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FAMILY POLICYMAKING IN THE US AND UK FROM 1960 to 2010: A  
COMPARATIVE ANALYSIS OF CIVIL SOCIETY AND LEGAL  
FRAMEWORKS FROM A FEMINIST PERSPECTIVE

by

Leah M. Persky

A Dissertation Submitted in

Partial Fulfillment of

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ABSTRACT  
FAMILY POLICYMAKING IN THE US AND UK FROM 1960 to 2010: A  
COMPARATIVE ANALYSIS OF CIVIL SOCIETY AND LEGAL  
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by

Leah M. Persky

The University of Wisconsin-Milwaukee, 2013  
Under the Supervision of Professor Natasha Borges Sugiyama

Why do countries have different family policy outcomes? This comparative analysis of maternity, paternity and family leave policies in the United States and United Kingdom traces the historical development of family policies from 1960-2010 in order to understand the trajectory of the gendered welfare state. The dissertation uncovers the impact that the social construction of gender has on family policy outcomes. I look to civil society activity and the legal framework for evidence of gender norms. Analysis draws on field research, interviews, archival sources and data collected from governmental and nongovernmental organizations. I suggest that the social construction of gender influences policymaking and helps to explain the path dependent development of family policies over time. With contrasting equality frameworks in each country established in the mid-1960s, I find that the policy trajectories are largely unchanged. Thus, there are limited opportunities for significantly altering the future development of family policies.

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To

John, my parents and grandparents, Andy, Pat, Lois, and of course Nora.

I could not have accomplished this without your continual support, love, and  
positivity.

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## Chapter 1: Introduction

Some of the most private aspects of life including marriage, childbirth, child-rearing, and the ways in which families balance care and employment responsibilities are managed and dictated by governmental policies and political activity. The way these policies are written sends direct and indirect messages to citizens about proper roles and identities for men and women, mothers and fathers. Public policies play an important role in defining gender norms and creating idealized visions of the roles that mothers and fathers should embody in both public and private spaces. These norms contribute to the way that individuals in society view the activities of child-rearing and home-making. Policies governing maternity, paternity, and parental leave have far-reaching influences such as impacting an individual's decisions about when and if to get married and have children. These policies also impact the connection that new parents, especially mothers have to stable and well-paid employment.

While policies that govern family benefits such as maternity, paternity and family leave influence both men and women, they most forcefully impact the life choices and opportunities of women (Vogel, 1993). It is most often women who are the primary caregivers of children, the elderly, and infirm. Women generally take on these caregiving roles even if they also work outside of the home (Wyn et al, 2003). Despite the fact that more fathers are taking on childcare and household responsibilities in the US, women still do twice the housework and three times the amount of childcare than men do. Women do more housework than men even if they are the primary breadwinner for the family (Belkin, 2010). In the UK women also do the majority of domestic and care-work (McVeigh, 2012). This occurs at least in part because of the power that social norms

exert, either directly or indirectly through public policies which are in place. Socially constructed gender identities create expectations which compel women to take on the bulk of domestic duties, regardless of their employment status. These social norms are embedded into many dimensions of public and private life and often exhibit considerable staying power. Once in place the social construction of gender norms are slow to change, although dynamism is possible (Munoz Boudet et al, 2012).

The social norms in place in the US encourage women to act like men if they want to be seen as successful by society (Crittenden, 2001, p. 29). Caregiving work is often taken for granted and rendered invisible by the structure of society (Crittenden, 2001). Further, the work is difficult, tiring and requires many varied skills. Crittenden (2001) asserts that not only is mother's work invisible but: ". . . it can become a handicap. Raising children may be the most important job in the world, but you can't put it on a resume. . . The devaluation of mothers' work permeates virtually every major institution. Not only is care giving not rewarded, it is penalized" (p. 3-4). The collection of governmental policies that govern pregnancy protection, recovery from childbirth, and care of infants reflects this cultural bias in the US and UK.

The effects of maternity and family leave policies are felt on multiple levels encompassing individual, family, community and national dimensions. The shape and scope of maternal and family leave policies vary markedly worldwide, from countries with no policies to others with expansive benefits for families. Surprisingly, high levels of economic development are not always associated with more expansive maternal and family leave policies (Haggard & Kaufman, 2008). Nor do cultural, religious or regional differences account for the diversity of policies across nations. For example, religion has

been the subject of a fair amount of research in terms of its impact on outcomes of the welfare state (Esping-Andersen & van Kersbergen, 1992; Stephens, 1979; Schmidt, 1980 and 1982; Wilensky, 1981). There continues to be a lack of consensus about just how religion impacts the welfare state (Manow & van Kersbergen, 2009). Countries that share many similarities in terms of their religion, history, political, economic and social arrangements often demonstrate considerable differences in their family and maternity leave policies. Two such similar countries with different family policy outcomes are the United States and the United Kingdom.

This research asks how and why the social welfare state in the last half of the 20<sup>th</sup> century has developed as it has in two economically advanced democracies: the United States and the United Kingdom. Specifically, I am interested in understanding the development of employment protections for pregnant women and new mothers, maternity, paternity and family leave in these two countries. For simplicity's sake I call this collection of benefits and regulations *family policies*. How can we understand the development of family policies since 1960 in these two cases? What are the most important factors that can account for the differences in family policies? This research is primarily informed by scholarship in feminist legal studies, civil society activity, and comparative studies of welfare states.

I suggest that seemingly small differences in how gender norms are constructed and operate in society greatly shape the nature and scope of family policies. I look to two sources for evidence of gender norms. The first is the legal framework in each nation. This includes an investigation of the relevant laws, their timing and language, and the decisions of landmark high court cases which are pertinent to family policies. I draw on

comparative legal studies, particularly feminist legal theory to demonstrate that since the 1960s these two nations have operated on significantly different frameworks: the US leans towards a liberal feminist framework and the UK espouses a cultural or difference feminist framework (O'Conner, Orloff & Shaver, 1999). I will also demonstrate that prior to the 1960s both countries operated under the cultural or difference feminist framework. While the US retains vestiges of the cultural framework in some policy arenas, the liberal framework is the dominant value system in place today. On the other hand, UK continues to operate under the culture feminist framework.

The second place I will turn to demonstrate gender norms, is civil society activity. I assert that the activity of relevant groups in society generally reinforces the dominant set of gender norms in place. Civil society activity is carried out by diverse actors. These include small grassroots groups, well-funded national organizations, think tanks, and unions. These groups often have the goal of changing some aspect of the current set of family policies and they operate within or in reaction to the dominant gender norms in place where they exist.

### **Analytical Puzzle**

The United Kingdom and the United States have an affinity with each other in terms of their shared culture, history, language and religion. They are also both advanced industrial economies, have strong service economies, and have a comparable proportion of women in the workforce. In both countries women make up approximately 50 percent of the overall workforce (US Department of Labor, 2009; Office of National Statistics, 2009). Since 1960 these two nations have experienced many similar inputs of the family policy landscape. Each has had similar inputs—including events such as the women's

movement, continually increasing rates of women in the workforce, shared common law legal tradition, highly developed service industries, and welfare states often characterized as minimal and market-driven. Further, these countries have experienced similar economic conditions including recessions in the 1980s and significant economic growth in the early part of this century and during the late 1990s. The political parties in each nation have also tended to rise and fall with each other; the two most notable examples are the strength of the conservatives in the 1980s and the strength of the center-left parties in the 1990s.

Scholars have noted that the UK and the US have a shared history regarding family policy, both in terms of how it has evolved and what it provides (Kammerman & Kahn, 1997; Gornick & Meyers, 2003; Esping-Anderson, 1990). These two countries are often classified as the same type of welfare state in terms of the structure, approach and extent of their liberal welfare systems. Kammerman and Kahn (1997) note that neither country has ever had an explicit, national or complete set of policies pertaining to family policy. Both tend to rely on implicit policies and tend to take a reluctant and hands off approach to this policy arena (p. 9). Despite all of the commonalities and parallels between the two countries, the family policy outcomes of the welfare state of each country are not as similar as one would expect. It is the differences, not the similarities in the arena of family policy that are immediately apparent. Despite these similar inputs and the commonalities between the countries, they exhibit very different family policy outcomes. This research explores potential explanations for these variations.

A brief overview of the maternal and family leave policies of each country will demonstrate just how different they are. The United States does not guarantee paid time

off for maternal and family leave. Federal legislation, the Family and Medical Leave Act of 1993 (FMLA), is utilized as *de facto* maternity leave. While many women use this policy as maternity leave, FMLA may also be utilized by men and for a variety of other reasons. In addition to being used for the birth or adoption of a child, FMLA can also be used to care for immediate family members in times of sickness. An individual may also take advantage this policy if she is ill and cannot be at work for an extended period of time. FMLA is mandated by the federal government and is applicable only to businesses with 50 employees or more. This legislation provides full-time employees with 12 weeks of **unpaid** leave with job protection (US Department of Labor, 2009). The FMLA has assisted millions of Americans since its inception in 1993, but it provides coverage to only about 60 percent of all US citizens (AFLCIO, 2010). FMLA benefits are only available to about 46 percent of all working women (Fass, 2009, p. 5). The US is one of only four countries in the entire world that do not provide paid universal maternity leave. The other nations which do not offer universal paid leave for new mothers are Cuba, Mali, Mongolia and Chad (Finnigan, 2012).

The United Kingdom provides new mothers with between 26-52 weeks of mostly **paid** maternity leave depending on the length of time spent at the women's current employer. There are several policies in this arena and all mothers are covered in some manner. Wage replacement depends on previous work experience and pay. Between four policies-- Statutory Maternity Pay, Maternity Allowance, Statutory Paternity Pay and Paternity Leave-- all individuals including fathers are given the opportunity to take time off upon the birth or adoption of a child. The government also provides additional opportunities for unpaid leave, through parental leave provisions which are available to

both men and women (Direct Government UK, 2009). See Table One for a broad comparison of the policies of each country.

What can account for the different family policy outcomes in these similar cases? I assert that the way gender is defined, constructed and operates in each case is quite different and can help to explain differential policy outcomes. Gender as a construct operates in the legal system, within the structure and culture of the government, and is constantly reinforced through civil society activity and public policies. Looking to these gendered structures and relationships will help to explain why the family policy outcomes in each case are so dissimilar.

