2009

The United States in Comparative Perspective: Maternity and Parental Leave and Child Care Benefits Trends in Liberal Welfare States

Linda A. White
The United States in Comparative Perspective: Maternity and Parental Leave and Child Care Benefits Trends in Liberal Welfare States

Linda A. White†

ABSTRACT: This Article tracks recent developments in maternity and parental leave benefits provision and early childhood education and care (ECEC) policies across five liberal welfare states, in order to highlight the variation between the United States and some of its closest comparators (Australia, Canada, New Zealand, and United Kingdom) on policies designed to promote work-life balance and maternal labor market participation. The Article demonstrates that, while there is a great deal of fragmentation in liberal welfare states' maternity and parental leave and ECEC policies and programs, the United States stands out as an outlier in its failure to provide national paid parental leave. While governments in all liberal welfare states increasingly encourage economic self-sufficiency and adult labor market participation, other liberal welfare states display less resistance than the United States to the idea that motherhood should trigger benefits entitlements. This idea still induces strong resistance within the United States. The Article also examines reasons for the United States' continued outlier status.

INTRODUCTION............................................................................................................. 186
I. LIBERAL WELFARE STATES AND SOCIAL POLICY NORMS REGARDING THE FAMILY ................................................................................................................. 190
II. ECEC AND MATERNITY AND PARENTAL LEAVE REGIME CHANGE IN LIBERAL WELFARE STATES ................................................................................................. 193
A. Measuring Liberal Welfare Regime Change ...................................................... 193
B. Child Care and Maternity and Parental Leave Regimes in Liberal Welfare States: Five Country Case Studies ......................................................... 205
   1. Australia ........................................................................................................... 205
      a. Child Care ..................................................................................................... 205

† Associate Professor, Department of Political Science, University of Toronto. Financial support for this research was provided by the Social Sciences and Humanities Research Council of Canada grant #72033728. The author gratefully acknowledges the helpful research assistance of Katherine Wilson-Milne.

Copyright © 2009 by the Yale Journal of Law and Feminism
INTRODUCTION

This Article provides a comparative analysis of public policies—namely maternity and parental leave programs and early childhood education and care (ECEC)—which support the reconciliation of work and family life for parents with children as well as maternal labor market participation.¹ I track recent developments in laws and benefits provision across traditional liberal² welfare

¹. For a summary of empirical studies exploring the relationship between maternity/parental leave policies and maternal labor market participation and work/family reconciliation, see AUSTRALIAN GOV'T PRODUCTIVITY COMM’N, PAID PARENTAL LEAVE: SUPPORT FOR PARENTS WITH NEWBORN CHILDREN § 5.1-6.15 (draft report 2008). For a discussion of the relationship between ECEC policies and maternal labor market participation and workplace gender equality, see JODY HEYMANN ET AL., THE PROJECT ON GLOBAL WORKING FAMILIES, THE WORK, FAMILY, AND EQUITY INDEX: WHERE DOES THE UNITED STATES STAND GLOBALLY? 8 (2004); and ORG. FOR ECON. CO-OPERATION & DEV., POLICY BRIEF: BABIES AND BOSSES: RECONCILING WORK AND FAMILY LIFE (2008) [hereinafter OECD, BABIES AND BOSSES]. Heymann et al. explain that high quality and reliable child care is labor-market supportive because “[a]ccess to high-quality infant and toddler care improves parents’ ability to get and keep jobs, cuts down on their absenteeism, and improves their productivity on the job. High-quality child care also helps bridge the gender gap by reducing the ‘motherhood penalty’ on women’s wages and careers.” HEYMANN ET AL., supra, at 8. Studies demonstrating the link between child care availability and female labor force participation include A. Chevalier & T.K. Viitanen, The Causality Between Female Labour Force Participation and the Availability of Childcare, 9 APPLIED ECON. LETTERS 915 (2002). However, note the caveat that long care leaves in Europe can discourage women’s return to the labor market. Kimberly J. Morgan & Kathrin Zippel, Paid To Care: The Origins and Effects of Care Leave Policies in Western Europe, 10 SOC. POL. 49 (2003).

states (namely Australia, Canada, New Zealand, the United Kingdom, and the United States) in order to highlight the variation between the United States and its closest comparators on policies designed to promote work-life balance and maternal labor market participation. I make these comparisons in order to answer the following questions: To what extent are liberal welfare norms changing with regard to state provision of public goods and services to encourage maternal workforce participation? Is the United States increasingly becoming an outlier in terms of maternity and parental leave and child care benefits provision? What can the United States learn from the experiences of its closest comparators?

In past research I have pointed out that, while the United States is typically portrayed as unique among western industrialized countries in not delivering paid parental leave benefits nationally, in fact it has only been an extreme case of what is typical in liberal welfare states. In Australia, for example, the Workplace Relations Act of 1996 provides for fifty-two weeks of unpaid maternal leave, and the Australian government is only now reviewing the idea of statutorily-mandated paid parental leave for all new parents. The Canadian federal government established paid maternity leave benefits in 1971 under federal unemployment insurance (UI) provisions; however, program coverage is limited to salaried employees eligible for UI benefits (now called Employment Insurance or EI) and provides only a fifty-five percent partial wage replacement up to a cap. The New Zealand government introduced an unpaid twelve-month parental leave and job protection program in 1987 under the Parental Leave and Employment Protection Act. Only in 2002 did the government introduce twelve weeks of paid benefits up to a cap as part of that parental leave program and extend those benefits in 2006. The British government introduced the legal right to maternity leave in the 1975

---


5. Workplace Relations Act, 1996, div. 6, § 266 (Austl.).

6. See, e.g., AUSTL. GOV'T PRODUCTIVITY COMM'N, supra note 1, §§ 1.5-1.12.

7. The Unemployment Insurance Act of 1971 permitted women who had completed twenty weeks of work in the preceding fifty-two weeks to claim fifteen weeks of paid benefits at the same rate as other Unemployment Insurance recipients. Unemployment Insurance Act, 1971 S.C., ch. 48, §§ 16(1)(d), 18(a), 30 (Can.), repealed by 1996 S.C., ch. 23, § 155 (Can.).

8. The Canadian federal government renamed the program as part of a number of amendments to the program, with passage of the Employment Insurance Act, 1996 S.C., ch. 23.

9. Id. § 14. But see infra Part II.B.4.b for a discussion of the Québécois maternity/parental leave program, which offers more generous benefits for more categories of workers.

Employment Protection Act\textsuperscript{11} and provided some maternity leave benefits.\textsuperscript{12} However, the Conservative government under Margaret Thatcher subsequently eroded many of the maternity leave provisions.\textsuperscript{13} It was not until the Labour government under Tony Blair that the British government increased the length of leaves and the compensation rates for maternity/parental benefits.\textsuperscript{14}

In comparison, in 1978 the United States enacted the Pregnancy Discrimination Act,\textsuperscript{15} which protects against discriminatory treatment of pregnant women and provides equality in access to any government or employer medical benefits, and the Family and Medical Leave Act\textsuperscript{16} in 1993, which provides a mandated twelve-week period of job-protected leave for, among other things, pregnancy and childbirth. In terms of timing and coverage, until very recently the United States did not look like quite such an outlier compared to other liberal welfare regimes.

Similarly, the United States has traditionally not been such an outlier in terms of ECEC provision. Liberal welfare states traditionally conceive of social reproduction\textsuperscript{17} largely as a choice and thus the responsibility of families themselves, with the state only stepping in to assist the very poor, and with the presumption that mothers would take on primary responsibility for childrearing and fathers would take on primary responsibility for wage earning.\textsuperscript{18} Liberal welfare states have thus often been among the less generous of industrialized states in terms of public funding and public provision of ECEC services.\textsuperscript{19}

\textsuperscript{11} Employment Protection Act, 1975, c.71 (U.K.).

\textsuperscript{12} MAUREEN BAKER, CANADIAN FAMILY POLICIES: CROSS-NATIONAL COMPARISONS 178 (1995).

\textsuperscript{13} Compare Employment Act, 1980, c. 42, §§ 11-13 (U.K.) (statute passed during Prime Minister Thatcher's administration), with Employment Protection Act, 1975, c. 71, §§ 34-38 (U.K.) (statute passed prior to Prime Minister Thatcher's administration, during the tenure of a Labour Party prime minister).

\textsuperscript{14} The Statutory Maternity Pay (General) (Amendment) Regulations, 2005, S.I. 2005/729 (U.K.); see also HM TREASURY, CHOICE FOR PARENTS, THE BEST START FOR CHILDREN: A TEN YEAR STRATEGY FOR CHILDCARE para. 3.5 (2004).


\textsuperscript{17} For further explanation, see Barbara Laslett & Johanna Brenner, Gender and Social Reproduction: Historical Perspectives, 15 ANN. REV. SOC. 381, 382 (1989), which defines social reproduction as "the activities and attitudes, behaviors and emotions, responsibilities and relationships directly involved in the maintenance of life on a daily basis, and intergenerationally."

\textsuperscript{18} JULIA S. O'CONNOR, ANN SHOLA ORLOFF & SHEILA SHAVER, STATES, MARKETS, FAMILIES: GENDER, LIBERALISM AND SOCIAL POLICY IN AUSTRALIA, CANADA, GREAT BRITAIN AND THE UNITED STATES 43-65 (1999); Urie Bronfenbrenner, Child Care in the Anglo-Saxon Mode, in CHILD CARE IN CONTEXT 281, 287 (Michael E. Lamb et al. eds., 1992).

Comparative welfare state scholars such as Ann Shola Orloff have argued, however, that the United States has traditionally taken a different approach to workplace gender equality than many other advanced industrialized societies, including other liberal welfare states.\textsuperscript{20} Orloff characterizes the U.S. approach as "regulation rather than social provision."\textsuperscript{21} That is, U.S. policymakers tend to focus on laws that remove discriminatory barriers to entry to occupations and prevent discriminatory treatment in the workplace—in other words, laws that ensure "same" treatment of men and women in the workplace.\textsuperscript{22} In much of Europe,\textsuperscript{23} however, and even in Canada,\textsuperscript{24} policymakers focus on benefits provision as well as rights protection, and those provisions may be gendered so as to provide resources to mothers specifically to support caregiving. Other liberal welfare states have thus traditionally been more generous in terms of social policy provision than the United States: "Alongside Japan, the welfare state 'laggards' of 1980 were Australia, Canada, the United States, and Switzerland. . . . While Australia, Canada, and Switzerland had moved up, Ireland had joined the United States and Japan at the bottom of the OECD league by 2001."\textsuperscript{25}

Orloff and other scholars have argued that "maternalist" public policies to support female caregivers and male breadwinners are dying away in both Europe and North America, and are being replaced by public policies that presume the gender-neutral adult worker.\textsuperscript{26} As Orloff argues, "[M]otherhood—unless coupled with employment—is less and less a basis for making entitlement claims in welfare states."\textsuperscript{27} Certainly that pattern holds true with respect to low-income women in the United States, given the elimination of Aid to Families with Dependent Children (AFDC) in 1996 and the creation of Temporary Assistance for Needy Families (TANF) as part of the Personal


\textsuperscript{21.} Id. at 18. See generally JANET C. GORNICK & MARCIA K. MEYERS, FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT (2003) (discussing U.S. policy as regulating the actions of employers but with few benefits, whereas European governments provide both legal protection and paid benefits).

