

CLASS DISPARITIES, MARKET FUNDAMENTALISM AND WORK-FAMILY POLICY:
LESSONS FROM CALIFORNIA

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December 2007

Prepared for the volume, *Institutions for Gender Egalitarianism: Creating the Conditions for Egalitarian Dual Earner/Dual Caregiver Families*, edited by Erik Olin Wright, Janet Gornick and Marcia Meyers (New York: Verso, forthcoming)

The problem of reconciling work and family commitments is not new; indeed it has been a central concern for feminists since the birth of industrial capitalism. Recently the issue has entered the mainstream of public debate, as maternal labor force participation rates have climbed to unprecedented levels and the “male-breadwinner/female-homemaker” family has declined throughout the global North. In wealthy nations on both sides of the Atlantic, despite the fact that the vast majority of wives and mothers today are employed outside the home, gendered expectations (and behavior!) regarding housework and family care have been altered relatively little. What Gornick and Meyers call “partial gender specialization,” with women continuing to shoulder the vast bulk of caregiving labor alongside their paid work, is now the norm. The resulting time pressures on mothers and other women with significant carework commitments, as well as on those men with such commitments, have sparked increased concern about work-family “balance.”

The U.S. has long been on the leading edge of these transformations. Second-wave American feminists succeeded in opening up professional opportunities for women as early as the 1960s and early 1970s, even as ongoing economic restructuring (especially the growth of the tertiary sector) increased demand for women workers in the labor market as a whole. On the supply side, meanwhile, sharply declining real incomes among non-college-educated men since the 1970s led growing numbers of married women and mothers to join the labor force to keep their families afloat.

Over the years since, although outright gender discrimination in the labor market and job segregation by gender have by no means disappeared, young women’s career aspirations have risen substantially, and gender-based wage disparities in entry-level jobs have narrowed considerably. The current pattern is one of accumulating disadvantage for women, so that the gender gap in pay widens over the life course, particularly for mothers (Valian 1998, Glass 2004). Mothers’ greater labor market disadvantage in part reflects the persistently asymmetric gender division of housework and family care, but there is also accumulating evidence of an employer-driven “motherhood penalty” in the managerial and professional ranks, while fathers in these occupational categories enjoy a wage premium (Correll, Benard and Paik 2007).

By the 20th century’s end, as working hours grew longer and time demands intensified in the “new economy,” both genders expressed the desire for relief with ever-growing urgency. The “time bind,” as Arlie Hochschild (1997) memorably labeled it a decade ago, is especially acute in the U.S. Survey after survey has found work-family “balance” to be high on the wish list for working Americans (even as feminism itself remains, for many, anathema). And public support has burgeoned for policy measures to ease the burden on employed parents. In a 2003 survey of adult Californians, for example, 85% of respondents expressed support for the idea of paid family leave, with extensive majorities in every demographic category and across the political spectrum (Milkman and Appelbaum 2004). In a rare exception to the ongoing rollback of state regulation of the labor market, political momentum for positive governmental intervention on this front is

growing rapidly. Yet most employed women in the U.S. must still find private, individual “solutions” to “their” work-family “problems.” Feminists and labor activists have long promoted more collective approaches, but their success to date remains limited.

Indeed, the nation’s famously minimalist welfare state, along with an exceptionally strong tilt toward gender-neutrality in those laws and policies that do exist, has produced what is incontestably the industrialized world’s most meager public provision for work-family support. In this respect, the U.S. could hardly be more different from Europe, where a long and deeply entrenched family policy tradition, historically rooted in demographic concerns as well as in social-democratic efforts to use the state as a social leveler, has generated a vast state-sponsored apparatus of support for women (and sometimes men) who are actively involved in both caregiving and paid work. On the other hand, feminist influence on this policy arena developed later in Europe than in the U.S, and was (at least initially) weaker.

Gornick and Meyers do a superb job of excavating these developments and the complex social, political and economic dynamics underlying them. Their “dual earner/dual caregiver” model is a compelling approach that neatly combines the insights of second-wave feminism with the legacy of social-democratic family policies. For researchers who focus on the U.S., their comparative perspective is especially welcome. By carefully conceptualizing gender-egalitarian policy proposals that improve on existing European work-family policies, Gornick and Meyers make an especially valuable contribution. Yet to advance this policy agenda in the U.S. context involves some special challenges.

This chapter focuses on two distinctive dimensions of the U.S. case that Gornick and Meyers treat only marginally (and which are far less salient in the European context):

- class disparities in existing access to work-family support, and
- the influence of market fundamentalism, which is the key political impediment to legislative proposals in this area.

After briefly discussing each of these phenomena as they are manifested in the U.S. as a whole, I turn to the case of California, the state that has made by far the most substantial breakthrough in work-family policy in recent years. California’s new paid family leave program, established by a law passed in 2002 and implemented in 2004, offers a model of what might be possible elsewhere in the U.S. – for the moment, in other “blue” states; and perhaps in the future at the federal level.¹ However, California’s experience also presents a cautionary tale in regard to the ongoing challenges facing advocates of change in the work-family arena, at least in the absence of a broader macropolitical and cultural shift that legitimates state intervention in the workplace more generally.

¹ In early 2007, Washington state passed a paid family leave bill into law (although funding for it has not yet been appropriated), and similar efforts are underway in several other states – Oregon, New York and New Jersey. In June 2007, a federal Family Leave Insurance Act was introduced in the U.S. Senate.

