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# How the Law Could Promote Caring Relationships which are Pivotal to the Well-being of Society

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*This article focuses on the need for Parliament to acknowledge and understand the need for caring relationships in our society and how legislation needs to be used as a tool to promote them.*

Kathleen Lynch states that care is a 'basic human need... [and is an] inherent part of our humanity and we cannot avoid it. It is central to our flourishing'.<sup>1</sup> She is essentially supporting a stronger focus on care and promoting caring relationships through law as they are 'key to the well-being of society'. However, what really are caring relationships and can we actually go as far as saying that they are the 'key to the well-being of society'?

To discuss what the law could do to promote these types of relationships, we need to define what caring relationships are. A clear definition will be helpful when evaluating whether these relationships are indeed essential to the well-being of society and in examining why the law should intervene to promote caring relationships. If caring relationships are indeed vital to society, what the law can do to promote these relationships needs to be considered.

## **What are caring relationships?**

Caring relationships are a concept we are all familiar with and have all 'benefitted from'.<sup>2</sup> The importance of caring relationships is exemplified throughout our lives through their prevalence, as we have all been involved in a caring relationship 'either as recipients or as both carer and the recipient'.<sup>3</sup>

Engster defines caring as:

...helping individuals to meet their basic needs and to develop and sustain those basic or innate capabilities necessary for survival and basic functioning in society, including the ability to sense, feel, move about, speak, reason, imagine,

affiliate with others, and in most societies today, read, write and perform basic math[s].<sup>4</sup>

However, Wallbank and Herring argue that this definition is too narrow and 'is only helpful when defining types of relationships that are worthy of state support'.<sup>5</sup> Although they agree that caring relationships involve 'the meeting of people's needs',<sup>6</sup> they argue that in caring relationships there is normally an action. Instead, they propose to expand the definition, to not only include 'the physical and rational' but also 'emotional welfare'<sup>7</sup> in order to promote well-being through caring relationships.

## **Why should the law promote caring relationship?**

From these definitions, it can be seen that caring relationships that include emotional welfare are not currently deemed worthy of state support. However, this should not be the case. The state should promote these relationships as they are and have been an important aspect of all of our lives, and thus, they should not be undermined. These definitions suggest that caring relationships are beneficial to society because they take account of emotional well-being, which would make society more compassionate.

There are three main reasons why caring relationships are key to the well-being of society and why the law should focus and promote them. Firstly, they affect everyone. We have all been in a caring relationship. Hence, they are relevant and valuable to everyone in society. Secondly, the current status of carers leaves them in a disadvantageous situation. Therefore, the law should

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<sup>1</sup> Kathleen Lynch, 'Affective Equality: Who Cares?' (2009) 52 *Development* 410.

<sup>2</sup> Nicole Busby, *A Right to Care?: Unpaid Care Work in European Employment Law* (1<sup>st</sup> edn, Oxford University Press 2011) 5.

<sup>3</sup> *ibid.*

<sup>4</sup> Daniel Engster, 'Rethinking the care theory: the practice of caring and the obligation to care' (2005) 20(3) *Hypatia* 50.

<sup>5</sup> Julie Wallbank, Jonathan Herring, *Vulnerabilities, Care and Family Law*, (1<sup>st</sup> edn, Routledge 2014) 27.

<sup>6</sup> *ibid* 26.

<sup>7</sup> *ibid.*

intervene to remedy this by promoting caring relationships to support and protect them. Thirdly, it is in the interest of society to promote caring relationships because of the consequences of neglecting them.

As caring relationships are a prevalent factor in all of our lives, they are key to the well-being of society and their role should not be underplayed. Society needs to recognise 'the value of the care relationship to society as a whole,'<sup>8</sup> because they are 'of fundamental importance in ensuring the continued sustainability of developed economies'.<sup>9</sup> Therefore, the 'contextual and relational nature of caring ought to be brought to the fore in our legal and policy responses'.<sup>10</sup>

Nussbaum confirms the fact that care is inevitable when she states:

...any real society is a care-giving and care-receiving society, and must therefore discover ways of coping with these facts of human neediness and dependency that are compatible with the self-respect of the recipients and do not exploit the caregivers.<sup>11</sup>

In this quotation, Nussbaum reiterates the need to adapt in order to aid care. This can be achieved through the law. For example, by simply developing legal policies that support caregivers, they would not have to compromise their employment. Not only does this benefit the carer, but the recipients of care, employers and the State all benefit as well.