\textsuperscript{22.} Orloff, supra note 20, at 18.

\textsuperscript{23.} GORNICK & MEYERS, supra note 21, at 121-28.

\textsuperscript{24.} White, supra note 3, at 342.


\textsuperscript{27.} Orloff, supra note 20, at 1.
Responsibility and Work Opportunities Act. Of interest to comparative welfare scholars, therefore, is the extent to which states currently provide benefits to support maternal employment.

Part I of the Article outlines traditional liberal welfare norms regarding child care and maternity and parental leave provision. Part II contains three sections. The first section develops measures to determine the extent of recent norm change in liberal welfare states in the areas of maternal workforce participation, ECEC system-building, and ECEC system integration. The second section then traces norm change through specific developments in five country cases. This cross-national, five-country survey demonstrates that there is a great deal of fragmentation in liberal welfare states' maternity and parental leave and ECEC policies and programs. The third section then analyzes cross-country trends. The United States turns out to be similar to its comparators in terms of its investment in ECEC services. However, the United States increasingly stands out as an outlier due to the fact that it does not provide federal paid parental leave. Part III examines the reasons for the United States' outlier status, and the Article then concludes with lessons learned.

I. LIBERAL WELFARE STATES AND SOCIAL POLICY NORMS REGARDING THE FAMILY

When scholars look to alternative models to inform analysis of the United States, many tend to look at Scandinavian countries such as Sweden, which have exceedingly generous paid maternity/parental leave and ECEC provisions. But Scandinavian welfare states in particular and European welfare states in general tend to differ from the United States in their political and social histories, political cultural traditions, and attitudes regarding the role of the state in social policy provision. Better lessons may be drawn from countries with similar norms regarding the role of the state and similar policy concerns.

28. Title I of the Personal Responsibility and Work Opportunities Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996). Title I eliminates the open-ended entitlement provisions of AFDC and in their place establishes block grants for states to provide cash assistance programs for needy families. Those programs are usually time-limited and have work requirements for most recipients. For more information on the termination of maternalist programs such as AFDC, see generally GWENDOLYN MINK, WELFARE'S END (1998).


Since Gösta Esping-Andersen introduced the concept of the welfare state regime, researchers have understood industrialized countries' social policy (benefits and services) provision to vary based on certain norms regarding the appropriate roles of states, markets, and families in the establishment of welfare state institutions, social services, and benefits provision, and social and economic outcomes. These underlying logics of welfare state capitalism provide some predictability in understanding the broad contours of states' social policy provision and account for the variation observed among western industrialized countries.

Esping-Andersen notes that western industrialized countries tend to cluster around three different sets of norms regarding social policy provision: First, social democratic welfare regimes tend to "decommodify" citizens because the state presumes it has a role in overcoming economic inequalities. Social policy provision thus tends not to be tied directly to employment, is often universally available, and is generous enough so as to provide viable options for those not earning income in the labor market. Conservative welfare regimes, in contrast, see social entitlements as linked to employment. The corporatist arrangements between the state, employers, and trade unions often require some workforce attachment in order to receive benefits that may vary by occupation and income group. Liberal welfare regimes presume that private markets will take care of most social needs; social entitlements should be limited to instances of market failure and be awarded on the basis of need, rather than being universally available. The state therefore provides more limited social programs with strict entitlement rules such as income tests. As a result of this limited range of assistance, the state provides little in the way of reduction in income disparities.

With regard to a country's provision of work/family reconciliation policies, certain patterns of provision also emerge. In social democratic welfare regimes, the state also assumes a great deal of responsibility for social reproduction in order to support the notion of social citizenship and, in later decades of welfare state development, to reduce gender inequalities. Thus, state programs for children tend to be generous, freeing up women to participate more easily in the labor market. In conservative welfare regimes, corporatist arrangements

31. ESPING-ANDERSEN, supra note 2, at 26-29.
32. Id. at 27.
33. Id. at 27-28.
34. Id. at 26-27.
sometimes include some support for social reproduction, but the assumption is that caregiving is a responsibility primarily performed by the family and thus state programs for mothers and children tend to support and reinforce women's caregiving.\textsuperscript{36} In liberal welfare regimes, caregiving has traditionally been even more privatized to the family and markets. Liberal welfare regimes traditionally conceive of social reproduction largely as a choice and thus the responsibility of the families themselves, with the state only stepping in to assist the very poor, and with the presumption that mothers take on primary responsibility for childrearing and fathers take on primary responsibility for wage earning.\textsuperscript{37}

Traditionally, then, these liberal welfare states provide some income support for very poor families, often with little expectation of mothers' labor force participation; some government funding of child care services for those poor families; and slowly, over time, early childhood development and/or education programs targeted to highest-risk families.\textsuperscript{38} Middle- and upper-income families are expected to manage the tasks of social reproduction by themselves, either through the mothers' own caregiving or through the purchase of private services on the market of for-profit and not-for-profit services. Governments may provide some tax relief for those working parents' child care fees and public funding for kindergarten and grade school education.\textsuperscript{39} Otherwise, the market is expected to deliver services, mostly through low-wage formal (center-based) and informal (at-home) ECEC service delivery.\textsuperscript{40}

\begin{thebibliography}{99}
\bibitem{36} Esping-Andersen, supra note 30, at 81-83. See generally Monique Kremer, How Welfare States Care: Culture, Gender, and Parenting in Europe (2007) (discussing care regimes in the United Kingdom, the Netherlands, Denmark, and Belgium).
\bibitem{37} See, e.g., O'Connor, Orloff & Shaver, supra note 18, at 66.
\bibitem{38} For cross-national information on child care in liberal welfare states, see Child Care in Context, supra note 18, at 157-302, which covers the United States, United Kingdom, and Canada; and International Handbook of Child Care Policies and Programs 11-32, 57-81, 515-57 (Moncrieff Cochran ed., 1993), which covers Australia, Canada, the United Kingdom, and the United States, respectively. For an excellent country-based history of early childhood education and care programs and policies in Australia, see Deborah Brennan, The Politics of Australian Child Care: Philanthropy to Feminism and Beyond (rev. ed. 1998); for Canada, see Early Childhood Care and Education in Canada (Larry Prochner & Nina Howe eds., 2000); and Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy (2001); for New Zealand, see Helen May, Politics in the Playground: The World of Early Childhood in Post-War New Zealand (2001) [hereinafter May, Politics in the Playground]; and Helen May, The Discovery of Early Childhood: The Development of Services for the Care and Education of Very Young Children, Mid Eighteenth Century Europe to Mid Twentieth Century New Zealand (1997); for the United Kingdom, see Vicky Randall, The Politics of Child Daycare in Britain (2000); for the United States, see Barbara Beatty, Preschool Education in America: The Culture of Young Children From the Colonial Era to the Present (1995); Sally S. Cohen, Championing Child Care (2001); Sonya Michel, Children's Interests/Mothers' Rights: The Shaping of America's Child Care Policy (1999); and Marisa Vinovskis, The Birth of Head Start: Preschool Education Policies in the Kennedy and Johnson Administrations (2005).
\bibitem{39} O'Connor, Orloff & Shaver, supra note 18, at 78-84.
\bibitem{40} Id. at 79.
\end{thebibliography}
Furthermore, even though care and education both occur from the time children are born until the time they enter school and beyond, these services are traditionally conceived of as separate functions and are handled by different types of service providers.\textsuperscript{41} In the public's mind and in the minds of many policymakers, care alone is what goes on in non-parental non-school delivered child care services; "education" is what goes on in school-based kindergartens and pre-schools.\textsuperscript{42} Care in liberal welfare states is a parental responsibility; education is a state responsibility. Traditionally, liberal governments have been reluctant to invest public dollars in the former but have invested in the latter, although generally not until age five and beyond.\textsuperscript{43} Because of this dichotomous thinking, a dichotomous administrative apparatus has emerged as well, with responsibility for these services divided between ministries of education and ministries of social services or health.\textsuperscript{44}

Liberal welfare states, then, have tended to be under-investors in child care and early childhood education programs compared to both conservative and social democratic welfare states.\textsuperscript{45} Parents assume a great deal of the costs of care, and markets provide a large part of the services available.

II. ECEC AND MATERNITY AND PARENTAL LEAVE REGIME CHANGE IN LIBERAL WELFARE STATES

A. Measuring Liberal Welfare Regime Change

If we understand norms to mean principles or rules of appropriate action,\textsuperscript{46} then measuring the extent of norm change involves analyzing the extent to which those principles and rules—as outlined in government statements and policy pronouncements as well as in legislation and program provision—have changed over time. I develop indicators of norm change in the areas of maternal workforce participation, ECEC system-building, and ECEC system

\textsuperscript{41} John Bennett, \textit{Starting Strong: The Persistent Division Between Care and Education}, 1 J. Early Childhood Res. 21, 25-26 (2003).
\textsuperscript{42} Id.
\textsuperscript{44} Bennett, supra note 41, at 26.
These indicators of norm change are based on best practices identified, for example, in OECD reports that specify what factors are necessary to support “the social needs of families.” In this Article I explore in particular maternal workforce participation norms and ECEC system-building norms.

Maternal workforce participation norms can be measured by the extent to which a state provides social benefits supportive of both labor markets and the family, such as maternity and parental leave rights and paid leave provisions. A country’s commitment to maternal workforce participation can also be measured by how effective that parental leave is—that is, to what extent the length of maternity/parental leave, combined with wage replacement rate, usefully allows parents to take a leave from paid employment while also encouraging them to return to paid employment. Another measure is to what extent the available leave provisions are gender-neutral. With regard to ECEC provision to support maternal employment, one measure of norm change is the extent to which the state provides ECEC programs that are structured around the parental work day and designed for younger as well as older children. Societal norm shifts can be discerned in the extent to which mothers with young children return to work after having a baby or return to work full-time as opposed to part-time in order to earn higher incomes.

ECEC system building norms can be discerned via a number of measures: state funding of ECEC services; the degree to which services are universally available or targeted; the extent to which public spending supports service delivery (supply) and not just parental subsidies (demand); and the extent to which governments fund formal as opposed to informal forms of care, impose national or centralized regulations and staff standards, and set a national or centralized curriculum. The extent to which government investment provides an effective system of ECEC delivery for parents can also be measured by the percentage of program costs that parents assume.


50. GORNICK & MEYERS, supra note 21, at 101.

51. Id. at 102.

52. See generally Morgan & Zippel, supra note 1, at 72 (discussing the importance of societal norms regarding leaves and gender equality).