Class Disparities

In the U.S., social class profoundly affects both patterns of time use and access to existing (mainly employer-provided) benefits that facilitate work-family reconciliation.² Along both dimensions, professionals and managers (regardless of gender) are sharply differentiated from the rest of the workforce. As the *New York Times* recently reported, even pumping breast milk at work is an option available mainly to well-paid professional women, while for lower-income mothers, it is “close to impossible.” (Kantor 2006)

Such class disparities are hardly new, but they have intensified in the past few decades as economic inequalities have grown – both *within* the employed female population as well as among men (Bianchi 1995, McCall 2001). The pattern is stark, with access to paid time off for caregiving purposes widely available to professionals and managers (albeit on a modest scale by European standards), and largely inaccessible to the rest of the workforce (Heymann 2000). There is an intermediate group, comprised of unionized and/or public sector employees, but this sector of the workforce is shrinking as economic polarization continues to reshape the U.S. political economy (Mishel et al 2005).

The limited wage replacement that is currently available for family-related absences from work in the U.S. primarily takes the form of employer-provided benefits – ranging from paid sick leave and paid vacation or “paid time off” (which combines sick leave and vacation) to disability insurance (commonly used for pregnancy-related leaves). Some employers – often as a result of collective bargaining agreements – also provide paid maternity or parental leave benefits. Eligible workers typically draw on a patchwork of employer-provided benefits (in a few states supplemented by state-sponsored disability insurance programs³) for income support when the arrival of a new child or a serious family illness necessitates an absence from work for any significant amount of time. But for many, especially those outside the managerial-professional occupations, wage replacement for caregiving purposes is not available at all, since in the U.S. even paid sick leave, paid vacation and similar employer-provided benefits are far from universal. Indeed, between 1996 and 2000, only 42% of U.S. women who were employed during their first pregnancy received *any* type of paid leave when the child was born (Johnson and Downs 2005: 9).

Prior to the early 1990s, the U.S. lacked any formal policy provision for parental leave, apart from the 1978 Pregnancy Discrimination Act (PDA), which requires employers to offer wage replacement for pregnancy-related “disabilities” to the same extent as they do for other disabilities. This law did not mandate any disability coverage, however, and to this day many employers (especially smaller ones) provide none. The legal framework

² The racial and ethnic disparities that are highly correlated with class are also salient, although I do not discuss them here, in part because of a paucity of data and in part because professionals and managers of color are treated quite similarly to their white counterparts in this particular arena.

³ State disability insurance programs, which can be used to support pregnancy-related leaves, have existed in California, Hawaii, New York, New Jersey, Rhode Island and Puerto Rico for many years, but are absent in the rest of the U.S.

guiding the PDA was explicitly gender-neutral, reflecting concern among feminists at the time that sex discrimination might increase if leaves were provided only to mothers (Vogel 1993).⁴ Indeed, this longstanding concern has been borne out in recent years by evidence that mothers who take advantage of employer-provided “work-family benefits” suffer substantial wage penalties (Glass 2004).

In the 1980s and early 1990s several states passed laws providing job-protected (but unpaid) family leaves, and the federal government followed suit in 1993 with the Family and Medical Leave Act (FMLA). That law guarantees job-protected, unpaid leaves of up to 12 weeks to eligible U.S. workers who need time off to care for a new baby or for a seriously ill family member.⁵ Yet FMLA is limited in several critical ways. First of all, not everyone is aware of its provisions. Survey data suggest that as late as 2000, seven years after it became law, only about 60% of U.S. workers knew that FMLA existed (Waldfoegel 2001). Secondly, less than half of all private-sector workers meet FMLA’s eligibility requirements: to be covered, workers must be employed in establishments with at least 50 employees within a 75-mile radius, and must have worked at least 1250 hours during the previous year. Less than a fifth of new mothers are estimated to be covered by FMLA (Ruhm 1997). Third, because it provides only unpaid leaves, even those who are covered often cannot afford to take advantage of the law.

Both the frequency and length of family leaves taken by new mothers in the U.S. have increased significantly since the passage of FMLA (although this has not been the case for new fathers, despite the gender-neutral character of the legislation). Leaves to care for seriously ill family members (especially parents) have also increased in this period (Han & Waldfoegel, 2003; Waldfoegel, 2001). And the number of mothers who quit their jobs or were fired as a result of a first pregnancy has declined since FMLA’s passage, from about 39% to 28%, according to U.S. government data. However, the same data also show that over half of maternity leaves remain entirely unpaid. The percentage of new mothers taking paid leaves (including those financed by employer-provided sick pay or paid vacations and/or maternity and other paid family leave policies), after rising slightly in the late 1980s, has stabilized (at about 42-44%) since FMLA’s passage (Johnson and Downs, 2005).

The data on such paid leaves vividly illustrate the salience of class disparities: between 1996 and 2000, 59% of college-educated women who were employed during pregnancy received some sort of paid leave after the birth of their first child, but only 18% of those with less than a high school education did so (Johnson and Downs 2005: 12). All else equal, those workers employed by large firms have greater access to paid leave benefits than do those working in small and medium-sized businesses. With the important exception of unionized workers (a steadily declining group in the U.S.), professionals,

⁴ However, some states did enact legislation creating benefits exclusively for pregnant women in this period, later challenged in the courts by employers who argued that the PDA pre-empted such “special treatment.” The Supreme Court ruled otherwise, however, in 1987. Vogel 1993 offers an excellent analysis of this history.

⁵ FMLA also mandates unpaid, job-protected leaves for an eligible employee’s own illness, including pregnancy-related “disability.”

managers, more-educated and better-paid workers generally, are far more likely than non-supervisory, low-wage, less-educated workers to have access to any type of employer-provided paid leave benefits. Ironically, despite their limited participation in caregiving activities, male workers also are more likely to have formal access to such benefits than their female counterparts (Heymann, 2000, Milkman and Appelbaum 2004).