**Table One: Maternal and Family Leave Legislation in the UK and US as of 2010**

<b>Country</b>	<b>Universal entitlement to maternity leave</b>	<b>Length of time</b>	<b>Paid maternity leave</b>	<b>Paternity leave</b>	<b>Paid paternity leave</b>
<b>USA</b>	No. Family and Medical Leave Act applicable only to organizations with more than 50 employees ( <i>De Facto</i> maternity/family leave).	Up to 12 weeks	Federally no. Five states plus Puerto Rico have some paid leave benefits generally through short-term disability insurance	New fathers are covered under FMLA as long as they meet the employment requirements.	No, unless provided by employer (very rare).
<b>UK</b>	Yes. Maternity Allowance and Statutory Maternity and Adoption Pay cover all new mothers.	Between 39-52 weeks	Yes, for at least 39 weeks. Payment varies based on wage and employment history.	Yes, Up to two weeks paid available through Statutory Paternity Pay.	Yes (2009), partial wage replacement up to 90% of weekly pay or a flat rate-whichever is less. 13 + weeks with no pay.

## Clarifying the Terms

### Gender

Gender exerts important influences on both the inputs and outputs of the welfare state. But what does the term gender mean? I explicitly realize that the roles, behaviors, activities and attributes of men and women in society are created by society at large, including governmental activity and legislation (Glover & Kaplan, 2000; Butler, 1999; Beauvoir, 1989; Lorber, 2005). For my purposes here, gender refers not to biological difference or sex, but to the ways in which societies and cultures create acceptable identities for men and women. I acknowledge that governments play a key role in constructing the appropriate masculine and feminine roles in the family and the workforce (Lewis, 1992). More broadly speaking, gender structures the social order as it places people into two distinct categories: men and women. These categories are so powerful because through various means society encourages members of each group to act differently. Each gender group has its own set of expectations and rules of behavior and the groups are treated differently in society (Lorber, 2005, p. 531). Governments are an important part of this relationship because they send direct and indirect messages about gender identities and norms through policies which shape behavior and frame issues and problems (Kingdon, 1984; Stone, 1997; Gornick & Meyers 2003). For example, governments provide incentives which encourage women and men to enter certain professions, policies that define and outlaw sexual discrimination in the workplace, policies that regulate *acceptable and unacceptable* marital unions, incentives for individuals to marry for tax purposes, and enforce electoral laws such as quotas for women in elected office to meet social ends. These are just several examples of how



governments' impact and influence gender identities and relations and construct ideals of family life. These gendered policies impact behavior in real terms. Further, gender constructions and the social processes which support them vary across time and space. Lastly, gender as a concept is important on multiple levels-- as an identity, as a source of agency and because it plays a crucial role in structuring relationships (Skocpol, 1992, p. 38).

There is nothing natural or given about how concepts such as gender, race or ethnicity are defined. Social problems and target populations of policies are powerful because they often become unquestioned and accepted by society as given and natural or scientific categories. These assumptions often become so hegemonic that they operate unconsciously within society and government (Schneider & Ingram, 1997), or as Lorber 2005 asserts, much of the power behind gender constructions is their invisibility (p. 532). Due to the often unconscious operation of gender norms in society citizens are not often able to question or compare these definitions, or suggest alternates. These definitions are such powerful constructs that they become unconsciously reproduced over time and dramatic change becomes more difficult. Key elements of past policy designs relating to gender and family concerns are usually reproduced over time by the prevailing institutional, cultural and societal relationships (Lorber, 2005). Once established, definitions and policies can become so embedded they become difficult to change leading to path dependent development (Schneider & Ingram, 1993; Yanow, 2007; Pierson, 2000). Therefore policy design and policymaking reflect the values and norms of the society within which they exist. They also structure how large portions of the population relate and participate with their government.

## **The Welfare State**

Orloff (1996) uses a sufficiently broad yet parsimonious definition. A welfare state is: “a state committed to modifying the play of social or market forces in order to achieve greater equality” (p. 53). Since the policy arena makes use of different terms and definitions regarding policies and the groups eligible for governmental protections, it is necessary to clarify three types of leave programs that are typical in most welfare states and are the focus of this research. Maternity leave is leave granted only to mothers around the time of childbirth. This type of leave varies significantly (in time and wage replacement levels) by country. The goal of maternity leave is to allow new and expecting mothers time to prepare for childbirth, heal, and bond with the new addition to their family for a limited amount of time. Paternity leave is available in some contexts and is granted only to new fathers around the birth or adoption of a child; this type of leave also varies in length and wage replacement levels. Paternity leave is a fairly recent policy development in most nations with Scandinavian and northern European countries being some of the first to implement paternity leave in the mid-1990s. These policies encourage or in some cases mandate new fathers to take time off. Paternity leave has the potential to influence the gendered distribution of care work, help to reduce economic instability within the family, and it can reduce imbalances in employment by gender. There is also a surprising amount of variation on the scope of this type of leave. Family leave is a broad term which has been utilized to promote gender equity, and it applies to a fairly wide range of activities which pertain to care work provided by family members. Family leave can be taken in a consecutive manner or it can be taken in increments in order to attend to irregular family concerns (Gornick & Meyers, 2003). In countries like

the United States, the broad category of family leave includes medical leave. Medical leave is time an employee can take off to care for herself or a sick family member; the amount and nature of medical leave also varies by nation. The goal of family or parental leave is to offer some protections for an employee who might otherwise be forced to quit or be fired in the event that she needs to take time off of work to attend to the birth or adoption of her child. Family leave policies offer job protection for both men and women and do not necessarily ensure the full or partial replacement of wage. Family leave is different from maternity leave for several reasons: it is available to both men and women, it is generally longer than maternity leave and it is often taken after maternity and paternity leave.

### **Research Design**

This historical comparative policy analysis traces the developments of family policies in two cases since 1960. I will follow the development of family policies and demonstrate how the changes to policies over time are influenced by the social construction of gender norms and identities. Evidence of gender norms will be investigated in the legal activity, and civil society organizing. The dissertation is organized chronologically into three time periods, which will be outlined below

Data is derived from 45 targeted interviews (29 in US 16 in UK) collected in 2010- 2011 and from analysis of historical data. This research engages in theory and hypotheses building by observing the patterns of events and causal mechanisms at work over time. Because there are so few studies in political science that establish causation or provide clear links between gender norms and policy outcomes of the welfare state, theory and hypotheses building is sorely needed. Generating theories and hypothesis to

test will advance understanding about the ways that the social construction of gender influences policy outcomes and vice-versa. The hypotheses resulting from this research can be tested in the future with other similar cases such as Australia, Canada, and New Zealand. The concluding chapter will provide an in depth discussion of the hypothesis derived from this research.

### **Relevance and Contributions**

Maternal and family leave policies greatly impact individuals and their life choices. An individual's ability to access leave for pregnancy and care-giving impacts her quality of life, work-life balance, and ability to care for her family. More generous family policies increase an individual's ability to contribute to the economy, and to take an active role in political activity and civil society (Williams, 2000). Additionally, family policies impact the health and opportunities of future generations of citizens. Recent research has found that poor early childhood development and slow early brain development is connected with the absence or diminished attention of parents—many of whom spent a majority of their time fulfilling responsibilities outside of the home, often out of necessity (Gornick & Meyers, 2003, p. 2).

These far-reaching policies also impact governmental and economic operation. They impact the national economy and productivity by shaping the relationships citizens, primarily women have to stable employment (Belkin, 2011; Human Rights Watch, 2011). Historically, women in industrialized countries have had weak ties to formal employment and limited opportunity for advancement due to socially constructed norms and identities which were informed by the ideal of the male breadwinner and female caretaker (Lewis, 1993). Williams (2000) asserts that the gender system of domesticity is a hallmark of the

US and it also accurately describes the UK (Lewis, 1993). Domesticity is a gender system which is entrenched in society and structures the market, employment opportunities, and also informs politics and policies. Domesticity is based on the male breadwinner/ female caregiver norm. This dominant social construction negatively impacts women because it will most impact the mother's ability to work outside of the home. Some have asserted that the decision to have a child is the worst economic decision that a woman can make (S. Scanlan, personal communication, 2010). These norms have relegated women, especially pregnant women and mothers of young children to the home and to employment which is conducive to caring for small children. These generally part-time positions were and continue to be low-paid, they also lack stability. This employment pattern is a byproduct of the male breadwinner model which has been in place in both nations since the Industrial Revolution when men started to work outside of the home (Lewis, 1992).

Despite that fact that many women in the US and UK believe they have achieved equality with men in most all facets of life, females are still marginalized from employment, educational, and political opportunities. This has much to do with the fact that women are viewed as and often expected to be the primary caretakers of families.

Comprehensive maternal and family leave policies are therefore more than simply women's issues or generous benefits offered by advanced welfare states. Rather, they are an essential aspect of any system of national productivity (Daly, 2009; Esping-Andersen, 2002; Orloff, 1993). This issue has become even more critical as more women enter the workforce and support their families, often as heads of households. The tensions between work and family responsibilities have become more acute for many parents as the number

of women in the workforce has increased since the 1970s (Gornick & Meyers, 2003, p. 2). Many parents are overburdened by the responsibilities of home and work life. On the most human level, maternal and family leave policies shape the quality of life and the economic well-being of billions of people worldwide.

In addition to empirical considerations, the evolution of maternal and family leave policies generates fundamental theoretical questions for political scientists. Exactly how gender is incorporated into leave policies is a political, social, and economic concern with far-reaching implications. The complex relationships in this arena are potentially hard to specify, conceptualize, and model. Understanding the creation of leave policies and the influences which they have is a fairly new undertaking for political scientists. This is in part because the guarantee of maternity, paternity, and family leave is a fairly recent policy development. Politicians, policymakers, social scientists, bureaucrats and citizens are still working out how these complex policies work in theory and in practice. Social scientists are attempting to specify the relationship between gendered concerns and the policymaking process (Annesley & Gains, 2007).

There is a significant amount of research on comparative welfare state studies, there is significantly less political science research focused on uncovering the impact that gender has on outcomes of the welfare state. My research will demonstrate that the social construction of gender identities and norms is a crucial part of understanding outcomes in areas of policymaking such as: family leave issues, child care, retirement benefits, and tax benefits. Trying to explain policy outcomes in these arenas is not possible without attention to how gender norms and identities function in the specific time and place being investigated.