53. In my larger research project, I develop measures of ECEC system integration norm change that include the extent to which child care and early childhood education administrative authority is vested in a single administrative unit within a level of government; the degree to which service delivery is coordinated between levels of government; and the degree to which services are delivered by one level of government in federal systems. White, supra note 47. These measures are similar to those developed
Table 1: Dimensions of Normative Change in Liberal Welfare Regimes: Australia, Canada, New Zealand, the United Kingdom, and the United States

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Australia, Canada</th>
<th>New Zealand</th>
<th>United Kingdom</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid maternity/parental leave</td>
<td>Yes, Can.*</td>
<td>N.Z., U.K.</td>
<td>No, U.S.</td>
<td></td>
</tr>
<tr>
<td>Child care and ECE service operations and not just parent subsidies</td>
<td>Yes: Aust.</td>
<td>N.Z., U.K.</td>
<td>No: Can. at federal level, minimal at provincial level</td>
<td>Minimal: U.S. at federal and state level</td>
</tr>
</tbody>
</table>

Table 1 (continued): Dimensions of Normative Change in Liberal Welfare Regimes: Australia, Canada, New Zealand, the United Kingdom, and the United States

<table>
<thead>
<tr>
<th>Maternal work force participation</th>
<th>Child care and ECE system-building</th>
<th>Child care and ECE system integration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective parental leave</td>
<td>Median among OECD: Que.</td>
<td>Universal versus targeted programs</td>
</tr>
<tr>
<td></td>
<td>&lt; median: U.K., Can., N.Z., Austl., U.S.</td>
<td>Yes: Austl. nascent plans for ECE; U.K. for ECE; some ECE in U.S. states; min ECE in Can. provinces</td>
</tr>
<tr>
<td>Gender neutral leave</td>
<td>Yes: Austl.; U.S.</td>
<td></td>
</tr>
<tr>
<td>(meaning leave provisions are equally accessible by male and female parents)</td>
<td>No: Can., N.Z., Que., U.K.</td>
<td></td>
</tr>
</tbody>
</table>
Table 1 (continued): Dimensions of Normative Change in Liberal Welfare Regimes: Australia, Canada, New Zealand, the United Kingdom, and the United States

<table>
<thead>
<tr>
<th>Maternal workforce participation</th>
<th>Child care and ECE system-building</th>
<th>Child care and ECE system integration</th>
</tr>
</thead>
</table>
| % employed mothers with children ages 3-5 | > 60%: Can., U.S., N.Z.  
<60%: U.K.  
<50%: Austl. | Encouragement of not-for-profit services and more formal forms of care | Yes: some provisions in Can.  
No and yes: N.Z. govt funds for all forms of services but provides grants for not-for-profit services  
No: minimal in Can. |
| % employed mothers with 3 children | > 60%: Can.  
<60%: Austl., N.Z.  
<50%: U.K.  
U.S. N/A | National regulations to improve quality | Yes: Austl., N.Z., U.K.  
No: Can., U.S. | | |
Table 1 (continued): Dimensions of Normative Change in Liberal Welfare Regimes: Australia, Canada, New Zealand, the United Kingdom, and the United States

<table>
<thead>
<tr>
<th>Maternal workforce participation</th>
<th>Child care and ECE system-building</th>
<th>Child care and ECE system integration</th>
</tr>
</thead>
<tbody>
<tr>
<td>% mothers with 2+ children who work part-time</td>
<td>&gt;60%: Austl., U.K.</td>
<td>National staff training standards</td>
</tr>
<tr>
<td></td>
<td>&lt;60%: N.Z.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;30%: Can., U.S.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;30%: Austl., Can., U.K.</td>
<td></td>
</tr>
</tbody>
</table>
Table 1 (continued): Dimensions of Normative Change in Liberal Welfare Regimes: Australia, Canada, New Zealand, the United Kingdom, and the United States

<table>
<thead>
<tr>
<th>Maternal workforce participation</th>
<th>Child care and ECE system-building</th>
<th>Child care and ECE system integration</th>
</tr>
</thead>
</table>

* indicates early leader

Table 2: Current Employment-protected Statutory Maternal and Parental Leave Arrangements in Liberal Welfare States

<table>
<thead>
<tr>
<th>Enabling Legislation</th>
<th>Maximum Duration (weeks) and Benefit Level (% wage replacement)</th>
<th>Qualifying Criteria</th>
<th>Financing</th>
<th>Percentage of Employees Eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong></td>
<td>Workplace Relations Act 1996 (Cwth) along with state-based industrial relations systems</td>
<td>52 parental at 0%; for first week after child’s birth, both parents may take leave concurrently</td>
<td>12 months continuous service with employer</td>
<td>No federal expenditures; some employer plans</td>
</tr>
<tr>
<td><strong>Canada</strong></td>
<td>Employment Insurance Act, 1996; provincial labor laws</td>
<td>15 maternity; 35 parental both at 55% wage replacement to cap of $413 per week</td>
<td>600 contributable hours in the year pre-leave period; must be eligible for federal Employment Insurance (e.g. not self-employed)</td>
<td>Employment insurance</td>
</tr>
</tbody>
</table>
Table 2 (continued): Current Employment-protected Statutory Maternal and Parental Leave Arrangements in Liberal Welfare States

<table>
<thead>
<tr>
<th>Province</th>
<th>Act Respecting Parental Insurance, 2001 which came into effect 1 January 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quebec</td>
<td>Basic plan: 18 weeks maternity at 70% wage replacement; 32 parental of which 7 weeks provide 70% wage replacement and 25 weeks 55%</td>
</tr>
<tr>
<td></td>
<td>Special plan: 15 maternity at 75%; 25 parental at 75%</td>
</tr>
<tr>
<td></td>
<td>Paternity: 5 at 70%, or 3 at 75%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New Zealand</th>
<th>Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act, 1987 and amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14 maternity with an avg 50% wage replacement (to a max cap); 52 parental at 0% wage replacement</td>
</tr>
<tr>
<td></td>
<td>Paternity: 1 or 2 weeks depending on length of service with employer, at 0%</td>
</tr>
<tr>
<td></td>
<td>6 months continuous service with employer and have worked a min of 10 hours per week, including at least 1 hour a week or 40 hours a month; 12 months for parental leave; some self-employed eligible</td>
</tr>
<tr>
<td></td>
<td>General govt revenues</td>
</tr>
<tr>
<td></td>
<td>8 out of 10 mothers surveyed in N.Z. DoL study (p. 14) eligible for paid parental leave; 2/3 of employed mothers eligible for ppl and 52 weeks unpaid leave</td>
</tr>
<tr>
<td>U.K.</td>
<td>U.S.</td>
</tr>
<tr>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td><strong>Employment Rights Act, 1996</strong></td>
<td><strong>Family and Medical Leave Act, 1993</strong></td>
</tr>
<tr>
<td>Families Act, 2006 and enabling regulations</td>
<td></td>
</tr>
<tr>
<td>52 maternity, 26 paid at 90% of avg weekly earnings for the first 6 weeks, and then a flat rate, 26 unpaid</td>
<td>Employment for 12 months and at least 1250 hours</td>
</tr>
<tr>
<td>2 weeks paternity at 25% avg</td>
<td></td>
</tr>
<tr>
<td>68% of mothers who worked in the year before birth in the 2006-2007 survey</td>
<td>46% estimated</td>
</tr>
<tr>
<td>Employer (refund for at least 92%)</td>
<td></td>
</tr>
</tbody>
</table>

Table 2 (continued): Current Employment-protected Statutory Maternal and Parental Leave Arrangements in Liberal Welfare States
## Table 2 (continued): Current Employment-protected Statutory Maternal and Parental Leave Arrangements in Liberal Welfare States

<table>
<thead>
<tr>
<th>California*</th>
<th>Paid Family Leave Insurance Program, 2002 (Senate Bill No. 1661)</th>
<th>6 weeks at approx 55% of wages up to $917 per week</th>
<th>Covered by Temporary Disability Insurance, some elective coverage for self-employed</th>
<th>Employee funded and state administered</th>
<th>Est'd 13 million covered employees</th>
</tr>
</thead>
</table>

Sources:

a. **AUSTL. GOV’T PRODUCTIVITY COMM’N, PAID PARENTAL LEAVE: SUPPORT FOR PARENTS WITH NEWBORN CHILDREN § 3** (draft report 2008).


Table 3: Child Care and Early Childhood Education Usage and Public Financing in Liberal Welfare States

<table>
<thead>
<tr>
<th>Country</th>
<th>Enrollment rates age &lt;3</th>
<th>Enrollment rates ages 3-5</th>
<th>Public expenditures on child care as % GDP</th>
<th>Public expenditures on ECE as % GDP</th>
<th>Total child care and ECE expenditures as % GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>29</td>
<td>72</td>
<td>0.19</td>
<td>0.20</td>
<td>0.39</td>
</tr>
<tr>
<td>Canada</td>
<td>19</td>
<td>95 (age 5); 4 figures not available</td>
<td>0.25</td>
<td>0.26</td>
<td>0.25</td>
</tr>
<tr>
<td>New Zealand</td>
<td>32.1</td>
<td>93</td>
<td>0.16</td>
<td>0.545</td>
<td>0.625</td>
</tr>
<tr>
<td>Québec province</td>
<td>34 (in licensed care only)</td>
<td>48 (ages 3-4); 50 (ages 4-5) (in licensed care only)</td>
<td>0.864</td>
<td>0.1265</td>
<td>0.9266</td>
</tr>
<tr>
<td>U.K.</td>
<td>25.8</td>
<td>81</td>
<td>0.39</td>
<td>0.10</td>
<td>0.49</td>
</tr>
<tr>
<td>U.S.</td>
<td>29.5</td>
<td>62</td>
<td>0.08</td>
<td>0.2</td>
<td>0.28</td>
</tr>
</tbody>
</table>

54. "Child care" equals the number of spaces per 100 children under the age of three during the mid-2000s. Figures include public and private child care centers, family day care homes, and childminders, and may include some preschool programs (save for the province of Québec which reflects enrollment in licensed care only).


56. Id.

57. See OECD, PUBLIC SPENDING, supra note 19, at 1. The numbers from this source are estimates, as they exist within the source only in graph format.

58. Id.


61. OECD, STARTING STRONG II, supra note 45.

62. Id. at 246 (expenditure estimates, based on country responses to a 2004 OECD survey).

63. Id.

64. OECD, 4 BABIES AND BOSSES, supra note 59, at 17, 109.

65. Id.

66. Id.
B. Child Care and Maternity and Parental Leave Regimes in Liberal Welfare States: Five Country Case Studies

This section tracks relevant policy developments in each of the five liberal welfare states in the areas of ECEC and maternity or parental leave provision.

1. Australia

The primary focus of ECEC policy in Australia has traditionally been on providing care for children while parents work, but not to provide paid maternity or parental leave. Contemporary public policy at the national level has focused attention on expanding child care services—called “long day care” in Australia—and family day care. These policies are often targeted to families with working parents in an effort to encourage maternal labor-force participation.

a. Child Care

The Commonwealth government began to fund child care services directly in the 1970s with the introduction of the Child Care Act. The Act permitted the federal government to engage in a shared-cost arrangement with state and local governments in order to provide financial assistance to community-based non-profit child care centers that met defined standards of quality such as specified child/staff ratios. Parents still had to pay fees to the centers, but the Commonwealth government also provided grants to centers in the form of wage subsidies which covered the majority of their expenses. In addition to funding the supply of child care, the Commonwealth government’s Childcare Assistance program provided child care subsidies to low- and middle-income parents using approved child care services; these subsidies varied depending on family income and number of children.

