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Foster Parenting as Work

Hannah Roman†

ABSTRACT: Foster parents play two vital roles in the modern child welfare system. A foster parent is a caregiver for the child as well as a member of a team working to provide appropriate services and support to the child and to the family of origin. Despite the importance of each of these roles, however, and unlike other members of the team, foster parents are not compensated for their labor.

Treatment of foster parents as volunteers is rooted in both legal theory and doctrine. As a theoretical matter, foster parents are equated with biological parents, whose labor is uncompensated. Just as caregiving for family members is assumed to be given without expectation of any reward beyond familial affection, foster parents' caregiving is treated as a gift, and its value as a public good goes unrecognized. As a doctrinal matter, the child welfare system distinguishes foster parents, who are lay people, from professionals such as social workers, therapists, lawyers, and judges. The professional members of the team are assumed, by virtue of their training and education, to possess expertise for which they should be compensated, but foster parents are assumed to lack expertise. As a result, foster parents' labor is devalued and their expertise goes unrecognized, making it a challenge to recruit and retain committed foster parents and to ensure that children receive the skilled care they deserve.

Neither family law scholars examining the child welfare system nor feminist legal theorists contemplating the value of care work have addressed this problem. This Article demonstrates that foster parenting should be treated as work and compensated as such. Introducing compensation, improved training, and higher expectations for foster parents will enable foster parents to provide better care, resulting in improved outcomes for children. Additionally, it has the potential to prompt reconsideration of the legal treatment of other traditionally unpaid forms of care work.

† Staff Attorney, King County Department of Public Defense. The views expressed in this Article are those of the author and do not necessarily reflect the views of the King County Department of Public Defense. Many thanks to Clare Huntington, Marty Guggenheim, Erez Aloni, Jessica Dixon Weaver, Chris Gottlieb, Tara Urs, Amy Mulzer, and participants in the NYU School of Law Lawyering Colloquium for their very helpful comments.

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INTRODUCTION

Imagine a job in which the employee is expected to be on-call twenty-four hours a day. Let us make this employee a woman, like almost everyone who does this job. It is a job in which the health and well-being of others depends on the job being done well. It is intensely stressful. The employee must be available at a moment’s notice whether it is four in the morning or six in the evening. The job requires her to manage one or more people who may be uncooperative and resistant to her help. She is responsible for implementing complicated plans that require her to coordinate with numerous other people who work in other fields. She must attend meetings in the office on a regular basis, and must also be available for meetings called by her supervisors without notice. She must attend additional meetings at locations scattered around the city where she lives. She may lose her job for violation of any number of rules and regulations, but receives only eight hours of training on her responsibilities as an employee. Imagine further that the employee is given only a monthly stipend intended to cover her costs. She is paid nothing for her time or her labor. She receives no benefits: no health insurance, no life insurance, no retirement plan.

This is precisely the strange position in which foster parents find themselves. Their work is challenging, emotionally and physically draining, and full of heartbreak. The stakes are impossibly high: a stable, loving foster home placement where a child’s needs are met can change the course of that child’s life. Despite all of this, the law assigns no economic value to a foster
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Although foster parents generally receive a monthly stipend, it is expressly intended to cover only the expenses they incur in the course of caring for a child.

Of the approximately 400,000 children in foster care in the United States, 297,852 are in family foster care,

meaning that they live with foster parents in their homes rather than in group homes or institutions, reflecting the long-accepted belief that children in foster care should live in a family setting whenever possible.

Foster parents are thus essential members of the "team" responsible for caring for children in foster care. Other members of this team—including social workers, therapists, child advocates, and lawyers—are paid for the work that they do on behalf of children.

Foster parents are not paid, despite the fact that they "are [expected to be active members of the service delivery team]."

Foster parents must work with other members of the team to develop a plan to address the often complex needs of each child in their care. Once the service plan is in place, foster parents must arrange for, take children to, and participate in counseling, intensive mental health treatment, medication management, behavior management, and so on. They maintain ongoing communication with case workers responsible for the children's placement and negotiate with them whenever a disagreement arises over parenting or treatment decisions. They also bring children for visits with their parents and help children cope with the emotions that arise as a result of spending time with family from whom they are separated. Foster parents must constantly strive to reinforce and strengthen the relationship between parent and child, to "help[the child] maintain his or her own identity as someone else's child."

Federal subsidies for family foster care explicitly limit foster parents' compensation to the costs of providing care, excluding any compensation for time or labor. See infra notes 211-212 and accompanying text.


As early as the 1909 White House Conference on the Care of Dependent Children, when many prominent child welfare reformers gathered to draft highly influential recommendations for child welfare practice, their recommendations included a provision stating that "homeless and neglected children, if normal, should be cared for in families, when practicable." JOHN E.B. MYERS, A HISTORY OF CHILD PROTECTION IN AMERICA 101 (2004).

Andrew Sanchirico & Kary Jablonka, Keeping Foster Children Connected to Their Biological Parents: The Impact of Foster Parent Training and Support, 17 CHILD & ADOLESCENT SOC. WORK J. 185, 187 (2000) ("Foster parents are no longer perceived as merely substitute parents or custodians, but are now expected to be active members of the service delivery team."); see also Margaret Beyer, Too Little, Too Late: Designing Family Support to Succeed, 22 N.Y.U. REV. L. & SOC. CHANGE 311, 335 (1996) (describing foster care as "a support service to the family and not just substitute parenting for the child"); Sandra Stukes Chipungu & Tricia B. Bent-Goodley, Meeting the Challenges of Contemporary Foster Care, FUTURE CHILD., Winter 2004, at 75, 86 ("In addition to nurturing children and promoting their healthy growth and development, [foster parents] are expected to advocate for children, mentor birth parents, and provide members of the team (including social workers, lawyers, and judges) with key information about the well-being and permanency of children.").

MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 209 (2005).
is in addition to the daily work of raising children with which every parent is familiar.

Despite the significant work involved in caring for children removed from their parents, treatment of foster parents as volunteers is firmly rooted in both legal theory and doctrine. As a theoretical matter, foster parents are equated with biological parents, whose labor is uncompensated. The vast majority of foster parents, or at least of foster parents who assume primary caretaking responsibility for children, are women. The law treats mothering as labor that need not be compensated because it is assumed to be freely given. Moreover, the law fails to recognize the productive value of women’s household labor. Foster mothers are seen as substitute mothers, and are assumed to act without expectation of reward. The productive value of their work is rendered invisible.

Moreover, they become vulnerable to a “commodification critique,” described by Katharine Silbaugh as the belief that “certain human attributes or certain resources should lie wholly or partially beyond exchange, because to allow exchange would be inconsistent with a vision of personhood or human flourishing.” Thus the suggestion that foster parents should be compensated for their work is frequently met with concern. To pay foster parents, the thinking goes, reduces a powerfully intimate service to a commercial transaction.

At the level of doctrine, the child welfare system distinguishes professionals, including lawyers, social workers, and judges, from lay people,

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6. See infra notes 59-60 and accompanying text.
7. See, e.g., Katharine Silbaugh, Turning Labor into Love: Housework and the Law, 91 NW. U. L. REV. 1, 25-27 (1996) (arguing that the law should recognize that household work produces value regardless of the satisfaction women may derive from it).
9. Silbaugh, supra note 8, at 84.
10. Although commodification anxiety plays an important role in the legal treatment of foster parents as volunteers, the role of altruism and economic motivation in foster parenting remains largely unexplored. By contrast, numerous scholars have examined commodification and the role of altruism and economic motivation in the context of assisted reproduction. See, e.g., NAOMI R. CAHN, TEST TUBE FAMILIES: WHY THE FERTILITY MARKET NEEDS LEGAL REGULATION 156-64 (2009) (arguing that commodification of gametes can coexist with recognition of their intrinsic non-monetary value); Mary Anne Case, Pets or Meat, 80 CHI.-KENT L. REV. 1129, 1143-44 (2005) (identifying “resistance to full monetization of [women’s] labor” in the context of egg donation); Kimberly D. Krawiec, A Woman’s Worth, 88 N.C. L. REV. 1739, 1757-63 (2010) (describing the legal regulation of payments to egg donors based on belief that egg donors should be motivated primarily by altruism); Sonia M. Suter, Giving in to Baby Markets: Regulation Without Prohibition, 16 MICH. J. GENDER & L. 217, 219 (2009) (describing “baby markets” resulting from the commodification of reproductive material).
primarily foster parents. The experience and training of the former are considered worthy of compensation. The latter, by contrast, are seen as having no particular expertise, but rather as possessing an innate capacity for love that leads them to offer care to the children of strangers. Child welfare professionals may have only fleeting contact with children in foster care, while foster parents care for them throughout the day and night. Foster parents thus become experts on the particular children in their care and on the needs of children in substitute care more generally. Yet the child welfare system, valuing formal education and training over experience, does not recognize this expertise. As a result, foster parents' contributions are underappreciated and their work is undervalued, leading to burnout and correspondingly high turnover rates. Foster parents are stretched to capacity in terms of financial sacrifice, time, and the stress of navigating a system that views them as unskilled and accordingly interchangeable. Moreover, the training foster parents receive is premised upon the belief that what they do takes little skill, and is therefore often woefully inadequate to prepare them for the challenges of the role. Nor do foster parents receive sufficient ongoing support from the agencies that employ them, because the child welfare system fails to adequately recognize the significant challenges of the job.

Neither family law scholars examining the child welfare system nor feminist legal theorists of commodification and care work have confronted the problem presented by foster parents' unpaid labor. Family law scholarship on child welfare tends to ask, "How should we construct the relationships between the state, parents, and children?" This "parent-child-state" framework


obscures the role of some "important others," including foster parents, who dominate the lived experience of children in foster care. Despite ever-present concerns about the capacity of state child welfare systems to adequately address the needs of children in foster care, relatively little attention is paid to the foster parents to whom the state delegates the work of caring for these children. Nor has the economic transaction that occurs when a foster parent takes in a foster child been addressed by feminist legal scholars concerned with care work. Scholars have examined numerous ways in which the law devalues caregiving, including unpaid work performed within the home as well as paid care work. Although the law's treatment of foster parents is a reflection of the pervasive devaluation of care work, foster parenting has not been examined as a form of care work.

This Article begins to fill in this gap by demonstrating that foster parents' care work should be treated as labor and compensated as such. Treating foster parenting as work will benefit children in foster care by making it possible for foster parents to provide the kind of care that these children deserve. Re-conceptualizing foster parenting as work rather than volunteerism recognizes the key role that foster parents already play in improving outcomes for children in foster care. It will also make it possible for foster parents to do better. This

parents who care for children for extended periods of time be granted "parental or quasi-parental status"); Gilbert A. Holmes, The Tie That Binds: The Constitutional Right of Children to Maintain Relationships With Parent-like Individuals, 53 MD. L. REV. 358, 392-93 (1994) (urging an "expanded definition of 'parent" that would include "individuals who are not legally related to the child but have voluntarily assumed parenting responsibilities, and who have either resided with the child or were barred from residing with the child by the child's custodian," including foster parents).


16. See JILL DUERR BERRICK, TAKE ME HOME: PROTECTING AMERICA'S VULNERABLE CHILDREN AND FAMILIES 84 (2009) ("Serving as the backbone of the child welfare system . . . traditional foster care is nonetheless given scant attention by public policymakers, administrators, and child welfare reformers."); TERESA TOGUCHI SWARTZ, PARENTING FOR THE STATE: AN ETHNOGRAPHIC ANALYSIS OF NON-PROFIT FOSTER CARE 8 (2005) ("Very little research has paid attention to the provision of care to foster children while under state protection . . .").


18. See, e.g., Dorothy Roberts, Spiritual and Menial Housework, 9 YALE J. L. & FEMINISM 51 (1997) (identifying exemption of domestic workers from labor protections and limitations on welfare benefits for poor mothers as examples of racialized devaluation of housework, including caregiving, performed by women of color); Silbaugh, supra note 7, at 72-79 (describing ways in which law treats paid household work as unlike other forms of paid work by exempting domestic workers from numerous labor protections).
Article suggests that we undercompensate foster parents for the work that they do, but we also expect too little of them. This Article focuses in particular on the possibility that if properly compensated, foster parents could be asked to serve a key role in facilitating reunification. When foster parents see reunification as an important and attainable goal, they can be a powerful source of support for families. However, we generally accept that it is unfair to ask those who are volunteering their labor to take on additional responsibilities that could speed reunification, such as offering supervision, guidance, and parenting support to parents during visits with their children, or helping parents remain involved in their children’s education and medical care by bringing them to doctors’ appointments and school events. Accepting that it is both worthwhile and fair to pay foster parents for their labor opens the possibility that we could pay them a salary that allows them to spend time mentoring parents and ensuring parents have meaningful, frequent contact with their children.

Expansion of the foster parent’s role (something that, as I describe below, is already occurring) will require additional training and support for foster parents. Here, too, viewing foster parenting through the lens of work, rather than charity, allows us to consider what skills we want a foster parent to possess. If we accept that good foster parenting—like all care work—takes skill, we begin to see that the current system is highly inadequate when it comes to training and ongoing guidance and supervision for foster parents. Recognizing the work involved in foster parenting also requires recognizing the skill it takes to do that work well, and should prompt reconsideration of the level of training and ongoing education and support that should be provided to foster parents.

The first Part of this Article provides an overview of the current foster care system, beginning with the population of children in foster care and the processes by which they enter and leave foster care, then turning to the relatively little information available regarding the foster parent population. I examine the work that foster parents do, suggesting that while much of it resembles the ordinary labor of parenting, foster parents also engage in additional work as members of a professional team providing services to a family. In the second Part, I examine the reasons for widespread resistance to the idea of paying foster parents, and in particular the role of commodification anxiety in shaping current thinking about foster parenting. In the third and final Part of this Article, I provide some preliminary suggestions as to what a system that treats foster parenting as work might look like. I argue that treating foster parenting as work, and compensating it as such, would allow for a number of

19. There is far too little empirical research on the work that foster parents do or how they experience that work. In describing the work, this Article relies primarily on the two existing in-depth ethnographic accounts of American foster mothers’ experiences. See SWARTZ, supra note 16; DANIELLE F. WOZNIAK, THEY’RE ALL MY CHILDREN: FOSTER MOTHERING IN AMERICA (2002).
changes that would increase the quality of care for children. These include relieving financial strain on foster parents by compensating them for their labor, improving training and establishing more rigorous qualifications for foster parents, and encouraging foster parents to take on an active role in reunification efforts as mentors and sources of emotional—as well as more concrete forms of—support.

