**The judgment in Re W (A child): national and international implications for contemporary child and family social work**

**Abstract**

This paper argues that contemporary child and family social work in England and some other states in Europe needs an ethical ‘turn’. This paper considers the facts in the Re W judgment and identifies certain features in the case that can be understood as products resulting from a particular paradigm of social work in contemporary practice. National and international implications are considered and hopeful ways forward are proffered: epistemic humility, inner dialogue, and cultivating our humanity

The key message of this paper is that Re W indicates that contemporary child and family social work is dominated by an ‘automatic’ thinking which tends not to ‘hear’ the voices of actual human beings and a refocusing on ethics work is needed to put humane practice back at the heart of the social work profession.

Keywords: Re W, ethics work, child and family social work, social work

**Introduction and background**

There is a wide range of approaches to social work (Narey, 2014). In the field studies indicate that the reality of social work practice does not always reflect the expectations of policy makers and indeed social workers. Most importantly, perhaps, interventions with children and their families can in practice be limited and formulaic (Higgins et al, 2015; Thomas and Holland, 2010; Ferguson, 2016). Similar findings have been identified in other European states (Roose et al, 2013; Arbeiter and Toros, 2017) and outside Europe (Gilbert et al, 2011).

There is a ‘turn’ in social work to a wider concern for a situated ethics within practice itself (Gray and Webb, 2010; Banks, 2016) although there is debate on this turn (Webb, 2009). Professional ethics is seen as more than just the application of models of decision-making and adherence to ethical principles. Banks (2016) has labelled this movement ‘ethics work’. Moving away from general principles, ethics work situates ethics within everyday social work practice. Francis’ (2013) use of the term ‘ethical integrity’ in the Mid Staffordshire Inquiry can also be seen as linked to the concept of virtuous character. The use of the word ‘integrity’ reinforces the unifying sense of ethical professional practice as a form of probity or virtue, which unifies a professional practice.

The strategy adopted in this paper is to analyse a particular Court of Appeal judgment (Re W) and identify whether it can illuminate current approaches in social work. There has to date been limited discussion of Re W in social work (Community Care, 2016). Re W has been selected for two reasons. First, it is a judgment made in the Court of Appeal, which is a senior court in England. Second, the judgment explores in some detail the social work reports and the ‘thinking’ implicit them. It is this social work thinking that can help make sense of social work today both in England and other states in Europe.

Re W needs to be seen within the contemporary context of adoption social work in England. In 2014 the then coalition government published a strategy to increase the number of adoptions in England (Department for Education, 2014a). The rationale for the plan was the decline in adoptions and the increase in number of children in public care. In the foreword to the action plan the Secretary of State used phrases such as “swifter use”, “speed up” and “fast-track”. The use of these phrases can be understood to underlie the strategic approach as about a speeding up of the adoption process (Department for Education (2014a, pp. 3-4) where adoption is best for children. The problem with the emphasis on speed is that there is a risk that the needs of individual children may take second place to the aim of ‘quick’ adoptions.

The focus on fast-tracking of adoption was challenged in Re B S (2013). the Court of Appeal emphasised the importance of:

1. Providing evidence for a recommendation
2. Considering all the options by undertaking a holistic evaluation of the child’s welfare which takes into account all the negatives and the positives of each option.

The court’s concern, therefore, in Re BS was that government policy and social work practice was focused on achieving the ‘best’ outcome (adoption) rather than examining the evidence and options. The government’s approach in adoption can be seen to reflect a model that aims to do what is best overall for children instead of what is ethically right. Munro (2011) made this distinction when she referred to social workers doing things correct procedurally rather than doing the ethically right thing. Munro’s argument is that social workers are focused on guidance that tends to be interpreted as a set of 'rules' that must be followed rigidly. For example, an observational study of local authority children's social workers found that everyday decisions were often dealt with using routinised 'rules of thumb' where it had been agreed that a particular way of undertaking a task was the ‘correct’ way (Whittaker). A consequence of this approach is that there was no professional choice of options because social workers followed such rules irrespective of the consequences.