### **Where Are the Families in Political Science?**

While a significant body of work is being conducted on gendered dimensions of politics and elections in political science, there is significantly less focus on the impact gender has on policy outcomes. This research will help build awareness of the important and often taken for granted relationship between policymaking and gender. Political science as a discipline still struggles to incorporate attention to gender in a meaningful way (Lovenduski, 1998). I hope to advance research beyond the attempts of many in political science to simply, “Add women and stir.” (Sapiro, 1995, p. 67). By addressing gendered dimensions as both the inputs and outputs of the political system it is my goal to incorporate meaningful and accurate understandings of the impact gender constructs have on family policy outcomes. Scholars cannot convincingly explain policy outcomes of the welfare state without paying attention to the way gender is defined and the way it operates in society. Further, there is a danger in assuming gender is defined in the same way across time and space, even in countries that appear to be similar in other regards. Careful attention and specification of the construction of gender norms can help to explain the outcomes of family policymaking.

### **Outline of the Dissertation**

Chapter 2 presents the main theoretical argument and reasoning of this project and outlines how the construction of gender impacts family policymaking. I first situate this research within the foundations of the comparative politics literature. I then outline how this research is informed by the work of feminist legal scholars and scholars of civil society activity. I highlight why it is necessary to specifically define gender norms and track how they change over time in order to understand family policy outcomes. This

chapter asserts that the social construction of gender norms is specific to time and place and determines or frames the realm of possible policy outcomes.

Chapter 3 presents the research methodology, including a discussion of the field research and historical analysis techniques. I provide the theoretical and practical reasoning behind these choices and a discussion of the methods used. Chapters 4 through 6 are organized by historical development over time. I break up the 50 years this research covers into three distinct time frames. 1960-1975 is the **Foundational** time period where early policies and normative constructions of gender identities set the stage for future policy development. During this time the foundational family policies are put in place. These early policies inform the future development of the family policy landscape in each country. During this time period the US shifts away from a framework which focused on providing special protections for women. The US begins to embrace a new idea of equality based in gender equality and neutrality. The passage of the Civil Rights Act of 1964 marks this change in the United States. The UK continues to develop policies which reflect its commitment to providing new mothers with special protections.

The next chapter covers 1975- 1995, this is a period of **Path Dependent Development** of gender norms and principles of gender equity in legislation, high court case outcomes and civil society activity. Both the US and UK passed numerous family policies which further reinforced their unique policy trajectories. The policy changes and relevant activities between 1975 and 1995 demonstrate the path dependent development of the foundational aspects of family policy which were established in the earlier period.

Chapter 6 covers 1996-2010, I call this time period **Path Dependency and the Opportunities for Change**. This phase is marked by few incremental changes in the



United States. The lack of change in this period in the US demonstrates the continued persistence of gender norms based on ideas of complete equality between men and women. In the UK this period is marked by numerous changes to the family policy landscape and new opportunities for policy change. By this time the UK has numerous policies in place which provide new mothers with time off and varying levels of wage replacement. The policies introduced between 1996 and 2010 do not challenge the mother-focused policies, rather they introduce new types of policies based on either gender-neutrality or on providing fathers with time off to care for a new child. These co-exist with the long-held views and policies which provide new mothers with significant amounts of time and (in some cases) wage-replacement. Both internal pressures from civil society organizing and external pressures from the European Union are behind the changes to the family policy landscape in the UK. I conclude in chapter 7 by discussing the main findings of the research, and presenting the hypothesis and theories which can be tested in the future.

## **Chapter Two: Theoretical Background**

The purpose of this research is to investigate why the set of family leave policies in the US and UK are so different from each other. Specifically I seek to highlight how the social construction of gender influences the outcomes of family policymaking. In order to determine the influence that gender construction has on policymaking I turn to two sources for evidence: the way the legal system defines and treats gender and how civil society activity reinforces and in some instances reshapes gender norms. To carry out this research it is necessary to complete a critical review of relevant literature.

This chapter explores three areas of literature; each provides important insights into the theoretical rationale of this dissertation. Taken together they provide the foundation for my theoretical framework which is discussed at the end of this chapter. I first review the relevant literature of welfare state research in comparative politics. This part of the literature review focuses on the ways that gender has been incorporated into welfare state research and situates this study as a product of past political science scholarship.

I next provide an overview of feminist legal theory. This aspect of the literature review will demonstrate how and why past legal activity and decision-making has real consequences for how society constructs gender and defines proper roles and identities for men and women, fathers and mothers. I draw on feminist legal theory because it highlights how social values and norms around gender are reflected in legal activity. In any given nation the legal framework influences behavior, policymaking, and reflects the dominant value systems in place. As part of the critical analysis of feminist legal theory I will differentiate between two types of feminism: liberal and cultural or difference

feminism. These broad categories allow me to classify the nations as having either a liberal or cultural feminist influence. I discuss how these two types of feminism operate in each country, and how dynamic these two categories are.

The final arena of literature I review details the role civil society plays in this policymaking arena. I outline how civil society activity is framed by the normative construction of gender in place in each country. Civil society groups take on and accept these social constructs and their activity takes place within the defined boundaries.

The last section of the chapter highlights my theoretical framework. I describe the ways I innovate on the theories discussed, namely by incorporating attention to the social construction of gender into a policy evolution framework. Most explicitly gender-conscious research on the welfare state pertains either to a single case (Skocpol, 1993; Josephson, 1997; Haney, 2002), or is theoretical in nature (Orloff, 1996; Pierson, 2000a; Esping-Andersen, 2002). There are few examples of research which incorporate gender into a comparative and historical analysis (see Pedersen, 1995). Previous welfare state research has also tended to focus on actors, institutional processes, and political routines rather than legal frameworks or the influence of normative concerns (Skocpol, 1992; Weir, Orloff & Skocpol, 1988; Pierson, 1993; March & Olsen 1989; Banting, 1987). Comparative studies which acknowledge gender as both an important influence on and output of the welfare state and which pertain to recent historical developments are rare (Orloff, 1993).

My research will fill an important gap in the current scholarship of the welfare state because it incorporates gendered concerns as both inputs and outputs of policymaking and includes analysis on the influence legal frameworks may have on

policymaking. From a methodological standpoint my use of two cases, investigated over fifty years provides a rich source of data. This study is also directly relatable to current scholarly debates and is applicable to the real life challenges women and families face in the US and UK.

### **Gender in Welfare State Research**

Within political science there is a significant body of research which focuses on the interaction between welfare states and policymaking. This realm of scholarship grew during the 1970s when welfare states around the world became more robust, complex, required more financial expenditures by the state, and permeated increasing arenas of everyday life (Myles & Quadagno, 2002, p. 34-35). It was not until the late 1980s that political scientists turned their attention to how gender issues might factor into welfare state outcomes, mostly in the form of single-case studies (Sainsbury, 1996). At this time the dominant literature, including comparative welfare state studies, tended to ignore the roles and influence of women within society and politics and generally overlooked how gender constructs might figure into the equation. Pierson (2000) asserts that gender-related outcomes of the welfare state appear to be linked to systems of social provision, but traditional research has rendered these outcomes almost invisible (p. 800).

Since the late 1980s scholars have developed convincing theoretical arguments that gender matters to studies of the welfare state and state policies do influence gender relations and behaviors (Orloff, 1993, p. 307). Important insights have been made regarding how gender and gendered behaviors impact policymaking in welfare regimes (Koven & Michel, 1993; O'Connor, Orloff & Shaver, 1999; Huber & Stephens, 2001). Around this time scholars also brought attention to the gendered nature of social rights

and responsibilities (Korpi, 1983 and 2000; Esping-Andersen, 1990; Shaver, 1990); uncovered previously overlooked inputs and unintended consequences of the policymaking process (Skocpol, 1992; Pierson, 1996); focused on the political activity of women (Pedersen, 1993; Skocpol, 1992; Jensen, 1986); and explored how the welfare state reproduces gender hierarchies (Orloff, 1993; Esping-Andersen, 1996). The significant amount of research on gender and the welfare state allowed scholars to ask fundamentally different types of questions about the welfare state and to focus on the interplay of gender, the state, and policy outcomes.

The newly developed research agenda focusing on gender and the welfare state created a break with much previous research in this arena (Pierson, 2000a). Scholars created a space for a new type of inquiry with their persuasive theoretical arguments and empirical evidence. Researchers in this arena tackle complex questions and do not make assumptions about the origin of policies or definitions. They also tend to ask fundamentally different type of questions. Today there is an extensive body of literature on the welfare state in political science, but still the relationship between policymaking and gender norms remains under-theorized (Pierson, 2000a; Orloff, 1996; Esping-Anderson, 2002). Despite all of the accomplishments of scholars studying the welfare state from a gendered perspective, mainstream research on the welfare state in political science has been slow to incorporate a gendered lens. This neglect may lead to problems of inaccuracy of major terms, problems of specification, and general omission of important concepts and actors. All of these problems may lead to misguided efforts at theory-building.

Scholars interested in the relationship between gendered dimensions of the

welfare state and policymaking have argued for a reconceptualization of this area of research to capture more complexity, and include a more diverse set of actors. Lewis (1992) argues that studies of the welfare state must also include careful attention to the household, in addition to the market and state categories. The household broadly includes caretaking activities including childcare, eldercare, cooking, cleaning and essentially caring for the well-being of the individuals within the home. This often invisible, private and under-valued work has not been acknowledged to be influences by or to exert important influences on welfare state outcomes in the traditional literature. Scholars working to understand gendered dimensions have advanced our understanding of the welfare state by bringing attention to the ways that primarily women's work is treated and valued within the household and society more broadly (Orloff, 1993; Vogel, 1993; Williams, 2000; Josephson, 1997; Esping-Andersen 2002). To date, the empirical evidence has demonstrated strong connections between care work and larger economic, political, and employment concerns.