I. FAMILY FOSTER CARE IN THE UNITED STATES

A. Children in Foster Care

The number of children in foster care nationwide has declined slowly since the 1990s. In September 2001, there were 542,000 children in foster care, whereas today there are a little over 400,000. Only a small percentage of these children have suffered severe abuse. Neglect is far more common; this broad category can include a parent’s drug or alcohol abuse, inadequate housing, unsanitary conditions in the home, a parent’s failure to ensure regular attendance at school or to follow up with recommended medical treatment for the child, domestic violence, or a parent’s mental illness. The vast majority of children in foster care come from poor families, and the conditions that lead to removal are often directly related to the family’s poverty. Children of color are significantly overrepresented in the foster care system.

21. Children’s Bureau, supra note 2, at 1 (stating that there were 402,378 children in foster care on the last day of federal fiscal year 2012). This is actually a slight increase over the previous two years. Id.
22. See HUNTINGTON, supra note 15, at 94 (“[I]t is estimated that only 10 percent of all cases in the child-welfare system warrant criminal charges.”); Matthew I. Fraidin, Stories Told and Untold: Confidentiality Laws and the Master Narrative of Child Welfare, 63 ME. L. REV. 1, 21 (2010).
23. Fraidin, supra note 22, at 22-23.
24. Id. at 23-25.
25. Dorothy Roberts suggests a number of ways in which poverty and child neglect are linked: (1) the stress of living in poverty can lead to child maltreatment, including violence and drug abuse, DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 31-32 (2002); (2) such parents “rely on public service providers who are far more likely to report maltreatment than are private professionals who serve a more affluent, paying clientele,” id. at 32; (3) parents’ inability to meet the needs of their children may result from lack of resources (for example, unsafe housing conditions or a lack of affordable child care), id. at 33-38; and (4) child welfare agencies are more likely to find certain behaviors, such as recreational drug use or refusal to administer psychotropic medication to a child, to be neglectful when the parent is poor, id. at 38-39.
26. Of the 402,378 children in foster care nationwide in 2013, twenty-four percent (98,201) were African-American. Children’s Bureau, supra note 2, at 2. According to census data, African-Americans make up 13.2% of the population. State & County Quick Facts, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/00000.html (last visited Feb. 15, 2016). Nationwide statistics can obscure the extent to which minority children are overrepresented in certain areas. See Dorothy E. Roberts, Child Welfare’s Paradox, 49 WM. & MARY L. REV. 881, 882 (2007). In New York City, for example, of 12,580 children in foster care, only 583, or 4.6%, are white; 7,028, or 55.9%, are African-American. E-mail from Peter Nabozny, New York City Admin. for Children’s Servs., to author (July 23, 2014) (on file with author). Census data shows that African-Americans make up only 25.5% of New York City residents. State & County Quick Facts: New York City, U.S. CENSUS BUREAU,
likely to be removed from their parents' care than white children, and they stay longer in foster care once they are there.

Typically, a child enters foster care when the state removes him from the care of his parent or parents based upon an allegation of abuse or neglect. Upon determining that there are grounds for removal, the state or local agency responsible for child welfare files a petition in a civil court charging the parent with abuse or neglect, and the child may or may not remain in foster care pending adjudication of the petition. After the court makes its determination regarding whether abuse or neglect occurred, it can order continued foster care placement or return the child to the custody of her parents. If the court does find abuse or neglect occurred, the court will generally make orders requiring the parent to participate in services to address the abuse or neglect.

Although scholars often refer to "the child welfare system," each state's child welfare system operates in slightly different ways, and is governed by state law. However, federal funding for foster care placements is tied to state implementation of certain federal priorities. For example, in very limited circumstances, the state may refuse to try to reunite the family, but in the vast majority of cases, the state will attempt to reunite the family.

http://quickfacts.census.gov/qfd/states/36/3651000.html (last visited Feb. 15, 2016). In South Dakota, sixty percent of children in foster care are Native American, although Native American children make up only fifteen percent of the population of children in the state. ALICE HEARST, CHILDREN AND THE POLITICS OF CULTURAL BELONGING 106 (2012).

27. ROBERTS, supra note 25, at 17.

28. Id. at 19. Although, as noted, poor families make up the vast majority of families involved in the child welfare system, racial disparities in the child welfare system cannot be explained entirely by the fact that families of color are disproportionately likely to live in poverty. See Shani M. King, The Family Law Canon in a (Post?) Racial Era, 72 OHIO ST. L.J. 575, 609-11 (2011). Rather, deeply-rooted stereotypes and assumptions about black family dysfunction lead to stark inequalities in treatment of parents and children of color, given the subjective and discretionary nature of child welfare decision-making. See ROBERTS, supra note 25, at 47-53; see also Annette R. Appell, Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System [An Essay], 48 S.C. L. REV. 577, 587 (1997) (arguing that "[w]omen experience the public protective system's myopia in particularized ways" because "the state clearly, and at times explicitly, targets women based on their gender, race and class"); Tanya Asim Cooper, Racial Bias in American Foster Care: The National Debate, 97 MARQUETTE L. REV. 215, 245-49 (2013) (arguing that the amorphous "best interests of the child" standard allows judges to indulge racial stereotypes about parenting practices).

29. In cases known as "voluntary placements," parents give temporary custody of the child to the state without a formal allegation of abuse or neglect. The "voluntariness" of such placements has been questioned, given that parents often agree to foster care placement out of desperation when needed services are unavailable outside of the foster care system, or based upon the threat that abuse or neglect charges will be filed if they do not agree. See ROBERTS, supra note 25, at 86-88.

30. Criminal charges may also be filed in certain cases, but the abuse or neglect proceeding (often called a "dependency" proceeding) is a separate civil case.

31. In some jurisdictions, such as New York City, this adjudication can take years. See, e.g., In re Joseph A., 91 A.D.3d 638, 641 (N.Y. App. Div. 2012) (reversing finding of neglect made at fact-finding hearing commenced seventeen months after children's entry into care and completed sixteen months after that, during which time children remained in non-relative foster care "at a location that made it extremely difficult for the family to maintain a relationship"); Martin Guggenheim & Christine Gottlieb, Justice Denied: Delays in Resolving Child Protection Cases in New York, 12 VA. J. SOC. POL'y & L. 546, 549-53 (2007) (describing numerous cases involving egregious court delays).

32. 42 U.S.C. § 671(a)(15)(D) (2012) (reasonable efforts not required in cases involving severe abuse, murder of a sibling, or felony assault of a child, or if a parent's rights have been terminated with respect to a sibling).
majority of cases, the state is obligated under federal law to make reasonable efforts to “make it possible for a child to return safely to the child’s home.” If the family is not reunified within statutory timeframes, the state (or in some instances, the private foster care agency to which the child has been assigned) may bring a petition to terminate the parent’s parental rights. The parent remains the child’s legal parent unless and until a court determines that there is clear and convincing evidence of parental unfitness sufficient to terminate the parent’s rights, and that termination is in the child’s best interests. After termination, the child is eligible for adoption, but may remain in foster care long-term if no adoptive placement is found.

Although at least half of families with children in foster care are ultimately reunified, with most reunifications occurring after a relatively short period of time in care, the average length of stay in foster care is a little over twenty-two months. For children who are not reunified with their parents, adoption is the favored outcome, but it is not available to all children in foster care. For example, while adoptions from foster care have increased in recent years, few children over twelve are adopted. The average age of a child in foster care is eight, and almost forty percent of children in foster care are twelve or older. While some of these older children enter care as teenagers, many have been in foster care for years and have experienced multiple placements. Adoptive placements for such children are few and far between. In September 2013, there were approximately 102,000 children “waiting to be adopted,” which means

33. 33. Id. § 671(a)(15)(B)(ii).
34. 34. The Adoption and Safe Families Act of 1996 requires states to file a petition to terminate a parent’s rights after a child has spent fifteen of the most recent twenty-two months in foster care, unless the child is living with a relative, the state has failed to make reasonable efforts to reunify the family, or there is a compelling reason why termination would not be in the child’s best interest. Id. § 675(S)(E).
36. 36. Although grounds for termination of parental rights vary from state to state, generally the state must prove unfitness “by linking a condition, deficit, or dysfunction to a person’s current or future ability to function as a parent.” Janet L. Wallace & Lisa R. Pruitt, Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights, 77 MO. L. REV. 95, 111 (2012).
37. 37. BERRICK, supra note 16, at 39. However, Berrick notes studies showing that a significant percentage of children returned to the care of their parents will eventually be placed back in foster care, and suggests that the long-term reunification rate may be closer to thirty-five percent. Id.
40. 40. Stott & Gustavson, supra note 39, at 620 (less than fifteen percent of children adopted from foster care in 2005 were older than twelve).
41. 41. Children’s Bureau, supra note 2, at 1.
42. 42. Id.
43. 43. See Stott & Gustavson, supra note 39, at 621 (noting that “as the length of stay in foster care increases, the number of placements increases”).
either that a court has established a goal of adoption for them or that their parents’ rights have been terminated.\textsuperscript{44}

Most children in foster care live in family foster care, meaning they live in private homes with foster parents who are licensed and monitored by public or private agencies. Nation-wide, approximately twenty-eight percent live of children in foster care live with a foster parent who is a relative (“kinship foster care”), while another forty-seven percent live with a non-relative foster parent.\textsuperscript{45} Only fourteen percent live in a group home or institution.\textsuperscript{46} Children in foster care are much more likely than other children from a similar socio-economic background to experience serious emotional and behavioral challenges as well as developmental delays.\textsuperscript{47} Since family placements are strongly favored in today’s child welfare systems,\textsuperscript{48} family foster care now serves many children who might previously have been placed in group homes or residential treatment facilities, including teenagers and those with emotional or behavioral challenges.

As a result, and as a result of efforts to prevent foster care placement for children who can remain safely at home, foster parenting today means caring for children who are challenging to care for, who have experienced significant trauma, and whose needs may go far beyond basic needs for love and shelter. Unfortunately, we know very little about the foster parents who take up this challenge.

\begin{itemize}
\item \textsuperscript{44} Children’s Bureau, \textit{supra} note 2, at 4. This estimate excludes children over the age of sixteen who have a goal of emancipation. \textit{Id}.
\item \textsuperscript{45} \textit{Id.} at 1.
\item \textsuperscript{46} \textit{Id}.
\item \textsuperscript{47} See, e.g., A. Rachel Camp, \textit{A Mistreated Epidemic: State and Federal Failure to Adequately Regulate Psychotropic Medications Prescribed to Children in Foster Care}, 83 TEMPLE L. REV. 369, 381 (2011) (noting higher rates of emotional and behavioral problems, developmental delays, birth defects, and chronic physical disabilities); Daniel Pollack, Khaya Eisenberg & Amanda Sundarsingh, \textit{Foster Care as a Mitigating Circumstance in Criminal Proceedings}, 22 TEMPLE POL. & CIV. RTS. L. REV. 45, 49 (2012) (noting significantly greater risk of psychological disorders). There are a number of possible reasons that children entering foster care may have higher rates of mental illness and behavioral issues: they have often experienced significant trauma, both prior to their removal from their parents and as a result of it, and rates of entry into foster care may also be higher for children whose parents are ill-equipped to adequately address their medical and mental health needs. Moreover, foster care itself is often harmful; multiple foster care placements cause trauma and also make it very difficult to ensure continuity of care, which means that children frequently do not receive adequate mental health treatment. See Camp, \textit{supra}, at 385; Kathleen Noonan & Dorothy Miller, \textit{Fostering Transparency: A Preliminary Review of “Policy” Governing Psychotropic Medications in Foster Care}, 65 HASTINGS L.J. 1515, 1523-24 (2014).
\item \textsuperscript{48} Federal law requires that case plans for children in foster care be “designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents’ home.” 42 U.S.C. § 675(5)(A).
\end{itemize}
B. Foster Parents

There is little data available to tell us who becomes, and who remains, a foster parent; existing studies are few and reflect limited sample sizes. What data exists suggests that foster parents tend to be “older, less educated, and with fewer financial resources than U.S. families in the general population.”

With respect to income, one study found that “almost one fifth of children in nonrelative foster care were living in homes with incomes below 100% of the poverty level, and an additional two fifths of children were living in homes with incomes below 200% of the poverty level.” The National Survey of Child and Adolescent Well-Being (NSCAW), which surveyed caregivers for 700 children who had been in foster care for more than one year, found that only twenty-six percent of kinship foster parents and thirty-eight of non-kin foster parents reported an income of $50,000 or more per year, in contrast to fifty percent of American households. Twenty-one percent of non-kin foster parents and forty-one percent of kinship foster parents had incomes of less than $25,000. Fifty-six percent of foster parents (both kin and non-kin) had a high school education or less, while another twenty-four percent had an associate’s degree or a certification from a vocational or technical school.

The NSCAW also found that thirty percent of foster parents were over the age of fifty, and eleven percent were over the age of sixty. Only twenty-four percent were under the age of thirty-five, whereas in the general population, forty-one percent of parents are under thirty-five. The study also found that only thirty-six percent of foster parents were white; most were African-American, and a significant number were Latino. The study also concluded that foster mothers do most of the caregiving for children in foster care.

49. See Jill Duerr Berrick & Marit Skivenes, Dimensions of High Quality Foster Care: Parenting Plus, 34 CHILD. & YOUTH SERVS. REV. 1956, 1964 (2012) (“[R]emarkably little is known about foster parents in general, either in terms of the most effective recruitment strategies, or the characteristics sought among effective caregivers.” (internal citations omitted)).