Thus, more than a decade after the passage of FMLA, many U.S. workers have no access to family leave whatsoever. Even among those who are covered by FMLA, in the absence of adequate provision for wage replacement, a large proportion cannot afford to take a leave from work for more than a brief period of time when caregiving needs arise. A survey of employees conducted for the U.S. Department of Labor in 2000 found that among FMLA-eligible respondents who indicated that they had recently needed family leaves but could not take them, the vast majority reported that the reason was financial. The same survey found that among those who did take FMLA-covered leaves, economic worries remained salient, with more than half (54%) of respondents expressing concern about lacking enough money to pay their bills. Over a third (38%) of the female leave-takers surveyed (and 30% of male leave-takers) received *no pay* during their FMLA-covered leaves (Waldfoegel 2001).

Similarly, in a 2004 screening survey of California employees who either had recently experienced or expected to soon experience the triggering events that would qualify them for benefits under the state's new paid family leave program, 18% of respondents indicated that they had needed but not taken a leave to care for a new child or a seriously ill family member in the preceding two years. Once again, the most frequently cited reason for not taking the needed leave was financial. Within the group that needed leave but did not take it, 61% of respondents reported that they "definitely" would have gone on leave if they "could have received some income to make up for lost pay," and another 25% reported that they "probably" would have done so. Among female respondents earning \$9 per hour or less within the group who needed but did not take leave, 100% indicated that they "definitely" would have gone on leave if they could have received wage replacement!⁶

Not only is access to employer-provided benefits concentrated in the upper echelons of the labor force, but public discussion of work-family issues in the U.S. also focuses primarily on the needs and dilemmas of the affluent. This phenomenon dates back at least to 1963, when Betty Friedan's bestseller, *The Feminine Mystique*, highlighted the anomie of college-educated homemakers in the post-World War II years, and urged them to embrace careers to solve "the problem that has no name." Millions of women have since followed Friedan's advice, and indeed today unprecedented numbers are employed in managerial and professional jobs.

Public attention to the work-family reconciliation dilemmas facing this elite group of women is extensive and growing (among many recent examples see Blair-Loy 2003;

⁶ These data are from a screening survey conducted in 2004 by the author and Eileen Appelbaum of employed Californians who either had recently experienced, or expected to experience in the near future, a life event such as the birth of a new child, or a serious family illness, triggering the need for family leave.

Mason and Ekman 2007; Correll, Benard and Paik 2007; Stone 2007), but the far more difficult plight of the majority of the female workforce, toiling away in low-wage, gender-stereotyped “pink collar” jobs, remains largely invisible. Even Arlie Hochschild’s insightful 1997 book, *The Time Bind*, sometimes fell into the trap of generalizing from the experience of women in managerial jobs to that of Everywoman.⁷

In fact, the character of work-family issues varies greatly by social class. As Jerry Jacobs and Kathleen Gerson (2004) have shown, managers and professionals (of both genders) in the U.S. typically work far longer hours than lower-level employees. Although many non-supervisory workers would prefer to work *more* hours than are readily available to them (for an extreme example, see Lambert 2007), those who aspire to successful careers in elite occupations are expected to work extremely long hours. This contrasts starkly with the European pattern and is directly tied to the far higher level of inequality in the U.S. earnings distribution, perhaps because the most elite U.S. workers receive such disproportionately large returns for working extra hours (see Freeman 2007: ch. 4).

That the norm of extensive work hours is so deeply embedded in managerial and professional culture presents a poignant dilemma for mothers in elite occupations, particularly in view of the late-20th-century ideology of “intensive mothering” (Hays 1996). That ideology has been disproportionately adopted by the nation’s most affluent families, eager to reproduce their class position, as Annette Lareau (2003) has documented; by contrast, working-class parenting takes a very different form.

Ironically, the escalating time demands on the nation’s upper-tier workers emerged just when large numbers of highly educated women first gained access to elite professional and managerial jobs. Mary Blair-Loy (2003) has starkly exposed the hegemony of the “male model” at the highest levels of the contemporary corporate world, where family involvement for women (as well as men) is effectively precluded by a deeply entrenched culture that demands total “24/7” commitment to the firm. The same problem, albeit in less extreme form, is pervasive throughout the managerial ranks in the U.S. Indeed, even when firms are putatively “family friendly,” available benefits often go underutilized for this reason (see Hochschild 1997, Fried 1998, Glass 2004). As Blair-Loy observes, some top women managers respond by “opting out,” abandoning their fledgling careers or, in some cases, forgoing motherhood entirely (see also Stone 2007). Others use their abundant financial resources to hire substitute caregivers (Hertz 1986).

In contrast, low-income workers in the U.S. are regularly forced to choose between economic security and providing vital care for family members. Parents who have access to paid sick leave or paid vacation are five times more likely to stay home with a sick child than are those who lack such benefits, and ill children recover more quickly when

⁷Hochschild’s key finding was the counterintuitive and intriguing one that many women actually *preferred* to spend time at work rather than with their families, and thus often did not take advantage of the “family-friendly” policies provided by the firm that was the focus of her case study. However, the media spin on the book mainly focused on the ill effects for children and families of this preference, and of maternal employment more generally (see Milkman 1997).

parents are present (American Academy of Pediatrics 2003; Ruhm 2000; Heymann 2000: 57–59). Yet paid leave is disproportionately available to those with the greatest economic resources. One recent survey found that two-thirds of low-income mothers (compared to slightly over a third of middle- and upper-income mothers) lose pay when they miss work because a child is sick (Kaiser Family Foundation 2003). Apart from lost income, missing work under such conditions often has other negative employment consequences.

At the other extreme, public welfare provisions for the indigent have been radically restructured so as to require workforce participation from poor single mothers who formerly had access to state assistance while caring for their children at home (Reese 2005; Somers and Block 2005). And the nation's large and growing disenfranchised population of unauthorized immigrants is often unable or unwilling to access even the meager public provisions (from FMLA to state-sponsored disability programs to what remains of “welfare”) that do exist.