By the late 1980s, however, the Commonwealth government began to move away from a non-profit model of provision in an effort to expand supply.

67. OECD, STARTING STRONG II, supra note 45, at 266-67.
71. BAKER, supra note 12, at 208; Gerald Ashby, Anne Kennedy & Elizabeth Mellor, Early Childhood Services in Australia: Recent Commonwealth and State Initiatives, in INTERNATIONAL DEVELOPMENTS IN EARLY CHILDHOOD SERVICES 7, 9 (Lorna K.S. Chan & Elizabeth J. Mellor eds., 2002).
In 1988, the Commonwealth government agreed to offer tax deductions to private child care services, and in 1991, the government agreed to extend parental subsidies to the users of for-profit child care centers. In response to critics’ concerns about the quality of care and staffing in commercial centers, the Commonwealth government introduced the Quality Improvement and Assurance System, a child care center accreditation system covering both commercial and not-for-profit child care centers; this system operated separately from already established state-based licensing requirements, and addressed the quality of child/staff interactions. Then, in 1996, under a “level playing field” strategy, the federal government withdrew operational subsidies altogether from non-profit child care centers and before- and after-school child care programs, although it retained subsidies for indigenous and other special services, including family day care, occasional care centers, multifunctional children’s services, and not-for-profit services in rural areas and disadvantaged urban areas. The government thought that this strategy would encourage the development of competition in service delivery.

The decision in fact had the opposite effect. Australia has seen the increased domination of child care service delivery by for-profit providers and more expensive child care. Parents ended up having to pay a portion of fees themselves as a result of fee gaps between the price of care and the amount of government subsidy provided under either Childcare Assistance or the Child Care Cash Rebate program established in 1993 and paid to working families for their work-related child care costs. Thus, in addition to funding the supply of child care, in 1999 the Commonwealth government created the Child Care Benefit, a more generous program that provides subsidies to parents according to income, number of children, and type of care used. Additionally, in 2004 the Commonwealth government introduced a child care tax rebate program that provides parents with a tax offset of thirty percent of their out-of-pocket child care expenses for approved child care, minus the amount of Child Care Benefit received, up to a certain maximum. The new Labour Government in its 2007 election platform committed to increasing the child care tax rebate even more.

73. BAKER & TIPPIN, supra note 70, at 139.
74. PRESS & HAYES, supra note 72, at 18; Brennan, supra note 68, at 216.
75. Brennan, supra note 68, at 216.
76. BAKER & TIPPIN, supra note 70, at 141; PRESS & HAYES, supra note 72, at 31; OECD, STARTING STRONG II, supra note 45, at 273.
78. See Childcare Rebate Act, 1993, c. 112, § 46 (Austl.).
b. Maternity and Parental Leave

Brennan argues that the increasing dominance of the commercial child care sector in Australia has created a child care system that is very expensive but which continues to suffer from concerns about high quality, as there have been pressures to deregulate so as not to create barriers to profit.\(^8\) In addition, Brennan argues that this has created a group of actors resistant to the introduction of a Commonwealth government-subsidized paid maternity and parental leave program, as such a program would reduce parental demand for child care services for young children.\(^8\)

While Australia, along with the United States, lacks a national statutory paid leave program, it does have a few family-related benefits programs that assist with the costs of bearing and raising young children. Since 1996 the Commonwealth government has provided a lump sum maternity payment (a "baby bonus") to assist families with the costs of birth or adoption of a new child, based on the family's prior income.\(^8\) The government also provides a maternity allowance, equivalent to about one week's wages, to assist in the costs of having a baby.\(^8\) Low-income families may also be eligible for Family Tax Benefits, which provide means-tested payments that help to defray the costs of having children.\(^8\)

Since 1973 for federal public servants and 1979 for many private sector workers,\(^8\) parents with a record of twelve months' continuous employment with the same employer have been entitled to fifty-two weeks of unpaid leave after the birth of a child. In addition, since 1973, the Commonwealth government and other employers provide paid leave, which currently covers about thirty percent of the workforce.\(^8\) Men began benefiting from paid parental leave on the basis of a 1990 industrial tribunal ruling, the effects of which were codified in the 1996 Workplace Relations Act.\(^8\) In February 2008, following the previous year's election of the Commonwealth Labour Party, the government appointed the federal Productivity Commission to examine the

---

82. Brennan, supra note 68, at 220.
83. Id.
85. A New Tax System (Family Assistance) (Administration) Act, 1999, c. 81., div. 3 (Austl.).
86. OECD, STARTING STRONG I, supra note 45, at 265.
87. BAKER & TIPPIN, supra note 70, at 143.
88. OECD, STARTING STRONG II, supra note 45, at 268.
issue of paid maternity, paternity and parental leave. As of the time of writing, no new programs have been introduced.

In sum, while the Australian government has vastly increased funding for child care services in recent years, government support for for-profit child care has led to more expensive child care, and the increased presence of child care corporations who are opposed to paid maternity or parental leave. Furthermore, that spending has so far not had the intended positive maternal employment effects.

2. New Zealand

New Zealand is something of an outlier among liberal welfare states as an early innovator in establishing an educational focus for its early-years programs. While the majority of its ECEC services have been delivered by the private sector—although with some government subsidies—most (but not all) of the private sector services were community-based (many with religious affiliation), not corporate. The number of for-profit services has increased over the years, however, as in Australia. Currently, 58.4% of New Zealand’s children attend privately owned care services, and 41.6% are in community-based services. State oversight of the system is strong, however. For example, the vast majority of early-learning and child care services in New Zealand are licensed, including family day cares.

a. Child Care

As in other liberal countries, use of child care was stigmatized in New Zealand throughout much of the twentieth century, and public opinion reflected the belief that young children were best off at home. The New Zealand government supported the development of community-based or “free kindergarten” when it agreed to provide subsidies to kindergartens in the early decades of the twentieth century. It also agreed to fund play centers after

90. AUSTRALIAN GOV’T PRODUCTIVITY COMM’N, supra note 1, § 3.1-3.27.
91. See supra Table 1.
95. MEADE & PODMORE, supra note 92, at 7.
96. Id. at 5.
World War II. In 1960, the New Zealand government brought in child care center regulations as a result of a child care scandal. In 1974, the government introduced fee subsidies for low income families to help with the cost of child care. In the 1980s, it introduced financial incentives for centers to employ trained staff.

However, it was not until the 1989 funding reforms (outlined below) that similar levels of funding for child care and kindergarten services were established. Anne Meade reports that, in 1989 (just before the New Zealand government embarked on major reforms to its ECEC system), “approximately 90% of four-year-olds, 61% of three-year-olds, and 40% of all children under the age of five attended an early childhood program.” Those numbers reflect care in a diverse array of programs, including community-based and commercial education and care centers (which include some sessional, some full-day, and some flexible hours programs, or drop-in centers, for children from infancy to school age), sessional free kindergarten programs for three- and four-year-olds, usually community- rather than government-run, parent-supervised and -managed parent/child play centers, home-based services (family day cares), and Maori (nga kohanga reo) and Pacific Islander language, cultural immersion, and school readiness services which operate for six hours per day. All of these services received some kind of government funding, although different formulae were in place for different providers.

As of the early 1990s, government funding included grants for licensed early childhood services and charters based on a per-hour and per-child formula (capped at thirty hours per week) with a higher rate for infants and toddlers. These grants were demand-driven, meaning that government spending on these services increased dramatically over the years, as did enrollment in early childhood services. As of 1992, the government began to reduce subsidies for infants and toddlers as a way to decrease government expenditures. Some

97. Id. at 8.
98. Id. at 7.
99. Id. at 8.
100. Id.
102. MEADE & PODMORE, supra note 92, at 6.
103. While compulsory school does not begin until age six, students can—and most do—enroll in school from their fifth birthday. Id. at 5.
105. Meade, supra note 101, at 83, 85; Peter Moss, From a Childcare to a Pedagogical Discourse—Or Putting Care in Its Place, in CHILDREN, CHANGING FAMILIES AND WELFARE STATES 154, 163-64 (Jane Lewis ed., 2006).
106. Id. at 87-88.
107. Id. at 87-88.
108. Id. at 87.
services, such as kindergarten, found that the way to make up lost government grants was to increase enrollment.  

Throughout the 1990s, the government continued to provide some fee subsidies to low-income families for child care, albeit with major cuts for infants and toddlers’ fees in 1992 and a later overall cap on child care subsidies. The government also encouraged the growth of community-based services through a discretionary grant program, although, as mentioned above, commercial services continue to grow. Unlike other liberal welfare states, the New Zealand government has implemented a number of reforms to improve the quality of services delivered, including training programs and requirements for ECE and child care staff. It also instituted “quality funding” incentives in 1996 where “[s]ervices with better than minimum standards with regard to staff qualifications and staff to child ratios . . . receive a higher per child grant,” and gives charter status—and higher levels of funding—to child care centers who meet additional quality guidelines. New Zealand was also an early leader in integrating early care and education. In 1986, the government moved all early childhood services, including child care, from the Ministries of Education, Social Welfare, and Maori Affairs into a single department—the Ministry of Education—more than ten years before countries such as Sweden and the United Kingdom did. New Zealand was also the first country to introduce a national curriculum, Te Whāriki, which applies to children from infancy to preschool age. Given the variety of programs that deliver ECEC services, a variety of regulatory regimes exist which the government is now working to streamline.

b. Maternity and Parental Leave

As the government has worked to improve ECEC services’ supply and quality, it has also implemented policies to encourage mothers’ attachment to the paid labor force. Until the late 1980s, New Zealand resembled many other liberal welfare states in not providing a statutory maternity or parental leave.

109. Id. at 88.
110. Id. at 87.
112. Meade, supra note 101, at 89-90.
113. Id. at 87.
114. Id. at 89.
115. MEADE & PODMORE, supra note 92, at 7.
117. Meade, supra note 101, at 91.
program or benefits. Then, in 1987, the New Zealand government introduced an unpaid fourteen-week maternity leave, two-week paternity leave, and fifty-two-week parental leave and job protection program for eligible parents (those who had worked for the same employer for more than twelve months for an average of at least ten hours per week). In 2002, the government introduced a paid parental benefit as part of its parental leave program, which included twelve weeks of leave with a maximum payment of $334.73 NZD per week before taxes. In practice, the maximum payment reflects around fifty-three percent of average weekly earnings. The paid parental leave benefits are financed through general revenues (similar to Germany and Luxembourg) rather than through the much more common system of contributions by employers or employees. The duration of maternity leave increased from twelve to fourteen weeks in 2004, and the maximum benefit level as of July 1, 2008 is $407.36 NZD per week. In addition, the New Zealand legislation provides fifty-two weeks of unpaid leave for all parents who meet employment eligibility requirements.