54. Id.

55. Id. at 14.

56. Id. at 144.

57. Id.

58. Id.

59. Id. at 89 (noting that the primary caregiver tends to be the foster mother); see Teresa Toguchi Swartz, Mothering for the State: Foster Parenting and the Challenges of Government-Contracted Carework, 18 GENDER & SOC’Y 567, 571 (2004) (noting that even in two-parent families, “foster
According to the NSCAW, while seventy-three percent of non-kinship foster parents were married, ninety-seven percent of non-kinship caregivers were women, suggesting that even among foster parents in committed relationships, women are almost always the primary caregivers.  

Inability to recruit and retain sufficient numbers of foster parents is often cited as one aspect of the crisis in foster care. As greater numbers of women have entered the paid work force, the supply of full-time stay-at-home caregivers for foster children has decreased. Other factors, such as the changing population of children in family foster care and an increased emphasis on adoption by foster parents, may also come into play. Recruitment is not the end of the story when it comes to the foster parent shortage; even if there are sufficient numbers of licensed foster parents in a given area, the supply may not match the demand. For example, foster parents may not be able to accommodate sibling groups or children of certain ages, or they may live so far from a child’s family of origin that visitation would be impossible. Not all licensed foster homes can be or will be utilized; for example, a 2005 study of foster homes in New Mexico, Oregon, and Oklahoma showed that twenty percent of foster parents provided sixty to seventy percent of foster care. Finally, turnover among licensed foster parents is consistently high. The same study showed that between forty-seven and sixty-two percent of foster parents stopped fostering within a year of their first placement. High turnover among foster parents makes it difficult to ensure stable placements for children and decreases the number of skilled, experienced foster parents mothers provided the majority of care to children and bore the daily responsibilities of organizing foster children’s lives, interacting with social workers, and managing relationships with biological parents).

60. See National Survey of Child & Adolescent Well-Being, supra note 53, at 144.

61. See, e.g., BERRICK, supra note 16, at 83 (“There are too few foster parents available to care for the thousands of children needing care...”); Andrew Sanchirico et al., Foster Parent Involvement in Service Planning: Does it Increase Job Satisfaction?, 20 CHILD. & YOUTH SERVS. REV. 325, 325 (1998) (“The recruitment and retention of foster parents has been a major issue of concern among child welfare professionals over the past several years.”).


63. See WOZNIAK, supra note 19, at 58.

64. See Deborah Gibbs, Understanding Foster Parenting: Using Administrative Data to Explore Retention, U.S. DEP’T HEALTH & HUM. SERVS. 1-1 (Jan. 2005), https://aspe.hhs.gov/sites/default/files/pdf/73146/report.pdf [hereinafter Understanding Foster Parenting] (“Because the majority of adoptions are by foster parents, these homes may become less available as foster homes, following one or more adoptions.”).

65. See BERRICK, supra note 16, at 83 n.2; Understanding Foster Parenting, supra note 64, at 1-1.

66. Understanding Foster Parenting, supra note 64, at 3-14.

67. Id. at ES-3.
available to provide care.\textsuperscript{68} The shortage of foster homes may lead to "relaxed criteria and thus the inclusion of ‘marginal’ foster homes."\textsuperscript{69}

Broadly speaking, there are three types of family foster placements: non-kinship foster care (where the foster parent is unrelated to and unknown to the foster child before placement), kinship foster care (where the foster parent is a relative of the child), and "therapeutic" foster care (where the foster home is specially licensed to provide care for children with complex medical, behavioral, or mental health needs).\textsuperscript{70} Therapeutic foster care differs from standard family foster care in a number of ways: foster parents are provided with special training, can access additional resources such as crisis intervention and respite care, and receive significantly more money per child.\textsuperscript{71}

State and local child welfare agencies often contract with private agencies,\textsuperscript{72} typically but not always non-profits,\textsuperscript{73} to provide foster care services. These agencies may also provide other related services directly to parents and children, such as medical/mental health services, parenting classes, residential treatment, and services to prevent placement in foster care.\textsuperscript{74} Whether it is a public or private agency overseeing the foster care placement, case workers employed by the agency monitor foster homes, making periodic visits to ensure children’s well-being. Case workers “guide, support, and police their foster families,” offering advice, ensuring necessary paperwork is filled out, and enforcing an often complex regulatory scheme intended to ensure the safety of children in foster care.\textsuperscript{75}

The same public and private agencies that oversee foster care placements also investigate potential foster homes to determine whether they should be licensed to take in children. In order for states to receive federal reimbursement for payments made to foster parents, the foster parents must be licensed by the state.\textsuperscript{76} Federal law sets minimum standards for foster parent licensing,

\textsuperscript{68} See Sanchirico et al., supra note 61, at 326.
\textsuperscript{70} See Patrick A. Curtis, Introduction: The Chronic Nature of the Foster Care Crisis, in THE FOSTER CARE CRISIS: TRANSLATING RESEARCH INTO POLICY AND PRACTICE 1, 3-4 (Patrick A. Curtis et al. eds., 1999).
\textsuperscript{71} Id.
\textsuperscript{72} See Susan Vivian Mangold, Protection, Privatization, and Profit in the Foster Care System, 60 OHIO ST. L.J. 1295, 1313 (1999) (noting that while state agencies now bear primary responsibility for the care of abused and neglected children and may delegate that responsibility to private agencies, the private philanthropic foster care system predates the public child welfare system).
\textsuperscript{73} See id. at 1296 (describing the 1996 amendment to the Social Security Act allowing “federal reimbursement for foster care provided by for-profit companies”).
\textsuperscript{75} SWARTZ, supra note 16, at 139.
\textsuperscript{76} 45 C.F.R. § 1355.20(a) (2012) (defining foster family home, for which federal reimbursement is available, as "the home of an individual or family licensed or approved as meeting the standards
Foster Parenting as Work

requiring states to check national crime databases using fingerprints as well as to check the state’s child abuse and neglect registry.77 Prospective foster parents must submit to home visits from an agency worker who checks that the home is safe and has adequate space and interviews the prospective foster parents to assess their suitability for foster parenting.78 Foster parents are also generally required to undergo a medical examination and to submit references.79 Almost all states also require some amount of training (anywhere from six to thirty-six hours for non-treatment foster homes) before a license is issued.80

The agencies that supervise foster parents, whether public or private, generally do not consider them to be employees,81 and foster parents are not covered by the Fair Labor Standards Act.82 Foster parents are paid a monthly stipend or per diem for each child in their care, which is nominally intended to cover the costs they incur as a result of caring for the child. They are generally required to show that they have other sources of income sufficient to sustain the

established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children”).


80. Home Study Requirements, supra note 78, at 6-170 (collecting statutes and regulations); see, e.g., ARIZ. ADMIN. CODE § 6-5-5825 (2013) (requiring twelve hours of training for initial license, plus six hours annually); MICH. ADMIN. CODE r. 400.12312 (2014) (requiring twelve hours of training prior to placement of child in home, plus six hours annually); OHIO ADMIN. CODE 5101.2-5-33(3)(3) (2015) (requiring thirty-six hours of training for initial license, plus sixty hours per subsequent certification period); S.C. CODE ANN. REGS. 114-550(G)(5) (2015) (requiring fourteen hours of training for initial license, plus fourteen hours annually).

81. Courts have addressed the question of whether foster parents are employees or independent contractors when considering tort claims by foster children, and have generally found foster parents to be independent contractors and have accordingly declined to extend vicarious liability to the supervising agency. See, e.g., I.H. ex rel Litz v. County of Lehigh, 610 F.3d 797, 812 (3d Cir. 2010) (holding that a private foster care agency did not have a master-servant relationship with the foster parent); Mitzner ex rel Bishop v. State, 891 P.2d 435, 439-40 (Kan. 1995) (noting that finding an employment relationship would expose the State to liability to third parties as well as foster children for a foster parent’s torts). But see Hunte v. Blumenthal, 680 A.2d 1231, 1241 (Conn. 1996) (holding that a foster parent was the employee of the state Department of Children and Youth Services).

82. See U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter (Sept. 13, 1996) (finding no employment relationship under the FLSA where a “State or licensed private agency selects individuals who voluntarily agree to become foster care parents in accordance with State standards, where the Stage agency either directly or indirectly finances the care services, and where the services are provided in the foster parent’s home”); U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter (Nov. 13, 1974) (finding no employment relationship “where the payment is primarily a reimbursement of expenses for rearing the child”).
family in the absence of foster care payment. In other words, foster care payments may not be the sole source of income for the family. However, as noted above, foster parents are often low-income, and may support themselves using fixed income sources such as Temporary Assistance to Needy Families (TANF) and other public assistance.

The amount of money that foster parents receive for fostering varies widely from state to state. States typically establish a basic rate according to the age of the child, to which an additional amount may be added for children requiring higher levels of care. For example, in Connecticut, the basic rate ranges from $25.73 to $28.24 per day depending on the age of the child, while "medically fragile" or "therapeutic" foster homes receive between $46.63 and $133.00 per day. In South Carolina, the basic rate ranges between $11.07 and $14.17 per day, with higher rates ranging from $17.50 to $66.66 per day depending on the needs of the child. Most states also provide limited additional allowances to foster parents for various expenses, such as school supplies, diapers, clothing, and holiday and birthday gifts.

Consistent with their definition as being reimbursements for the costs incurred by foster parents, foster care payments are not treated as income for most purposes. Stipends paid to foster parents are not taxable income. Nor are they considered when determining a foster parent's eligibility for public benefits such as TANF, Medicaid, or Supplemental Security Income (SSI). At the same time, foster parenting does not qualify the foster parent for Social Security benefits, nor do foster parents receive health insurance, pensions, or

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83. Home Study Requirements, supra note 78, at 2.
84. See Critelli, supra note 50, at 7.
86. See id. at 8. States pay the same rates to relatives as to non-relatives provided that they are licensed as foster parents. see Miller v. Youakim, 440 U.S. 125, 145 (1979) (holding that federally funded foster care payments must be available to kinship foster parents who meet licensing requirements). However, unlicensed kinship caregivers may receive significantly less money; often, they receive only Temporary Assistance to Needy Families (TANF) child-only grants. Tiffany Allen et al., State Kinship Care Policies for Children that Come to the Attention of Child Welfare Agencies: Findings from the 2007 Casey Kinship Foster Care Policy Survey, CHILD TRENDS 19-20 (Dec. 2008), http://www.grandfamilies.org/Portals/0/documents/Resources/Foster%20Care%20Licensing%20Resources/State%20Assistance%20to%20Kin.pdf.
87. DeVooght & Blazey, supra note 85, at 10.
88. Id. at 16.
89. Id. at 7. In some cases, these supplemental allowances may mean that the overall payments provided to the foster parent are significantly higher than is evident from the stated amount of the stipend. Id. at 8.
other work-related benefits.\textsuperscript{92} Their only compensation consists of the monthly stipend, which is nominally intended solely for the foster child, along with any additional funds the state chooses to provide to reimburse foster parents for specific expenses, such as children’s clothing or transportation.

C. The Work of Foster Parenting

Foster parenting, like other kinds of care work, has traditionally been understood as an activity “requiring little or no skill or initiative, something that ‘any loving person’ can do.”\textsuperscript{93} In fact, good foster parenting is difficult, and takes a great deal of skill.\textsuperscript{94} It is a more involved and complex role today than it was a few decades ago, when foster parent were expected merely to serve as substitute parents to children whose parents were often given little support or opportunity to regain custody.\textsuperscript{95} In the early years of the modern child welfare system, agencies routinely failed to provide services to parents and children to alleviate the concerns that led to placement in foster care, and failed to maintain the bond between parents and children in foster care through regular visits.\textsuperscript{96} Because little effort was made to reunify families, foster parents were considered substitute caretakers whose role was limited to daily care and supervision of children who could not safely remain at home.\textsuperscript{97} Federal law now recognizes, however, that services and regular visitation are essential to prevent children from growing up in what is meant to be temporary care, requiring states to make “reasonable efforts” to reunify the family.\textsuperscript{98} The law also now reflects a strong preference for family foster care over

\textsuperscript{92} See BERRICK, supra note 16, at 96.
\textsuperscript{93} Paula England & Nancy Folbre, Care, Inequality, and Policy, in CHILD CARE AND INEQUALITY: RETHINKING CAREWORK FOR CHILDREN AND YOUTH 133, 139 (Francesca M. Cancian et al. eds., 2002) (describing care work generally).
\textsuperscript{94} See BERRICK, supra note 16, at 89 (suggesting that “good foster parents may need even better parenting skills than the average parent”); SWARTZ, supra note 16, at 73 (describing foster mothers’ understanding of themselves as “skilled caregivers”).
\textsuperscript{95} See Eileen Mayers Pasztor, Permanency Planning and Foster Parenting: Implications for Recruitment, Selection, Training, and Retention, 7 CHILD. & YOUTH SERVS. REV. 191, 193 (1985) (noting the changing nature of family foster care and suggesting that “[p]reviously, the goal of foster care often was continued foster care, and foster parents were considered as clients or caretakers”); Sanchirico et al., supra note 61, at 328-29 (“Unlike the past, when basic child rearing skills were all that was necessary for the job, today’s foster parents need a number of additional skills if they are to properly perform their service delivery functions and be active partners in planning activities.”).
\textsuperscript{96} See Mangold, supra note 74, at 184 (describing the circumstances leading to the passage of the Adoption Assistance and Child Welfare Act of 1980).
\textsuperscript{97} See Sanchirico & Jablonka, supra note 4, at 186-87.
\textsuperscript{98} 42 U.S.C. § 671(a)(15)(B)(ii) (2012). Reasonable efforts are not defined in the statute. These efforts are not required if the parent “subjected the child to aggravated circumstances” as defined by state law (which may include sexual abuse, chronic abuse, torture, and abandonment), killed the child’s sibling, committed a felony assault resulting in serious bodily injury to the child or a sibling, or had her parental rights terminated involuntarily with respect to a sibling. Id. § 671(a)(15)(D).
institutional care whenever possible, meaning that children with special needs and significant behavioral challenges, who might previously have been placed in a group home or residential care facility, are now regularly placed in family foster homes.

It is now widely accepted that family foster care "should be a planned, goal-directed service in which the temporary protection and nurturing of children take place in the homes of agency-approved foster families." Thus a foster parent plays two primary roles: she is a caregiver for the child, and she is a member of a team working to provide appropriate services and support to the child and to his family of origin, ideally so that the child can return home.