Class disparities, then, are a key feature of the work-family landscape in the U.S. Although there are some exceptions (most notably, unionized workers who gain access to employer-provided family leave and related benefits through collective bargaining), on the whole professionals and managers enjoy far more extensive work-family options – including paid leave, flexible hours, and so on – than their counterparts in clerical, service, sales and other low-wage jobs. Such highly-paid professionals and managers are also more able to afford the wide array of commodified services – from prepared meals to paid domestic labor and private child care – available on the open market, on which affluent families increasingly rely to reconcile the demands of work and family.

Elsewhere in the industrialized world, governments have long since established universal social benefits that support children and families and that were from the start intended to moderate class disparities. The growing popular concern about work-family “balance” and the recent groundswell of public support for paid family leave suggest the prospect that such policies might finally have a chance to take root in the U.S. But for that to occur, a key obstacle must be overcome, namely the anti-statist market fundamentalism that is hegemonic among employers, and that also influences the wider political culture.

Market Fundamentalism

Popular support for national family leave legislation has been on the rise in the U.S. since at least the 1980s. But even the comparatively minimal FMLA became law in the face of continual opposition from organized business interests, who effectively blocked its passage for many years. Earlier on, the business lobby had also strenuously opposed the PDA (Vogel 1993: 71), but they lost this battle in 1978. Passing such legislation became still more difficult in the period of conservative ascendancy that followed. Congress approved family and medical leave bills twice under the first President Bush, who vetoed the legislation both times. The issue was then debated in the 1992 election campaign, and a revised version of the legislation was passed by the new Congress in January 1993. A

month later, FMLA was signed into law by then-president Clinton – the very first bill he signed after taking office (Martin 2000, Bernstein 2001).

In the post-Clinton years, political momentum shifted to the state level. California passed the nation's first paid family leave law in 2002, and the program it established came into effect in mid-2004. In 2005, paid leave bills were introduced in 26 states (National Partnership for Women and Families 2005). One of them (in Washington State) was passed and signed into law in 2007 (although funds have not yet been appropriated to launch the program) and similar bills have come close to passage in a few other states as well, despite consistent business opposition. In 2007 two new pieces of federal legislation, both with bipartisan support, were introduced in Congress. The Family Leave Insurance Act of 2007 would provide up to eight weeks of partial wage replacement to FMLA-covered workers, and a proposed amendment to FMLA would extend the period of job-protected family leave from 12 weeks to 6 months for family members caring for returning veterans with serious injuries.

The best documented and indeed prototypical case in the history of political contestation over work-family policy in the U.S. is the seven-year campaign against FMLA, led by the national Chamber of Commerce and small business groups. Cathie Jo Martin (2000: 221-22) succinctly summarizes the arguments business made against the bill at the time:

Small business predicted dire economic impacts to companies from the high costs of hiring replacement workers... [and] also argued that the new benefit would constrict the creation of jobs and hurt female workers by motivating employers to discriminate against women in hiring... and reduce the flexibility with which managers and workers could negotiate compensation packages.

It was perfectly acceptable for companies to offer such benefits voluntarily (as indeed many already did), but organized business passionately opposed any employer “mandate” in this (or any other!) area. As Martin rendered the dominant business view: “Although parental and disability leaves are excellent employee benefits, Congress should not dictate benefits. Doing so is contrary to the voluntary, flexible and comprehensive benefits system that the private sector has developed.” (Martin 2000: 221) Similar arguments were advanced by business interests at the state level in response to proposals for paid family leave legislation (Koss 2003 documents this for the case of California).

The specific claims of negative effects on business from employer mandates are largely unsustainable (as discussed below), but this practical reality has yet to undercut the ideological framework that continues to dominate the business side of the policy debates. Indeed, market fundamentalism, or “the idea that society as a whole should be subordinated to a system of self-regulated markets” (Somers and Block 2005: 261) is the most salient political obstacle to the development of work-family policy in the 21st century U.S. It has been the central trope of organized business’ opposition to FMLA and subsequent legislative efforts to address work-family issues, and has increasingly penetrated the wider political culture as well. As Margaret Somers and Fred Block (2005: 282) argue, Anglo-American societies, with their Lockean legacy and

longstanding distrust of the state, have been particularly influenced by this ideology since the 1970s, and among these societies the U.S. is the most extreme case.

Business opposition to family leave legislation is part of a broader animus against “employer mandates,” which are routinely denounced as “job-killers.” This is a logical corollary of the broader ideology of market fundamentalism. With rare exceptions, employers consistently oppose – often on explicitly ideological grounds – virtually all labor and social legislation that would move the U.S. toward European-style family policies, including even minimum- and living-wage laws. The New Deal order (much less the corporate liberalism of a century ago) has entirely lost any legitimacy it once enjoyed among employers in the last few decades. In my own fieldwork I have even encountered managers who – blissfully ignorant of practices in the rest of the world – assert that the introduction of paid family leave in the U.S. would endanger the nation’s global competitiveness. For example, one California manager, aghast at the state’s new law, exclaimed, “That’s why we moved our call center to Ireland!” – apparently unaware that paid family leave had existed in Ireland for half a century.

Although this ideological consensus has virtually no defectors at the public, political level, many employers’ practical experience with FMLA and other work-family balance policies nevertheless appears to have been quite positive. Over a decade since FMLA’s passage, there is little evidence to support business’ earlier concerns that its enactment would be highly burdensome. On the contrary, managers on the ground report little difficulty in adhering to the law’s provisions. A 2000 U.S. Department of Labor employer survey found that nearly two-thirds (64%) of respondents found it “very easy” or “somewhat easy” to comply with FMLA, with even larger majorities (84% and 90%, respectively) reporting that the law had “no noticeable effect” or a “positive effect” on their productivity and profitability (U.S. Department of Labor 2001). Indeed, many employers expanded their own provision of family and medical leave benefits in the aftermath of the law’s passage (Ruhm 1997; Waldfogel 1999, 2001; Han & Waldfogel 2003), and administering such leaves is now a routine feature of the human resource management repertoire of many (though by no means all) large U.S. companies.