**Re W: the facts of the case**

The facts of the case can be briefly summarised. W is a female child born on 01/05/14. Neither parent was able to provide suitable care for the baby because of their learning difficulties and drug misuse. The child was placed with foster carers when she was a day old. The parents did not engage significantly with legal proceedings and in October 2014 a full care order was made with consent to place for adoption. At seven months the child was placed with prospective adopters and remained with her adoptive parents ever since.

During proceedings the maternal family and the father had not been co-operative and the local authority was unable to contact paternal family. Subsequently the paternal grandparents made contact, stating they wished to become carers of their granddaughter. At the time of the court decision on the grandparents’ application (20/05/16), the child was just over 2 years old and had lived with the prospective adopters for some 17 months. The child was assessed as thriving in their care and was a bright and active little girl. The judge decided the child should be removed and placed with her paternal grandparents. The prospective adopters appealed and Re W is the decision of the higher court on the adopters’ appeal. The Court of Appeal upheld the adopters’ application to set aside the judgment of the first hearing and ordered a rehearing of the case.

Initial reaction to the judgment from the social work community has been limited with the judgment being seen as part of a wider debate on adoption (Community Care, 2016). However, this paper argues that Re W provides insight into the nature of contemporary social work and thus has national and international implications for social work practice beyond adoption. Three particular features are identified and explored: automatic thinking, the bland child, and not being heard.

**‘Automatic’ thinking**

Lord Justice McFarlane gave the court’s judgment. He refers on a number of occasions to an ‘automatic’ thinking or approach adopted by both the guardian ad litem (court appointed social worker in public proceedings) and an independent social worker (appointed in this case to assess the grandparents). McFarlane says that both social workers seemed to assume that the right to be brought up within the extended family was an “automatic ‘presumption’ or right” (Re W, 2016 section 71, no page number). Both social work reports worked on this automatic presumption. For example, the independent social worker recommended that the child should not be adopted because the grandparents could offer her a home:

“We shared the opinion that where there was a loving family who were prepared to care for A and the benefits of being brought up by family there could be no justification for a child to be adopted outside the family.” (W, A child, 2016, section 31, no page number).

In this part of the independent social worker’s report she explicitly states there can be ”no justification” to prefer an adoptive family to a member of the extended family (if suitable). However, as McFarlane rightly points out, this is not the test. It is what is best for the welfare of the individual child that is the actual test under the Children Act 1989. The social workers understood the option of being brought up within the extended birth family (if suitable) as a right that that outweighed other rights and considerations.

The Children Act (1989) states explicitly that the welfare of the child is paramount. What needs addressing is why both very experienced social workers made use of this ‘presumption’ or automatic thinking without giving due weight to all the relevant matters and instead prioritised only one of the relevant factors. It is suggested that this automatic thinking reflects much of what goes on in contemporary social work. The Knowledge and Skills Statements (Department for Education, 2014b, 2016b) have been adopted to identify the key knowledge and skills social workers need in types of work. The relevant knowledge and skills statement here is achieving permanence (2016b). This statement focuses on achieving long term or permanent placements including the extended family and adoption. The statement states that social workers must:

“Eliminate drift for children by reaching the right decision within a timeframe which meets the child’s best interests” (Department for Education (2016b, no page number)

This sentence evidences two points. First, the emphasis is on promptness in reaching a decision. Second, there is an assumption that there is a single right decision. It is suggested that this statement can lead to social workers thinking automatically. They will focus on the speed of the decision rather than considering factors and weighting up options. They will also assume there is a right decision rather than approach decision making as a balancing of options. McFarlane makes the same point when he states that the social worker needed to provide:

“An overall welfare analysis aimed at balancing the pros and cons for the two competing options” (Re W, 2016, no page number, section 27)

Automatic thinking can be compared with Kahneman’s (2011) ‘fast’ thinking. Fast thinking operates quickly and automatically or, in a sense, without deliberating. As a contrast to fast thinking slow thinking is deliberative, conscious and analytical. The danger highlighted in McFarlane’s identification of the automatic thinking in the social workers’ reports is that social work practice tends to operate on an automatic or fast approach when a deliberative and balanced model is required.

