

MATERNITY AND PATERNITY LEAVE WITHIN FRANCE AND THE UNITED STATES

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This paper examines, comparatively, how current maternity and paternity leave policies within France and the United States have come about and what current policies are in place. In the process of delineating the historical development of maternity and paternity leave protections in both nation-states, certain social movements, historical events, and institutional processes are to be noted as foundational in understanding the development, enactment, and access to paternity and maternity leave. This area of family policy is increasingly important due to its implications towards gendered roles, work-time patterns, and the dynamics of the family as a social institution. In closing, it is suggested that the social policy towards maternity and paternity leave within the United States is lacking, overall, in a variety of facets, where social policy in countries like France is not. Learning from countries that have continually improved upon various maternity and paternity leave benefits, both in policy and programmatically, would be useful in ensuring the well-beings of individuals in the workplace and the next generation of individuals within a society.

In the scope of social policies abroad, there can be an argument made that the overall goals of certain policies are aimed at the efficient and effective organization and delivery of services which seek to address a social issue. However, there can be instances where there is an unwitting lack of emphasis on the well-being of individuals in society through current, ineffective policies (e.g., instances of environmental racism or workplace discrimination). Within the purview of what social policy can provide, the needs of certain peoples can be framed in a variety of ways for a variety of different reasons. Largely, these include environmental, economic, political, and social influences that can impose of a variety of confounding ultimatums that need to be identified and explored in order to generate any “good” advice towards policy. Most importantly, social policy needs to involve individuals and communities at a substantive-level which presupposes addressing the design, implementation, and evaluation of policy with societal well-being and equity in mind. The topic covered analyzes the access and scope of previously implemented workplace

policies, and their outcomes, in an effort to provide gender equality within the workplace.

This work will provide an overview of why social policy concerning maternity and paternity leave is framed, crafted, and implemented differently between the United States and France. The roles of political ideologies are entirely invaluable when looking into how family policy is framed and enacted toward aspects of the types of maternity and paternity available to caregivers. In order to cultivate a nuanced understanding of why family policies exist as they currently stand, the historical context and development of adopted policies need to be outlined. Within the United States, family policies are largely underserving in regard to individuals and their children. As James W. Russell states, "...family policies encompass all programs that attempt to either support or orient how families function" (2017: 101). This statement, when nestled in its larger context, assumes that the family is the initial institution with the aims of supporting and serving children, which has traditionally been the only responsible party for the rearing and the development of the next generation of citizens. In the United States and Western Europe, the perceptions about the costs of child raising have undergone different trajectories and have provided differing benefits for their citizenry. The scope of this analysis will compare the maternity and paternity policies present within the United States and France—ultimately focusing on the disparities based upon gender roles and a lack of viable access to leaves. By outlining the specificities of what each region offers, a discussion on why various populations with the same social problems have developed different solutions through policy can begin to take form.

Many individuals require some sort of family leave within their lifetime (Isaacs et al., 2017). In the context of the United States, the traditional family and market relations that previously provided commodities and services began to change at the turn of the twentieth century (Schrader, 1999). As more women began to enter the paid workforce, the needs for care of families changed due to the traditional primary caregivers (women, largely) having to balance work and familial obligations. By participating in the labor market, many nuclear families had to transition away from an extended family structure, which also provided a source of child rearing and caregiving services (Heymann et al., 2013). The movement of populations, through urbanization, and the growing number of mothers within the workforce created a situation where the institution of the family was "[becoming] increasingly dependent on the outside economy" (Russell, 2017: 103). The reality of this dependency has challenged an assumption held within the United States about the importance

of small government and self-reliance—both of which are intended to foster the wellbeing of society. In relation to potential family policies,

The United States [has] always oriented by this moral and economic belief with some transformations to a degree of where government could act directly to promote welfare and where government would have the responsibility to provide welfare without relying exclusively on charitable acts... (Sapiro, 1986: 235)

In maintaining this political ideology, along with internalized aspects of the Protestant work ethic, there has been an institutionalization of these aforementioned ideals through social policy, or a lack thereof, within the United States.