Much of the work of foster parenting consists of the same tasks performed by any caregiver for children, whether that person is a parent or a paid care provider: feeding and preparing meals, taking children to school or to medical appointments, helping with homework, playing with them, reading to them, putting them to bed. Foster parenting, like all child care, is labor: it requires careful, constant attention to the physical and emotional needs of a child who is dependent upon the caregiver. But foster parenting also involves a great deal of labor unique to the foster parents’ role, including engaging with case workers and other professionals involved with the child, permitting them to visit the home, and ensuring the child receives the services they recommend.

As one foster mother remarked, it is far more than just "a full-time baby-sitting job." Children in foster care often have emotional and behavioral challenges or developmental delays, which the foster parent must learn to manage and treat. Danielle Wozniak describes how "[r]outine tasks accomplished by other same-aged children often became a matter, for foster children, of painstaking successive approximations and behavior modification programs.

99. Id. § 675(5)(A) (requiring case plans to include "placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child").
101. See, e.g., id. at 11 (describing family foster care as "an essential child welfare service for children and their parents who must live apart from each other for a temporary period of time"); Sanchirico & Jablonka, supra note 4, at 187 ("Foster parents are no longer perceived as merely substitute parents or custodians, but are now expected to be active members of the service delivery team.").
103. See WOZNIAK, supra note 19, at 199.
104. Id. at 133 (quoting a foster mother who goes on to say that foster parenting "affects every aspect of your life").
105. BERRICK, supra note 16, at 89; WOZNIAK, supra note 19, at 118-20; Angela C. Baum et al., Influences on the Decision to Become or Not Become a Foster Parent, 82 FAM. IN SOC'Y 202, 202 (2001); Chipungu & Bent-Goodley, supra note 4, at 84-85.
Parenting in these cases required vigilant consistency.\textsuperscript{106} Frequently, foster parents must be dogged advocates for the children in their care: arguing for and seeking out appropriate services and medical treatment,\textsuperscript{107} ensuring that children receive funds available for “extras” (clothing allowances, school trips, Christmas gifts, and so on),\textsuperscript{108} and using their intimate understanding of the children in their care to advocate for appropriate permanency outcomes.\textsuperscript{109}

Another significant aspect of foster parents’ labor—one that further distinguishes it from the work of parenting more broadly—involves supporting the child’s relationship with her family of origin. Foster parents play an essential role in reunification.\textsuperscript{110} They must help the child develop “a sense of belonging” in the foster family without undermining the relationship between the child and her own parents.\textsuperscript{111} Foster parents can serve as mentors or role models for parents who need support in developing their own skills as parents.\textsuperscript{112} Some foster care agencies explicitly ask that a foster parent be a “resource parent,” meaning “a combination of parent, coach and cheerleader to both the foster child in their care and the child’s parents.”\textsuperscript{113} Child welfare professionals emphasize the importance of regular contact between children and their families of origin.\textsuperscript{114} Accordingly, foster parents must often bring children for visits with their parents, or in some circumstances supervise such visits themselves. Visitation can involve, for the foster parent, the work of helping the child cope with complicated feelings that may arise before, during, and after the visits.\textsuperscript{115} Although they are not generally expected to do so, foster parents may also engage in a number of other strategies for facilitating a connection with the child’s family of origin: telephone calls; emails and letters; encouraging parents to accompany the foster parent to medical appointments,  


\textsuperscript{107} See Morgan E. Cooley & Raymond E. Petren, Foster Parent Perceptions of Competency: Implications for Foster Parent Training, 33 CHILD. & YOUTH SERVS. REV. 1968, 1972 (2011) (noting that foster parents surveyed “often mentioned that their ability to seek, fight for and obtain resources was very important” and described their “struggle to meet children’s needs amid a lack of resources”).

\textsuperscript{108} See WOZNIAK, supra note 19, at 101 (noting that many of the foster mothers she interviewed had difficulty obtaining resources to which they were entitled).

\textsuperscript{109} See, e.g., id. at 97 (describing a foster mother who advocated for a child to be returned to her mother).

\textsuperscript{110} See GUGGENHEIM, supra note 5, at 202-04; Beyer, supra note 4, at 335-36.

\textsuperscript{111} See WOZNIAK, supra note 19, at 112-13.

\textsuperscript{112} CHILD WELFARE LEAGUE OF AM., supra note 100, at 47.

\textsuperscript{113} Helaine Olen, For the Sake of Their Children, CHILD WELFARE WATCH, Summer 2008, at 31, 31.


\textsuperscript{115} Id. at 196-97.
parent-teacher conferences, and the child’s extra-curricular activities; and involving parents in decision-making regarding the child.\textsuperscript{116}

In order to support the child’s relationship with her family of origin, foster parents must master a form of the “detached attachment” that Margaret K. Nelson observed in her study of family day care providers.\textsuperscript{117} Nelson described the day care providers as striving to develop an attachment to the children in their care that “relies on the ongoing work of creating a space, a ‘distance’ that saves them from an overwhelming emotional engagement.”\textsuperscript{118} Nelson argues that in order to ensure that the child does not become too attached, family day care providers draw on the existence of the child’s own mother “to remind the child that his or her loyalties must rest elsewhere.”\textsuperscript{119} Cameron Macdonald makes a similar observation regarding nannies, finding that nannies who wanted the freedom to express their love for their employers’ children “were careful to emphasize” that “they were not trying to displace or replace the biological parents” but rather to give the child “additional love.”\textsuperscript{120} For foster mothers, this is an even more challenging enterprise, given that foster parents cannot promise the children in their care that they will return home to their own parents.\textsuperscript{121} Even if reunification is very likely, a foster parent cannot say with certainty when that day will come. The ability to cultivate children’s relationships with their own families of origin while making them feel welcome and loved in the foster home is an essential but under-recognized and under-valued skill among foster parents. Despite the law’s emphasis on efforts to reunify families, the “detached attachment” that foster parents must cultivate in order to support reunification is not necessarily valued or encouraged by the agencies that license and supervise them.\textsuperscript{122} It is nevertheless a significant part of the emotion work of foster parenting in our current system.\textsuperscript{123}

\textsuperscript{116} See, e.g., CRIS BEAM, TO THE END OF JUNE: THE INTIMATE LIFE OF AMERICAN FOSTER CARE 38-42 (2013) (describing foster parents who live a few blocks from the child’s father and allow him to stop by for visits and meals); SWARTZ, supra note 16, at 57 (describing foster mother who called child’s mother “to remind her to visit and to call her daughter and invit[ed] her over for family gatherings or just afternoon chats”); CHILD WELFARE LEAGUE OF AM., supra note 100, at 46-47 (describing ways in which foster parents can support child/parent relationship); Olen, supra note 113, at 33 (describing informal contacts between foster parents and parents).

\textsuperscript{117} See MARGARET K. NELSON, NEGOTIATED CARE: THE EXPERIENCE OF FAMILY DAY CARE PROVIDERS 100-06 (1990); see also CAMERON LYNNE MACDONALD, SHADOW MOTHERS: NANNIES, AU PAIRS, AND THE MICROPOLITICS OF MOTHERING 114-18 (2010) (describing detached attachment as a “feeling rule” that “structure[s] the emotional labor of paid childcare”).

\textsuperscript{118} NELSON, supra note 117, at 101 (describing the “capacity to create and sustain” detached attachment as “one of the unrecognized skills acquired in the course of learning how to be a day-care provider” (emphasis omitted)).

\textsuperscript{119} Id. at 103 (emphasis omitted).

\textsuperscript{120} MACDONALD, supra note 117, at 141; see also GUGGENHEIM, supra note 5, at 209 (drawing a parallel between the “role that nannies play when helping raise children of the wealthy (some of whom spend very little time with their parents)” and the role of foster parents in “help[ing] the child maintain his or her own identity as someone else’s child”).

\textsuperscript{121} See GUGGENHEIM, supra note 5, at 203.

\textsuperscript{122} Foster parenting differs significantly from other forms of paid child care in that there is no employer/employee or consumer/provider relationship between the foster parent and the biological
A superficial view of fostering sees good foster mothers as simply extraordinarily loving women, to whom genuine care for the children of strangers comes naturally. Popular depictions of foster parenting reflect this notion: "contemporary foster mothers are generally depicted as women who find ultimate fulfillment in motherhood, in nursing sick children, in caring for orphans, and in creating a home." But accounts of modern foster parenting suggest that today's foster parents are expected to go well beyond love and support, creating a rehabilitative environment for children, offering modeling for birth parents, . . . advocating for children's special needs, and serving as a bridge between children, birth parents, social service agencies, and the courts. The "emotional labor" involved in these intensely intimate relationships is significant.

Foster parents' emotion work has many facets. Foster parents must work to make children feel loved even when those children are difficult to love. Foster parents must often manage their own emotional reactions to children's behavior in order to provide appropriate care. On occasion, they must conceal or manage their own emotional reactions to the behavior of children's biological parents in order to help children cope with that behavior.

Foster parents do this work in the context of significant bureaucratic constraints. Foster parenting is care "in the public sphere," governed by rules...
and norms that frequently contradict what foster parents, children, and families of origin believe is best.\textsuperscript{127} Foster parents operate within the confines of a bureaucratic structure that values efficiency and compliance with well-meaning rules that may in fact have a negative impact on particular children. Their parenting is subject to numerous bureaucratic requirements that may or may not serve children’s best interests, but do make foster parents’ lives more difficult. For example, Teresa Toguchi Swartz describes the frustration of foster mothers who worked for a private foster care agency in Los Angeles and were required to report “every illness and injury, regardless of severity,” to the agency.\textsuperscript{128} The foster mothers complained that the policy reflected a lack of confidence in their judgment, and that reporting every minor scrape and bruise might lead case workers to think, unfairly, that the foster parent was a neglectful caregiver.\textsuperscript{129}

Child welfare professionals now generally advocate for foster parents to be involved in service planning for children,\textsuperscript{130} meaning that decisions regarding the child’s education, medical and mental health services, and visitation with the family of origin are to be made with the input of the foster parent, who is the child’s primary caregiver. In reality, however, the day-to-day experiences of foster parents often fail to comport with descriptions of foster parents as members of a “team” providing services to families in crisis.\textsuperscript{131} Foster parents may be prevented from making routine child care decisions, like whether a child can have a sleepover at a friend’s house, get her hair cut, or go on a school field trip;\textsuperscript{132} their input is often not sought when it comes to major decisions, such as whether a child should receive therapy or be placed in a residential treatment facility.\textsuperscript{133} Foster parents are regularly treated not as members of a professional treatment team but as providers of room and board. For example, there is often “no clear expectation that they will participate in any form of mental health interventions with children in their care.”\textsuperscript{134} In practice, child welfare professionals often have very limited expectations of foster parents, seeing them as untrained volunteers rather than as skilled workers with valuable input regarding the needs of the children in their care.

\textsuperscript{128} SWARTZ, supra note 16, at 89.
\textsuperscript{129} Id. at 89-90.
\textsuperscript{130} Sanchirico et al., supra note 61, at 328.
\textsuperscript{131} See Sanchirico et al., supra note 61, at 329 (“[D]espite general agreement regarding the need for teamwork in decision-making and service planning, and despite the desire among foster parents to be involved in these activities, the existing evidence indicates that foster parents are commonly excluded from such activities.”).
\textsuperscript{132} WOZNIAK, supra note 19, at 92; see SWARTZ, supra note 16, at 90-91.
\textsuperscript{133} See SWARTZ, supra note 16, at 91-93 (discussing a foster mother whose judgment that children should not be unsupervised during home visits due to suspected abuse was not respected).
\textsuperscript{134} Shannon Dorsey et al., \textit{Current Status and Evidence Base of Training for Foster and Treatment Foster Parents}, 30 CHILD. & YOUTH SERVS. REV. 1403, 1404 (2008).
As with other forms of care work, "the skills needed" to be a successful foster parent "are not in general the codifiable skills of a formal training scheme. Rather, many of the skills that a carer needs are tacit, difficult to codify, and generally picked up in the course of developing a particular caring relationship with a particular caree." Casual observers may assume that the capacity to love another person's child is an adequate qualification for being a good foster parent, failing to see both the labor involved in all parenting and the labor that is particular to foster parenting. To think of a good foster mother as simply a kind of super-mom obscures the skill and dedication her work requires, as well as the complex and often frustrating bureaucratic context in which she operates. It also limits our expectations of foster parents, leading child welfare professionals to ask too little of them. As a result, children in foster care do not receive the kind of care that they need.

II. MONEY FOR LOVE

A. Care Work and Commodification

These examples of foster parents' labor serve to highlight the amount of work, and the degree of skill, that is involved in caring for a vulnerable and often traumatized child. Foster parents—unlike the staff of institutions and group homes—are not compensated for this labor. A wide-ranging body of scholarship on care work serves to make sense of our reluctance to think of foster parenting as work, despite the fact that it involves many of the same kinds of tasks that are done for wages (albeit low ones) in a variety of other contexts. Scholars of care work draw on an extensive feminist literature that seeks to render women's unpaid work in the home, including parenting, visible...
as labor, and argue that the devaluation of reproductive labor extends to that which is performed by paid caregivers, whose work is similarly "unrecognized and unrewarded." 

Child care, elder care, and care of the disabled, like foster care, are fields in which women, and particularly women of color, are overrepresented. Care of dependent persons was "historically performed by women within the family," and paid care work largely involves the same kinds of care "relocated to state- and market-governed institutions," where it tends to be poorly compensated. "Our idea that mothering is 'natural' and should be given freely creates resistance to generous remuneration in care work that may be even greater than employers' tendency to devalue other 'female' jobs (such as secretarial work) simply because they are done by women." Foster parenting is particularly susceptible to this, given that it resembles mothering even more closely than other forms of child care such as the provision of home day care or nanning. The work that foster mothers do doesn't look like work; it looks like mothering, and mothering is assumed to require little training or skill but instead to come naturally to women.

Failure to treat foster parenting as work is motivated not only by the belief that parenting is unskilled work, however, but by persistent concerns about foster parents being motivated by money. There is a widespread perception that many foster parents are motivated to foster because they see foster care as work, and argue that the devaluation of reproductive labor extends to that which is performed by paid caregivers, whose work is similarly “unrecognized and unrewarded.”