Leigh (2016) provides an example from her own practice of automatic thinking. She worked in an emergency duty team which dealt with referrals outside office hours and at weekends. The father of a child subject to a child protection plan had been involved in a fight earlier in the day with his sibling. He was now asleep. The father had to restrain his son and the father was concerned the child may have received marks when being restrained. As the child was subject to a protection plan the father wanted to provide this information. The social worker with her colleague visited the family home around 22:00 hours. When they arrived, the social workers could see the child was asleep. The author suggested they would return the next morning to see the child; but her colleague insisted on him being woken up and undressed for them to check for bruising. The author felt this was not in the child’s best interests and suggested that the different approaches reflected her colleague approaching the situation as if there was a set “dogma” to all child protection (Leigh, 2016, p. 7).

When the author discussed the case in supervision, her manager explained this was how they did it in their team. The manager’s approach can be linked to recent research on what happens in social work supervision (Wilkins, 2016). Over 200 written records of supervision were reviewed. The notes tended to be narratives of actions done and actions to be completed. The rationale for the activity and how to undertake it were usually not in the records. Thus, automatic thinking seems to be a dominant approach in social work and the social workers in Re W were presenting a common mode or approach in their reports.

Having looked at automatic thinking the next common feature to be reviewed from Re W is the ‘bland’ child.

**The ‘bland’ child**

The court also commented critically on the description of the child. Lord McFarlane criticised the guardian because there was no discussion of the actual child in the case, only a “bland, factual account” (Re W, 2016, section 82, no page number). For example, the guardian reported:

“A’s immediate need is to be placed in a nurturing, secure, safe environment, where she can continue to make the positive attachments she has already begun to make. A has a need for high quality, permanent care that is consistent and robust. Due to her age, A needs the opportunity to be claimed by permanent carers therefore adoption is not in her best interests as, in my view, [paternal grandparents] can provide the necessary level of permanent care needed by A. (Re W, 2016, section 82, no page number)

Looking at the first two sentences it is fairly obvious that all young children (regardless of whether they are placed for adoption) need this even within their own birth parents’ home. The ‘need’ of A is the need of every child. This reflects what has been called elsewhere a standardised model of describing the developmental needs of children in reports (Thomas and Holland, 2010). In their study of reports Thomas and Holland suggested this standardised child was a result of the bureaucratic approach within social work. The bureaucratic approach and its formulaic description of the child has been identified also elsewhere in the literature (Higgins et al, 2015). In reality, children vary from one child to another and the only universal characteristic is that each child is unique (Sinclair, 2005).

Lord McFarlane pointed at that at no stage did the guardian consider the level of the attachment between the child and her adoptive family. In fact, the guardian did not meet the adopters or the young person prior to submission of the report. Even after meeting them, the guardian provided no further written evidence on them. In a sense, the guardian saw only what was ‘right’ in terms of her automatic thinking and failed to see the welfare of the child before her.

The independent social worker did see the adopters and the child as part of her assessment. However, she also seemed to adopt a bland notion of the actual child. When the independent social worker explored options to move the young person she considered three:

Option 1: a four-day introduction to the grandparents involving the adopters

Option 2: the social worker would pick up the child from the adopters’ home and take her to her grandparents

Option3: the child be placed with foster carers as a bridging placement for 3-6 months with appropriate support provided to prepare for the move to the grandparents

The social worker noted that the opinion of the therapists in her agency was that the child:

“will be negatively affected and the trauma of the move will most likely impact on her emotional wellbeing and therefore impair the attachment process” Re W, 2016, section57, no page number).

Despite this feedback the independent social worker opted for option 2: removal from the adoptive home by the child’s social worker. The rationale for option 2 was that the adopters would find it too upsetting and this would affect the child. Difficult decisions of course must sometimes be made in social work but, that said, given the facts of the case, it is hard to comprehend the recommendation of the independent social worker. A way to make sense of going for option 2 is that the independent social worker approached the child as a ‘bland’ child, not taking into account the likely increase in potential grief and loss in going for option 2. This can be evidenced in the following extract from the independent social worker’s report:

“This is a very distressing case but I remain of the opinion that where a child has birth family who are able to offer an acceptable level of care in a permanent home that a child should not be denied the right to be brought up within their family of origin.” (emphasis added by Lord McFarlane)