Despite these advancements there remains a dearth of comparative and empirical studies pertaining to gender and welfare state outcomes. Specifically research should focus on specifying the relationship between gender norms, political activity and outcomes of the welfare state. Much work remains, in part because the interactions between the variables in these complex relationships are hard to isolate and measure. The data requirements are extensive and a historical lens is often required. This means that research is time-consuming and pertains to only a small number of cases. Also, taking a specifically feminist or gendered lens is not something most political scientists are trained to do. It requires a different theoretical framework and acquiring a new type of

knowledge. Importantly, this study is an example of gendered research on the welfare state that is designed to generate relevant theories and hypotheses which can be tested in the future as a way to accumulate knowledge in this developing arena of research. This will help to specify the complex connections between gender and policymaking in welfare states.

Much work within comparative politics which examines the relationship between gender and the welfare state has been theoretical in nature (Orloff, 1996; Pierson, 2000a). Scholars such as Orloff (1993, 1996) have made compelling arguments that gender matters and that studies of welfare state outcomes are not complete without attention to the ways in which gender influences and in turn is influenced by policies of the welfare state. Any investigation of the social construction of gender and the welfare state must include attention to how the state, market, and household interact. Because women do the majority of all care work their social status and opportunities cannot be captured or understood by looking at state and market variables alone. While this increases the complexity of the relationship and expands the scope of data required for research, the theoretical reasons validate going to these lengths. This review highlights the relevant work in political science and situates in order to situate this research in the previous scholarship. I next turn to a discussion of specific works on gender and the welfare state.

Jensen's (1986) work is an example of one of the earliest pieces of empirical scholarship which acknowledges the give and take relationship between the social construction of gender and the welfare state policies. Jensen incorporates explicit attention to how the factors of market, state, and household interact. Her comparison of the reproductive policies of Britain and France demonstrates how the outcomes of these

policies were the product of a multitude of factors including the different social constructions about motherhood and women in place in each nation. Jensen's analysis highlights the complexity inherent in the relationship between gendered dimensions and welfare state outcomes. She asserts that the policies and gender norms in Britain encouraged women to participate primarily in household activity while being dependent on their husbands' connections to paid work outside of the home. This male-breadwinner model which was so prominent in the UK was much less developed in France. This in part can explain why policies in France developed to support working mothers. Working mothers in France were treated as individual citizens and workers. In contrast, mothers and married women in the UK were treated by default, as the ward and responsibility of their husbands. Jensen's attention to gender norms as both influencing and influenced by welfare state policies allowed her to explain the different policy outcomes in these two countries. This research is an excellent example of the more holistic research agenda that I embrace in my own research as it is able to capture the ways in which states, in different locations, can and do reproduce the social construction of gender over time.

Skocpol (1992) also makes explicit connections between the welfare state and gendered relationships. She attempts to understand why the US failed to adopt a European style social welfare state in the early to mid-1900s. She concludes idea that the construction of gender norms and identities in society and government played a major part in the shape of the US welfare state. Similarly to Jensen she asserts that gender relations and identities were not simply a footnote but rather were a factor with significant influences on politics in early America (1992, p. x). Pederson (1993) also intentionally incorporates gender into her study of origins of the welfare state in Britain



and France. Her historical analysis focuses on the origins and early development of welfare states with a clear focus on the interaction between state, market and household factors. Skocpol, Jensen, and Pedersen highlight how and why the social construction of gender matters for policymaking over time.

Both Pederson and Skocpol focus on the activity of women's groups and demonstrate that the outcomes of welfare state policies are the product of complex factors which include the political and social activity of women's groups. An important contribution these authors make is their assertion that the political activity of women often has real but often overlooked consequences on policymaking. Further, both note that countries which exhibit higher levels of feminist or women's civil society activity are not always the ones that have the most expansive or generous welfare state policies for women. Skocpol specifically innovates by being one of the first scholars to explicitly focus on the political activity of women as having important policy implications. She finds that despite many failures, women's groups in the US had real and lasting consequences on the policy outcomes of welfare states. Early civil society activity by women helped to create some of the earliest welfare programs for widows and veterans of the Civil War. Skocpol's innovative work highlights the importance of women's civil society activity and situates both civil society activity and policy making in welfare states in a path dependent process.

Skocpol's (1992) careful historical analysis of the early welfare state development of the US is insightful and was one of the first major works in political science to draw attention to the connection between welfare state development and the social construction of gender. Skocpol's incorporation of a gendered lens is one of the most interesting and

innovative aspects to her research and is what sets her polity-centered approach apart from other scholars who also embrace an institutional perspective. The author asserts that gender is a crucial dimension of the policymaking process. For Skocpol, gender is an influential force, but its impact may be exerted in subtle or indirect ways that are outside some of the most visible and often studied aspects of politics. From her analysis it seems that Skocpol is asserting that gender dynamics must be incorporated into any analytic lens, but the impact of gender is mediated by other forces, notably political institutions. Much of the book is devoted to uncovering the work and impact of women's associations, the position of women in the political system, important women leaders, and the dominant gender constructs at the time. Research on these variables informs Skocpol's assertion that the U.S. had a decidedly maternalist focus to the social policies that were enacted during this time period.

Skocpol's distinction between maternalist and paternalist welfare states is innovative, catchy and also slightly problematic. She asserts that the US welfare state started from a very different place compared to the origins of welfare states of many other industrialized countries. This is so because the US never subscribed to the paternalist or male breadwinner model which was so dominant in Europe. Paternalist policies are focused on working men and they : “. . . Attempt(ed) to shore up the working conditions of all workers in ways that reinforced male trade unions, and attempted to channel public benefits to women and children through male wage-earning capacities” (p. 34). Not only does the author assert paternalist policies were primarily devised by men and for men, she notes that these policies stand in stark contrast with maternalist policies which were devised by and for women, served a broader group of women and were not

exclusively connected with the male-headed household. Skocpol notes that both maternalist and paternalist policies are only variations within the larger patriarchal model which it seems both the U.S. and western European countries fall within.

The clear distinction she draws between these policy types appears arbitrary and I question how different these policy categories actually are from each other if they are each simply: “. . . Policy variations within patriarchy”(p. 35). The reason why the distinction seems arbitrary is that while many policies for mothers in the US may have been originally designed and influenced by women, it seems that the strength of traditional gender constructs of the time, the dearth of women in political leadership positions, and the often negative and unintended outcomes of these maternalist policies did nothing to help further the social, economic and political functioning of women in US society. While it does seem that women were successful at influencing the shape of policies during this time and that many policies did indeed benefit worthy mothers, she notes that the U.S. never was able to achieve a truly maternalist state. If the US never achieved this ideal type of welfare state and still existed within a clearly patriarchal system, is it accurate to think of the origins of social policy in the U.S. as maternalist? The terms also are slightly misleading because it appears that maternalist policies despite their name do little for furthering the position of women in society. The author could have taken a more precise view of gender aspects to policymaking processes by creating a more nuanced policy typology, by focusing on more than just the activities of middle and upper class women, and by exploring the many aspects of intersectionality that exist within the broad construct of gender interests.

Unlike Skocpol, I find that the US and UK looked quite similar to each other in

regards to the types of policies targeted at women as mothers and employees prior to 1960. Most policies focused on providing some sort of special treatment or protection to mediate the effects of public life and work on women's primary duty of being wives and mothers. Many early policies in the US and UK can be classified as based in difference feminism as will be discussed below. Skocpol's assertion that the US never fully embraced a male-breadwinner model does seem problematic in light of the evidence collected here. I acknowledge the innovation and influence of Skocpol's seminal work and I add to it by including comparative leverage and by bringing a different and I believe more precise way of understanding gendered influences on the development of welfare state policies.

Classification schemes are also dominant within the comparative politics literature on welfare states. These schemes have helped to order our thinking and research about welfare states and policy outcomes, often without attention to the ways that gender may influence classifying welfare states (Esping-Andersen, 2002). Feminist scholars have responded to the lack of attention to gendered concerns in classification schemes by asserting that the previous schemes have rendered women and much of their work as invisible and therefore inconsequential to larger political and social concerns (Orloff, 1993; Sainsbury, 1996 & 1999; Lewis, 1992; Pedersen, 1993). As a response to the lack of attention paid to gender by most researchers working on classifying welfare states, scholars interested in gender, have worked to test the accuracy of Esping-Andersen's dominant scheme (O'Connor et al, 1999) and to broaden his original classification scheme to be inclusive of other aspects which speak to position of women in society and their tendency to be involved in care work (Esping-Andersen 1996; Lewis, 1998; Fraser,

1994; Gornick & Meyers, 2003).

Examples of work responding to the mainstream welfare state typology with a specifically gendered approach is O'Connor, Orloff and Shaver (1999) and Sainsbury (1996). These authors analyze gender relationships and social policy outcomes within nations classified as similar using Esping- Andersen's classification system. O'Conner et al (1999) investigate how similar the Liberal nations are in terms of their conceptualization of gender norms and social policy outcomes. They are interested in seeing if the Liberal category of welfare regimes holds up once attention to gender and social provision for women and mothers is incorporated. The authors determine that there is an essential quality of liberalism in all of these nations. Liberalism is marked by the separation of private and public dimensions of life, an emphasis on individual responsibility, and a shared belief in the equality or sameness of men and women.

O'Conner et al (1999) find that aside from these important yet quite blatant similarities, there are also important distinctions and differences between Liberal regimes. They assert that these differences cannot be ignored because they tell us important things about how gender as a construct operates in society and how it influences policy outcomes. They also note that each nation exhibits differing levels of dependence on the market for provision of services. Most importantly for my research they acknowledge that the social construction of gender is important as an influence on welfare state policies. The authors bring awareness to the fact that gender as a construct is also influenced by policies of the welfare state.

Sainsbury (1996) and O'Conner et al (1999) find that the general classification schemes are still fairly accurate when gendered concerns are incorporated. But they both

note there are important distinctions between similar countries that should not be ignored. If there are important differences between similar countries, than how meaningful are the classification schemes? Both Sainsbury (1996) and O'Conner et al (1999) find that the impact the liberal regime has on women is based on its stated gender-neutrality in law and policy. But I will demonstrate with this research that it is questionable, at least in the realm of family policy, that the UK has traditionally adhered to this so-called gender-neutrality in policy. I find that the collection of family policies in the UK reflects an adherence to the male bread-winner model which treats men and women according to much different standards. This is much different than the classification of the UK as a country that adheres to gender- neutrality in policymaking.