Caring relationships should not be ignored because they are important to the well-being of society. In the current situation, the law focuses more on the recipients of care and less on care givers. However, it is seen that as a result of their caring duties, carers are not only financially disadvantaged, but are 'likely to suffer other...costs in terms of their own health and well-being and...impacts of social exclusion'.<sup>12</sup> Thus, the law should promote caring relationships to reduce the harms faced by carers.

Research found that, due to carers compromising their employment, whether it be quitting altogether, reducing hours or settling for lower positions, they lost an 'average £11,050'<sup>13</sup> a year. Closer analysis in the 2001 census also found that 'combined effects...of care commitment and labour market participation left many carers vulnerable to ill health and excluded from opportunities to improve their employment prospects'.<sup>14</sup>

The sacrifices made by carers make caring relationships seem burdensome. However, as some carers have no choice but to care for their recipients, the law should provide adequate solutions to support them so

that work does not become a burden. The current legislative measures are not effective in promoting caring relationships and 'carers are not adequately protected',<sup>15</sup> and the protections of carers in the workplace 'are very limited'.<sup>16</sup> As carers may only take leave 'on grounds of force majeure for urgent family reasons in cases of sickness or accident... [it makes] ...the immediate presence of the worker indispensable'.<sup>17</sup> This is only beneficial in emergency situations and 'not a useful right in relation to meeting ongoing care needs'.<sup>18</sup>

Therefore, it is critical that the law provides adequate protection so that carers are not exploited. These laws need to be well-drafted and enforced, so that they 'can help remedy distortions in the labour market that lead to unjust and disproportionate disadvantages being experienced by those who provide care'.<sup>19</sup> The law needs to be expanded to support ongoing care needs, and carers need to be protected by 'carer-specific provisions'.<sup>20</sup> For example, care leave or flexible working hours, which will be discussed in further detail later.

An incentive for the law to promote these relationships is 'the economic rationale for action'.<sup>21</sup> Ineffective legal provisions to support caring relationships will not only lead to loss of economic opportunity, but society as a whole could suffer detrimental costs. The care penalty faced by carers would worsen, which would have negative repercussions. The cost of caring responsibilities has a huge impact on the current and future economy. Not only would promotion of these relationships encourage gender equality in the labour market,<sup>22</sup> but they would reduce pressures on State health and social care services.<sup>23</sup>

If the law does not sufficiently promote caring relationships to support carers, the economy will suffer from a higher unemployment rate from losing skilled workers in the labour force. As a result, there will be less consumer expenditure in the economy and there will be 'little or nothing' paid in taxes.<sup>24</sup> There has already been an estimated loss of £5.3 billion of lost earnings in the UK, including £1 billion in foregone taxes due to people leaving the labour market to take on caregiving responsibilities.<sup>25</sup>

This proves that caring relationships are key to the well-being of society because they have such a huge impact on society. The cost of care affects people's well-being as the cost of professional care leads to less disposable income and the risk of falling into poverty. Furthermore, dependents on care could suffer from

<sup>8</sup> Nicole Busby (n 2) 8.

<sup>9</sup> *ibid* 1.

<sup>10</sup> Mary Donnelly, 'Determining best Interests under the Mental Capacity Act 2005' (2011) 19 MLR 304.

<sup>11</sup> *ibid* 313.

<sup>12</sup> Julie Wallbank (n 5) 188.

<sup>13</sup> Charlotte O'Brien, 'Confronting the Care Penalty: The Cause for Extending Reasonable Adjustment Rights along the Disability/Care Continuum' (2012) 34 JOSWAL 5, 11.

<sup>14</sup> Julie Wallbank (n 5).

<sup>15</sup> Charlotte O'Brien (n 13) 5.

<sup>16</sup> Rachel Horton, 'Caring for adults in the EU: Work-life balance and challenges for EU law' (2015) 37 JOSWAL 356, 358.

<sup>17</sup> Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (2010) OJ L68/13 Art 7.

<sup>18</sup> Rachel Horton (n 16).

<sup>19</sup> Grace James and Emma Spruce, 'Workers with Elderly Dependents: Employment Law's Response to the Latest Care-Giving Conundrum' (2015) 35(3) LS: TJOTSOLS 463, 471.

<sup>20</sup> Charlotte O'Brien (n 13).

<sup>21</sup> *ibid* 467.

<sup>22</sup> *ibid* 466.