The comments of the social worker seem to adopt this abstract or bland approach, with limited focus on how the actual child will respond. Lord McFarlane’s underlining of “the right” links the social worker’s thinking to automatic thinking (discussed in the previous section). This extract suggests the adoption of presumptions such as ‘right’ instead of looking at the welfare of this child in this situation. In a sense, automatic thinking produces ‘bland’ notions of children. Lord McFarlane makes this point clearly when he says:

“[B]oth the Children’s Guardian and the ISW fell into serious error by misunderstanding the need to evaluate the question of A’s future welfare by affording due weight to all of the relevant factors and without applying any automatic “presumption” or “right” for a child to be brought up by a member of her natural family.” (Re W, 216, section 70 (no page number).

Automatic thinking may lead to bland or standardised understandings of children but, the third and final review of the case indicates that automatic thinking and bland reports can also result in voices going unheard.

**Unheard voices**

“This case was all about A. She is a person. Her personality, her attributes, her achievements should have been centre stage in these proceedings. Yet she does not shine out from any reading of the court papers or from the judge’s judgment, indeed, the opposite is the case.” (Re W, 2016, section 84, no page number)

Despite the case being all about the child, the focus on what Lord McFarlane calls ‘automatic’ thinking and ‘bland’ reports on the child led to the child’s voice going unheard. There is nothing new in suggesting that despite legislation, policy and models of good practice, the child’ voice goes largely unheard in child and family social work (Higgins et al, 2015; Holland and Thomas, 2010; Ferguson, 2016). In a study on child protection Ferguson described how children can become ‘invisible’ because of the context of social work practice. Lack of time, organisational culture, emotional and interactional dynamics were identified as rendering the child ‘unseen’ or, as Lord McFarlane suggests, not heard. There is research to suggest this can occur in other countries as well (Arbeiter and Toros, 2017). In their study of child protection in Estonia Arbeiter and Toros found that children sometimes felt they were not at the centre of the social worker’s assessment. Children wanted to be heard more and their views taken into account.

**Implications: national and international**

Automatic thinking, bland child, and unheard voices can be seen as ‘products’ of a narrow or rule-driven model of social work (Higgins et al, 2015). Contemporary social work tends to be restricted to a particular version of practice which focuses on following fixed rules without considering the real child and their family context (Higgins, 2016). As Lord McFarlane points out professional judgments should be about reaching a balanced decision in a particular case between at times competing options (McFarlane, 2017).

There is some evidence that social workers tend to adopt a draconian and authoritarian approach to their service users (Forrester et al., 2008). Similarly, Roose et al (2013) in Belgium suggest that talk of partnership in children and families can sometimes ignore a ‘reductionist’ approach, whereby parents are seen as bad or dangerous. Roose et al argue that the rhetoric of partnership can obscure the underlying contradiction between partnership and this reductionist or limited model of parents. Parents become ‘boxed’ into a fixed or narrow understanding, which diminishes their own agency as human beings and citizens.

**Recommendations**

Offering a way of hope is important if social workers are successful in engaging with the issues explored in this paper (Collins, 2015; Higgins, 2016). The features existing child and family social work were identified from Re W as: automatic thinking, the bland child, and unheard voices. Three possible steps are suggested: epistemic humility, inner dialogue, and cultivating our humanity. The limitations of a single paper will permit only an outline of these ‘signposts’ of hope. However, the author has explored elsewhere some of these options in more depth (Higgins et al, 2015; Higgins, 2016, 2017).

***Epistemic humility and inner dialogue: response to automatic thinking***

Humility in this sense is an ethical openness to others and an absence of privileging ourselves before others. As an epistemic virtue humility has been explored recently in psychology. Intellectual humility can be defined as the willingness to accept that we may be wrong about our opinions (Leary et al, 2017). Leary et al (2017) looked at four studies that undertook research on epistemic humility., Study 1 showed that intellectual humility was linked to openness, curiosity, tolerance of ambiguity, and low dogmatism. Study 2 evidenced that participants with a strong sense of intellectual humility were less sure that their beliefs about religion were accurate and judged people less on the basis of their religious views. Study 3 found that participants high in intellectual humility were more positive politicians who changed their attitudes and Study 4 indicated that people high in intellectual humility were more receptive to the strength of persuasive arguments than those who were low.