Moving away from aspects of the atomized individualism fostered through the United States' free-market orientation, a focus on Western Europe provides an alternative view of how a society can frame the needs of its citizenry. Historically, social welfare in Western Europe developed in the era known as the Age of Revolution—which was roughly from 1774 through 1849 (Souza, 2017). For example, in post-Revolution France their *Declaration of the Rights of Men and Citizens* directly addresses aspects of public assistance in terms of societal interest rather than individual interests (Danto, 2009). In doing so, the idea of public assistance within French society has its political ideology rooted within the conditions immediately following their revolution. In terms of family policy, the strongest advocates of child rearing benefits ironically have come from the politically moderate or the politically conservative; moreover, these advocates defended these policies both in the hopes of supporting pronatalism and in frustration towards France's increasing secularization (Talmy, 1962). Largely, the main activity in support of public assistance came from France's "family movement," which has lobbied since the 1960s, to "promote and assist large families" of three or more children (Morgan and Zippel, 2003). This is an interesting facet of France's social policy, as there are no other European countries that link the degree of assistance provided to a specific number of children with the intention of expanding the population (Fagnani, 1995; Schiermann, 1991). In this instance, the French greatly differ from the United States' commitment to *laissez-faire* economics and atomized individuals in providing assistance to their respective population.

In the course of the United States' efforts of developing social policy toward the needs of mothers and families, there have been two landmark acts that have been enacted to assure protections for maternity and family leave. However, in order to express the long-standing impacts these policies have been able to provide, historical context is exceedingly important. The

significance of family leave is integral in fostering an efficient and effective citizenry, especially in remedying the inequalities present in the work and family balance. By the beginning of the twentieth century, an average of eighteen percent of all laborers were women and less than five percent were either married or mothers with children under the age of three (Biber and Carter, 2000). In stark contrast, at the turn of the twenty-first century, women came to total for forty-nine percent of salary and wage workers—at the very least showing a sizable demographic shift in the workforce (United States Census Bureau, 2018; Schrader, 1999). Ultimately, this movement in the workforce also indicates that there has likely been a large shift in how individuals must go about child-rearing and child-care in order to make time for their careers. Within the United States, much of the issues in family policy stem from a traditionally held belief that the roles of women are that of the primary caregiver to children. That is not to say this does not exist in France; however, the contradiction that this belief holds in relation to egalitarian values are espoused through American political discourse much more readily than those of the French (Russell, 2017).

The aforementioned political discourse within the United States has been exemplified in certain court cases from the early twentieth century. The two leading examples are *Muller v. Oregon* (1908) and *Ritchie and Co. v. Wayman* (1910), both of which took precedence in discussing the working hours *allowed* to women in relation to their perceived domestic obligations, all of which was unremunerated labor. Retrospectively, these cases are of particular concern due to the fact that the issue at hand was the agency of female employees in their places of employment—especially since each case emphasizes the fecundity of female employees explicitly (*Muller v. Oregon*, 1908). The ramifications of these cases extended well into the Great Depression in the 1930s, which provided the economic and social climate necessary to mobilize many working-class organizations within the United States (Navarro, 1989). The mobilization and outcry of labor movements within the United States were matched with the Roosevelt administration providing more encompassing social welfare programs and more employee benefits (Russell, 2017; Piven and Cloward, 1979). However, the provisions established within the New Deal were incomplete comparatively with the programs and benefits provided by nations like France. The labor movements within the United States largely ignored or compromised in regard to the interests of women within the realm of the workplace (Weldon, 2011).

After the implementation of New Deal programs, much of the labor concerns toward women were again expressed in relation to their perceived

roles of the nurturers and domestic servants to their partners and children (Sapiro, 1986). It was not until the demographic labor shift resulting from the events of World War II that the United States began to pay considerable attention to the role of women in the paid workforce. Given that around five million women joined the workforce in the United States at that time, many business owners were pressed to provide informal company policies in acknowledgement to this growing population (Kamerman et al., 1983). However, the enactment of informal policies for women in the workforce was largely insufficient in providing equity for the daily lives of many female workers. Many women were still entrapped in employment arrangements that regulated the hours they were allowed to work and prohibited them from specific occupations on the basis of their gender (Sawyers and Meyer, 1999). It was not until the Civil Rights Act of 1964 where the role of workplace provisions for women was addressed in formalized social policy through Title VII (Sapiro, 1986). Title VII of the Civil Rights Act of 1964 forbids the discrimination on the basis of race, religion, color, and sex—which proved to be a landmark case within the scope of American history (Russell, 2017: 145). The inclusion of sex to Title VII was thought to be a huge success in regard to women's roles in the workplace. Unfortunately, the legislation makes no mention of whether discrimination based on pregnancy or parental responsibilities were an actual violation of Title VII.