<sup>23</sup> *ibid* 24.

<sup>24</sup> The Social Protection Committee and the European Commission, *Adequate Social Protection for Long-Term Care Needs in an Ageing Society* (Publications Office of the European Union 2014) 23.

<sup>25</sup> Age UK, *Later Life in the United Kingdom* (Age UK 2013).

'poorer quality of life, additional health problems, loss of dignity and autonomy'.<sup>26</sup>

In addition, caring relationships affect the quality and the quantity of the labour force. The European Commission and Social Protection Committee acknowledged that 'relying on relatives to provide care, regardless of suitability, training or motivation, can be economically inefficient'.<sup>27</sup> The European Commission also noted in 2009 s.4 that 'lack of adequate work-life balance measures may also influence women's and men's decision not to have children...which is problematic as regards the ageing of the population and the future labour market supply, and consequently economic growth'.<sup>28</sup> In an attempt to reduce these negative consequences, the law needs to place more focus on creating effective policies that address these issues.

### **Legislation and caring**

It is evident that the law should focus and promote caring relationships but what can the law do to achieve this? The law can start promoting caring relationships. Firstly, through acknowledging their importance by giving them legal recognition. The law then needs to move from 'reactive to more proactive approaches' to provide support.<sup>29</sup>

### **Suggestions for state improvement of care**

#### **legislation**

Smart concludes that the law does not attach particular significance to the distinction of caring about and caring for which devalues caring relationships.<sup>30</sup> There is little legal recognition for caring relationships, because our current system is based on the 'free, autonomous person' who is able to enforce their rights. There is a need for the law to give caring relationships legal recognition by focusing more on care and less on the free autonomous person in order to provide 'adequate coverage in terms of eligibility and scope'.<sup>31</sup>

Furthermore, there needs to be more transparency in the system. The Social Protection Committee and the European Commission recognise that there are convincing 'equity and efficiency reasons' in favour of caring relationships and they support this by advocating for the establishment of social protection through 'a better recognition of care duties in labour law and corporate practice'.<sup>32</sup> Instead of the procedural framework contained in the legislation, there is a need for more 'judicial and professional acknowledgement that wider interests are being considered' in order to 'provide safeguards for the open scrutiny of decisions'.<sup>33</sup> At the

moment, considerations of wider interests are left to professional discretion. However, legal recognition ensures that carers have legal standing to obtain the protection and support that they need and it provides a 'route to challenge professionals'<sup>34</sup> if they feel that their interests are not being considered.

In addition to legal recognition, there needs to be practical measures enforced to further support and promote care. Parliament can create policy and legislation that focuses on caring relationships. Legal policies should concentrate on preventative measures in reducing the number of dependents of care in the future, and support them by promoting independent living, and supporting carers. If independent living is not possible, they should be provided access to better quality care services to ensure that dependents are being properly looked after. Lastly, carers need support not only with their daily care duties, but also relief through financial support and flexibility in the workplace so that they do not have to compromise their employment for their care responsibilities.

It is important for the law to undertake policies to reduce the exceeding number of people needing long-term care and prevent the 'loss of autonomy'.<sup>35</sup> This can be achieved through encouraging 'healthy lifestyles and age-friendly environments in homes and neighbourhoods'.<sup>36</sup> A report by the Social Protection Committee and the European Commission further provides supplementary examples of preventative measures that can be incorporated. They suggest managing 'functional decline and frailty through targeted interventions in physical fitness, nutrition status, cognitive function, chronic conditions and diseases for the social or psychological well-being of older people'.<sup>37</sup>

To make a difference in the quality of life of dependent individuals, the law needs to incorporate policies that 'improve the quality and responsiveness of care'.<sup>38</sup> This can be achieved through 'rehabilitation, promotion of age-friendly environments, technology, better coordination of health and social care',<sup>39</sup> cooperation with Europe to exchange and share practices are also essential to making a difference. Not only does this 'raise the efficiency of care services',<sup>40</sup> but with the help of the European Union (EU), also reduces 'the cost of researching and testing new solutions and fostering technical and social innovation'.<sup>41</sup> Through better coordination and cooperation, knowledge of costs and quality methods that work can be exchanged. This is why the European Innovation Partnership for Active and Healthy Ageing 'has been established'.<sup>42</sup>

To further promote caring relationships, it has been recognised by Carers UK and the Social Protection Committee and the European Commission that there

<sup>26</sup> The Social Protection Committee and the European Commission (n 24) 12.