Epistemic humility is linked to ethical humility. Wright et al (2017) contend that humility is a particular type of psychological positioning that has both epistemic and ethical features. Epistemically, humility can be seen as a virtue whereby we see ourselves as:

“a finite and fallible being that that is but an infinitesimal part of a vast universe, and has a necessarily limited and incomplete perspective or grasp of the whole which is infinitely larger and greater than oneself (Wright et al, 2017, p4).

Ethically, humility is the understanding that

“we are only one among a host of other morally relevant beings, whose interests are foundationally as legitimate.as our own” (Wright et al, 2017)

Epistemic and ethical humility are linked because within both approaches we see ourselves as only one among equally valid and important agents epistemically and ethically. This paper focuses on an intellectual virtue but it is important to acknowledge the connection between the two types of virtues.

Adopting epistemic humility means that social workers approach service users and decision making in an open or willingness to learn manner (Roose et al, 2013). Whereas in Re W both social workers tended to adopt a closed or professionally certain way.

Munro (2014) warns of the dangers of confidence and over reliance of ideas of evidence based practices. She suggests the need for intellectual humility. Munro argues epistemic humility means making only assertions that we have a solid base for. Epistemic humility is not submissiveness or lack of confidence. It is instead the absence of arrogance, the ‘professional knows best’ model combined with knowing the reasons for our claims and being comfortable with not knowing.

Munro (2014) recommends inter alia that:

1. We monitor ourselves
2. Ask for all the findings and stories, not a simple selection
3. Allow for retractions, corrections
4. Point out there are no simple answers
5. Share commitment to honest reporting

The relevance of humility in recent years has been explored in relation to cultural competency in social work (Ortega and Faller, 2011; Fisher-Borne et al, 2015) and other professions (Foronda et al, 2016). However, it remains an undeveloped concept within the social work literature (Fisher-Borne et al, 2015). While cultural competency rightly addresses the challenges of diversity and discrimination both in social work and society as a whole, there is a risk that the focus on becoming culturally competent may place too much emphasis on similarities and shared values. What separates us and makes us culturally distinct is as important as being able to understand another culture. Cultural humility approaches diversity from a humble or not knowing perspective in contrast to expecting social workers to be experts in another culture (Ortega and Faller, 2011).

With reference to the current paper epistemic humility may be seen to extend beyond cultural humility and to apply generally to contemporary social work practice. Research indicates that in children and families social work today at times there is an authoritarian and harsh approach to working with parents and carers (Higgins, 2016). At times documentaries on social work practice also evidence this authoritarian approach (Patterson, 2012) and service users are portrayed as beyond what is ‘normal’ ((Featherstone et al, 2013). Epistemic humility can offer a way to be more open and engaged more as partners (Roose et al, 2013) with service users. There is some evidence too from recent psychology studies that epistemic humility can result in a willingness to consider our own opinions may be wrong. (Leary et al, 2017; Wright et al, 2017).

Applying epistemic humility to child protection, for example, offers an ‘open’ model in investigations; or, what Burton and Revell (2017) call ‘professional curiosity’. The authors point out that ‘curiosity’ is not used in current child protection. It is suggested that epistemic humility is an approach that can encourage a greater sense of curiosity or openness when working in child protection. Laming also emphasised the importance of what he called ‘respectful uncertainty’ Laming, 2003).

The concept of inner dialogue is taken from Arendt (1981). The idea of an inner dialogue is similar to Munro’s suggestion above of the need to ‘monitor’ ourselves. Arendt argues that thinking requires an internal debate within our own minds about what we should believe or do. Whenever we are considering options, the existence of this internal conversation with two sides of ourselves allows us to think clearly and rightly. This internal conversation reflects the external need to converse with other people because thinking is a dialogue with fellow human beings. This inner dialogue helps us prepare for the external dialogue with others. The absence of this internal conversation can lead to social workers assuming dialogue is unnecessary because they already know the answer. Failing to hear the child in Re W can be seen as a lack of focus on both internal and external dialogue. The social workers did not need to consider the best option for the child because there was a principle that decided this without the need for a conversation. Adopting an inner dialogue can help social workers move beyond what Lord McFarlane calls automatic thinking to a practice which sees action as both an inner and outer conversation (Smeeton, 2017).