The legislative gray area was largely exploited by employers when addressing the women within their workforce. The 1977 cases of *General Electric vs. Gilbert* and *Nashville Gas v. Satty* provided evidence as to how women were denied both paid and unpaid leave upon encountering medical complications stemming from pregnancy (Schrader, 1999). With regard to *Nashville Gas v. Satty*, the United States Supreme Court favored the position that the existing sex discrimination policy did encompass pregnancy because it only affected one sex (*Nashville Gas. v. Satty*, 1977). Both cases provided the basis for the initial drafting and passage of the Pregnancy Discrimination Act of 1978, which was signed into law by President Jimmy Carter. This act prohibited the discrimination of women on the basis of pregnancy, childbirth, and related conditions that may warrant medical attention (US EEOC, 1997). Through this piece of legislation, employers are prohibited from refusing to hire a woman based on pregnancy or exhibiting prejudices regarding pregnancy. This particular act treated pregnancy as a temporary disability, which attempted to remedy inequalities that may take place in the workplace between a woman's coworkers and superiors. The provisions of the act also afford women protections in relation to their occupational positions within an organization

and prior health benefits (US EEOC, 1997). This social policy is the first example of family policy that directly upholds protections to pregnant women in maternity leave within the United States.

The Pregnancy Discrimination Act of 1978 was the only piece of social policy concerning parental leave or protections until the Family Medical Leave Act of 1993 (FMLA)—which was signed into law by President Bill Clinton. This piece of legislation concerns both men and women, while affording protections to employees who: (1) are employed by a “covered” employer, (2) are employed by a “covered” employer for at least twelve months or a total of 1,250 hours in a twelve month interval, and (3) are employed at a site where fifty employees are within a seventy-five mile proximity of the work site (US Department of Labor, 1993). Under this act, the leave is provided to parents upon the birth or the adoption of a child or children, for the worker’s own personal medical conditions, and/or the medical conditions of an immediate family member (Guthrie and Roth, 1999; Souza, 2017). The FMLA covers up to twelve weeks of *unpaid* leave in a twelve-month period, which (based on the employer’s discretion) is enacted in a reduced workweek or in set scheduling blocks (Vahratian and Johnson, 2009). Initial drafts of the 1990 FMLA had provided close to eighteen weeks of unpaid leave based upon the aforementioned criteria of the act—which was vetoed by both the Reagan and Bush administration (Isaacs et al., 2017). In the context of the United States, the nonmarket solutions provided by the state were still politically framed in the discourse concerning values of individual responsibility and competitive individualism (Russell, 2017). The political ideology that informs the United States’ view on maternity and paternity policy is in direct opposition of the comprehensiveness of universal benefits found within France and Western Europe (Morgan and Zippel, 2003).

In France, the political ideology that has informed their creation of social policy has supported legislation that increased the presence of women of the French workforce and the political arena (Misra, 1998). Additionally, the French political discourse contained a pronatalist ideology which stressed a “. . . moral duty to bear children and the women’s importance to keep the country functioning in absence of men,” subsequently appealing to both the French labor movement and the pronatalists (Souza, 2017: 69). Within the course of these ideological developments, maternity protections and family allowances were perceived as viable solutions to strengthen the institution of the family and to promote women’s freedom from a male-centered perception and development of social policy (Misra, 1998). In 1909, the *General Confederation of Labour* (GCL) provided protection to female workers through the provision

of an eight-hour workday and up to eight weeks of *unpaid* maternity leave (Souza, 2017; Danto, 2009). The primary factor that allowed the French labor movement to become more successful in creating protections for women in the workforce than that of the United States is the presence of powerful labor unions in their political system. Similar labor movements to those within the U.S. led to the creation of social policy that directed similar responses to demographic shifts in the workforce due to the events of World War II (Cohen and Hanagan, 1991). However, the French labor unions have proven (through the actual enactment of policy) to address the public's interests and hold more political influence than that of American labor unions (Beland, 2001). The resulting maternity and parental leave policies in France provide a different perspective on how family policy is valued in the context of Western Europe.