Classification schemes of welfare states have started to incorporate and acknowledge gender in innovative ways. But, the classification schemes do not speak to the possibility of change occurring over time. They lack the ability to capture dynamism, evolution of policy, or to capture changes in the ways gender operates in society. This is problematic because much research on welfare states is historical and tries to understand early development and change over time. Within the current schemes being used, even those that incorporate gender, there is not much room for regime types to change or to move from one category to another. Dynamism becomes hard to capture and measure which can be problematic because the social construction of gender can and does shift over time in meaningful ways based on political, economic, and social influences.

Another problem with the use of dominant classification schemes has to do with accuracy. The most dominant schemes usually rely on three distinct types of welfare states (Esping-Andersen, 1990 & 1996; Kammerman & Kahn, 1997; O'Connor et al;

1999). I question if this is accurate as the ways that gender is incorporated into welfare states is complex and may necessitate more than just three general types. The way gender is constructed and enforced over time and how gender is incorporated into welfare state matters and may require increased differentiation in any classification scheme used to accurately describe it. Another problem relating to accuracy remains because there are many nations classified as the same regime type. But, one type of regime can actually contain a great deal of diversity within it. This can lead to many different types of policies and very different treatment of citizens in similar countries. If there is a significant amount of diversity within the dominant categories then it may be time to question the applicability of them. It may be that different types of classification schemes are needed to accurately incorporate gendered elements of welfare states.

This discussion of how gender has been incorporated into welfare state research in political science serves to situate this study as a product of past scholarship. Specifically, I am influenced by the work of scholars who are searching for meaningful ways to incorporate the social construction of gender as a meaningful and complex influence on the policy outcomes of welfare states. To capture the influences of the gendered concerns on policymaking I take a broader view for understanding the ways that the social construction of gender influences policy outcomes. For example, I include attention to legal activity and civil society organizing as a way to capture multiple complex influences on policymaking. Without such a broad view it would be difficult to capture the ways that social norms around gender influence policy outcomes. I also respond to the previous scholarship on classification schemes in welfare states through my research design. Similarly to O'Connor et al (1999) I use a similar systems approach which takes

two countries that are classified by scholars as Liberal Welfare Regimes (Esping-Andersen 1990; Kammerman and Kahn, 1997). I acknowledge the many shared aspects that the welfare states in each country have in common. In doing so I am also looking to uncover important and possibly overlooked differences in the social construction of gender in these two similar countries.

### **Path Dependency, Policy Feedback, and Critical Junctures**

Welfare state scholars have developed a significant body of work which explores policy change or evolution over time by using the punctuated equilibrium model and acknowledging that once created, policies tend to get locked in and continue to reinforce themselves over time in a path-dependent manner (Pierson, 2000 and 2004; True, Jones & Baumgartner, 1999). Path dependency highlights how policies develop over time. Policies often experience relative stability and generally change only incrementally over time. But, major policy changes can and do occur when a major governmental, societal, or cultural shift occurs allowing for major changes to occur, generally in a fairly short amount of time. These opportunities for radical change, called critical junctures are rare, hard to predict, and are often the result of exogenous occurrences. Critical junctures are defined as brief phases where institutional change occurs. These changes often have lasting impacts that influence the future development of the issue being researched (Capoccia & Keleman, 2007). The changes that occur during critical junctures also close off certain possibilities for future development, framing and limiting future development in self-reinforcing ways. Critical junctures are an important aspect for explaining change in historical research which seeks to understand change over time. Changes occurring during critical junctures can create a break with the past and create a starting point for



path dependent development (Pierson, 2011). Critical junctures are marked by changes in the policy landscape and corresponding changes in society. These moments can tell us important things about how and why policies change over time. Breaking away from the current path then becomes possible only if some critical juncture occurrences which allows for a change in trajectory of the policy (Collier & Collier, 1991). As Pierson (2011) notes, once a policy gets locked in, it becomes hard to break away from. These models of understanding the development of welfare states over time embrace the idea that history matters and specifically the order of history matters. This means that any understanding of current or future policies must be based in an analysis of what has come before. These ways of understanding outcomes of the welfare state are an excellent way of capturing change over time in a small number of cases.

Much research has been conducted on welfare states taking a path dependent approach (Skocpol, 1992; Pierson, 1994, 1996; Esping-Andersen, 1990; Steinmo, 1996; Huber & Stephens, 2001; Maioni, 1998). Scholars embrace the idea that the past developments constrain and outline future developments, specifically policies and institutional forces become locked-in in a way that is reinforcing over time. Many historical institutionalists embrace path dependency as a theoretical underpinning of their research meaning that they are interested in understanding the reproduction of institutions, including policies over time by exploring a specific sequence of events from the past. They hope that this type of research will uncover causal mechanisms at work regarding how institutional actors become reproduced over time.

Historical institutionalists tend to focus on state structures and institutions broadly speaking, not on the actors themselves. Social and cultural aspects can all be considered

types of institutions, especially within the *new* institutionalist research agenda, but scholars have tended to focus on more tangible institutions including formal rules of behavior codified into law, state structures, bureaucracies, and policies. To historical institutionalists the sequences of events matter greatly as do the fairly rare points in time that offer a point of departure or a critical juncture from the stasis which is generally present within any given institution or policy realm. Critical junctures offer a chance for change, a break from the past, they can also help to reinforce or cement an evolutionary path. This means that at critical junctures there is a chance for change but there is also an opportunity for policy feedback, or the reinforcement of a given path, which done again and again over time makes it next to impossible to break away from the current path and begin on a new one. It is also hard to predict if change will occur and if it does, in what direction. By taking a comparative and historical approach which focuses on the sequences of events over time I am able to identify critical junctures and explore what impact they might have.

Most scholars of the welfare state lack an explicit embrace of gender as key source of change and influence on outcomes overtime. Evidence of changing gender norms in legal activity and civil society activity can be captured well by a path dependent approach. My research specifically draws attention to gender as a social construct, one that has important and not well-specified influences on policy outcomes of the welfare state. There is a theoretical imperative to incorporate gender into welfare state research and a significant amount of progress has been made utilizing a path-dependent approach. It seems logical to marry these two frameworks together to create a powerful theoretical underpinning for understanding welfare state outcomes. Any attempt to understand

gendered outcomes of welfare states necessitates the use of a gendered lens over time. Even policies which on the surface do not seem to deal with gender are actually the product of long-standing social, cultural, and political forces and shape the ways that citizens behave, and conceptualize gender norms.

### **Feminist Legal Theory**

Both the US and UK are considered liberal welfare regimes, but important differences become evident when one looks to how the welfare regime of each country handles social provisions for women and mothers, important differences become evident. O'Conner, Orloff and Shaver (1999) find that there is significant meaningful variation within the Liberal typology. Liberalism as an ideology or typology functions differently in each nation. But just what are the differences and how do they impact family policy? In order to understand the meaningful differences within the liberal type I turn to the legal framework and legal history. Differential social values and norms are reflected in the legal record and in the unique set of social policy provisions for women and children in each country. Examining the legal framework is necessary in order to capture dominant gender norms and their change over time. Much of the work on the welfare state comes from a comparative politics background and does not incorporate attention to these essential clues about the normative construction of gender. If one argues that the social construction of gender influences policy outcomes, attention to legal history and cases which set precedent on gender matters is part of the foundation to any complete analysis.

Legal frameworks reflect the dominant social norms and identities that exist in a specific time and place. The legal system of a nation reflects the interests, values, and

goals of the dominant group of society (Edelman, 2008). On the broadest level, the values of society are evident in the legal framework. Said another way, social values and norms are reflected in public policy and legal framework (Friedman, 2006, p. 17). Investigation of legal history, including the outcome of landmark cases, the language used to write relevant laws, and the information presented to courts is an excellent source for evidence of the social values of a society. Friedman et al (2007) write that controversial cases which set precedent: “. . . Hold up a mirror to society. They are dramas -- stage presentations -- which present society's norms and values in vivid, living form for argument, and debate” (p. 95). Through studying legal history I will find evidence of fluctuating definitions of gender norms, changing values, identities, and behaviors. Investigation of legal history can capture how the social construction of gender changes over time.

The law also matters as a site of ideological and political struggle (Smart, 1989). The outcomes of legal battles can then be seen as a reflection of the values of the dominant group. In many instances new policies and laws shape the landscape of values and norms in society. A feminist analysis of law and history acknowledges that the categories and norms which inform lawmaking and gender identity do not exist in a vacuum and cannot be taken as natural or given (Boisseau & Thomas, 2010; Chamallas, 1999). Legal scholars interested in the interplay between social norms and the law, also support the idea that the law reflects established societal values and norms (Dworkin, 1978 & 1976; Sustain, 1996). Further laws are the product of social institutions, all of which are gendered (Connell, 1987; Clement & Myles 1994; O'Conner et al, 1999). Some legal scholars are also are interested in how public policies and the outcomes of

legal battles change social norms (Posner, 2000). The goal of this research is to bring attention to the ways that the social construction of gender can influence policymaking in welfare states. I embrace the idea that the norms inform policy and law-making. In turn, policies and laws have the potential to change norms in a way that supports a path dependent approach. Norms and policies can build upon each other gaining strength and eventually becoming embedding in institutional frameworks. Most importantly I acknowledge that dominant social norms are reflected in legal history. They are capable of capturing the dominant norms at a specific place and time.

Feminist legal scholars argue that gender is important to our everyday lives and the law can and should be crafted in a way which will empower women, create a level playing field between men and women, and address the long history of male dominance (Chamallas, 1999). Feminist legal theory is critical of the legal status quo, acknowledges that women are in a position subordinate to men. Feminist legal scholars also find that laws and institutions are generally based on the male experience, and they embrace the idea that the law plays a crucial role in determining power relations between men and women, and defining the experiences of women (Dalton, 1987; Cohen, 1995; Cain, 1991). A historical investigation of the legal history is an excellent source to turn to for evidence of how women's status, identity and opportunity changes over time and place.

Both the US and UK have roots in the common law legal system which protected married women under the law of coverture. This meant that: “. . .A woman was covered legally by her husband and thus relieved of rights to property, wages, child custody, or suffrage” (Boisseau & Thomas, 2010, p. 3). The system of coverture made all wives non-entities who could not even sign a legal contract. Husbands became guardians and were

responsible for all actions, including criminal actions, of their wives. Today the system of coverture seems archaic and extreme, but it influenced the treatment of women for hundreds of years in both the UK and US.