Field interviews with managers – to be sure, mostly in large, “family friendly” firms – echo the 2000 Department of Labor survey data in confirming that FMLA compliance has been unproblematic for most covered employers.⁸ “Back when we didn’t have it [FMLA], if you told me this is what I had to do, I think I would have shot myself,” one said. “But now that we do it on a day to day basis, it’s no big deal.” Many of these informants indicated that FMLA leaves related to pregnancy were especially easy to handle, since they could plan ahead to cover the work involved during an absence of predictable duration. In contrast, leaves tied to family medical crises took all concerned

⁸ Eileen Appelbaum and I conducted management interviews and site visits to a convenience sample of 19 establishments in California in 2003-04, and an additional 13 in New Jersey in 2005, on which I draw here. The samples included firms in a variety of industries, but most were medium-to-large companies; indeed all but four of the 32 were large enough to be covered by FMLA. For more details on the New Jersey cases, see Appelbaum and Milkman 2006.

by surprise, but most interviewees viewed such events as an unavoidable part of doing business, and effectively manageable under FMLA.

Most of those interviewed felt that the positive benefits of FMLA outweighed its negative aspects, and some were positively enthusiastic. “You always have perfunctory whining,” one human resource manager at a non-profit research firm told us. “But everyone has problems from time to time and we understand that employees need time off occasionally.” And a manager at a computer chip design company defended the decade-old federal law against ongoing criticism from colleagues in the business world, asserting that as far as productivity and profitability are concerned, FMLA was a “non-event.” “When we’re talking about bottom-line issues, I’ve never heard anyone say, ‘The real problem is FMLA.’ No one has ever said ‘The share price of our stock stinks, and if we could only repeal this leave law we’d be doing better.’”

Several managers suggested that the availability of FMLA leaves had improved organizational morale, as well as facilitating retention of valued employees. “The people who get the leaves appreciate it,” one manager at a large food processing firm asserted. “In the long term, we get better productivity, because employees feel they are supported by the company,” a computing engineering firm manager reported. “Overall, it helps with the morale.” And a manager at a large retailer (which offered paid time off only to the minority of its employees who were full-timers) noted, “Yes, people have the burden of picking up the slack for someone else on leave, but they also know that someone will do this for them if they need it.” Still another manager at an entertainment firm asserted, “Turnover would be much higher in the absence of FMLA leaves.”

In keeping with the pragmatic approach of these on-the-ground managers in “family-friendly” firms who recognize the positive features of FMLA and related policies, some work-family advocates have devoted a great deal of energy to advancing the “business case” for paid family leave and, more generally, for a “family-friendly” workplace. They point to the considerable costs associated with: (a) employee turnover, i.e. the cost of recruiting and training new workers to replace those who quit for family-related reasons; (b) absenteeism; and (c) lost productivity associated with employees who remain at work while preoccupied with the unmet needs of their families, or while trying to juggle caregiving with paid work (see Levin-Epstein 2006, Williams 2006).

Although systematic evidence on these matters is difficult to obtain, some leading high-road companies have done their own calculations and have concluded that generous work-family benefits can indeed offer large cost savings. Merck, for example, estimated that its own six-month parental leave policy saved \$12,000 per employee in turnover-related costs; similarly, Aetna reported saving \$2 million in hiring and training costs because 91% of its employees returned after taking family leave (Martin 2000: 157).

In some cases, employer recognition of such costs has led them to improve their own benefit packages – especially in cases where this could improve retention of female professionals and managers with firm-specific training and/or for whom recruitment costs are especially high (e.g. recently feminized professions like law and accounting,

or skilled occupational fields facing labor shortages, like nursing). It may well be the case that, as Williams (2006: 25-34) has so eloquently argued, even employers in low-wage, female-dominated sectors like retail or service industries – which rarely provide even health insurance or paid sick leave to their workers, much less paid family leave – would be economically better off if they devoted some degree of attention to work-family needs. But such low-road employers often appear to view high turnover positively, since it keeps the bulk of their payroll clustered at entry-level and makes it easy to adjust to market fluctuations (see Lambert 2007). And even in the case of managers and professionals in which firms have sunk extensive training investments and thus have a real interest in retaining, as Mary Blair-Loy (2003) has eloquently argued, ideology often trumps economic rationality.

The employers who do offer generous work-family benefits to their own employees nevertheless adamantly oppose legislative proposals that would *require* such provisions, standing in firm solidarity with the rest of the business community in opposing all legislative “mandates.” This is part of a broader commitment to market fundamentalism, and perhaps reflects concern that any concession to state intervention on one issue could become a slippery slope, legitimating state intervention on other fronts as well.

It follows that, as long as the ideology of market fundamentalism remains dominant (and that is likely to be the case for the foreseeable future, at least in the U.S.) efforts to appease business interests are not likely to be effective. The only hope of overcoming business opposition to paid family leave and other legislative proposals is to put forth a competing, morally compelling narrative that can prevail over the anti-statist narrative of the fundamentalists. Such a narrative must emphasize the human needs left unmet in the absence of comprehensive policies for work-family support. Only on that basis will it be possible to mobilize enough political support to secure the passage of state-sponsored paid family leave and related work-family legislation in the face of business objections.

Indeed, that is how advocates finally won passage of both FMLA (see Dark 1999: 166; Martin 2000; Bernstein 2001: 125-26) and the California law (see Labor Project for Working Families 2003). Both achievements, to be sure, were ultimately subject to political compromises and included major concessions to organized business’ demands, although the business lobby opposed them to the bitter end nevertheless. In both cases, organized labor (also anathema to most employers in the U.S. today and to market fundamentalists generally) did much of the political strategizing and lobbying to win passage of the legislation, in coalition with women’s rights groups and advocates for children, the elderly and the disabled.