In sum, while New Zealand's service provision follows the typical liberal welfare state pattern of supporting private markets, state oversight regarding the delivery of these services is much stronger than in other liberal countries. The government has also expanded state provision of paid maternity and parental leave.

3. The United Kingdom

The United Kingdom has arguably experienced the most dramatic transformation over the years in terms of government spending on maternity/parental leave and ECEC services, going from “worst to first” in the European Union since the late 1990s. The scope of programs is expansive as well: Moss characterizes it as “arguably the most wide-ranging in the world
today.”¹²⁶ It includes the massive development of child care spaces so that “all families with children aged up to 14 who need it” can have access to “an affordable, flexible, high quality child care place that meets their circumstances,”¹²⁷ a universal part-day preschool entitlement for three- and four-year-olds (with compulsory education beginning at age five), a large-scale Sure Start program for disadvantaged children with over five hundred local programs currently in place, a pledge to develop integrated child care/ECE Children’s Centres in every locality, and expanded maternity/parental leave.¹²⁸ These programs are designed, as Stephen J. Ball and Carol Vincent argue, to address several goals: “increasing social inclusion and in particular combating child poverty, revitalizing the labor market, and raising standards in education.”¹²⁹

a. Child Care

Prior to reforms begun in 1997, the major role that the British government played in child care was to regulate private services and fund child care for those children deemed to be in need.¹³⁰ Otherwise, parents were deemed responsible for the costs of care if they chose to work.¹³¹ Historically, the labor-force participation rates of married women were low in the United Kingdom.¹³² Levels of part-time work were also high among mothers.¹³³ Playgroups organized by parents (mothers) that required a great deal of parental involvement were the predominant form of care for preschool-aged children until the 1990s, but the short hours and the focus on three- and four-year-old children meant that these playgroups could not serve children of full-time working parents. Parents in need of full-day child care tended to rely on social networks such as relatives and the private market of childminders.¹³⁴

Concerns about a shrinking labor force and labor shortages, the major economic and social inequalities that were emerging as a result of earnings inequalities, and increases in child poverty led the Conservative government to turn its attention to child care and early childhood education. Two child care

¹²⁶. Moss, supra note 105, at 163.
¹²⁷. HM Treasury, supra note 14, at 1.
¹³⁰. Cohen et al., supra note 116, at 52.
¹³¹. Peter Moss, Day Care for Young Children in the United Kingdom, in Day Care for Young Children: International Perspectives 121, 133 (Edward C. Melhuish & Peter Moss eds., 1991).
¹³². Id. at 134-35.
¹³³. Id.
¹³⁴. Id. at 135.
programs were introduced in the early 1990s: one to support the start-up costs of school-age child care, and another to provide some financial support for low-income families' child care costs. Both of those programs were placed under the administrative auspices of the Department of Education, portending the transfer of authority for child care that the Blair government undertook in 1997. In 1994, the Conservative government, in an attempt to universalize nursery education for three- and four-year-olds, pledged additional funds for not just school-based but for any provider that met certain standards. The government distributed these funds in the form of a voucher.

The election of the Labour government in 1997 under Tony Blair continued this trend but went much further. In fact, Cohen argues that "for the first time in peacetime, childcare became a recognised policy priority, alongside education." Increasing child care provision was thought to be a means to "bring women back into the workforce, thereby increasing productivity as well as lifting families out of poverty, modeling child-rearing skills to parents understood as being in need of such support, and giving children the skills and experience they need to succeed in compulsory education." The government explicitly endorsed the idea of maternal employment in the 1998 document *Meeting the Childcare Challenge*, in which it stated that it "welcomes women's greater involvement and equality in the workplace and wants to ensure that all those women who wish to can take up these opportunities." The 1998 National Childcare Strategy stated that the government's goal was to "ensure quality affordable childcare for children aged zero to fourteen years in every neighbourhood, including both formal childcare and support for informal arrangements." The way the government chose to do so came first in the form of a parental subsidy. In 1998, the government announced the establishment of the Childcare Tax Credit for low- and middle-income working families to cover a certain portion of child care costs, depending on the number of children in the family. That program was replaced by the child care element of the Working Tax Credit in 2003 and paid up to seventy percent of child care costs to a certain maximum. Eligibility is limited to parents in

---

137. Cohen et al., supra note 116, at 54.
138. Id. at 56.
139. Ball & Vincent, supra note 129, at 558.
140. United Kingdom Sec'y of State for Educ. and Employment, Sec'y of State for Social Security & Minister for Women, Meeting the Childcare Challenge para. 1.6 (1998) [hereinafter MEETING THE CHILDCARE CHALLENGE].
141. Id. at para. 1.26.
142. Id. at para. 3.4.
143. HM Treasury, supra note 14, at para. 3.4 & box 3.1.
low-wage occupations working a minimum of sixteen hours per week. The money can be used for both for-profit and not-for-profit services and can pay for preschool outside of the free portion; however, the provider must be registered and permit the Office of Standards in Education to inspect services. Providers must also work toward government-specified learning goals.

In addition, the 1998 strategy required local Early Years Development and Childcare Partnerships, made up of a variety of public, private, and community-based agencies to scrutinize child care needs in their area and draw up plans. The government has also committed to “pump-prime the provision of new childcare places in some areas where there is market failure, and provide other appropriate targeted funding.”

In 1998, the Blair government abolished the early childhood education voucher introduced by the Conservative government and instead set up a grant system for all ECE services. This grant system covered not just schools but also playgroups, nurseries, and childminding. The grant covers part-time provision (twelve hours per week over three eleven-week terms) and is given to programs that agree to work towards the early learning goals as outlined in the document Curriculum Guidance for the Foundation Stage. Also in 1998, the government established the New Opportunities Fund, consisting of lottery-generated money to develop before-and-after-school care and integrated ECEC programs.

The combination of these two policy choices—parental subsidies for many forms of care and grants for various forms of ECEC programs—has encouraged the development of a largely private market of child care services. The United Kingdom currently has the highest percentage of private for-profit providers of any country. Further encouraging the growth of this child care market was the Blair government's guarantee of a universal part-time (twelve and a half hours per week for the thirty-three week academic year) early education program for four-year-olds in 1998. In 2004, the Blair government further expanded that guarantee to twenty hours per week for thirty-eight weeks.

---

144. Id. at para. 3.44 & box 3.2.
145. OECD, STARTING STRONG II, supra note 45, at 420.
146. Id.
148. COHEN ET AL., supra note 116, at 58; MEETING THE CHILDCARE CHALLENGE, supra note 140, at para. 5.2.
149. Lewis, supra note 128, at 224.
150. Id. at 67.
151. Id. at 68. See generally DEP'T FOR EDUC. & EMPLOYMENT, CURRICULUM GUIDANCE FOR THE FOUNDATION STAGE (2000).
152. COHEN ET AL., supra note 116, at 114.
153. Id. at 72.
154. MEETING THE CHILDCARE CHALLENGE, supra note 140, at 3.
of “high quality care” for all three- and four-year-olds, with the first step to provide fifteen hours per week for thirty-eight weeks per year for all children by 2010; and further guaranteed an out-of-school child care place for all children ages three to fourteen by 2010. These early education programs can be delivered through a variety of settings, not just the schools, but also through private and community-based service providers.

In addition to these universal programs, the Blair government also concentrated resources on disadvantaged children. It introduced Sure Start in 1999, modeled on the U.S. Head Start program. The program focuses on parents with children under age four who live in disadvantaged neighborhoods, with the goal of improving their health, parenting, and early learning. These programs are run by local partnerships (usually Children’s Trusts in local authorities), and deliver a host of services including developing or expanding child care centers; supporting Neighbourhood Nurseries (a service established in 2001 to fund “well-designed premises in communities with little or no provision”), now called Children’s Centres; providing parental training for work and basic skills development; and developing nursery schools. The hope is that these centers will fix the gap in the system between the free preschool services and the often difficult to find before- and after-school services.

b. Maternity and Parental Leave

The British government introduced the legal right to maternity leave in the 1975 Employment Protection Act. As of 1996, when the European Union passed its parental leave directive, women were legally entitled to cease work eleven weeks prior to the expected date of delivery of their child, and to be reinstated with their employer twenty-nine weeks later (forty weeks total), if

---

155. HM TREASURY, supra note 14, at 1; OECD, STARTING STRONG II, supra note 45, at 415, 418.
156. HM TREASURY, supra note 14, at para. 3.5.
161. Id. at 59; OECD, STARTING STRONG II, supra note 45, at 421.
162. OECD, STARTING STRONG II, supra note 45, at 424.
they met certain qualifying conditions. Some employees were also entitled to maternity benefits if they were employed for a certain period of time with the same employer. Baker reports that the basic maternity benefit as of 1994 was £39.25 per week for eighteen weeks for employees who had worked for at least twenty-six weeks continuously for the same employer, with a maternity allowance available for lower-income women. In addition, some employees could qualify for benefits paid at a rate of ninety percent of earnings for six weeks and a flat rate for twelve weeks thereafter if they had been employed for two years full-time or five years part-time with the same employer. The Conservative government under Margaret Thatcher, however, eroded many of the maternity leave provisions out of fear of costs to employers; in addition, many women did not meet eligibility requirements for the various schemes.

In 1998, the Labour government committed itself to implementing the European Union’s Parental Leave Directive to give all parents the right to unpaid leave for three months after the birth or adoption of a child. In 2003, it introduced a paid paternity leave program of two weeks for those workers who have worked for the same employer for twenty-six weeks, and extended its maternity leave program from eighteen to twenty-six weeks (“ordinary” maternity leave). It also allowed a further twenty-six weeks’ unpaid leave if an employee had worked for an employer for longer than twenty-six weeks by the fifteenth week prior to the expected week of childbirth, and it increased the compensation rate for maternity allowances and statutory maternity provisions. In the latter case, the compensation is currently ninety percent of a woman’s average weekly earnings for the first six weeks, with a flat rate for twenty weeks that is approximately thirty-three percent of the average wage. This policy also allowed parents with young children to request more flexible work arrangements. Under the Work and Families Act of 2006, the Labour government has set a goal of twelve months’ paid maternity leave by 2010.

165. BAKER, supra note 12, at 178.
166. Id.
167. EUROPEAN COMM’N NETWORK ON CHILDCARE AND OTHER MEASURES TO RECONCILE EMPLOYMENT & FAMILY RESPONSIBILITIES, LEAVE ARRANGEMENTS FOR WORKERS WITH CHILDREN 51 (1994).
168. BAKER, supra note 12, at 178-79.
172. OECD, KEY CHARACTERISTICS, supra note 121, at 7.
173. HM TREASURY, supra note 14, at para. 3.9.
174. OECD, STARTING STRONG II, supra note 45, at 415.
with the interim plan of establishing nine months' paid maternity leave by 2007.\textsuperscript{175}

In sum, the United Kingdom has followed a path similar to Australia's toward developing for-profit child care, and a path similar to New Zealand's toward developing universal pre-school programs and paid maternity and parental leave. Despite the massive changes that have occurred in the United Kingdom, maternal employment remains weak, with low levels of employed mothers with young children or multiple children, and with high levels of mothers in part-time employment.\textsuperscript{176}

4. Canada

Canada was an early leader among liberal welfare states in providing paid maternity leave for new mothers and in funding child care services for low-income families. However, despite that early lead, Canada (outside of the province of Québec) currently ranks last in terms of public funding of ECEC services among OECD countries\textsuperscript{177} and low (outside of the province of Québec) in terms of effective parental leave.\textsuperscript{178}

a. Child Care

Child care is a matter of exclusive provincial jurisdiction under the Canadian Constitution, but the federal government has been involved in program funding through its federal spending power.\textsuperscript{179} Major federal involvement in funding care services began in 1966 with the introduction of the Canada Assistance Plan (CAP). This program provided subsidies for low-income families on a shared-cost basis with the provinces and territories for


\textsuperscript{176} See supra Table 1.