Coverture lessened in legal importance and once women received the legal right to vote in the early 1900s it no longer held legal sway, but still influenced social norms and behavior (Williams, 1994). As recently as the early 1970s women in the US could be exempted from prosecution for criminal behavior if they could prove that their husband encouraged them to act in an unlawful way (Time Magazine, 1972). Despite the similar roots in coverture and Common law, today the US and UK exhibit two distinct frameworks regarding normative gender constructions. These different frameworks have significant influences on family policy outcomes. Today the US primarily employs a liberal feminist framework and the UK is influenced by a cultural feminist framework. Liberal feminists share much with sameness feminism. Sameness feminism seeks to: “. . . Highlight the ways in which women can be seen as the same as men, entitled to the same rights, protections, and privileges” (Burchard, 2009). On the other hand, difference or cultural feminism suggests that the essential differences between women and men are meaningful and must be taken into account in order to craft appropriate and equitable policy and law<sup>1</sup>. Difference feminists assert that the significant biological, character, and personality differences between men and women have to be acknowledged by the law in order to serve justice and equality (Burchard, 2009). They believe in certain essential qualities of women, such as women are more peaceful, kinder, and are excellent caregivers and mothers. Difference feminists suggest that by celebrating and rewarding

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<sup>1</sup> I use the terms difference and cultural feminism interchangeably because they are both referring to the same idea: that the essential qualities of women should be celebrated and protected in order to achieve equality in all aspects of social, political, and economic life.

the typical feminine qualities and supporting women in their unique biological roles, equity is possible.

Liberal and difference feminism are two branches of feminism which legal scholars use to understand and classify the world (Chamallas, 1999; Boisseau & Thomas, 2011). These different branches of feminist legal theorizing each identify different legal mechanisms as the cause of subordination of women. Each outlines different changes needed to create equality between the genders and end discrimination against women (Boisseau & Thomas, 2011, p. 19). The two branches of legal feminist theory I draw on are liberal and difference feminism. Below I define the terms and explore why the US is classified as liberal and the UK is classified as cultural.

### **Liberal Feminism in the US**

Gender norms in the US today are based on tenets of liberal feminism. Another way to say this is that the US embraces a commitment to treating men and women exactly the same. This is especially evident in areas of law that relate to family leave and employment law. This assertion has been made by scholars who study how gender influences policymaking and politics (Josephson, 1997; O'Conner, Orloff & Shaver, 1999; Banaszak, 1996). This has also been noted by legal scholars (Chamallas, 2003) and others interested in studying women's rights and the tensions between motherhood and employment rights for women (Williams, 2000; Butler, 1999, Crittenden, 2001).

A look back into the not so distant past reveals a US commitment to difference feminism; this is evident in laws which provided special protections for women going back hundreds of years. Evidence of difference feminism is also present in laws which limited the civic rights and responsibilities of women because of their roles as mothers

and wives. Looking back 100 years, the social construction of gender in the US and UK was quite similar, evidence of this can be seen in similar laws that treated women as a separate from men, in need of protections for a variety of reasons, and legally inferior to their male counterparts.

The US's adherence to liberal feminist values is fairly recent. I argue that this shift occurred slowly in the mid-1960s. By 1964 when the Civil Rights Act passed the policy trajectory towards Liberal feminism was cemented, starting the US along a new path for family policymaking. The social unrest and political process that led to the passage of the 1964 Civil Rights Act created a break in the development that had been followed so far. With this new legislation the legal framework around treatment of women in most all public parts of life, including employment, was forever changed.

The welfare state in the US promotes independence between the household and the market and encourages individuals to provide for the needs of their own family. The US is often defined as the most liberal of all Liberal regimes (O'Conner et al, 1999). Liberalism in the US means policies and employers must treat all genders exactly the same. Stated another way, men and women are treated the same, generally as gender-neutral workers with access to the same set of policies pertaining to family needs. Liberal feminism is based on individual opportunity and focuses on women's ability to demonstrate their similarity to men through their actions and choices. Liberal feminists also work to refute the false notion that women are by their very nature, *less than* men. The development of the second wave of the women's movement in the US in the 1960s was based on tenets of liberal feminism which were prominent and espoused by the civil rights movement (Davis, 1999).



Liberal feminists assert that the subordination of women and minorities more broadly speaking is based in legal structures and gender norms in society. In order to overcome the subordination of women in society liberal feminists argue that there must be a focus on equality of opportunity. They separate themselves from the idea that women require special protections based on their unique social and biological attributes. . The fact that women and men have different biological functions is not considered important. The fact that women are mothers is not thought to be an important indicator of ability, difference or opportunity (Chamallas, 1999, p. 16-17; Tong, 2009; Jager, 1983).

Gender- neutral wording in legislation is a hallmark of the liberal feminist legal tradition. While equality of opportunity is the focus, there is not much attention paid to the outcomes of this 'level playing field.' Women and other marginalized groups in society are treated legally as equals to the idealized white male. A tension inherent in this legal framework is that it does not take into account important social and biological differences between the sexes including: care-taking responsibilities, time needed away from public work for pregnancy/child birth, inability to work or perform well in traditional full-time jobs, and the ability to afford necessary higher education and other opportunities (Baker & Van-Doorne- Huiskes, 1999).

### **Difference Feminism in the UK**

The UK is classified as Liberal regime by scholars of the welfare state (see Esping-Andersen, 1990). But, the manner women are treated by the welfare state as both mothers and workers looks very different from how women are treated by similar policies in the US. Distinctions are evident in the arena of family policy and related employment law. In the UK, gender definitions are based on tenets of difference feminism which

promote distinct identities for men and women (O'Conner et al, 1999). The differences between men and women are acknowledged and often celebrated (Gilligan, 1982; Kaminer, 1990).

Adherence to the foundations of difference feminism is evidenced by the British dependence on the male breadwinner model for social policy (Lewis 1992; Pedersen 1993; Jensen 1986). In this ideal model the strengths of men and women balance each other. In its purest form the place for women is in the home as the family caretaker. This arrangement means that most wives and mothers are financially dependent on the full employment of their breadwinning husband. In recent years the ideal model has experienced many changes and a majority of women in the UK now work outside of the home, at least on a part-time basis. As of 2007, 44 percent of all working women worked on a part-time basis, compared with just 10 percent of men working part-time (Leapman, 2007). Some suggest it more accurate to call the UK a 1.5 male breadwinner model (J. Rouse, personal communication, 2011). Despite the fact that it no longer accurately describes society, the male breadwinner model is still a dominant value which influences the shape of social policies, behavior, and the overall number of women in the workforce (O'Conner, Orloff & Shaver, 1999, p.7).

Difference or cultural feminism developed from radical feminism and its focus on validating the essential female essence or nature (West, 1988; Gilligan, 1982). It validates and promotes female experiences and qualities such as the emotional and intuitive side of knowledge, empathy, caring, and nurturing (Chamallas, 2003). Cultural feminism also acknowledges and highlights the differences between the sexes and idealized gender roles. Cultural feminists tend to focus on the role and value of women as mothers and on

the act of mothering (Lewis, 1984, p.105). This is a key difference between cultural and liberal feminism. A goal of cultural feminism is transforming society by including women's experience and voices in the dominant patriarchal social framework and revaluing feminine traits (Kaminer, 1990). Cultural feminists hope that by focusing on and valuing the voices and experiences of women they can create a more equitable society which is capable of equally valuing the essential traits of both men and women (Gilligan, 1982). This brand of feminism does not require a rejection of traditional gender roles, but takes issue with how women and feminine traits have been undervalued in much of society (Kaminer, 1990).

Policies which are informed by tenets of cultural feminism tend to offer specialized policies targeted at men and women; fathers and mothers. Sex specific legislation is thought to be more humane and speak to the real differences between men and women. Targeted and narrowly written policies do provide a different set of benefits to men and women, mothers and fathers. From this perspective, gender-neutral policies which do not acknowledge important social and biological differences between the genders would be considered inappropriate, impractical and in some cases inhumane. A focus on equity rather than equality is a hallmark of this perspective.

This review highlights important distinctions between two branches of legal feminist analysis: liberal and cultural feminism. I have demonstrated with relevant evidence from scholars that the US is today most aligned with tenets of liberal feminism and the UK most closely aligned with tenets of cultural or difference feminism. The discussion of the important distinctions between these two similar countries will be further supported in the empirical sections of the research. For now it is important to lay

the groundwork regarding how the legal frameworks compare to each other and why this has important ramifications on social policy outcomes. Further evidence discussed in chapters 4-6 will demonstrate how the US has shifted away from its roots in cultural feminism to an embrace of liberal feminism since 1960.

Making distinctions between the different feminist legal foundations in these two countries is a useful way to organize the nuanced and complex differences that exist between them. While it is valid to make distinctions between the countries it is important to note that in different policy realms the nations do not necessarily adhere to these frameworks and it is possible to find example of policies which may not reflect the legal frameworks as I have outlined. For example, in some policy realms the US still does demonstrate its roots in cultural feminism. Vestiges of cultural feminism can be seen in policy realms such as child custody law, laws that govern military service, and in some cases laws regulating jury service. The UK is also slowly shifting away from its dependence on the male breadwinner model and is making moves towards more gender-neutral family leave policies. Overall, it is theoretically valid to make these distinctions between the feminist frameworks. It is important to keep in mind that these are not black and white distinctions and the categories are dynamic.

Feminists in both countries continue to disagree about which type of feminist model is best able to provide women with relevant policies which will support them in efforts to reach equality with men in education, employment, earning capacity, and care-giving responsibilities (Vogel, 1993, p. 5). These disagreements have created fragmentation within civil society and the women's movement in both countries. It is not my intention to make this a normative discussion about which type of legal framework is

best able to create true equality in society. I believe it is important to bring up these sources of disagreement and to acknowledge that seemingly small differences in definitions and legal frameworks can lead to significant differences in family policy outcomes and how women are treated in society. I next turn to a discussion of the last theoretical foundation of this paper: civil society.