An effective coalition of this sort is possible, in part, because of the widespread public perception that work-family pressures are at a crisis point. Polls show overwhelming popular support for such measures as paid sick days and paid family leave laws, the hegemony of market fundamentalism notwithstanding. In a 2003 survey of California adults, for example, 89% of non-college educated respondents supported paid family leave, compared to 82% of respondents with some college or higher levels of education

(Milkman and Appelbaum 2004: 53). The difference is statistically significant, but more surprising than the strong support among those who are least likely to have any access to employer-provided benefits is the high level of support among the more educated group, many of whom presumably have employer-provided benefits to draw on. This may reflect the fact that, in the absence of job security, even at the most “family-friendly” firms, managers and professionals often hesitate to take advantage of work-family benefits, fearing (with reason) that if they do so, they will be seen as lacking in career commitment (Fried 1998, Hochschild 1997, Glass 2004). Universal state-supported paid family leave programs would level the playing field in this respect, so that more privileged workers would benefit too, even if the bulk of the material benefits would go to those who currently lack any paid leave options at all.

Some advocates feared that the 2003 California recall election that removed Gray Davis from office and catapulted pro-business Arnold Schwarzenegger into the governor’s seat might lead to a rollback or some type of deleterious modification of the California paid family leave program, which took effect just before the recall. But this has not occurred, perhaps because paid leave enjoys such broad popular support, across the political spectrum and across class boundaries as well. As both this example and the widespread managerial complacency that set in shortly after FMLA became law well illustrate, once business opposition to legislation of this type is successfully overcome, employers tend to pragmatically accept defeat, make the necessary adjustments in their day-to-day practices, and move on. All the more reason for advocates to concentrate on struggling for state intervention, rather than seeking to persuade or placate organized business.

California’s Paid Family Leave Program

The short history of California’s paid family leave program, a key legislative success in the work-family area, is worth examining in a bit more detail. Although its provisions are minimal by European standards, it nonetheless represents a breakthrough in the U.S. context. The program is still too new to be definitively evaluated, but its political history is revealing, and some of its achievements and limits are already becoming evident.

When the California law was proposed in 2002, it faced intense opposition from the state’s business lobby, just as the PDA and FMLA had on the federal level in earlier years. The California Chamber of Commerce and other business groups vigorously opposed the proposed bill. Ignoring the accumulated evidence from the previous decade’s experience with FMLA, they argued that a paid family leave program would impose excessive burdens on employers, especially small businesses (Koss 2003).

Although organized business ultimately failed to block the bill’s passage, it did win modifications to the initial version of the legislation, from which the final version differed considerably.⁹ Nevertheless, on September 23, 2002, the nation’s first

⁹ Whereas the original bill had provided twelve weeks of paid leave, with costs evenly split between a tax on employers and one on employees, business won elimination of the employer tax. Ultimately employees alone were saddled with the full cost of the program, and the benefit was cut back to six weeks. Business

comprehensive paid family leave program was signed into law by California's then-governor Gray Davis, and benefits became available to most employed Californians starting on July 1, 2004. The program provides up to six weeks of partial pay for eligible employees who need time off from work to bond with a new child or to care for a seriously ill family member. It builds on California's longstanding state disability insurance (SDI) system, which for decades has provided income support for medical and pregnancy-related leaves. Like SDI, the paid family leave program is nearly universal in coverage: apart from some self-employed persons, virtually all private-sector employees are included. (Public-sector workers are only included if they opt in through the collective bargaining process, but most already have access to paid leave benefits more extensive than those provided by the new law.)

Unlike FMLA, then, California's paid family leave program covers all private-sector employees, regardless of the size of the organization they work for, including most part-time workers. (To be eligible, employees must have earned \$300 or more during any quarter in the "base period" five to seventeen months before filing a claim). The program is thus especially valuable for low-wage workers, many of them female, who have limited or no access to employer-sponsored benefits providing any type of paid time off.

Even before the passage of this new law in 2002, California provided more income support for family leave than most other states. Under SDI, nearly all pregnant women employed in the private sector, as well as some in the public sector, could already receive partial wage replacement for four weeks before delivery, and an additional six to eight weeks afterward.¹⁰ California's paid family leave builds on the SDI insurance model. As with SDI, there are no direct costs to employers: the benefit is funded entirely by an employee payroll tax (0.6% of wages). Eligible workers can receive, after a one-week waiting period, up to 55% of their normal weekly earnings with a maximum of \$882 per week in 2007 (the maximum is indexed to the state's average weekly wage) for up to six weeks a year.¹¹

pressure also led to an amendment providing that employers could require employees to use up to two weeks of paid vacation time before receiving the state paid family leave benefit. With these modifications, the California bill was passed by a legislature with a strong Democratic majority in August 2002, and signed into law by then-governor Davis the following month (Labor Project for Working Families 2003).

¹⁰ In addition, since the late 1970s, the California Fair Employment and Housing Act (FEHA) has guaranteed women who are disabled because of pregnancy, childbirth, or related conditions the right to up to four months of job-protected leave. The California Family Rights Act (CFRA), passed in 1991 (two years before FMLA), provided additional rights; it was amended in 1993 to conform to the federal FMLA. Used together, FEHA and CFRA permit a pregnant woman disabled by pregnancy to take up to four months' leave as well as an additional (unpaid but job-protected) leave for bonding with a new child extending beyond what the federal law provides, up to a total of four months. A 1999 amendment to the state's FEHA requires employers with five or more workers to provide reasonable accommodations to pregnant women. And a 1999 "kin care" law requires California employers who provide paid sick leave to allow workers to use up to half of it each year to care for sick family members (for more details see Milkman and Appelbaum 2004).