Aside from the *General Confederation of Labour* (GCL) which passed in 1909, the next development in paternity leave within France took place in 1926 and only affected the state employees of the French government. These government employees were allowed two months of maternity leave and were provided one hundred percent of their wages or salaries. Given that this was only for public employees, many French mothers who worked in the private sector were only afforded *unpaid* maternal leave. It was not until the aftermath of World War II, in 1946, where maternity leaves were expanding to private industry and afforded workers fifty percent of their wages or salary for a total of fourteen weeks. These leaves remained largely unchanged for French women until 1970 where mothers were afforded ninety percent of their earnings or salary for up to sixteen weeks. The dimensions in which these policies lacked were in the realm of job protections for women who made use of their right to maternity leave. This issue was remedied between the 1946 and 1970 expansions. In 1966, the maternity leave policies within France contained the provision that mothers could not be fired for up to twelve weeks after birthing a child (OECD Labour Market Position of Families Database, 2018).

In 1977, France enacted their own version of paternal leave which applied to both men and women—while ensuring job protections. For women, this expansion of paternity leave afforded another two years of *unpaid* leave after the initial *paid* maternity leave. This allows mothers a larger portion of time to maintain a productive and healthy environment for their children and family members. The major stipulation of this expansion is that the individual that makes use of the expanded paternity leave must work for their employer for over one year and the workplace must have over one-hundred and fifty employees. In order for fathers to make use of the expanded parental leave, mothers would have to decline their right towards extended paternity leave. In

1984, both parents were afforded another eight weeks of parental leave prior to the birth of the child and the provisions for *unpaid* leave for one parent was expanded even further to three years of leave (OECD Labour Market Position of Families Database, 2018). Since the enactment of these maternity and paternity leaves, France has created a tiered system of benefits for parents based upon how many children a family has and affords this benefit to families with children with no means-tested prerequisites. Additionally, in an effort for these family policies to be more inclusive, the French government rewrote family policy around parental leave to include rights for gay or lesbian couples (Leave for Looking after a Child, 2013). The expanded scope of protections provides sizable support for French citizens, through maternity and paternity leave policies, which far outdo provisions made through policy within the United States. Where France subsidizes universal childcare through direct cash benefits and *paid* leave, the United States only provides *unpaid* leave for mothers in specific circumstances (Rendall et al., 2009).

While France's maternity and paternity leave policies are far more generous than the policies within the United States, both nations still struggle with providing equal access to their respective leave policies. For example, the simple fact that the United States' Family and Medical Leave Act (FMLA) provides only *unpaid* leave to employees—the lack of income creates an obstacle for individuals to make use of their rightful leave (Guthrie and Roth, 1999). Additionally, due to the way the legislation was drafted and passed, private employers have an advantage in exercising discretion to implement company policies concerning how these leaves are allowed to be utilized. This ultimately takes away a considerable amount of autonomy from the employees that do meet the requirements of the FMLA (Isaacs et al., 2017). This lack of access is commonly supplemented through employees choosing to make use of vacation days (which are often paid) or sick days (which are often unpaid) in order to account for the lack of unencumbered access to the FMLA. This lack of access is also combined with considerations that the FMLA has less of a length in the protection of employment compared to France and other industrialized nations (Berger and Waldfogel, 2004). These aspects of the FMLA foster social inequality. Relations between the employer and the employed are largely determined in the context of market relations which have been proven to undermine aspects of social cohesion at the societal level (Russell, 2017). As stated by Souza, “[This] law fails to offer public institutions to carry some of the costs and burdens of responsibility for the care of dependents” (2017: 64). Overall, the FMLA's oversights primarily affect women with incomes less than \$20,000 and often forces individuals to take up another form of government

assistance in order to make ends meet (Berger and Waldfogel, 2004).