\textsuperscript{177} MARTHA FRIENDLY ET AL., \textit{EARLY CHILDHOOD EDUCATION AND CARE IN CANADA} 2006, at 241 (2007).

\textsuperscript{178} See Table 1. See also PLANTENGA \& SIEGEL, supra note 49, at I-38, for the formula for calculating effective parental leave.

\textsuperscript{179} Provincial governments derive their constitutional authority over social policy from the Constitution Act, 1867, 30 & 31 Vict, c. 3, § 92(13) (Eng.), which grants provincial governments exclusive authority over "Property and Civil Rights in the Province" as well as section 92(16), which grants provincial governments authority over "all Matters of a merely local or private Nature." In turn, the federal spending power is often inferred from enumerated federal powers such as section 91(3), the power to levy taxes; section 91(1A), the power to regulate public property; and section 106, the power to appropriate federal funds. However, such inferences are not uncontroversial; for a discussion of the divided scholarly opinions on the constitutionality of the federal spending power, see Andrée Lajoie, \textit{The Federal Spending Power and Fiscal Imbalance in Canada}, in \textit{DILEMMAS OF SOLIDARITY: RETHINKING REDISTRIBUTION IN THE CANADIAN FEDERATION} 145, 152-53 (Sujit Choudhry, Jean-François Gaudreault-DesBiens \& Lorne Sossin eds., 2006).
regulated public and not-for-profit child care services. As Martha Friendly and her co-authors argue, while the shared-cost nature of the federal CAP program encouraged provinces and territories to develop child care programs, the targeted nature of the funding meant that “regulated child care emerged as a welfare rather than a universal or educational service.”

Federal funding specifically directed at child care programs ended in 1996 with the cancellation of CAP and the introduction of the Canada Health and Social Transfer (CHST). The CHST is a block grant, and child care monies are not specifically earmarked. Federal, provincial, and territorial governments consequently signed the Agreement on Early Childhood Development (ECDA) in 2000, which provided for federal transfer of $2.2 billion Canadian (CAD) over five years to programs deemed to be part of a broad “child development” agenda: healthy pregnancy, birth, and infancy; parenting and family supports; early childhood development, learning and care; and community supports. Then, in 2003, federal, provincial, and territorial governments signed the Multilateral Framework Agreement on Early Learning and Child Care (MFA), in which the federal government agreed to provide $900 million CAD over five years, beginning in 2003, “to support provincial and territorial government investments in early learning and child care.” In 2004-2005, the federal government reached agreements with the provinces and territories to spend even more money on ECEC services (five billion dollars in total for all provinces over five years). However, the 2006 federal election brought in a change of government, after which the new Conservative

180. All provincial and territorial governments have regulations and licensing requirements that govern child care services, including unregulated family day care services, but those regulatory regimes vary widely across jurisdictions. FRIENDLY ET AL., supra note 177, at 213.
181. Id. at xiv.
183. For details on this block grant, see Can. Dep’t of Fin., Canada Health and Social Transfer (CHST), http://www.fin.gc.ca/transfer transfers chst-eng.asp (last visited Apr. 16, 2009).
government cancelled the agreements as per its election platform.\textsuperscript{187} Instead, it implemented its election pledge to create a $1200 per year taxable allowance for families for each child under age six.\textsuperscript{188} In the 2007 federal budget, the Conservative government established a $250 million CAD transfer to the provinces as part of the Canada Social Transfer to support the development of child care spaces.\textsuperscript{189} Federal involvement in child care provision currently includes these funds, as well as the federal Child Care Expense Deduction, which allows working parents to deduct a certain portion of their child care expenses—currently $7000 per child under age seven—on their income taxes, and a few other programs targeted to specific populations.\textsuperscript{190}

At the provincial level, early education and care services developed along separate tracks and continue to remain separate in the vast majority of provinces and territories. Full-day child care centers, center-based nursery or pre-school programs, and family day care exist in all provinces and territories, and the vast majority of these programs are sustained in large part via parent fees.\textsuperscript{191} Every province and territory provides fee subsidies to low-income families to cover some portion of child care fees.\textsuperscript{192} Some provinces also provide wage grants and other funds to support the operation of child care services, but these funds represent only a small portion of the overall budgets of these services.\textsuperscript{193}

The only province that provides a significant amount of funding for both parental subsidies and capital funds is Québec. In 1997, the Québec provincial government began to phase in its publicly-funded universal early learning and child care program, beginning with expansion of kindergarten to full-day for all five-year-olds.\textsuperscript{194} It then gradually implemented a five-dollar-per-day parent fee for all child care centers—raised to seven dollars a day in 2003 by a provincial Liberal government—and provided capital funding to encourage the expansion of child care spaces in not-for-profit centres de la petite enfance—center-based and family day care.\textsuperscript{195}

\begin{itemize}
\item \textsuperscript{187} CONSERVATIVE PARTY OF CAN., STAND UP FOR CANADA: FEDERAL ELECTION PLATFORM 31 (2006).
\item \textsuperscript{188} Universal Child Care Benefit Act, 2006 S.C., ch. 4, § 168 (Can.).
\item \textsuperscript{189} Can. Dep’t of Fin., Canada Social Transfer, http://www.fin.gc.ca/fedprov/cst-eng.asp (last visited Apr. 16, 2009).
\item \textsuperscript{190} For details on these programs and funding amounts, see FRIENDLY ET AL., supra note 177, at xxi-xxiii, 195.
\item \textsuperscript{191} Friendly and her co-authors note a 1998 study that found that “an average of 49.2% of revenue for full-day child care centers came from parent fees.” Id. at xvii.
\item \textsuperscript{192} Id. at xviii.
\item \textsuperscript{193} Id.
\item \textsuperscript{194} Id. at xv.
\item \textsuperscript{195} Id.
\end{itemize}
b. Maternity and Parental Leave

In contrast to ECEC services, the federal government retains exclusive constitutional responsibility for maternity and parental leave programs delivered under the federal employment insurance (EI) program. Workers are eligible for paid maternity and parental benefits if they are salaried or waged employees entitled to federal Employment Insurance benefits. The current rate of compensation includes fifteen weeks of maternity leave paid at fifty-five percent of earnings to a cap of $413 CAD per week, plus a two-week unpaid waiting period at the outset. It also provides thirty-five weeks of parental leave that can be taken by either parent and which is paid at fifty-five percent of earnings to the same cap.

In 2006, the Québec government implemented its own, more generous maternity and parental leave program that covers both salaried and self-employed parents—unlike federal EI, which does not cover the self-employed. The provincial basic plan provides a longer leave period (eighteen weeks maternity, thirty-two weeks parental) at a lower level of salary replacement (seventy percent maternity, seventy percent parental for seven weeks, then fifty-five percent for twenty-five weeks up to a cap of between approximately $600-800 per week). The special plan provides better benefit levels (seventy-five percent maternity and parental up to a cap of about $870 per week) for a shorter period of leave (fifteen weeks maternity; twenty-five weeks parental). The basic plan also provides paternity benefits of five weeks at seventy percent wage replacement up to the cap, and the special plan provides three weeks at seventy-five percent wage replacement up to the cap. The Québec plan is thus more generous and covers more categories of workers than the federal maternity/parental leave provisions, as demonstrated in Table 2.

---

196. The Unemployment Insurance Act of 1971 permitted women who had completed twenty weeks of work in the preceding fifty-two weeks to claim fifteen weeks of paid benefits at the same rate as other unemployment insurance recipients. Unemployment Insurance Act, S.C. 1971, ch. 48, §§ 16(1)(d), 30, repealed by S.C. 1996, c. 23, § 155 (Can.).


200. Id.

201. Id.
In sum, a significant gap has opened up in Canada in terms of family services and benefits provision between the province of Québec and the rest of Canada. Québec has been sui generis in its pursuit of its own expansive, made-in-Québec early learning and child care policy, and stands out as having higher levels of effective parental leave and higher state spending on ECEC services than the rest of Canada and indeed other liberal welfare states. Unlike other liberal states, however, Canadian governments have largely chosen to emphasize public delivery of ECE services\textsuperscript{202} and to encourage not-for-profit as opposed to for-profit child care.\textsuperscript{203}

5. The United States

The United States is typically regarded as the laggard amongst the liberal welfare states in terms of its relatively ungenerous social policy provision and the absence of national health insurance.\textsuperscript{204} However, over the last ten years or so federal child care funding increased significantly as a result of welfare reforms, and early childhood education initiatives are emerging in a number of states.\textsuperscript{205}

a. Child Care

As in all other liberal welfare states, American child care and early childhood education policies and programs have historically developed along separate paths. Child care has always been regarded as a private matter of parental responsibility and choice, with little role for government beyond providing programs for disadvantaged families. The OECD currently estimates that ninety percent of American early childhood services, including child care centers and family daycares, are delivered by the private sector; of those services delivered by the private sector, one-third are for-profit.\textsuperscript{206} While the federal government funds Head Start programs and provides subsidies to low-income and working families, and states are increasingly funding kindergarten and pre-kindergarten programs, parents assume the bulk of the costs of child care and preschool programs. The OECD reports that “[o]verall, the federal...
government underwrites 25% of costs, state and local government 15% and parents the remaining 60%.

While the federal government provides no comprehensive early learning and child care program, it has been involved in funding a number of programs, mainly targeted to low-income or at-risk families. In fact, despite the lack of formal constitutional responsibility for education and child care, Ron Haskins notes that the federal government is involved in at least seventy or eighty major and minor programs, including Head Start, Early Head Start, and the Child Care and Development Fund (CCDF). States can use money from the federal Temporary Assistance for Needy Families (TANF) program to finance welfare-reduction efforts such as providing child care for parents who are pursuing work or training. Thus, despite states’ jurisdictional responsibility for early care and education programs, as of 2002 “federal spending still outpaced[d] state spending on early care and education by about a 3:1 ratio.”

State programs include some direct provision of early learning and child care services, some subsidies to services and to parents, some tax benefits to offset ECEC costs, and some standards. Administratively, a number of states have consolidated responsibility for child care and early childhood education into various different models of governance—for example, the Office of School Readiness in North Carolina and a public-private partnership called the Partnership for Continued Learning in Ohio. In addition, some states have created a single administrative ECEC ministry or department. For example, Georgia in 2004 created the Department of Early Care and Learning, and Massachusetts in 2005 and Washington State in 2006 created consolidated departments for early education and care from previously separate education and child care offices.