¹¹ These family leave benefit payments (unlike SDI benefits) have been deemed taxable by the U.S. Internal Revenue Service, a development that was not anticipated by those who crafted the legislation.

Eligible leaves include those for bonding with a new biological, adopted, or foster child; this benefit is available to fathers as well as mothers. For biological mothers, the new benefit supplements the pregnancy disability benefits previously available under SDI. Although it does not increase the amount of job-protected leave available to women who have given birth, paid family leave does provide six *additional* weeks of partial wage replacement. Also eligible are leaves to care for specified seriously ill family members (parents, children, spouses, or domestic partners). The law does not provide job protection, however, nor does it guarantee the continuation of health and/or pension benefits (although in many cases leave-takers have these additional protections under FMLA or other laws). Employers may require workers to take up to two weeks of unused vacation leave before collecting paid family leave benefits.

Among the specific concerns business lobbyists cited in explaining their opposition to California's paid family leave legislation was that employers would incur significant costs in covering the work of absent employees, in the form of increased overtime payouts, payments for temporary replacements, additional training costs, and so forth (Koss, 2003). Thus the ways in which employers covered the work of those on leave in the period prior to the new law's implementation are of interest. Our 2004 employer survey asked how the work of employees who went on family-related leaves for a week or more was covered. The most commonly reported method was to "assign the work temporarily to other employees." Fully 90% of employer respondents reported that this was the primary method they used to cover the work of nonexempt employees during family leaves, and the figure was only slightly lower (83%) for exempt employees.

While this suggests homogeneity in approaches to the problem, field interviews revealed a rich variety of arrangements for covering the work of employees during both brief and extended absences. Virtually all the establishments we visited had developed systematic, often ingenious methods for handling such situations. Making provision for covering the work of absent employees is a business necessity, entirely apart from family leave. Managers constantly face the possibility that an employee may quit precipitously, become seriously ill and unable to work, enter the military, take an extended vacation or unpaid leave, etc. Similarly, several informants mentioned that it was common for immigrant workers (who make up a substantial part of California's workforce) to make extended visits to their home countries – sometimes to care for an ill family member, but in other instances simply for a long visit. Under all these circumstances, many of which occur regularly and yet on an unpredictable basis, the work of absent employees needs to be covered. Thus virtually all employers have long since developed mechanisms for ensuring that work will be covered during employee absences. In many cases they are able to do so with little difficulty, although sometimes the costs (in overtime pay, or fees to temporary employment agencies) can be significant. Still, these costs are modest relative to those associated with employee turnover, which is both more frequent than leave-taking or absenteeism, and generally more expensive for employers to address.

The consensus among our management interviewees was that more workers will go on leave as a result of the new state program, and that such leaves would be somewhat

longer than in the past. “People will definitely take the full six weeks,” one manager at a construction-engineering firm stated. “Now, they only take what they can afford – less than six weeks in many cases.” A public utility company manager agreed: “Employees will take longer leaves since they will be able to combine the use of vacation pay with the new state benefit while their leave is job-protected [i.e. for the 12 weeks of job protection they have under FMLA]. Currently, they take less than the full amount since they typically do not have sufficient accumulated vacation and sick days.” Another manager at the corporate headquarters of a large food processing firm speculated: “It may become more legitimate for employees to take time off.” This informant also thought younger workers might be especially affected, since in his view their mentality is different from that of many older workers who view any absences from work as illegitimate. There were also predictions that male workers would take more time off than in the past. “More people will take advantage of this [law] and take more time off to bond with new babies,” an insurance company manager stated. “Men in particular!”

Other managers – particularly those at enterprises with large numbers of well-paid professionals who already enjoyed paid leave benefits prior to the passage of the new state law – suggested that the program’s impact would be modest. “People already take time off if they have a sick parent or child. They already take as much time as they can and that won’t change,” a law firm manager asserted. A manager at a biotechnology firm agreed: “Most employees here already have a way to take paid leave – using state DI, or paid vacation.” Similarly, at a computer engineering firm where most employees have high salaries and already enjoy extensive benefits, managers “don’t expect the new paid leave to make a big change at this company,” although managers there did expect that men would take advantage of the wage replacement for baby bonding leaves, and go on slightly longer leaves than before.

The California program, despite its limitations, is a promising effort to institutionalize paid family leave in the inhospitable political setting of the U.S., and one that many other states are already seeking to replicate. However, the practical impact of the California program has been constrained thus far by two interrelated factors: a lack of awareness of its existence on the part of large segments of the state’s population, on the one hand, and a low take-up rate in the initial phase of its implementation, on the other.

A survey conducted in fall 2003, about a year after the new law was passed, found that only 22% of adult Californians were aware of the paid family leave program’s existence (Milkman and Appelbaum, 2004). In a follow-up survey in the summer of 2005, the figure was a somewhat higher 30%, but still well below the same respondents’ awareness of FMLA, which was 59% in the initial 2003 survey and 57% in the 2005 follow-up. In a 2007 follow-up survey, the awareness level had actually fallen slightly (but the difference between 2005 and 2007 is not statistically significant).

Moreover, those most in need of paid leave – low-income workers, those with limited education, and the foreign-born – are disproportionately represented among those who are unaware of the new program. In 2007, only 14% of respondents with household incomes of \$25,000 or less were aware of the program, whereas 36% of those with

household incomes over \$75,000 knew of it. The program's potential as a social leveler cannot be realized if those who stand to benefit most remain unaware of its existence.