<sup>27</sup> *ibid.*

<sup>28</sup> Charlotte O'Brien (n 13)15.

<sup>29</sup> Jean-Marie Jungblut, 'Working and Caring: Reconciliation Measures in Times of Demographic Change' *Eurofound* (Publications Office of The European Union 2015) 7.

<sup>30</sup> Carol Smart, 'The legal and moral ordering of child custody' (1991)18(4) *JOLAS* 485.

<sup>31</sup> Nicole Busby and Grace James, *Families, Caregiving and Paid Work; Challenging Labour Law in the 21st Century* (Edward Elgar 2011) 203.

<sup>32</sup> The Social Protection Committee and the European Commission (n 24) 5.

<sup>33</sup> Beverley Clough, 'What About Us? A Case for Legal Recognition of Interdependence in Informal Care Relationships' (2014) 36(2) *JOSWAF* 129, 143-144.

<sup>34</sup> *ibid* 140.

<sup>35</sup> Jean-Marie Jungblut (n 29).

<sup>36</sup> *ibid.*

<sup>37</sup> The Social Protection Committee and the European Commission (n 24) 63-64.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid* 10.

<sup>42</sup> The Social Protection Committee and the European Commission (n 24) 7.

must to be more access to 'quality, flexible and affordable care', 'funding for health and social care'<sup>43</sup> and measures put in place to 'boost the efficiency, productivity, accessibility and affordability of long term care'.<sup>44</sup>

It is crucial that the law intervenes to support carers as they are vital to the well-being of society. To strengthen care arrangements and give carers 'the support they need'<sup>45</sup>, there needs to be measures in place which 'improve supply and retention of formal carers and... support informal carers'.<sup>46</sup> As well as helping carers meet the demands of their work, laws are important to 'ensure that the needs of the recipients of care...[are] met'.<sup>47</sup>

This can be achieved through providing 'access to information and advice',<sup>48</sup> financial support and laws, which enable them to combine their caring responsibilities with their jobs. Through providing access to information and advice, caring relationships can be promoted by mitigating the burden suffered by carers as they can get further support and not feel alone. Busby and James enforce the fact that it is important that 'legal provisions need to provide ... [carers]...financial support'.<sup>49</sup> This is because the cost of caring can be grave. The European Foundation for the Improvement of Living and Working Conditions support Busby and James' statement and they are also in agreement with Carers UK that the government should stop cutting carers' benefits.<sup>50</sup> Both organisations instead propose 'income support and regulations in the employment field that support the reconciliation effort'.<sup>51</sup> Although the cost of care can be grave, the consequences of ignoring care would be more severe.

As well as financial support, there needs to be adequate labour laws that '[make] it easier for...[carers]...to reconcile employment and care responsibilities'.<sup>52</sup> This can be achieved through professional recognition of the strains of caregiving so that companies can provide flexible working hours and care leave. Flexible working hours enable carers to incorporate the care needs 'into their working lives'<sup>53</sup> without having to fully compromise their jobs. Similarly, care leave reduces the burden on carers, which in turn reduces 'the likelihood of the primary carer leaving their employment'.<sup>54</sup>

By taking these steps, the law will be promoting caring relationships, which are key to the well-being of society. Only when carers are helped 'meet the demands of care, and the needs of the recipients are met can we create opportunities for these crucially important caring relationships to flourish alongside labour market participation'.<sup>55</sup>

## **The role of care in society**

In conclusion, it is true that there should be more focus on care as it is key to the well-being of society. Given

there are realistic and practical ways in which the law can promote these relationships, the law should enforce caring relationships because they ameliorate society on the whole. The suggestions above are not a definitive list, but merely a starting point. These relationships have a positive impact and should be a responsibility we all have. If nobody cared, the burden of care would fall solely on the state and the consequences would be detrimental to society.

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<sup>44</sup> The Social Protection Committee and the European Commission (n 24).

<sup>45</sup> *ibid.*

<sup>46</sup> The Social Protection Committee and the European Commission (n 24) 63-64.

<sup>47</sup> Nicole Busby, Grace James (n 31).

<sup>48</sup> Carers UK (n 43).

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

<sup>51</sup> Jean-Marie Jungblut (n 29).

<sup>52</sup> The Social Protection Committee and the European Commission (n 24) 6.

<sup>53</sup> Nicole Busby and Grace James (n 31).

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