Across the country, the National Institute of Early Education Research (NIEER) reports that, as of 2005, approximately forty percent of all American children age three attended some kind of pre-school program, along with approximately two-thirds of children age four, and over ninety percent of children age five, although there is some variation across states and regions.
These figures compare with the 1965 numbers of approximately five percent of three-year-olds, sixteen percent of four-year-olds, and sixty percent of five-year-olds. The NIEER report defines preschool quite broadly so as to include all private and public child care and pre-kindergarten programs, but includes neither children age four in kindergarten nor home-based programs. The OECD reports that state pre-kindergarten programs cover two and a half percent of American children age three and sixteen percent of children age four, again with huge variation across states and within populations served (and with most state funding targeted to low-income families). Steven Barnett and Donald J. Yarosz report that children in families with modest incomes—that is, incomes under $60,000 USD—have the least access to preschool. Georgia and Oklahoma, however, have developed pre-kindergarten programs that are enrolling over fifty percent of children age four in their respective states.

b. Maternity and Parental Leave

The United States and Australia remain the only liberal welfare regimes to provide no national paid parental leave programs. Unlike in Australia, however (as mentioned previously), there is currently no significant movement in the United States for paid family leave at the federal level, although a number of state-based initiatives have emerged in recent years. The federal Family and Medical Leave Act, enacted in 1993, mandates that twelve weeks of unpaid job-protected leave be available within a twelve-month period for reasons that include the employee’s illness, the birth and care of a newborn or newly adopted or fostered child, or the care of a seriously ill child, parent, or spouse. However, the numerous eligibility restrictions mean that the Act covers about half (or fewer) of all private sector workers.

At the state and territory level, a few states have mandated that companies that offer temporary disability insurance (TDI) programs must also allow new mothers to apply for TDI. TDI programs allow for a partial wage

215. Id.
216. Id. at 5, 15 n.4. Because of the broad definition used, these data are not comparable to other countries' specific program participation rates, but do give a sense of the extent to which U.S. children are in some kind of formal program.
217. OECD, STARTING STRONG II, supra note 45, at 427.
replacement for the time period during which a woman is medically unfit to work after giving birth. While maximum benefits range from twenty-six to fifty-two weeks, the average leave time under TDI ranges from four to thirteen weeks.\footnote{Id. at 120-21.} The state of California has gone farther, however, and implemented a paid family leave program in 2002.\footnote{See Employment Dev. Dep't of Cal., Paid Family Leave, http://www.cdd.ca.gov/Disability/Paid_Family_Leave.htm (last visited Mar. 18, 2009).} This program allows families six weeks per year for care of a new child or sick relative at a wage replacement level of fifty-five percent, with a cap of $728 per week.\footnote{LAUREN ASHER & NETSY FIRESTEIN, LABOR PROJECT FOR WORKING FAMILIES, PUTTING FAMILIES FIRST: HOW CALIFORNIA WON THE FIGHT FOR PAID FAMILY LEAVE 4 (2003), available at http://www.working-families.org/organize/pdf/paidleavewon.pdf.} The program is funded through the State Disability Insurance Program and is paid for entirely by employee contributions, rather than by employer taxes.\footnote{Id.}

In addition, throughout the United States some employers provide workplace benefits that include paid leave provisions. However, many of the occupations in which women are typically employed provide few workplace benefits.\footnote{HEDIEH RAHMANOU, INST. FOR WOMEN'S POL'Y RESEARCH, RESEARCH-IN-BRIEF: THE WIDENING GAP: A NEW BOOK ON THE STRUGGLE TO BALANCE WORK AND CAREGIVING 3-4 (2001).} The lack of paid benefits means that U.S. women return to the labor force relatively soon after giving birth compared to other countries. In the 1996 to 1999 period, nearly sixty-five percent of first-time mothers in the United States returned to work one year after giving birth, and forty-five percent after the first three months.\footnote{JULIA OVERTURF JOHNSON & BARBARA DOWNS, U.S. CENSUS BUREAU, MATERNITY LEAVE AND EMPLOYMENT: PATTERNS OF FIRST-TIME MOTHERS: 1961-2000, at tbl.8 (2005).} In contrast, in Canada, about forty-seven percent of women in 2001 returned to work after one year, and fewer than ten percent returned to work after zero to two months or three to four months.\footnote{Katherine Marshall, Benefiting From Extended Parental Leave, PERSP. ON LABOUR & INCOME, Mar. 2003, at 6-7.} Child care in the United States is relatively cheap and plentiful, but largely privately-delivered and, unlike in New Zealand and the United Kingdom, governed by varying state and local, rather than national, standards.\footnote{OECD, USA COUNTRY NOTE, supra note 211, at para. 21; Morgan, supra note 45, at 247-48.}

C. Analysis of Cross-Country Trends

1. Maternal Labor-Market Participation

As the above accounts demonstrate, there is increasing norm fragmentation among liberal welfare states with regard to work/family reconciliation policies and maternal labor-market participation.\footnote{See supra Table 1.} In Australia and the United
Kingdom, traditional gender norms regarding maternal labor market participation remain entrenched, as reflected in the high percentage of mothers who are employed part-time and the lower percentage of mothers with young children or multiple children who participate in the labor market. Traditional liberal norms regarding lack of state responsibility for direct support for new parents remain in evidence in Australia and the United States, as evidenced by the non-provision of national paid parental leave. Additionally, the amount of effective parental leave in each of the five countries examined remains below the OECD median in all five, save for the Canadian province of Québec.  

There is also evidence of continued emphasis on parental responsibility and parental choice in locating child care services. Of the five countries, only New Zealand provides extensive funding to support public ECEC infrastructure.

However, there has clearly been a normative shift in some countries regarding the responsibility for funding of ECEC services. In Australia and Québec, governments have committed to developing full-day child care for parents through parental subsidies, although of mixed quality and, in the case of Australia, at high cost. The result is higher levels of maternal employment in Québec but not in Australia. In addition, full-day programs are proving to be increasingly popular among parents. For example, in New Zealand, while the government funds all forms of ECEC services, full-day programs have proven to be more popular than part-day, government-subsidized ECEC services.

In the United Kingdom and the United States, a normative shift has occurred as well with regard to the importance of supporting low-income mothers' labor-market participation. Jane Lewis argues that the British government's 1998 National Childcare Strategy represented a "radical" change in the United Kingdom because, by providing public funding for child care services, the state acknowledged for the first time "the desirability of

---

233. Based on OECD reporting for Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Norway, Portugal, Sweden, United Kingdom, and United States, and the author's own calculations for New Zealand and Québec. See OECD, STARTING STRONG II, supra note 45, at 240.
235. Brennan, supra note 68, at 221.
236. Michael Baker, Jonathan Gruber & Kevin Milligan, Universal Childcare, Maternal Labor Supply and Family Well-Being 27 (Nat'l Bureau of Econ. Research Working Paper No. 11832, 2005); see supra Table 1 (showing the percentage of employed mothers with young children, the percentage of employed mothers with three children, as well as the part-time employment rates of mothers with two or more children).
237. By 2006, full-day services comprised sixty percent of all enrollments in early learning and care programs, compared to forty-two percent in 1998, and wait times have increased for access to those programs. N. Z. MINISTRY OF EDUC., STATE OF EDUCATION IN NEW ZEALAND 2007, at 10, 15 (2008).
collectively provided childcare" and a model of the family in which all adults are wage-earners. A desire to transform low-income single mothers in the United States into wage earners drove the U.S. government to include child care funding as part of welfare reforms in 1996. In both the United Kingdom and the United States, there seems to be a growing consensus that low-income and single parents in particular need child care services in order to participate in the paid labor market; however, that consensus has not translated into an acknowledgement of the need for such services for all families. Indeed, the extent to which one can claim that the British and U.S. governments have moved away from male breadwinner/female caregiver norms to the adult wage-earner norm for both parents is limited by the fact that parental subsidies for child care remain targeted in both countries, and the U.S. government has not instituted a labor-market-supportive paid parental leave program. In the United Kingdom as well, despite the government’s strong stated commitment to support parents’—and particularly poor women’s—paid labor market participation, it has invested a great deal of public resources in part-day preschool programs which are not necessarily conducive to parents’ labor market participation. In Australia, in contrast, funding is increasingly directed to full-time child care programs, as it is in the province of Québec.

There is thus a great deal of variation among liberal welfare states in the extent to which they have embraced maternal workforce participation norms.

2. ECEC System Building

Similar variation and ambivalence can be observed regarding the embrace of ECEC system-building norms. In New Zealand, the United Kingdom, and the United States, there seems to have been a shift toward valuing early learning experiences for young children. In each of these countries, while the nursery school movement has been strong in the past (particularly in New Zealand and the United Kingdom), there have been strong calls for universal pre-school programs for decades, and governments are finally committing to

238. Lewis, supra note 128, at 221-22.
240. In the United Kingdom, a number of policy documents signaled the Blair Government’s desire to encourage all adults—even single parents who had previously received state support to care for children—to become wage-earners. See, e.g., GOV’T OF U.K., NEW AMBITIONS FOR OUR COUNTRY: A NEW CONTRACT FOR WELFARE 26 (1998). One can also look to the introduction of the Working Families Tax Credit and the various New Deal programs, including New Deal for Lone Parents. See, e.g., Anne Gray, ‘Making Work Pay’—Devising the Best Strategy for Lone Parents in Britain, 30 J. SOC. POL. 189, 191 (2001); Lewis, supra note 128, at 220; Katherine Rake, Gender and New Labour’s Social Policies, 30 J. SOC. POL’Y 209 (2001).
241. See, e.g., BEATTY, supra note 38 (giving an example of efforts in the United States calling for universal preschool); MAY, POLITICS IN THE PLAYGROUND, supra note 38 (describing the New Zealand preschool movement); Moss, supra note 126 (describing the U.K. preschool movement).
developing those programs: The New Zealand government242 and the British government have both committed to funding part-time "free ECE" programs.243 In the United States, concerns about students' educational performance and school readiness and the effects of child poverty and social exclusion on children's schooling and development have led state governments to commit more resources to developing universal pre-school education services.244 Even the Australian Labour government has now committed to "ensur[ing] every four year old child has access to fifteen hours a week and forty weeks a year of high quality preschool delivered by a qualified early childhood teacher."245

In Canada, by contrast, only two provincial governments—Ontario and British Columbia—have entertained the possibility of expanding current part-day programs for children aged four and five in Ontario and aged five in British Columbia, while the Québec government chose not to pursue such a plan.246 In fact, the Québec government's decision to fund full-day kindergarten for children age five only and to subsidize full-day child care programs for children aged four and under is contrary to trends in most other welfare states (where governments have put more resources into pre-school rather than child care programs), although it mimics funding patterns in social democratic welfare states.247 Although the Québec government labels its programs "educational child care,"248 the programs are delivered through a range of providers, including commercial child care centers and family day care providers, and by staff with varied (and often limited) training, and not within schools by trained teachers.249

There also seems to be some fragmentation among liberal welfare regimes regarding the norms surrounding the purposes of ECEC programs. That fragmentation is evident in the administrative apparatus established to deliver these programs. Although New Zealand and the United Kingdom (both unitary states) have integrated early learning and care services under a single administrative apparatus within departments of education, in Australia, Canada, and the United States, child care and early childhood education are administered via separate departments, and, perhaps reflecting the vagaries of federalism, separate jurisdictions.