Though the United States is largely behind in comprehensive social policy in regard to the institution of the family and maternity leaves, it is not to say that the family policies in France are without their own problems. In regard to lack of access or use, only two percent of long parental leaves are taken by men (Morgan and Zippel, 2003). Through the examination of how these policies have impacted France, it can be observed that the maternity and paternity leaves present serve to reinforce pre-existing gender roles. There have been incremental changes made, through policy, in an attempt to increase the presence of fathers in the care of children—though they have been largely unsuccessful. (Morgan and Zippel, 2007). Even with the monthly four-hundred and fifty euros provided to parents with small children, which is referred to as the “free choice benefit,” the discourse about choice is often brought up in terms of its gender neutrality. However, within France, the strongest advocates for these benefits overwhelmingly share, “...belief[s] in the merits of maternal care and the need to defend the well-being of homemakers” (Morgan and Zippel, 2003; Heinen and Koenigswarter, 2001). Given that the egalitarian perception of maternity and parental policies largely focus on the fact that they provide a sense of equity and guaranteed protection for women in the workplace—the focus now lies on how gender roles are treated as a static phenomenon (Iyyska, 1995). Even with the differing roots of political ideologies present within the United States and France, there is still largely an essentialism of gender that is pervasive within both nations and the institution of the family in the West.

Based upon a survey generated by the National Partnership for Women and Families, titled *Listening to Mothers*, mothers in the United States were asked about their employment during pregnancy and their satisfaction of the length of time at home with child. Out of the 2,400 mothers, more than sixty-one percent of mothers responded that they were employed during their pregnancy and thirty-four percent responded that they worked until less than a week of their due date (*Listening to Mothers*, 2013). In France, a similar survey called *The French National Perinatal Survey* issued similar measures where 15,187 women surveyed about their employment during pregnancy. A total of sixty-six percent of respondents stated that they have worked during their pregnancy, however, only twenty-three-point nine percent of women worked until less than a week of their due date (Blondel et al., 2011). Though these figures are not far from one another, it has been cited that there may be a difference as to why mothers work so long into their pregnancy. In the United States, the needs of mothers to work so closely to their due date lies in the fact

that they are dependent upon the income—which goes away upon leaving the workforce (Souza, 2017). This is evident when examining the *Listening to Mothers* survey, where seventy-two percent of respondents claimed they returned to work is simply because they could not afford more time off and twenty-two percent returned to work due to the fear of consequences such as lower pay or worse assignments (Listening to Mothers, 2013). This is in stark contrast to France, where respondents work closer to their due date in order to make the most out of the *paid* maternity leave they are provided (Blondel et al., 2011). Where mothers in the United States stay at work because of the aspects of wage dependency and externalizations of social costs, French mothers work longer out a sense of obligation explicitly towards their role in developing their children or family.

Even with similar figures of pregnant women in the workforce, the reasons for their choices depend upon their relationship to the social policy in their given nation. In the United States, mothers who become pregnant are expected to embrace the individualistic responsibility of choosing to have a child. In Western European nations like France, mothers are encouraged to continually increase birth rates for other problematic reasons that lie beyond the scope of this analysis. Given that both nations have similar issues in terms of, “...long-term imbalances between those who pay into supporting welfare state programs and those who draw benefits from them [due to increased life expectancy],” the difference in family policy is a very insightful example in the importance of political ideologies informing policy decisions and how that impacts the social institution of the family (Russell, 2017). Through the enactment of the Pregnancy Discrimination Act of 1978 and the Family Medical Leave Act of 1993, a substantive “floor” of legislation has been passed in the United States. However, these policies have largely fallen behind the benefits provided to mothers and families within Western Europe. Through the comparisons outlined between the United States and France, it is evident that the lack of *paid* leave remains a long-standing obstacle for mothers to maintain a healthy and productive environment in order to comfortably bring a child into the world. This research argues that a larger percentage of employers and employees should receive inclusion into existing maternity and paternity leave policies and a concerted effort should be made to implement a social insurance program providing *paid* leave to all families.

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