**Cultivating humanity: response to the bland child and unheard voices**

‘Cultivating humanity’ (Nussbaum, 1997) is learning to appreciate the common humanity we share with our service users. Nussbaum offers a number of ways to cultivate our shared humanity: world citizenship and narrative imagination. It is not sufficient to have an intellectual understanding of the lives and cultures of others. We have to be able to put ourselves into the shoes of others, to see the world from their perspectives. Narrative imagination is in a sense an emotional intelligence, which allows us to share the thoughts and feelings of others. We become the readers of other people's stories (Nussbaum, 2006). Smeaton and Boxall (2011), for example undertook a study of birth parents involved in contested care proceedings and adoptions. They make the point that we must allow birth parents the opportunity to tell their story from their own perspectives, however different the views of others may be.

‘Cultivating’ humanity is the ability to: “engage critically with tradition; the freedom to imagine citizenship in both national and world terms, and to negotiate multiple allegiances with knowledge and confidence; and the freedom to reach out in the imagination, allowing another person’s experience into oneself” (Nussbaum, 2006, p. 392). Cultivating our humanity is not an intellectual technique or a type of systemic thinking. Cultivating our humanity is a way of life (Hadot, 1995).

Arguably, the problem at the heart of Re W was that both social workers failed to see the child as a living and individual person in her own right. Thomas and Holland’s (2010) research was discussed above where they described a ‘standardised’ child in social work reports instead of a live and breathing child. This standardisation is what Lord McFarlane calls a bland child as discussed earlier in this paper. Moving away from this type of assessment means that reports need to be seen as more open, flexible and participatory (Higgins et al, 2015). Assessments of children should be seen as akin to life story work: individualised, developmental and bringing to life the actual child’s story of their life.

This focus on reports as life stories connects to the idea of encouraging ethical exercises. Findings of a study into ethical decision making (Doel et al., 2010) suggested social workers among other professionals were inclined to keep away from ethical complexities. The authors recommended the use of vignettes which presented ethical dilemmas and issues as a way of encouraging social workers to look beyond formulaic assumptions and guidance. This ethical turn connects to Lord McFarlane’s discussion of the bland child and unheard voices. Lord McFarlane also makes the point that the absence of putting the actual child at the centre of the assessment was due in part to the social workers failing to weigh up different and opposing options. Using vignettes that bring out the tensions in decision making can help to move reports beyond simplistic and ‘automatic’ solutions.

Both assessments as life stories and ethical exercise help also to promote a narrative imagination (Nussbaum, 2006). A narrative imagination understands human development as a story of other individuals in the full richness of their own individuality. In place of automatic thinking, bland children and unheard voices a narrative imagination encourages social workers to learn about the actual lives of their service users by bringing their stories to life rather than putting them into rigid boxes (Roose et al 2013). This means that, as Nussbaum puts it, cultivating humanity is a shared dialogue whereby individually and together we endeavour to arrive at a common understanding of our humanity (Nussbaum, 1986).

**Conclusion**

There are many models of social work (Narey, 2014). Building on the facts and comments made in Re W (2016) the themes identified in the case (automatic thinking, the bland child, and unheard voices) could be seen as products of a model of social work focused on following rules rather than adopting a wider ‘ethics work’ approach to child and family social work. The limited research into direct work with service users indicates that social workers can adopt an authoritarian approach in England and elsewhere in Europe (Forrester et al, 2008; Roose et al, 2013) and individual children can become invisible or standardised within this approach not only in England but elsewhere in Europe (Higgins et al, 2015; Holland and Thomas, 2010; Ferguson, 2016; Arbeiter and Toros, 2017). However, this approach (Gilbert et al, 2011) is only one of many models of social work (Fox-Harding, 1996). The key message of this paper is that Re W indicates that contemporary child and family social work is dominated by an ‘automatic’ thinking which tends not to ‘hear’ the voices of actual human beings. However, the hopeful (Collins, 2016) conclusion is that an ethical turn can offer ways forward to develop these models such as epistemic humility, inner dialogue, and cultivating humanity.

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