137. See, e.g., Cahn, supra note 102, at 1 (describing “household labor” such as “caring for one’s own children, spouse and household and producing one’s own child (whether through pregnancy or adoption”); Arlene Kaplan Daniels, Invisible Work, 34 SOC. PROBS. 403, 412 (1987) (arguing for an expanded concept of work that includes “the work in the private world of the home, the volunteer work in the public sphere, and the emotion work in both public and private worlds”); Silbaugh, supra note 7, at 25-27 (arguing for legal recognition of housework as productive labor).

138. MACDONALD, supra note 117, at 110; see also Paula England & Nancy Folbre, The Cost of Caring, 561 ANNALS AM. ACAD. POL. & SOC. SCI. 39, 41 (1999) (noting that “the disadvantage of working in a paid caring occupation ... seems to resemble the disadvantage of providing unpaid care”).

139. See Nancy Folbre & Julie A. Nelson, For Love or Money—Or Both?, 14 J. ECON. PERSP. 123, 138 (2000); Folbre & Wright, supra note 136, at 4; Mary C. Tuominen, "Where Teachers Can Make a Livable Wage": Organizing to Address Gender and Racial Inequalities in Paid Child Care Work, in CHILD CARE AND INEQUALITY: RETHINKING CAREWORK FOR CHILDREN AND YOUTH, supra note 93, at 193, 195. But see England & Folbre, supra note 93, at 139 (suggesting that black and Latina women are not overrepresented in care work generally but are overrepresented among domestic care workers).

140. England & Folbre, supra note 93, at 139.

141. See generally England & Folbre, supra note 138, at 41-46 (reviewing empirical evidence of “care penalty” and exploring possible explanations for it).

142. England & Folbre, supra note 93, at 139.

143. Part of the association between foster parenting and mothering depends upon the assumption that foster children's own mothers are absent in a way that the mothers of children in day care, for example, are not. Cf. NELSON, supra note 117, at 47-79 (describing relationships between mothers and family day care providers). This is usually not the case in the modern child welfare system, which recognizes the importance of frequent, regular contact between children in foster care and their parents. See supra notes 114-115 and accompanying text.

144. See Daniels, supra note 137, at 408 (“The closer the work to the activities of nurturing, comforting, encouraging, or facilitating interaction, the more closely associated it is with women’s ‘natural’ or ‘feminine’ proclivities. Such activity is not seen as learned, skilled, required, but only the expression of the character or style of women in general.”).
payments as a source of income.\textsuperscript{145} Although one national survey of approximately 300 respondents found that a little over half believed it was “okay for financial compensation to play a role in why foster parents choose to foster,”\textsuperscript{146} attitudes toward fostering for money are generally negative. Wozniak describes hearing “[t]he derisive phrase ‘in it for the money’” repeatedly when speaking to Connecticut social workers.\textsuperscript{147} Poor foster mothers’ parenting is suspect because of their financial needs; middle class foster mothers, on the other hand, are seen as “purely altruistic” because they can provide material goods and opportunities for foster children beyond what is funded by the state.\textsuperscript{148} Elizabeth Bartholet, for example, argues that lower-income foster parents are less likely to truly care for children:

Foster parents in it for the money will get money for themselves only to the extent that they fail to use their stipends for the benefit of their foster children; even if they provide their children with the basics, they are not likely to provide much in the way of emotional nurturing.\textsuperscript{149}

Bartholet provides no empirical support for her claim that foster parents who need money will necessarily provide less meaningful care. Instead, the claim masquerades as common sense, given our tradition of antipathy toward paid mothering. As one journalist has noted: “there’s something anathema, something maybe even biologically repulsive, about the idea of getting paid to

\begin{itemize}
\item \textsuperscript{145} See, e.g., Christina Leber & Craig Winston LeCroy, \textit{Public Perception of the Foster Care System: A National Study}, 34 \textit{CHILD. & YOUTH SERVS. REV.} 1633, 1636 (2012) (noting that in nationwide survey of 301 respondents, “[a] slim majority of the sample disagreed with the statement that most people are in foster parenting for the money (54.1%) and that people become foster parents because of the money they receive from the government (50.5% . . .”); Bill Grimm & Julian Darwall, \textit{Foster Parents: Who Are They and What Are Their Motivations?}, \textit{YOUTH L. NEWS} (Nat’l Ctr. for Youth Law, D.C.), July-Sept. 2005, at 1 (citing a 2000 Pennsylvania study in which almost all participants agreed that “too many people become foster parents for the money,” despite not knowing how much money foster parents receive).
\item \textsuperscript{146} Leber & LeCroy, supra note 145, at 1636.
\item \textsuperscript{147} WOZNIAK, supra note 19, at 50.
\item \textsuperscript{148} SWARTZ, supra note 16, at 83; see also WOZNIAK, supra note 19, at 194-209 (describing differences in Connecticut social workers’ attitudes toward middle-class and poor or working-class foster parents). Many of the social workers Wozniak encountered defined “good” foster parenting as that which allowed children upward class mobility and material comforts. The parenting of poor foster parents was suspect, because good care is defined according to indicators plainly linked to socioeconomic status: “‘Good’ mothers were those who had few time constraints, whose primary task was child rearing, who defined their daily chores in terms of their children’s needs, and who had access to certain material comforts.” \textit{id.} at 198. This view is echoed by Professor Bartholet, who contrasts low-income foster parents with non-foster parents seeking to adopt children, who are “generally relatively privileged in socioeconomic terms, as compared with the foster parent pool, and live in neighborhoods with better schools and community facilities, which are relatively free from drugs, crime, and violence.” ELIZABETH BARTHOLET, \textit{NOBODY’S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE} 89 (1999). Professor Bartholet’s view appears to be that since “good parenting is hard to assess and impossible to mandate,” \textit{id.} at 88, the child welfare system should use the ability to provide children with material goods and “opportunities” as a proxy.
\item \textsuperscript{149} BARTHOLET, supra note 148, at 88.
\end{itemize}
love another human being." Foster mothers who need money—in other words, foster mothers who are poor or working class—violate assumptions about what good mothering is: self-sacrificing, unwavering, and offered without any expectation of reward.

We tend to view care as being motivated either by love or money, and to believe that the two motivations cannot be reconciled. Treating foster parenting as work therefore raises the specter of the commodification of care: "The concern here is that motivation by money may lead to caring activities being performed to minimum standards, mechanically and impersonally, unaccompanied by the personal love and attention that we believe that children need to grow . . ." Foster care policy is haunted by the notion that paying foster parents more will render foster care an "objectified, self-interested exchange" rather than a labor of love, although the commitment to the wellbeing of children of other (paid) players within the child welfare system (social workers, case workers, administrators, lawyers, judges) is rarely questioned.

As Margaret Radin points out, almost all work has a non-commodified aspect, in that "[w]orkers take money but are also at the same time givers. Money does not fully motivate them to work, nor does it exhaust the value of their activity." The dichotomy between genuine care and economic motivation is an assumption not based in empirical evidence. "[B]eing motivated to take a job in large part 'for the money' need not imply that one is . . ."

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150. BEAM, supra note 116, at 75; see also Julie A. Nelson, Of Markets and Martyrs: Is it OK to Pay Well for Care?, 5 FEMINIST ECON. 43, 44 (1999) (asking rhetorically, "Isn’t it somehow insulting, at a human and relational level, to pay someone (for example, a foster parent) for providing love and affection?").


152. Folbre & Wright, supra note 136, at 2.

153. "Commodification" is the term used to describe "the process of something becoming understood as a commodity, as well as the state of affairs once this has taken place." Martha M. Ertman & Joan C. Williams, Freedom, Equality, and the Many Futures of Commodification, in RETHINKING COMMODIFICATION: CASES AND READINGS IN LAW AND CULTURE 1, 1 (Martha M. Ertman & Joan C. Williams eds., 2005). The term is frequently used pejoratively to imply that services provided for money are "stripped of emotion or concern for others." Folbre & Wright, supra note 136, at 2.

154. Folbre & Nelson, supra note 139, at 130.

155. Nelson, supra note 150, at 44.

156. See Laufer-Ukeles, supra note 12, at 90-94 (discussing "commodification anxiety" in family foster care context).


158. See Paula England, Emerging Theories of Care Work, 31 ANN. REV. SOC. 381, 393-94 (2005) (referring to work of Viviana A. Zelizer and Julie A. Nelson). To my knowledge, there are no studies showing that increasing compensation leads to a decrease in the quality of care provided. In fact, in the context of child care centers, one study found that teachers' wages "were the most consistent, significant predictor of quality of care." Deborah Phillips, Carollee Howes & Marcy Whitebook, Child Care as an Adult Work Environment, 47 J. SOC. ISSUES 49, 64 (1991).
In addition to satisfying basic needs such as food and shelter for themselves and their families, people may want money in order to provide education for their children, to pay a family member’s medical bills, or any number of other things that do not suggest hedonism or greed. "[R]eal people have real needs and real responsibilities," and the desire to satisfy those responsibilities by earning a wage is not selfish. Thus workers may have multiple, and not necessarily conflicting motivations, and although self-interest might trump altruism, prompting a worker to "do the work in a cold-hearted way," this is not inevitable. Indeed, "a low wage may also drive out caring, as the workers may come to feel under-valued and demoralized in their work."

Although our historically narrow, gendered understanding of work as something done “outside of the world of home and family” has largely given way to a broader definition that includes care work occupations, foster parenting is still explicitly understood as something other than work. Seeing foster parenting as work challenges our understanding of work as that which is motivated by the desire or need for extrinsic reward, rather than by love. Family foster care is particularly vulnerable to the claim that care should be given for free, and that to pay foster mothers “dries up real love, or worse, makes the sacred profane.” Accordingly, foster parenting is unique among care work occupations in that it is widely accepted that as a matter of morals, foster parents should not merely be poorly paid but should in fact not be paid at all.

Given the fact that foster parenting is dominated by, and almost always associated with, women, we would do well to be cautious about the claim that it is not skilled work, and the claim that to value the work by paying for it would degrade the quality of care. The stigmatization of paid mothering makes

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159. Folbre & Nelson, supra note 139, at 131-32.
160. Id. at 131.
162. Folbre & Nelson, supra note 139, at 132.
163. Nelson, supra note 150, at 53.
164. Tuominen, supra note 139, at 195-96.
165. See Himmelweit, supra note 126, at 28 (noting that definition of labor as that which is done only for extrinsic reward precludes recognition of caring labor in the home); Deborah Stone, For Love nor Money: The Commodification of Care, in RETHINKING COMMODIFICATION: CASES AND READINGS IN LAW AND CULTURE, supra note 153, at 271, 279 (describing the view that “[c]are is so full of love, and anything that involves love can’t be real work. All the warm, fuzzy, personal, relationship ‘heart stuff’ is recreation, not work”); Mary Tuominen, The Conflicts of Caring: Gender, Race, Ethnicity, and Individualism in Family Child-Care Work, in CARE WORK: GENDER, CLASS, AND THE WELFARE STATE, supra note 127, at 112, 117 (describing how paid child-care work “challenge[s] the ideology that child care is unwaged care motivated by women’s ‘love’ for children”).
166. England & Folbre, supra note 93, at 139.
167. Cf. Nelson, supra note 150, at 44 ("No one, of course, explicitly advocates that care should be low paying . . .").
168. Katharine Silbaugh has noted “the tendency to raise commodification concerns when women’s interests are at stake.” Silbaugh, supra note 8, at 84. She points out that arguments that certain human
foster parents, like other caregivers, vulnerable to financial exploitation. Foster parenting is hard work and requires significant sacrifices, but raising concerns about compensation—even asking for clothing and other allowances the state is required to provide—renders foster mothers vulnerable to charges of greed and failure to care enough to provide children with what they need. In the popular view, foster mothers are saints, as long as they only sacrifice, and gain nothing from their labor. In the face of pervasive mistrust of foster parents’ motivations, foster parents themselves are reluctant to acknowledge the role money plays in foster parenting. It is telling that foster parent advocates generally argue that increased stipends are needed because foster parents spend more than the stipend on the care of each foster child, avoiding arguments that increasing the stipend is necessary in order to compensate the foster parent for her work. Asking only for reimbursement for the actual costs of caregiving, as opposed to compensation for the foster parent’s time and effort places foster parents within the realm of altruism, insulating them from charges of greed.

attributes—here, caring—should be excluded from markets “arise when women receive money for something, not when women are paying money for something.” Id. at 104. Paula England and Nancy Folbre similarly warn that we should be wary of “any argument that decent pay demeans a noble calling.” England & Folbre, supra note 138, at 48.

169. See England & Folbre, supra note 138, at 48 (“The notion that women should provide care out of the goodness of their hearts has traditionally reinforced low pay for caring occupations.”); Cameron Lynne Macdonald & David A. Merrill, “It Shouldn’t Have to Be a Trade”: Recognition and Redistribution in Care Work Advocacy, 17 HYPATIA 67, 74 (2002) (describing increased willingness of caregivers to organize for better working conditions when poor conditions are linked to lesser quality of care); Stone, supra note 165, at 278 (describing paid caregivers’ reluctance to seek higher wages or benefits because “[r]aising issues of pay or working conditions makes the economic aspect of the work visible and brings it to the forefront”); Swartz, supra note 59, at 582 (“The fact that carework has been conventionally equated with social value in opposition to market value left foster mothers disempowered in negotiating financial issues and vulnerable to accusations of ulterior, and presumed inappropriate, motives.”).

170. See Swartz, supra note 16, at 94-96 (describing hostility expressed by case workers toward working-class foster parents seeking funds for therapy or medical bills not covered by Medicaid).

171. See Bartholet, supra note 148, at 86-88 (contrasting foster parents who “qualify for sainthood” with others who rely on the foster parent stipend as income); Swartz, supra note 16, at 65 (describing two stereotypical images of foster parents: “do-gooder saints” or those “who take in children for their own self-interested motives for profit”); Brenda Smith & Tina Smith, For Love and Money: Women at Foster Mothers, 5 AFFILIA 66, 67 (1990) (“As ‘supermoms,’ [foster mothers] are idealized for their nurturing skills but, paradoxically, hardly rewarded for their efforts.”); Wozniak, supra note 124, at 360 (describing media portrayals of foster mothers that emphasize “their perpetual and selfless giving”).