### **Civil Society**

What exactly is civil society? I define civil society as encompassing all of the organizations and associations that exist outside of state structures where people are organized to advance some common interest. To be more specific I draw on a definition presented by Selznick (2002) who outlines that civil society is "... the largely self-generating and self-regulating world of private groups and institutions – family, business, advocacy, sports, locality, religion, ethnicity" (p. 44). Civil society groups exist outside of the realms of government or market structures and represent points all along the political spectrum. The definition I use intentionally encompasses activity that occurs in the private sphere, which includes organizing within the structures of the household and family. Cohen and Arato (1992) highlight the role of the intimate sphere, especially the family, as one of the major components of civil society (p. ix).

Civil society groups are able to influence public policy independently of political parties through their ability to organize citizens along diverse lines, conduct independent research, disseminate their research to the public and politicians, capture media attention and provide valuable research to courts in relevant cases. The power of civil society is in its social power and networks of people (WHO, 2002, p. 4). Through its power of norm creation and regulation and its networks, civil society can impact policy outcomes and

governmental activity (Putnam et al, 1994).

Much research in political science has been conducted on the impact that civil society has on democracy in both new and established democracies (Putnam, 1994; Gellner, 1994; Berman, 1997; Linz & Stepan, 1996; O'Donnell, Schmitter & Whitehead, 1986). In advanced democracies such as the US and UK, civil society is able to attract participation from many more citizens than strictly political activity does. Data suggests that 82 percent of Americans belong to at least one voluntary association (World Values Survey, 1990-91). In the UK approximately 58 percent of all citizens are members of at least one civil society organization as of 2004. These numbers did not change much from their 1990 levels (Dekker & Van den broek, 1998, p. 6). Carothers (1999) asserts that many in the West view civil society as a means of social renewal that exists outside of the often stagnant political party system.

Scholars studying policymaking from the advocacy coalition framework also note that policymaking processes and the related civil society activity need to be explored over time, generally at least ten years, to get a feel for the types of actors, their goals, and tactics (Sabatier, 1988 and 1998; Jenkins-Smith & Sabatier, 1994 and 1999; Schlager, 1995). With such a long-term view scholars can better understand the ways that policymaking in specific arenas occurs, in large part due to civil society activity. Sabatier and Jenkins-Smith (1999) note that exploring policymaking in this ways allows one to encompass the multi-layered belief and value-systems embraced by groups, these include such values as gender constructs and beliefs about proper roles for men and women in society (also see Sabatier & Weible, 2007).

Exploring civil society in this way also allows researchers to better-understand

how and why many deeply held values are resistant to change but have the potential to be dynamic. Change can and does occur through learning and technological advances over time, understanding change in civil society activity becomes possible with this framework. While the groups of activated individuals involved in civil society groups which work to promote family concerns is not large, the ways they encompass gender norms and social constructions relating to family concerns makes it possible to capture changes in broader social norms that do occur over time. Scholars using the Advocacy Coalition Framework assert that policies are translations of belief systems (Sabatier & Jenkins-Smith, 1993). Changes in policies or the trajectories of policies reflect a change in some level of belief system within the coalition, and in many instances within the broader social environment as well.

Despite the fact scholars and media outlets lament that the number of Americans active in civil society has declined significantly since WWII (Putnam, 1994), today many more citizens are involved in civil activity of various forms than turn out to vote in elections or are registered members of political parties (Dekker & van den broek, 1998). Putnam's assertion that Americans are disengaged from political and civil life has also received criticism based on the fact that an expanded definition of civil society is needed and there are a variety of new ways to participate in civil society that may not be visible to the public (Schudson, 1996). Much civic participation today occurs on-line through emailed newsletters and calls to action, petitions and awareness campaigns. All of these avenues can have a real impact on political activity and policy outcomes but may not be immediately apparent to the outside observer.

Civic groups often engage in debates and disagreements about societal and

political issues. Civil society includes diverse groups including labor unions, grassroots organizations, professional associations, business organizations, sports clubs, neighborhood associations, faith-based groups, women's rights organizations, religious groups, family and community groups, and it encompasses the broad array of interest groups that exist within society.

### **Civil Society and Gender Norms**

Scholars interested in exploring how women's movements influence governmental activity and policy outcomes relevant to women and families have recently turned to the language of civil society (Howell, 2007). Feminist scholars have not historically connected with the body of literature on civil society because civil society was often viewed as part of the public realm, which often marginalized women. The public realm is often conceptualized as dominated by men and marked by the patriarchal structure of society. The needs and goals of women and their families within civil society research have been marginalized and not fully-acknowledged (Pateman, 1990; Okin, 1991). The public/private dichotomy that is so dominant within research on civil society is the idea that women are traditionally part of the private realm of the household and the family and are thus not viewed as a major part of civil society activity because it occurs in the public realm (Williams, 1996). The traditional view of civil society as a man's world is inaccurate and misses the many ways that women organize to influence politics and society more broadly.

It is not logical to think that the traditionally conceived private realm of the family is isolated from the happenings of the state and the market. Even in contexts, such as the US, where many conceive of family issues as private and not appropriate for regulation



by the state, much of the 'private' realm is regulated by governmental policies. For example, there are laws that govern the rules of marriage and divorce, child custody, care for young children, retirement, and policies that set specific guidelines for time off after childbirth, illness or other care- giving responsibilities. It is also not accurate to say that there is a clear delineation between the private and public realms, or that the sphere of household or family is not influenced by activity in the spheres of the state or the market. Feminist scholars are right to make the connections between the traditional civil society literature and feminist analysis of governmental activity, social movements and policy analysis.

The majority of civil society research tends to suffer from gender blindness (Howell, 2007, p. 417). This gender blindness is concerning because social and political organizing by and for women is one of the primary ways that women continue to bring awareness to issues of gender inequality, discrimination, and how women influence social policy outcomes. The lack of attention to gender awareness and civil society is also concerning because the idea that the family, as part of the private realm, is free from state intervention or intrusion, is simply not true. Williams reflects this idea in her assertion that: "The institution of the family is at least as much a product of state regulation as of individual choice" (Williams, 1996, p. 421).

Much of the feminist scholarship making direct connections to civil society literature is historical in nature. It sets the context for political activity by and for women. This research is often connected to research on social movements and policy outcomes (Skocpol, 1992; Koven & Michel, 1993; Beckwith, 2000; Baldez, 2002). Historical context is important as it helps to bring understanding to social policy outcomes,

dominant social constructs, and brings attention to the different ways that citizens can impact policy outcomes. Taking a historical perspective on civil society activity by and for women helps reveal how the construction of gender identities change over time, and how connected the social construction of gender is to policy outcomes.

Civil society provides a crucial link between the arenas of state, market and household or family and is itself a socially constructed and gendered term. As Howell (2007) highlights:

In feminist theory the placing of civil society within the public coupled with the primacy of the public versus private analytic axis has led to the engendering processes in civil society becoming lost from view. Given that the socially constructed public versus private divide has given rise to a field of enquiry around women and the state, both theoretical and empirical, there is no logical reason why feminist political theorists should not also interrogate civil society as a socially constructed site of gendered relations (p. 419).

Bridging the gap between the public and private in the research arenas of civil society and feminist analysis will help to bring a discussion of the family and gender roles and identities more clearly into view. Also, acknowledging the power dynamics and structure of civil society activity and how this may benefit some and hinder others is a crucial part of research on civil society. This aspect of civil society is often neglected in mainstream political science research. This research project uses the language of civil society as a way to understand how organizing by and for women and families often reinforces dominant gender norms that exist, and how under the right circumstances well-organized and well-positioned groups can influence policy outcomes. The realms of state, market and household/family are dynamic and interconnected concepts which cannot be explored in a vacuum. The separation between these realms, private and public, is itself socially constructed and flawed (Williams, 1996). This does not mean that feminist scholars

should not study civil society; rather it means that they need to acknowledge the complex interactions between the realms and explore the assumptions that are often made about them.

### **Civil Society's Role in Gendered Policymaking**

Civil society greatly influences policymaking through direct and indirect channels. Groups provide information and expertise to policymakers, they create public awareness about perceived societal problems and solutions, and they engage diverse groups of people in activities which can capture the attention of a broad audience.

While civil society groups can and do take antagonistic positions to each other, groups react to and operate by the specific normative framework within which they exist (Sabatier & Jenkins-Smith, 1999). In the case of gender norms and ideals, this means that they generally reinforce the dominant gender norms that already operate within their nation. They may oppose or support a specific policy proposition, but they cannot realistically push for an alternative that is not appropriate or logical for that specific time and place. While there are of course some smaller civil society groups that desire complete and generally unrealistic societal change, these groups will inevitably not be able to exert much influence on policymaking. This is so because their views will be seen by the general public as unrealistic, radical and esoteric. Civil society groups which influence policymaking will be firmly entrenched in dominant societal norms and will therefore function to reinforce gender norms and ideals which already exist.

Civil society's ability to amplify and further entrench normative social constructions over time is an example of what Pierson (1994) terms policy feedback. Family policies develop in a path dependent manner, as do the civil society groups which

work to influence them. The activities of civil society help to reinforce the dominant social norms around family policymaking by continually framing and re-framing the issues and reaching out to the public and key policymakers. Further, the entrenched groups stabilize the policy arena through this activity over time. This creates a situation where ideals and norms which inform policy become more entrenched, powerful, and therefore invisible over time. These norms begin to operate without much conscious awareness, and are rarely questioned. The overall impact this has is to further entrench the dominant views around family policy-making, while making other options less feasible over time. Not only do the underlying values and norms become more widespread and entrenched, but the groups themselves become more embedded and stable. Other civil society groups which develop that espouse different values or push for radically different types of policies will most likely find themselves further marginalized from the process of policy-making and the key players within the specialized policy arena.

It is not impossible to change a dominant gender norm in society in a radical way but it appears to be difficult and may only be the result of a massive shift in the political, judicial and/or economic environment of a nation. Understanding change over time is crucial to understanding policy development, a specific focus on civil society helps to underscore how and why change in the social construction of gender is so important. As the advocacy policy framework suggests, change generally occurs through external events or shocks, policy oriented learning, internal shocks, and negotiated agreements (Sabatier & Jenkins-Smith, 1999). I find in this arena that policy change is generally the result of internal or external events or shocks. Upon such shocks, civil society groups can

play an important role in changing the direction of policies during a policy opening or window (Kingdon, 1994). Times leading up to the passage of legislation, the time before a court ruling is made, or because a certain issue becomes salient in the eyes of the public and politicians, are all examples of opportunities for civil society groups to influence the trajectory of family policy during the rare critical junctures.