243. HM TREASURY, supra note 14, at para. 3.4; see MEETING THE CHILDCARE CHALLENGE, supra note 140, at 3.
244. See, e.g., BRUCE FULLER, STANDARDIZED CHILDHOOD: THE POLITICAL AND CULTURAL STRUGGLE OVER EARLY EDUCATION 46 (2007); KIRP, supra note 125, at 8.
245. AUSTRALIAN LABOR PARTY, supra note 81, at 1.
246. FRIENDLY ET AL., supra note 177, at xviii.
247. See discussion supra Part I on norms in welfare regimes; and supra Table 3.
249. FRIENDLY ET AL., supra note 177, at xviii.
III. AMERICAN EXCEPTIONALISM?

The above survey demonstrates that while the United States appears increasingly typical among liberal welfare states regarding ECEC provision, it remains exceptional even within liberal welfare states regarding maternity/parental leave provision. While the Australian government currently does not mandate a paid maternity/parental leave program, it does guarantee a full year of unpaid leave;²⁵⁰ the FMLA, in contrast, guarantees only twelve weeks of unpaid leave.²⁵¹ Should Australia enact a paid maternity/parental leave program as is currently being discussed, the United States will stand out as part of an increasingly tiny number of countries with no state-mandated paid leave for working mothers, along with Lesotho, Papua New Guinea, and Swaziland.²⁵²

It is thus worthwhile to probe some of the reasons why the United States continues to be an outlier regarding federally mandated maternity/parental leave provision. First, there remains a presumption that individuals choose to have and are largely responsible for children, and therefore a presumption that they can and should save money and plan for pregnancy just as they do for their own education.²⁵³ In Canada, in contrast, the Supreme Court of Canada stated in Brooks v. Canada Safeway²⁵⁴ that there is a fundamental inequality in imposing “all of the costs of pregnancy upon one half of the population,” and that “those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged.”²⁵⁵ In Reference re: Employment Insurance, the court emphasized that the interruption in employment that results from childbearing “can no longer be regarded as a matter of individual responsibility.”²⁵⁶ Thus, Canadian law has accepted that society should share in the cost of social reproduction, and that the state should play a role in providing benefits to encourage employees to take up maternity/parental leave and ensure that employers do not discourage the practice of taking leave.

In the United States, in contrast, business and industry organizations have resisted the imposition of mandated benefits. They fought hard to prevent the passage of the federal FMLA,²⁵⁷ as well as against such non-legislative initiatives as allowing states to use UI surplus funds for family leave.²⁵⁸ They have developed a variety of arguments to resist paid family leave, as revealed

²⁵⁰. Workplace Relations Act, 1996, div. 6, § 266 (Austl.).
²⁵². HEYMANN ET AL., supra note 1, at 24.
²⁵³. See, e.g., Levmore, supra note 4, at 222.
²⁵⁴. [1989] 1 S.C.R. 1219 (Can.).
²⁵⁵. Id. ¶ 43.
²⁵⁸. White, supra note 3, at 335-36.
in the debate over the introduction of paid family leave in California. The Berkeley Media Studies Group found that business groups argued first that paid family leave represents a tax on jobs; second, that it puts an unfair burden on small businesses in particular; and third, that it creates an investment disincentive. Other companies have argued that such benefits should be left to the employer's discretion and not mandated.

Saul Levmore notes as well that these benefits are still regarded with profound suspicion on the part of employers. As he remarks, "From an employer's point of view, the problem with parental leave, and perhaps with paid leave, is that the employee has no particular incentive to return to work after the period of leave." Experience in other liberal welfare states belies this argument, however. Katherine Marshall found that the extension of paid parental leave benefits in Canada in 2001 from ten to thirty-five weeks did not "appear to have affected mothers' return-to-work rate." Ivana La Valle, Elizabeth Clery, and Mari Carmen Huerta found that eighty-six percent of mothers returned to their pre-birth job in the United Kingdom, even with the expansion of maternity benefits, although many of these women went from full-time to part-time status after leave.

Levmore presents a more benign explanation for the lack of paid national benefits, resting on functionalist arguments. He points out that governments in many other industrialized countries have been motivated to provide universal paid maternity and parental leave benefits in order to combat low fertility rates or to encourage women's paid labor-market participation in response to labor shortages. But the United States faces neither the challenge of low fertility rates nor employment shortages. Its fertility rate is very high relative to other industrialized countries, and it has robust immigration and high maternal labor market participation. All of this creates low demand for public policies to motivate behavioral changes.

---

260. Id. at 9-10.
262. Levmore, supra note 4, at 220.
265. Levmore, supra note 4, at 207.
266. Id. at 207-09; see, e.g., ANNE HÉLÈNE GAUTHIER, THE STATE AND THE FAMILY: A COMPARATIVE ANALYSIS OF FAMILY POLICIES IN INDUSTRIALIZED COUNTRIES 2 (1996); Ito Peng, Social Care in Crisis: Gender, Demography, and Welfare State Restructuring in Japan, 9 SOC. POL. 411, 419 (2002).
267. Levmore, supra note 4, at 208; supra Table 1.
Levmore instead examines the explanatory power of race and class. He notes that it is not the case that the United States is completely opposed to expensive social programs, as "the United States mandates expensive accommodations for disabled persons, imposes occupational safety rules and environmental controls that are expensive and, arguably redistributive and expends considerable resources in relative terms on education and health care." Rather,

[i]t is also likely, though politically incorrect to suggest, that countries fear that higher subsidies will raise fertility among, or only among, low-income groups. It is one thing to want a cross-section of families to have more births, or perhaps a cross-section of women to marry or begin bearing children earlier, but it is quite another to have a system in which the least educated and poorest families are deployed to boost the reproduction rate.

In addition to these concerns, some social-conservative and religious groups have opposed any type of mandatory paid leave program that would favor women's waged work over work inside the home. All of the above factors figure into the profound resistance on the part of some business interests and conservative groups in the United States to adopting federal paid family leave, although public opinion surveys reveal that the American public supports the idea of paid parental leave. Advocates have thus focused in recent years on initiatives at the state and local level, where there have been some successes. These efforts have not received overwhelming endorsement by feminist groups, as there is still profound debate within feminist circles about how to deal with social reproduction issues. The fear on the part of many equal-rights feminists is that any legislation that would signal women's difference would be harmful to gender equality.

It is ironic, to say the least, that the countries with the most gender-neutral policies with regard to maternity/parental leave are Australia and the United States, which mandate unpaid leave only. Other liberal welfare states have

268. Levmore, supra note 4, at 213.
269. Id. at 207 (citations omitted).
270. Id. at 213.
273. See, e.g., Paid Family Leave California, supra note 220.
274. White, supra note 3, at 339-45.
275. See, e.g., MICHEL, supra note 38, at 2-3; Barbara Bergmann, The Only Ticket to Equality: Total Androgyny, Male Style, 9 J. CONTEMP. LEGAL ISSUES 75, 81 (1998); Lisa Vogel, Debating Difference: Feminism, Pregnancy, and the Workplace, 16 FEMINIST STUD. 9 (1990).
accepted the principle that birth requires and permits some differential treatment in law and public policy. Thus, for example, the Supreme Court of Canada recently refused to accept an appeal from a Federal Court of Appeal ruling that held that Employment Insurance Act provisions which prohibit non-birth mothers from accessing the fifteen weeks' paid maternity benefits do not violate Section Fifteen equality rights under the Canadian Charter of Rights and Freedoms. Under the Act, adoptive mothers are only entitled to thirty-five weeks of paid benefits in total, not fifty weeks of combined maternity and parental leave benefits. The Federal Court of Appeal in Tomasson v. Canada (A.G.) reasoned that birth mothers require a flexible period of leave during pregnancy, labor, birth, and the postpartum period in order to cope with the physiological changes they undergo. Because adoptive mothers do not undergo the same "physiological and psychological experience" of pregnancy and childbirth, they do not need the same period of time to recover as birth mothers. Such a ruling would likely receive harsh criticism from U.S. feminists supportive of gender neutrality who may worry about the recognition in law of birth mothers' differences from adoptive mothers (not to mention biological and adoptive fathers).

CONCLUSION: LESSONS LEARNED

This Article does not answer the question of which approach—benefits provision or rights protection—best combats pregnancy discrimination. It also does not address philosophical questions about which approach—"same treatment" or "differential treatment"—is the best way to pursue workplace

280. Id. ¶ 117.
281. Id. ¶ 134.
282. Employers can engage in a host of discriminatory actions, such as refusing to hire women for fear that they may become pregnant, or laying off pregnant women, regardless of whether laws are in place prohibiting such treatment. For evidence from Australia, see HUMAN RIGHTS & EQUAL OPPORTUNITY COMM’N, PREGNANT AND PRODUCTIVE: IT’S A RIGHT NOT A PRIVILEGE TO WORK WHILE PREGNANT 2 (1999). As Nancy Casas notes, even with legislative protections in place, such as Australia’s Sex Discrimination Act of 1984, employers still engage in discriminatory dismissals against pregnant women and limitations on women’s employment. Nancy Casas, Sex Discrimination on the Basis of Pregnancy: Australia’s Report on Pregnancy Discrimination Should Make the United States Re-evaluate the Effectiveness of the Pregnancy Discrimination Act in Eliminating Pregnancy Discrimination in the Workplace, 11 TRANSNAT’L L. & CONTEMP. PROBS. 141, 144 (2001). One can hypothesize, however, that providing such benefits “normalizes” the presence of pregnant women in the workforce, and provides compensation to employers who may fear the costs of hiring employees who are pregnant or may become pregnant.
gender equality.\textsuperscript{283} Rather, the main purpose of this Article has been to track recent changes in benefits provision in order to determine to what extent we really are seeing an end to gendered caregiving norms in liberal welfare states, and to what extent liberal welfare states are supporting mothers’ employment through social services and benefits provision.

This Article demonstrates that while governments in all of the scrutinized liberal welfare states increasingly promote economic self-sufficiency and adult labor market participation, there is variation among liberal welfare states regarding the level of government support for maternal employment. While the United States is similar to other liberal welfare states regarding ECEC provision, it differs in its lack of paid maternity and parental leave. That difference is rooted in part in the issue of whether the state is responsible for providing special benefits for new mothers. Some liberal welfare states continue to display support for the idea that motherhood should trigger benefit entitlements, while there is clear resistance to that idea in the United States. The differences among liberal welfare states are not as stark as might be believed, however, as the United States is following other liberal welfare states in terms of state investment in ECEC services.