172. See Wozniak, supra note 19, at 54 (noting foster mothers’ tendency to minimize importance of reimbursements); see also Macdonald & Merrill, supra note 169, at 74 (“Care workers themselves often believe that love and work are mutually exclusive.”); Stone, supra note 165, at 276 (“If anything, caregivers resist letting money affect their relations with the people they care for, and even try to deny that money is part of the relationship. They want to pretend money isn’t there.”).

173. See, e.g., Grimm & Darwall, supra note 145, at 5 (noting that the National Foster Parent Association has called for “a national standard reimbursement rate, arguing that reimbursement for foster care is not sufficient to cover the cost of rearing a child”).

174. For example, Wozniak describes how foster mothers resist the perception that they foster in order to earn money, describing the money they receive as “a gift from the state that helps run their household.” Wozniak, supra note 106, at 123. Given that fostering for money is frowned upon, it is
As I describe in the next section, however, the foster care system has always depended upon the exchange of either money or services for care. Paying for care, in one way or another, is hardly new. The history of foster parenting in the United States reveals that payment, in various forms, has always played a role in fostering, and continues to play a role, despite pervasive resistance to the concept of paid parenting.

B. The Economics of the Foster Home

In his 1971 book, The Gift Relationship, Richard Titmuss suggested that foster care deserved study as an area of social policy involving gift transactions between strangers that contain “elements of altruism and self-interest.” In the context of blood donation, Titmuss argued for a volunteer system in which donors were not financially compensated for their donations. His reference to foster care has been read as a suggestion that foster care, too, should be understood as a gift relationship, “reflecting its essential quality as a community service to others.” A system of voluntary blood donation requires “gift-reciprocity,” meaning that those who give assume that they, or their families, will benefit from the gift of another in a time of need. As Mark F. Testa has noted, however, foster care is “a system of generalized gift exchange that must be maintained in the absence of full reciprocity by the recipients (children) and other restricted exchange partners (parents).” The system will function only if caregivers’ commitment to the gift relationship is reinforced through empathy, duty, or payment, as substitutes for reciprocity. The history of family foster care in the United States demonstrates that taking in the children of strangers who cannot or will not care for them has never been a purely altruistic endeavor. What has changed is the extent to which foster families motivated by self-interest as well as charity are condemned as uncaring and unscrupulous. In other words, payment has become taboo, leaving only empathy and duty to sustain the gift exchange.

“Placing-out” poor children has a long history in the United States, beginning with the indenture by public officials of orphans and children

unsurprising that foster parents do not emphasize money as a primary motivation for fostering. See WOZNIAK, supra note 19, at 54 (“In response to mistrust and delegitimation, foster mothers were sensitive about money, preferring not to talk about it, especially with those whom they did not trust.”).


176. BERRICK, supra note 16, at 95.


178. Id. at 513.

179. Id.
deemed to be neglected by their parents. In the mid-nineteenth century, so-called orphan asylums became the favored form of care for children whose relatives were unable to care for them, but most institutions placed children with foster families, where they were expected to work, when they reached the age of twelve or fourteen.

The New York Children’s Aid Society, founded by Charles Loring Brace, pioneered a system in which the children of immigrants living in the city’s slums were sent to live with rural families in the West and the Midwest. In contrast to earlier forms of indenture, designed to prepare children for adult life by equipping them with the skills of a trade, the Children’s Aid Society’s placing-out system was designed to uplift those Brace saw as “polluted, the flotsam and jetsam of the urban ships, nearly ruined by their unparented, undisciplined life on the streets.” Although legal adoption as we understand it today was rare during this period, and in any event many of the children in question were not orphans, these arrangements have been characterized as adoptions. But the arrangements were understood by the receiving families “as a modern form of apprenticeship” and children did not always remain with the families where they were placed. The demand for children was driven by the need for workers in rural areas; the “orphan trains” were welcomed where labor was scarce.

The children were advertised as workers, and although there were no formal indenture contracts, foster children were expected to contribute their labor to the foster family. This reliance on foster children’s labor is reflected in the ages of the children involved. Most foster parents wanted older children who could work to earn their keep.

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180. See Mangold, supra note 74, at 177-78.
182. Id. Linda Gordon estimates that by 1910, the Children’s Aid Society had placed over 110,000 children in such homes. Linda Gordon, The Great Arizona Orphan Abduction 10 (1999).
187. Gordon, supra note 182, at 9. Many parents willingly sent their children West, understanding placing out to be a means of obtaining “job training or entry into the labor force.” Bruce Bellingham, Waifs and Strays: Child Abandonment, Foster Care, and Families in Mid-Nineteenth-Century New York, in The Uses of Charity: The Poor on Relief in the Nineteenth-Century Metropolis 123, 133-34 (Peter Mandler ed., 1990). And some teenagers sought “to use the Children’s Aid Society as an employment agency of sorts” to gain work in agriculture or rural industry. Id. at 138.
188. Holt, supra note 185, at 63.
189. Id. at 3.
190. Id. at 62.
191. See, e.g., Zelizer, supra note 181, at 171 (“In exchange for board, clothing, and some education, children were expected to assist the foster household in a variety of tasks.”); Naomi Cahn, Perfect Substitutes or the Real Thing?, 52 Duke L.J. 1077, 1097 (2003).
192. For babies and toddlers, who could contribute little economic value to a foster family, there were foundling asylums or so-called “baby farmers,” who took in infants whose parents could afford to
not necessarily mean that the families with whom children were placed merely exploited their labor: "in nineteenth-century foster homes, the sentimental value of a child did not preclude the possibility of profitably employing that same child." Children were expected to work, whether they remained at home with their parents or were sent west.

The Progressive Era saw a rise in the use of family foster care as an alternative to the orphanage. Progressive reformers believed that "placing out" was the best substitute for the child's own home. To Progressive reformers, "the value of the substitute family was apparently self-evident." At the same time, however, changing attitudes toward childhood made it less and less acceptable to think of children as sources of labor. Child welfare workers became increasingly concerned with what were seen as mercenary motivations on the part of foster parents, and sought to "replace mercenary foster parenting of any kind with a new approach to adoption more suitable for the economically 'useless,' sacred child." Indenture-like arrangements in which foster children would earn their keep were "condemned as an unseemly bargain."

When it became less acceptable for foster parents to benefit from the labor of foster children, paid parenting was the obvious alternative. Paid boarding homes had existed since the late 1860s, when the Massachusetts Board of Charities began paying foster parents to care for indigent children, particularly those who, by virtue of their age, disability, or "troublesome" nature, would be "economically unprofitable" to take on. Boarding children with foster families paid to care for them slowly became the norm, and it remains so today.

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193. ZELIZER, supra note 181, at 179; see also Bellingham, supra note 187, at 127 (noting that assuming fosterers who did not "adopt[]" their charges in the modern sense" were exploiters of child labor imposes anachronistic understanding of family).
194. See GORDON, supra note 192, at 126-27 (noting that well into the twentieth century, urban and rural households alike depended on children's labor); HOLT, supra note 185, at 21-22.
195. See ZELIZER, supra note 181, at 177-78; see also JOAN GITTENS, POOR RELATIONS: THE CHILDREN OF THE STATE IN ILLINOIS, 1818-1990, at 33 (1994) ("The notion of placing children in families and the belief that normal family life was a far healthier situation than institutions was firmly entrenched in child welfare thinking by the end of the [nineteenth] century.").
196. MELOSH, supra note 184, at 17.
197. SUSAN TIFFIN, IN WHOSE BEST INTEREST?: CHILD WELFARE REFORM IN THE PROGRESSIVE ERA 92 (1982).
198. See, e.g., ZELIZER, supra note 181, at 11 (describing the "sacralization" of children).
199. ZELIZER, supra note 181, at 177.
200. Id. at 182.
201. Id. at 185.
202. Id. at 184-85.
203. TIFFIN, supra note 197, at 97-98 (noting that while placing out agencies might have preferred free homes, "without the incentive of compensation it might be difficult to secure enough homes"). The change happened slowly, however: according to the 1923 census, 64.2 percent of "dependent and
Substituting foster boarding payments for the economic value of a child’s labor hardly resolved the purported conflict between love and money, and discomfort with foster parents’ economic motivation persisted. As Viviana Zelizer points out, “[o]nce the instrumental link between foster parent and child was declared illegitimate, any form of profitable parenting became structurally deviant and therefore morally suspect.” Many believed, however, that the modest nature of the payments received by foster parents would counteract the potential for fostering to be tainted by the desire (or need) for money. Foster payments were thus conceived as reimbursements for financial outlays made by foster parents on behalf of foster children, rather than as payment for services rendered, and this remains the prevailing understanding of such payments.

Since 1980, when Congress passed the Adoption Assistance and Child Welfare Act (AACWA), the federal government has sought to ensure that state foster care programs meet certain standards by providing for federal reimbursement for approved foster care programs. Under the current law, states may be reimbursed for foster care maintenance payments made to foster parents on behalf of children who would have qualified for Aid to Families with Dependent Children as of July 16, 1996, had they remained in the home from which they were removed. “Foster care maintenance payments” are defined as

neglected children” lived in asylums, 23.4 percent in unpaid foster homes, and only 10.2 percent in paid foster homes. ZELIZER, supra note 181, at 189.
204. See ZELIZER, supra note 181, at 186.
205. Id. at 188.
206. Id. at 186-87.
209. Ross & Cahn, supra note 12, at 60.
payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.211

Foster care maintenance payments are thus expressly defined as payments to cover the costs associated with caring for foster children, rather than as compensation for the foster parent's labor. The House of Representatives went so far as to state explicitly in its Conference Report that "in the case of foster family homes, payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties."212 As Susan Vivian Mangold has pointed out, although there is no federal child welfare system, federal law dictates, to a significant extent, how state foster care systems operate: "Federal reimbursement is a key factor in the provision of services for all dependency systems."213 States could choose to compensate foster parents for their labor, but they would have to do so out of state funds, and none have chosen to do so.

Many foster parents and their advocates maintain that foster care payments, which vary widely from state to state,214 do not even cover the actual costs of caring for children.215 At least two nation-wide surveys have sought to compare reimbursement rates with estimated costs, and have found that in most states, the basic family foster care payment rate is less than the estimated cost of caring for a child in that area.216 Those studies used cost estimates for middle-
income families as their benchmark, despite the fact that many families, including foster families, manage to get by on lower incomes, presumably in part by spending less on their children. Although the cost of raising a child in a middle-income family may be an inaccurate benchmark for costs incurred by low-income foster parents, one child welfare expert estimates that foster care payments are, on average, thirty-seven percent less than the minimum amount the United States Department of Agriculture deems necessary to raise a child even in a low-income family.\textsuperscript{217} In 2008, a federal district judge ruled that California’s payments to foster parents violated the AACWA because they were not based upon consideration of the actual costs of providing the enumerated items.\textsuperscript{218} The state did not dispute the fact that the payments failed to cover the enumerated costs.\textsuperscript{219} 

Since foster parents may be under-compensated even under a model that permits compensation only for actual expenses, it may seem paradoxical to claim that foster parenting serves as a source of income. In truth, however, taking in foster children does offer an economic benefit for poor and working-class women and families,\textsuperscript{220} who make up the majority of foster families.\textsuperscript{221} While many states require foster parents to demonstrate that they have the means to support themselves and their families without the foster care subsidy, licenses are frequently granted to families of relatively limited means. Danielle Wozniak, describing foster mothers in Connecticut, states that “[t]hose women who lived in poverty or just above the poverty level viewed the money they earned from fostering as helpful. It was steady, predictable, consistent, and a supplement to their incomes that afforded them opportunities they would otherwise not have had.”\textsuperscript{222} Fostering thus enables women to use their child-care skills to increase the family’s income or to allow them to stay home rather than work outside of the home.\textsuperscript{223} Although foster care payments are nominally

\textsuperscript{217} BERRICK, supra note 16, at 95; see also NANCY FOLBRE, VALUING CHILDREN: RETHINKING THE ECONOMICS OF THE FAMILY 156 (2008).

\textsuperscript{218} California State Foster Parent Ass’n v. Wagner, 2008 WL 4679857, at *7 (N.D. Cal. Oct. 21, 2008), aff’d, 624 F.3d 974 (9th Cir. 2009) (upholding lower court’s ruling that the AACWA created a right enforceable under 42 U.S.C. § 1983).

\textsuperscript{219} Wagner, 2008 WL 4679857, at *7.

\textsuperscript{220} See SWARTZ, supra note 16, at 66 (“Most foster parents I met . . . had economic needs that they partially met through their monthly foster-care stipends.”).

\textsuperscript{221} See supra notes 51-60 and accompanying text.

\textsuperscript{222} WOZNIAK, supra note 19, at 48.

\textsuperscript{223} See SWARTZ, supra note 16, at 69-73 (describing foster mothers’ use of fostering as a way to stay home with their children); WOZNIAK, supra note 19, at 44-45 (noting that many foster mothers she met “began as day care providers or baby-sitters and saw fostering as an extension of this work with the added benefit of having more input in children’s lives”); KADUSHIN, supra note 215, at 331 (describing “[i]increasing family income through in-home employment” as a “secondary contributing motive” for fostering, with personal gratification being the primary motive).
intended solely for the care of the foster child, foster care agencies do not require proof that every dollar goes directly to the foster child. Although states generally require foster parents to have another source of income besides foster parenting, 224 many foster parents do rely on foster care payments as part of their income, using them for general household expenses, including but not necessarily limited to expenses incurred on behalf of the foster child. 225 What they receive is not much, but for a family struggling to support itself, it is something, particularly if the foster parent provides care for more than one child. Foster parents very often take in more than one child at a time (in most states, foster parents may care for up to six, provided that the foster parent has adequate living space to accommodate that number). 226 The resulting economy of scale allows foster parents to use the foster care subsidies to support the household.