The business groups that opposed the California paid leave law warned that the costs of implementation might be higher than those the state had projected. However, to date the opposite has been the case, in part because the take-up rate for the new program has been so modest. In the program's first year (July 1, 2004 to June 30, 2005), a total of 176,000 claims were received by the state, representing just over 1% of the 13 million eligible workers. The following year the number of claims actually fell slightly, to 137,000. Most of the claims (just under 90%) were for bonding with a new child, and of these bonding claims, over 80% were submitted by women. Among the non-bonding claims (those for leaves devoted to caring for a close relative), 70% were submitted by women (California Employment Development Department, 2005). Only limited data are available on the take-up rate by income, but in general the profile of claimants by income seems to mirror the income distribution of the eligible workforce. The one exception is that workers earning \$12,000 or less a year – about 20% of those eligible, are underrepresented among paid family leave claimants, making up about 16%, perhaps because they are least likely to be aware of the program (Sheriff 2007: 7).

Over time, as public awareness grows, the take-up rate may rise, but the costs – which as we have already noted, are borne entirely by workers themselves – are likely to remain manageable. Because the events that precipitate eligibility for leave are spread over the life course, a relatively small proportion of the workforce will go on leave from work to care for new children or ill family members at any one point in time. Indeed, California employers surveyed in 2004 (just before the new law took effect) reported that in the previous year, on average, only 1.1% of their workers had taken a leave of more than one week due to childbirth or adoption, and just 1.8% had taken a leave of more than a week in order to stay home with a seriously ill child, parent, spouse or domestic partner.

Insofar as employers are able to coordinate their own benefits with the new state program, moreover, the more family-friendly firms actually may enjoy cost savings. As one manager predicted in an interview conducted shortly before the program went into effect, "Paid family leave in California was intended to help people who don't have any pay during maternity leave or medical leaves. But in fact the main beneficiaries will be higher-paid workers who already have paid sick leave and vacation and who will use the state program to top off their current benefits." This is confirmed by the fact that among the minority of adult Californians surveyed in 2007 who were already aware of the state program, 45% had learned about it from their employers; no other source of information was more frequently cited (though an equal proportion had learned about it from the mass media). If awareness of the program does not expand well beyond those workers whose employers are coordinating it with their own benefits, however, the new California law will do little to ameliorate the disparity between workers who already had access to paid leaves (via employer-sponsored benefits) and those who lacked such access.

Thus the reality of California's paid family leave program is far less problematic for employers than the business lobbyists initially claimed. Not only are excellent systems

already in place for covering the work of employees who are absent for extended periods, but the costs of those systems are modest, and counterbalanced by the savings associated with reduced turnover and absenteeism. Moreover, some employers are enjoying additional savings, if their employees use the state benefits instead of, or in tandem with, longstanding employer-financed benefits.

Conclusion

In the U.S., where market fundamentalism is a deeply entrenched feature of the political culture, organized business opposition to paid family leave and other legislative work-family “mandates” is likely to persist for the foreseeable future. This will be the case regardless of the practical, on-the-ground effects of such legislation, which might well be positive, as advocates of the “business case” maintain. Business resistance is rooted in a broader agenda of opposition to state regulation of all sorts, so that appeals to economic rationality – even if they are demonstrably correct – are unlikely to have much impact.

Rather than arguing within the terms set by the business frame, which is embedded in the larger market fundamentalist narrative, those who favor public policy interventions to create paid leave programs and other work-family supports would do well to focus on two interrelated tasks. The first is to develop a strategy to effectively surmount organized business’ lobbying efforts in the political arena, and the second is to advance an alternative moral narrative which reframes work-family issues in terms of human needs.

The strategic challenge is to build a coalition among labor unions, women’s rights groups, senior organizations, those representing the disabled, and children’s advocates – which collectively have the potential to exercise more political clout than the Chamber of Commerce and the rest of the business lobby. The legislative history of FMLA and the California paid family leave program both suggest that this is a viable path to victory. Organized labor, which despite sharp declines in union density still has considerable political influence (see Dark 1999) was particularly crucial in both these cases, and was further strengthened by its alliance with the other coalition partners. Both FMLA and the California program became law because broad political coalitions were able to mobilize enough support for campaigns that successfully shaped the legislative process and were strong enough politically to overcome the intransigent opposition of organized business.

As part of such an effort, claims that proposed legislative initiatives for paid family leave and the like will have dire economic consequences certainly can be countered by the arguments that have already been developed by advocates of the “business case.” Similarly, it is helpful to point out that decades of experience elsewhere show that government-mandated paid leave benefits far more generous than the ones now on offer in California are neither utopian nor incompatible with sustainable economic growth (as Gornick and Meyers have demonstrated in such compelling detail). Yet under no circumstances will business relent in its opposition as a result of such rational appeals. For an advocacy campaign to succeed, the defensive counterclaims must be coupled with an offensive strategy that frames the issue with an alternative moral narrative.

That alternative narrative should be focused on a straightforward insistence that paid family leave and other state-sponsored work-family policies deserve public support not on economic grounds (even if those too exist), but primarily because such policies meet urgent human needs. Those needs exist across class lines, even if they are especially pressing among the most disadvantaged populations. As noted above, polling data show overwhelming popular support for paid family leave programs, paid sick day legislation, and other work-family interventions, even among putatively conservative segments of the population. This popular support is rooted in the recognition that working families urgently need access to paid leaves and other types of family support, and that employers are not providing such access – especially not to those with the least ability to purchase substitute care in the marketplace.

The challenge, in short, is to outmaneuver the formidable business lobby politically. This is best accomplished not by engaging business on its own market-fundamentalist ideological terrain, but instead by appealing directly to the hearts and minds of the public with a moral narrative that focuses on the family-centered human needs of children, the seriously ill, and the elderly. Coupling such an alternative narrative with strategic coalition-building, as the recent success in California has shown, can be an extremely effective organizing approach. Winning work-family legislation in other states and perhaps even at the federal level on this basis is already within reach, even in the face of the nation’s longstanding anti-statist tradition. Among other positive benefits, such efforts promise to move the U.S. in the direction of greater gender egalitarianism as well.

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