Not only do many foster parents use the subsidies as a source of family income, but as described above, most, if not all, states have a parallel system of family foster care commonly known as “therapeutic foster care” or “treatment foster care,” in which foster parents caring for children with special needs are paid significantly more than foster parents receiving the regular subsidy. It is difficult to understand the higher subsidies except as compensation for the additional time and work involved in caring for children with disabilities or behavioral challenges, and as an incentive for foster parents to become licensed as therapeutic foster parents. This additional compensation acknowledges that skilled care is unlikely to be provided on a volunteer basis.

When we consider family foster care in the United States, we must therefore confront the fact that children in foster care remain a source of income for foster parents, years after placing-out became a thing of the past. 227 The placing-out system depended on the exploitation of children’s labor, which is unthinkable today. But the idea that foster parents could gain in some way from the act of fostering—that there could be a reward beyond a child’s love and the satisfaction of having done something charitable—need not be unthinkable. There is, of course, a profound difference between paying someone to care for children and requiring children to work for their keep. But it is hard to deny that the modern child welfare system depends upon the exchange of money for care, while simultaneously denying that this is true and condemning foster parents for whom foster care is a source of income. This Article asks whether accepting that there is work involved in fostering that

224. See WOZNIAK, supra note 19, at 59.
225. See WOZNIAK, supra note 19, at 48 (noting that most foster mothers “said that their state reimbursement checks were placed in a general checking account used for household management and daily expenses”).
226. The maximum number of children permitted in each foster home varies from state to state, but is typically five or six (with additional children permitted in the case of a sibling group).
227. See Wozniak, supra note 124, at 362 (“In this respect, the contemporary foster child, like his/her nineteenth-century predecessors, becomes once again the object of production.”).
deserves compensation, might open the door to a useful new way of thinking about foster care.

III. VALUING FOSTER PARENTING

Treating foster parenting as care work allows us to discard the fiction that a good foster parent never has any need for the subsidy except to cover the actual costs of caring for the child. It opens up the possibility of using payment as a means to reward and encourage good foster parenting. Compensating foster parents for their labor would allow us to ask more of foster parents, in terms of the training they must undergo as well as the tasks we ask them to take on. A foster parent who is compensated for her time and skill can reasonably be asked to do much more than one who is treated as a volunteer. And with increased recruitment as a result of better compensation and benefits, taking away licenses from foster parents who fail to live up to expectations becomes a real possibility.

If we accept that foster parenting is work, we must also accept that the work is not currently structured in order to maximize the quality of care. In foster parenting, as in other types of care work, "[t]oo much autonomy and discretion, little or no training, little or no supervision, and low wages and benefits all contribute to a lower quality of care."228 The foster care system is widely perceived to be broken, but as numerous scholars have pointed out, the law's single-minded focus on termination of parental rights (to be followed, in theory although very often not in practice, by adoption) as a means of improving the lives of children in foster care is inadequate.229 As Alice Hearst suggests, "[t]he fact that foster care systems are inadequate . . . means that foster care itself should be improved, not that every child in foster care should be moved out of the system as rapidly as possible."230 Too little attention is paid to how we can improve the chances that a child in foster care will feel safe and well cared for, whether he ultimately goes home to his family or not. One way to do that is to ensure that the foster parent caring for him is adequately trained, has sufficient support and resources to address his needs, and can take the time to address those needs because she will be compensated for that time.

Children in foster care would be well-served by a system in which foster parents are treated as skilled members of a professional team. Such a system would not insist that the ideal foster parent is one whose money and time permits her to volunteer as a substitute parent. Instead, the value of foster parents' time and effort would be recognized, they would receive the training

229. See, e.g., ROBERTS, supra note 25, at 104-13; Naomi R. Cahn, Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption, 60 OHIO ST. L.J. 1189, 1200-05 (1999).
230. HEARST, supra note 26, at 99.
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needed to provide excellent care, and their work would be guided by clear standards and supported by other members of the team. Thinking about foster parenting as work thus means thinking far beyond rates of compensation. The organization of care work—including, but not limited to, wage levels—significantly affects the quality of the care provided. Better pay and improved working conditions "could help strengthen the intrinsic motivation that brings many into this field of employment, reducing turnover and mitigating worker burnout." Below, I contemplate ways in which foster parenting could be organized in order to maximize its benefits for children, their families, and foster parents themselves.

A. Compensation

Teresa Swartz describes foster parents, in our current system, as "a hidden labor force that is poorly paid and rewarded primarily through the ideological mechanisms surrounding motherhood." Compensating foster parents for their labor is the most obvious means by which the state could reward them and recognize the value of their work. Paying foster parents could significantly improve the quality of care by reducing financial strain on foster families, allowing foster parents to devote more time and attention to children's needs. Furthermore, increased compensation, particularly when combined with better working conditions, could help to ease the strain on foster care agencies by increasing recruitment and retention rates. It is beyond the scope of this paper to consider the various ways in which compensation for foster parents

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231. Folbre & Wright, supra note 136, at 16 ("Considering the characteristics of care work raises questions of institutional design that are more complex than the answers to binary questions such as 'paid or unpaid'?").
232. Howes et al., supra note 228, at 87; see also Nelson, supra note 150, at 53 (suggesting that a "low wage may . . . drive out caring, as the workers may come to feel undervalued and demoralized in their work").
233. SWARTZ, supra note 16, at 81.
234. See Smithgall et al., supra note 69, at 17 (describing financially strained foster parents as more likely to rely on case workers to identify and manage needed services for children).
235. See Patricia Chamberlain, Sandra Moreland, & Kathleen Reid, Enhanced Services and Stipends for Foster Parents: Effects on Retention Rates and Outcomes for Children, CHILD WELFARE, Sept.-Oct. 1992, at 387, 398 (finding that enhanced training and support services, combined with small increased stipend, increased retention rates). Joseph J. Doyle and H. Elizabeth Peters suggest that states can attract foster parents by increasing foster care subsidies up to a point, but that after that point, increases in payment would not attract additional foster parents—although it might increase the quality of care provided. Joseph J. Doyle & H. Elizabeth Peters, The Market for Foster Care: An Empirical Study of the Impact of Foster Care Subsidies, 5 REV. ECON. HOUSEHOLD 329, 347-48 (2007). But see BERRICK, supra note 16, at 95 n.63 (suggesting that Doyle and Peters's conclusions "must be interpreted with extreme caution"). Doyle & Peters's analysis does not account for changes to foster parents' role and their interactions with agencies, but focuses solely on the market effects of increased payment. Cf. Chamberlain, Moreland, & Reid, supra, at 400 ("Simply increasing foster parent payments without tying the increase to a meaningful mission might not produce the positive benefits found here.").
could be structured. Instead, I will address several concerns, aside from the commodification critique, that might be raised regarding paying foster parents for their labor.

One objection is that it is unjust to pay foster parents more than we are willing to pay parents to care for their own children. In fact, however, this is precisely how our current system operates. Foster care stipends are significantly greater than TANF benefits, and the same amount is provided for each additional child, rather than the marginal increase per child generally available under TANF. Rather than deny foster parents—most of whom are low-income or working-class women—compensation for their work, the fairness concern is best addressed by limiting the reach of the foster care system to those families who really need its help; that is, by limiting out-of-home placements to children who cannot safely remain at home even with increased support and resources. Services for children with physical, emotional, or behavioral challenges should not be provided through foster care if they could be provided to families in their homes, and families whose needs stem from a lack of resources—including child care and housing in addition to financial support—should receive those resources in lieu of foster care placement. If out-of-home placement is reserved for children for whom there

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236. A number of questions spring to mind: Should this income be taxed? Would foster parents pay into Social Security? Would they be considered employees of the state or of the (often private) agency that licenses them? Would they be considered employees at all? These questions, however, are secondary to the principal questions addressed in this article, which are whether foster parenting should be understood as a form of care work and, if so, what the responsibilities of a foster parent caregiver should be.

237. See Barth et al., supra note 51, at 35.

238. See Dorothy Roberts, Child Welfare’s Paradox, 49 WM. & MARY L. REV. 881, 892 (noting “the child welfare system’s preference for paying foster parents to care for children rather than providing adequate support directly to poor mothers”).

239. Dorothy Roberts, Kinship Care and the Price of State Support for Children, 76 CHI.-KENT L. REV. 1619, 1626 (2001). At least eighteen states have enacted “family cap provisions,” which “deny or limit TANF benefits to children conceived while their parents were already receiving TANF.” JILL ELAINE HASDAY, FAMILY LAW REIMAGINED 212 (2014).

240. See Roberts, supra note 239, at 1629-31 (describing how parents are forced to relinquish custody of children “voluntarily” in order to obtain needed services); HUNTINGTON, supra note 15, at 94 (noting that majority of child welfare cases stem from “poverty-related neglect, which typically involves substance abuse, inadequate housing, or inappropriate child-care arrangements”). More broadly, resources can be shifted from foster care to families by providing state support for family relationships. Clare Huntington points out that in the current system, “instead of proactively nurturing strong, stable, positive relationships to prevent abuse and neglect, the state steps in only after a parent-child relationship has broken down.” Id. at 95. In so doing, “the state loses an opportunity to work with parents cooperatively” because the relationship between state and parent is “fundamentally adversarial.” Id. She argues that the state should do more to support parents in the work of raising children; in her vision, the state would “help parents choose when to have children, assist them in the transition to parenthood, encourage fathers to be involved even when they do not live with their children, provide opportunities in the preschool years, and address economic stressors.” Id. at 160. In order to reduce the number of children placed in foster care, the state should engage in these kinds of targeted but non-coercive interventions to strengthen families from the outset, well before the point at which the current child welfare system would intervene.
is truly no safe alternative, the fairness or unfairness of paying foster parents to care for children becomes a moot point.

More significantly, given the widespread use of kinship care, contemplating foster parent compensation requires us to consider how kinship foster parents would be compensated. State child welfare systems rely heavily on kin to care for children removed from their parents. There are approximately 113,000 children in kinship foster homes, and approximately 184,787 children in non-kinship family foster homes (excluding pre-adoptive placements).241 Currently, kin who can meet licensing requirements are entitled to the same subsidies available to non-kinship foster parents.242 Kin who cannot meet licensing requirements may, in some states, nevertheless care for children while receiving a stipend or public assistance benefits to cover some of the cost of their care.243

Although a full exploration of the policy implications is beyond the scope of this paper, a number of significant differences between kinship and non-kinship foster care placements support the conclusion that kinship foster parents should be treated differently in terms of compensation for labor. The benefits of compensation in terms of increased recruitment and retention of foster parents are largely inapplicable in the context of kinship care. Kin seek to care for family members because they love them and do not want them to live with strangers; this is a powerful incentive to become and to continue being a foster parent that is lacking among non-kinship foster parents. Further, increasing payments to kinship foster parents may actually discourage reunification. As noted above, payments under TANF benefits are significantly lower than foster care subsidies, creating an incentive for families to continue foster care placements rather than pursue reunification.244 Increasing the disparity between foster care payments and TANF payments increases the incentive for families to accept altered family caregiving arrangements in exchange for a higher standard of living for the child and caregiver.

Most importantly, though, the family relationship between kinship caregivers and children is of enormous value for children removed from their parents’ care,245 and that value must be weighed heavily when determining how

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241. Children’s Bureau, supra note 2, at 1.
242. See Miller v. Youakim, 440 U.S. 125, 146 (1979) (holding that federal subsidy program includes relative foster homes that meet licensing requirements). In approximately two-thirds of states, some licensing requirements may be waived for foster parents who are related to the child for whom they are caring. Allen et al., supra note 86, at 17.
244. A study of California’s foster care caseload indicated that “children in kinship homes receiving foster care payments are half as likely to be reunified after four years as children in kinship homes receiving the lower welfare payments . . . .” Id. at 82.
245. Children in kinship placements experience significantly greater stability than children in non-kinship placements. Id. at 81. They also report feeling happier and are more likely to say they “always” feel loved than their peers in non-kinship placements. Id. at 80.
requirements for foster parents should be applied. As I have suggested, paying foster parents would allow child welfare agencies to increase their expectations of foster parents, to require them to attend additional visits with children’s family, to attend additional meetings and trainings, and to participate more fully in the formulation and implementation of service plans. Kinship foster parents cannot be expected to treat foster parenting as a job; the work is thrust upon them, and must be incorporated into their lives as best it can. It would not be fair to expect kin to abandon jobs and other obligations to take on the role of foster parent, particularly since that role ends, for them, once the child returns home to her parents.

Nor should kinship foster parents be expected to have the same degree of skill and training as foster parents for whom it is a job or vocation. As described in more detail below, in a system that treats foster parenting as work, non-kinship foster parents will be rigorously screened to determine not only whether they pose any safety risks to children but whether they have the skills, or the capacity to develop the skills, necessary to serve as a part of a service team. Non-kinship foster parents will be required to meet high standards in terms of participation in service planning and delivery, as well as assisting in reunification efforts. A non-kin foster parent could be decertified for failure to comply with these standards; a kinship foster parent should not be. Her relationship to the child, and her role within the child’s extended family, is too valuable. Certainly, a kinship foster parent should be expected to meet the child’s needs and to participate in planning for her future, and should receive the support she needs in order to do so. But she should not be subjected to the same requirements and standards in terms of training, skill development, and participation in service planning and delivery. Thus, while kinship foster parents should receive a subsidy sufficient to allow them to care for kin without making financial sacrifices, the pre-existing relationship between child and foster parent arguably permits placing kin in a separate category when it comes to compensation.

A final objection to compensating foster parents for their work is that it will discourage adoption by foster parents. Although many adoptions from foster care are subsidized, meaning that adoptive families continue to receive ongoing payments to offset the cost of children’s care, this subsidy would be

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246. As a result of increased efforts to encourage adoption by foster parents, from October 2011 to September 2012 approximately fifty-six percent of children adopted from foster care were adopted by non-relative foster parents, while an additional thirty percent were adopted by relatives, many of whom were likely also foster parents. Prior Relationship of Adoptive Parent(s) to Child: October 1, 2011 to September 30, 2012, U.S. Dep’t Health & Human Servs. (2013), http://www.acf.hhs.gov/sites/default/files/cb/prior_relation2012.pdf.

247. See 42 U.S.C. § 673(a)(1)(B)(ii) (requiring states to provide adoption assistance payments to parents adopting children with “special needs” from foster care); 42 U.S.C. § 673(a)(3) (amount of payments to be determined by the state, up to the amount that would have been paid had the child been residing in a family foster home); 42 U.S.C. § 673(c)(B) (defining “special needs” as “a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the
much less than a foster parent’s salary. If the foster care subsidy is increased beyond the level of the subsidy available for adoptive parents, foster parents may be reluctant to adopt because it will mean losing income.248

The adoption disincentive should not end the conversation about foster parenting as work. Adoption costs the state less than long-term foster care, and provides the legal permanency that has become the chief priority of our current child welfare system,249 but it is not a panacea. Even with adoption subsidies, many children who are available for adoption wait for years without finding a permanent home.250 Professional foster parents could play a very significant role for these children. Indeed, professional “treatment” foster parents are already regularly used as an alternative to group homes or residential treatment facilities for children with special needs. Given the shortage of adoptive placements for older children, sibling groups, and children with disabilities,251 salaried professional foster parents can make it possible for agencies to offer long-term care in an appropriate, stable placement,252 rather than allowing challenging children to be shuttled between short-term placements when adoptive parents do not materialize. Long-term foster care is already a reality for many children for whom no adoptive placement can be found, and for children with severe behavioral or emotional challenges, a stable placement with a trained, skilled professional caregiver might very well be a better option

248. Mark F. Testa and Nancy Rolock studied a program in Chicago that paid foster parents an average salary of $16,000 in addition to $600 per month per child. The program served only children placed in groups of three or more siblings, and at least one of the children was required to have special needs, whether physical, behavioral, or emotional. Testa & Rolock, supra note 62 at 114. If the foster parents were to adopt, they would no longer receive the salary, but only the monthly board payments (in the form of an adoption subsidy). Id. at 122. Although the professional program did better than ordinary foster care by most of the measures used in the study (placing sibling groups together, placing children in neighborhoods close to their biological families, continuity of care, and avoiding institutionalization), none of the children in the program were ultimately adopted, although one-third of them had a permanency goal of either adoption or long-term foster care. Id. at 115-19.


250. See supra notes 38-44 and accompanying text. For children available for adoption who remain in foster care, the average length of time since termination of parental rights is twenty-two months. Children’s Bureau, supra note 2, at 5. These children are sometimes referred to as “legal orphans.” See Lashanda Taylor, Resurrecting the Parents of Legal Orphans: Un-Terminating Parental Rights, 17 VA. J. SOC. POL’Y & L. 318, 321 (2010).


than adoption by a parent who lacks those skills and resources, even assuming that such an adoptive placement was available.

As I describe below, treating foster parenting as work has the potential to improve children’s experience of foster care and to improve the odds of reunification, making it worth contemplating even if it can be expected to lower adoption numbers to some degree. A significant part of the professional foster parent’s increased responsibility should be support for reunification, including ensuring frequent and meaningful contact between children and parents as well as mentoring and guidance for parents to help them meet their children’s needs. Professionalizing foster parenting is a largely untested proposition, but as I envision it, a child welfare system that understood foster parenting as work would strive to ensure the gains in reunification with parents would balance the loss in adoptions. The law already purportedly favors reunification over adoption as a means of obtaining permanency, where reunification is a safe option, and one would hope that fewer foster parents would be called upon to adopt in a system in which their role was explicitly understood as, in part, a support for parents seeking reunification with their children.

B. Guidance and Oversight

Certainly, pay and benefits must be part of any scheme that treats foster parenting as work. But treating foster parenting as work requires thinking about who is qualified to do the work as well as improving the conditions in which foster parents do their jobs.

First, increased compensation should be accompanied by higher standards for licensing. States should implement more rigorous licensing standards and require significantly more training and ongoing skills development for foster parents. Hopefully, increased compensation and improved working conditions would allow for increased recruitment and, in turn, more careful scrutiny of those seeking to become foster parents. Licensing requirements for foster parents currently focus on basic safety concerns—the living environment within the home, first aid training, etc.—but leave up to each foster care agency assessment of more subjective qualifications, such as ability to serve as members of a service team focused on reunification, interest in and ability to support family reunification, ability to provide adequate emotional support for children, and so on. Standardized assessment tools could be developed to ensure that foster parents’ capabilities, strengths, and weaknesses are adequately assessed before licensing.253 I propose below that a form of “shared parenting” should be expected of foster parents in this system, and foster parents’ willingness and capacity to encourage children’s relationships with

253. See Cooley & Petren, supra note 107, at 1974 (urging the “development of standardized competencies” for foster parents).
their parents, and to serve as mentors for parents struggling to meet their children’s needs, should be a key part of this licensing assessment.

When it comes to training, non-therapeutic foster parents currently must undergo anywhere from six to thirty-six hours of training, and some permit foster parents to complete the training well after they have begun caring for children. Some states allow foster parents to use online training tools, watch DVDs, or read books in order to complete part of their training requirements. Pre-service training may focus as much on helping potential foster parents understand what is involved in foster parenting as it does on giving them the skills they need: “[O]ne potential downfall [of current pre-service training programs] is that the programs focus substantial attention on helping future foster parents make a decision about whether becoming a foster parent is appropriate for them rather than learning and acquiring necessary skills for helping youth in foster care.” Lack of quality training programs may be attributed in part to the expectation that foster parenting is a task that requires little skill. Treating foster parenting as work means helping foster parents gain the knowledge and skill required to do the work well, including where necessary individualized training that “tak[es] into account the foster parents’ existing knowledge and skills and the needs of the particular child placed in their home.”

More rigorous licensing standards and training would permit agencies to grant foster parents more autonomy and more input in decision-making. Foster parents frequently complain about negotiating an extensive web of rules and regulations that are designed to protect children but often get in the way of providing good care. Teresa Toguchi Swartz notes in her study of foster parents in Los Angeles that “numerous regulations and professional interventions diminished foster parent satisfaction and increased foster parent stress and retention problems. In addition, foster parent and social worker attention was diverted away from kids’ specific needs and toward compliance and documentation issues.” The scrutiny to which foster parents are subjected, while doubtlessly intended to protect children in family foster care, leads to a perception on the part of foster parents that foster care agencies and state bureaucracies do not value or respect what they do. Better trained foster parents might be permitted greater autonomy, and supervision that aims to support

254. See, e.g., Bill Grimm, Foster Parent Training: What the CFS Reviews Do and Don’t Tell Us, YOUTH L. NEWS (Nat’l Ctr. for Youth Law, D.C.), Apr.-June 2003, at 4-5 (“Stakeholders in some states reported that foster parents actually receive children before completing the pre-service training.”).
255. Id. at 17-18.
257. Grimm, supra note 254, at 6.
258. Swartz, supra note 59, at 584.
259. See SWARTZ, supra note 16, at 98-99 (describing foster parents’ feelings of living “in a ‘glass house’ as social workers routinely intervened and policies regulated foster homes”).
them in their work rather than simply to discern whether they are following the rules.

The conditions in which care is provided necessarily affect its quality. Although many states now pay lip service to the idea that foster parents are valuable members of a professional team, their practices often reflect a belief that foster parents lack sufficient knowledge or skill to actively participate in planning and service provision. At the urging of foster parents’ advocates, a number of states have enacted some version of a Foster Parents’ Bill of Rights.\(^{260}\) These statutes provide some guidance as to how the conditions of foster care work might be improved. For example, a number of them contain a provision similar to Oklahoma’s, which states that foster parents have the right to “[p]rovide input concerning the plan of services for the child and to have that input be given full consideration in the same manner as information presented by any other professional on the team.”\(^{261}\) Foster parents should not simply be told what a child needs; their knowledge about the child and her needs should be given significant weight by case workers when making decisions about services and placement.

Respect for foster parents’ particularized knowledge about children in their care is unlikely to be achieved, however, if foster parents are licensed based on minimal standards, primarily safety concerns, and offered minimal training. Recruitment and training of foster parents should be focused on the creation of a skilled work force, knowledgeable about children’s development and behavior and able to work in tandem with professionals such as therapists and social workers.

C. Shared Parenting

As I have suggested, paying foster parents—whether through an increased subsidy across the board or targeted compensation for serving in specific roles, such as a parent mentor—should allow agencies to ask more of them, and to take seriously their obligations as members of a service team. Foster parents might be asked to facilitate visits with children’s friends and extended family members, in community settings rather than in an agency office.\(^{262}\) They might be asked to arrange regular visits with siblings placed in another home.\(^{263}\) They


\(^{262}\) Child Welfare League of Am., supra note 100, at 48-49.

\(^{263}\) Id. at 48.
could serve as mentors for parents, guiding them in developing the parenting skills that they need. All of these are activities recommended by the Child Welfare League of America in its Standards of Excellence for Family Foster Care Services; all of them take time and effort that could more fairly be expected of foster parents who were being paid for their work. Seeing foster parents as unskilled volunteers limits what we expect of them, and it limits our ambitions.

As suggested above, perhaps the most exciting possibility opened by conceiving foster parenting as work is that foster parents could play a much greater role in supporting children's families of origin if they were expressly compensated for playing that role. One example is a pilot project of the Utah Division of Family Services, in which foster parents were given extra payments "for up to 10 hours a week of direct contact with natural parents in the days preceding and for approximately 60 days after the return home of a foster child." Parents, foster parents, and case workers alike "reported the development of a trusting and collegial relationship between the peer and biological parents." Most of the parents reported that they would likely continue the relationship informally after the program had finished. By promoting the development of a meaningful relationship between families, the program mitigated foster parents' feelings of sadness and loss when children returned home, and helped to facilitate a smooth transition for the children returning home. Tellingly, one foster parent "stated that she had heard agency people talk for years about the foster parent being a part of a service team, but this was the, 'first instance in which anyone had really made it happen.'"

Expanding our understanding of the foster parent's role can open up a wide array of opportunities to build relationships between parents and foster parents. Building trust and opening communication between parents and foster parents should be a priority for agencies committed to reunifying families whenever possible. Peer mentoring from someone who knows about an individual child's particular needs could be much more useful to a parent trying to cope with those needs than a one-size-fits-all parenting class. Ideally, the relationship could continue long after children return home; encouraging foster parents to see the work as a vocation (and compensating them accordingly) makes room for more long-term relationships and ongoing support. Foster parents could also be paid to provide child care for parents once children are reunified, easing the

264. Id. at 46-47.
266. Id. at 53.
267. Id.
268. Id. at 55-56.
269. Id. at 56.
stress of the post-reunification period and helping children cope with the transition.

An even more expansive view of what is possible when foster mothers are understood as paid caregivers is provided by Brenda Smith and Tina Smith, who studied an Australian foster care agency that viewed foster care as "shared parenting, in which more experienced women are helping less experienced women in their capacity as paid workers." Their conclusions suggest that foster parenting has the potential to be far, far more than simply substitute caregiving. Smith and Smith suggest that this agency succeeded in transforming the relationship between mothers and foster mothers in a way that seems only a very remote possibility in our current system:

With the emphasis switched to tasks carried out for payment, the natural mother's perception of the foster mother changes from seeing her as a rival—a better mother—to viewing her as a paid service provider, from whom she can expect skilled service. This new role places the foster mother in a similar position to other paid caretakers in the community, such as teachers, day care mothers, and residential care workers. In turn, foster mothers perceive natural mothers to be important people whose wishes are to be honored. Under this system . . . her job satisfaction is related to the rapid return of the child to his or her natural family, when possible, because restoration of the child is the sign of a job well done.

It is possible for foster parents to understand their role as nurturers of children and of the relationship between children and their parents. Because actively supporting reunification involves a significant amount of labor on the part of foster parents, however, it would be difficult to require unpaid foster parents to take on the challenge. Moreover, as Smith and Smith suggest, it may be easier to build relationships between foster parents and families of origin when foster parents are understood as "paid service providers" rather than as substitute parents.

These examples suggest that our current system under-utilizes foster parents. Well-trained and supported foster parents could do far more for children and their families than simply provide a family-like setting for children. Although child welfare professionals pay lip service to the idea that foster parents should be seen as members of the family's service team, reluctance to treat foster parenting as work is a significant obstacle to full realization of that goal. It is only when foster parenting is understood as care work, and care work as something valuable and deserving of respect, that foster

270. Smith & Smith, supra note 171, at 69.  
271. Id.
parents can live up to their potential as caregivers and as sources of support and guidance for parents as well as children.

CONCLUSION

Building foster parents’ professional capacity and developing their skills as caregivers has the potential to change the way that children and their parents experience the foster care system. Foster parents are unlike any other players in the child welfare system in that they care for children around the clock. They can do far more than is currently asked of them, but only if they are encouraged to develop skills and knowledge that can benefit the children in their care. Treating foster parenting as work will reduce turnover, allowing for the creation of a work force with experience, knowledge, and skill. It will encourage better training and support for foster parents, who will be expected to take a more active role in children’s treatment and in reunification efforts. And by making it possible to ask more of them than can be asked of unpaid volunteers, paying foster parents will allow the child welfare system to take full advantage of what they can contribute.

In order to achieve this, we need a new theoretical framework for understanding foster parenting. This Article identifies two aspects of legal theory and doctrine that prevent full utilization of foster parents as members of a professional team. First, the current divide between professionals and lay persons in the child welfare system prevents recognition of foster parents’ expertise. This in turn discourages provision of meaningful training and support for foster parents and makes it difficult to retain skilled foster parents, who feel unappreciated and exploited. Second, identification of foster parenting with biological parenting, and of the latter as gift rather than labor, obscures the work involved in foster parenting.

Much of that work is, of course, the same work that all parents do, including the parents of children in foster care. Recognizing foster parenting as care work requires seeing the work involved in parenting more generally, and should prompt us to ask whether parents themselves should receive some of the same kind of support I have proposed giving to foster parents. The state should not limit its support only to caregiving provided after children are separated from their parents. Indeed, greater support for caregiving within families would almost certainly prevent the need for foster placement in many cases. Children for whom foster care is a necessity, however, deserve foster parents who are well trained, compensated, experienced, empowered, and skilled. Treating foster parenting as work is the only way to ensure that foster parents live up to their potential as sources of support for children and their families.