A full-understanding of civil society activity within this policy realm is an important indicator of the social construction of gender. A discussion of civil society is crucial to this research because the gender norms espoused by the societal and legal system are generally reinforced and solidified, at least in part through the activity of civil society.

### **My Theoretical Approach**

I draw on theories of the welfare state, feminist legal scholarship, and civil society as the foundations for this research project. My theoretical approach borrows from all three and can be best described as a gendered policy evolution framework which focuses on capturing how and why the social construction of gender matters for the policymaking process. In order to capture the ways that the social construction of gender can influence family policymaking I focus attention on both civil society and legal activity. Both of these entities not only signal the dominant gender norms over time, they also act as important agents of policy and social change. The dominant theoretical frameworks present in the political science literature generally have not incorporated these approaches into one cohesive framework. Because my framework focuses on both legal and civil society activity I can understand how and why policy change occurs in way that captures the gender normative aspects of policymaking.

My theoretical approach is innovative because it explicitly incorporates the attention to the social construction of gender over time as a way to understand the evolution of family policymaking. Past research within political science that has been dedicated to understanding policy outcomes of the welfare states has either lacked attention to change over time, failed to acknowledge how gender constructs influence policy outcomes, and/or has not incorporated how legal structures can influence policymaking. Using a policy evolution framework which incorporates precise attention to the social construction of gender over time will allow me to capture an often overlooked element of policymaking in welfare states. By exploring the policymaking process during this period of fifty years I am able to trace the development of policies and the rare opportunities for change which are present in critical junctures. Taking this type of historical view also allows me to capture the ways that policies evolve over time by tracing the relevant changes in civil society and the legal framework.

This research will fill an important gap in the current literature by contributing a empirical comparative analysis of policies that primarily impact women. Further, it will add to the growing body of literature in this realm that acknowledges the important role of civil society activity by and for women. My reliance on feminist scholarship as one of the primary scholarly influences acknowledges the important and unique political contribution made by women through various channels, both direct and indirect. My analysis hinges on the use of gender as a social construct; this crucial element is something that is made invisible by most comparative studies of the welfare state. This research will help to determine if the ways that gender is socially constructed influences outcomes of the welfare state and if so, in what ways. Because I take a historical view,

with attention to change over time in just two cases, this research can capture changes in both social and policy realms. My research design contributes to theory-building which will bring clarity to understanding the policymaking processes in welfare states.

Comparative scholarship holds promise for clarifying just how the social construction of gender influences and is influenced by policies of welfare states. Comparative studies are best equipped to illuminate the differential gender constructions across time and space. With this variation I can begin to see how societal constructions of gender change over time and how they can influence welfare state outcomes. This research will help to accumulate knowledge in this arena as it is interested in grappling with the issue of causation. This research will provide some first steps in exploring if and how the dynamic forces relating to the social construction of gender impact policy outcomes of the welfare state. This is a large and important question, one that is intriguing from a scholarly, political and practical standpoint.

My unique contribution to studies of the welfare state is my ability to acknowledge and embrace the many factors which are rendered invisible or unimportant to much research on the welfare state. By bringing an explicitly feminist lens to this research arena I am able to highlight previously under-specified influences on the policy outcomes of the welfare state. The next chapter provides a discussion of the research methods which guide this project.

### **Chapter Three: Methodology**

The guiding research question for this study is: what accounts for the variation in family policy outcomes in the United States and United Kingdom from 1960-2010? To answer this question I explore how the social construction of gender norms influences family policy outcomes of two *similar* welfare states. My research seeks to understand if and how the social construction of gender norms and behaviors influences family policymaking, and if so in what ways. The two primary sources I turn to for evidence of gender norms are relevant legal activities and civil society activity. Attention to the social construction of gender over time holds clues for understanding the different family policy outcomes in these two similar countries. This qualitative research project relies on data collected from field research including 45 targeted interviews and historical evidence.

The purpose of this chapter is to describe the study's research design methodology. I discuss the following issues: rationale for the research approach, description of the research sample, data collection methods, analysis and synthesis of data, ethical considerations, and limitations of the study. The chapter concludes with a discussion of the contributions of the study and a brief summary of the information presented.

#### **Rationale for Qualitative Research Design**

Social policymaking in advanced welfare states is a complex and complicated process. Despite the complexity and uncertainty surrounding many of the causal mechanisms at work, research in political science continues to be dominated by large-n quantitative studies. These studies while certainly interesting and useful have not significantly advanced our understanding of the most important inputs to the social



policymaking process. Throughout this research I acknowledge that family policies are a type of normative policymaking. This means that I acknowledge that public policies are not based in scientific objectivity (Lasswell, 1950). Rather public policies reflect the dominant norms and values in a given society. I define norms as the informal, shared rules of behavior appropriate to a given identity. Norms exercise great influence over human behavior, including behavior pertaining to the policymaking process (Elster, 1989). The dynamism and complexity needed to understand social norms makes it very difficult to accurately capture them in a statistical model.

Public policies are the product of a given society (Stone 2012). These dominant norms are reflected by policymakers and others holding positions of power (Stone, 2012, p. 243). Stone (2012) asserts that policymaking is not a rational calculated process as many have asserted, rather she finds the essence of policymaking is the struggle over ideas (p. 13). She notes:

Ideas are a medium of exchange and a mode of influence even more powerful than money or votes and guns. Shared meanings motivate people to action and meld individual striving into collective action. . . Policy making, in turn, is a constant struggle over the criteria for classification, the boundaries of categories, and the definition of ideals that guide the way people behave (p. 13).

Following this logic, the individuals who hold positions of power within government make decisions, in a large part, based on the dominant ideas and norms present in the society they operate within. This means that the dominant social construction of race, gender, and ethnicity influences thinking about problems, solutions, and goals for government. Policies which specifically address socially constructed categories reflect the dominant values and norms within society and government. While essentially all policymaking is normative, policymaking that specifically deals with socially constructed

target populations is an excellent place to turn to investigate the values society espouses regarding certain groups in society.

Public policies have also been famously described as government choosing what and what not to do (Dye, 2001). One of the key aims of the welfare state is to alter or act as a buffer on the effects that the market and society has on citizens. The policies and activities of the welfare state reflect the larger social structures of power and dominant gender norms in place within the society they exist within (Shaver, 1990, p. 2-3).

Exploring the development of family leave issues policies over time can capture the changing values and norms around gender roles in both the public and private spheres of work.

A qualitative approach is best able to capture and explain complexity, change over time, identify causal heterogeneity, and to capture the role that norms play in the policymaking process. Family policy outcomes are the product of longstanding historical, social, cultural and institutional forces which are best captured by a small *n* qualitative research design. The processes which are most important and influential for understanding family policy outcomes cannot accurately be encompassed in parsimonious categories or represented by constructed quantitative variables. Using a qualitative research approach is necessary in order to avoid making invalid assumptions and to capture the complexity and nuance present in family policymaking. My research approach allows for context specific data analysis and is able to capture the constantly evolving influences on the policymaking process over time.

A qualitative perspective is best able to capture the process and evolution of events and activities over time in a small number of cases. Using a small number of cases

helps the researcher avoid assumptions about concept definitions and behavior and avoid conceptual stretching (Munck, 2004). Using a small number of cases also allows me to develop a rich and grounded context within which policy outcomes can be understood. Using a qualitative approach also helps to build knowledge and descriptive insights in research arenas which are still developing (Munck, 2004, p. 114 and 119; Ragin, 2004, p. 130-33). These two cases were chosen for theoretical reasons and as such the findings can help to clarify previously obscure relationships. This type of research will provide crucial elements of theory construction (McKeown, 2004, p. 153). One of the primary goals of this research is to generate hypotheses and theories that can be tested on other similar cases in the future.

### **Rationale for Comparative Case Study Methodology**

A small-n comparative study is most appropriate for this project because I am interested in explaining differences in the evolution of family policies. I need comparative leverage in order to understand how and why policies develop differently in different places. Ragin calls this type of research case-oriented rather than variable oriented (2004). The strengths of case-oriented research are that it allows for the study of complex processes, allows the researcher to build detailed knowledge, helps define concepts, assists in ruling out alternate explanations and can strengthen the causal assessment (Ragin, 2004; Collier, Brady & Seawright, 2004, p. 249). The question I am interested in answering necessitates the use of case-oriented research. Only with this research design will I be able to investigate the way that the social construction of gender norms may influence family policy development over time.

I use a most similar systems design in order to bring an element of control to the

study (Peters, 1998). This involves undertaking purposeful sampling of the cases where I am able to hold numerous factors constant. Purposive case selection is used as a way to control for variance (Peters, 1998, p. 37). Factors that are held constant through case selection are not the source of the variation under study. Most similar systems designs are an excellent way to isolate potentially important influences on what the researcher is interested in explaining. The factors that are not held constant within the cases can then be investigated for their ability to help explain divergence in outcomes.

Most similar systems designs are commonly used in social science research which investigates democratic English speaking countries (Alford, 1963; Aucoin, 1995; O'Conner, Orloff & Shaver, 1999). Using two cases is an excellent starting point for helping to accumulate knowledge in this research arena. I also chose to utilize a small n comparative case study because as chapter two highlighted, there is a need for more empirical research studies on the topic of gendered aspects of civil society activity and policy outcomes of the welfare state.

### **Methodology: Process Tracing**

The methodological approach I use is process tracing. Process tracing works by giving the researcher tools with which to scrutinize the causal steps in a given process and then to determine if the proposed theory matches the actual causal chain of events and outcomes (George, 1998). To capture the process I trace the historical developments and evolution of family policy outcomes in these two cases since 1960. Data collected from interviews and the historical record are what allow me to use process tracing as a method. Patterns and similarities between the cases are tracked which leads to a more complete understanding of how and why family policies change over time. It also allows

me to focus on why countries which would be expected to have similar policy outcomes do not. The evidence will be used to test if the theoretical framework laid out in the previous chapter holds promise for understanding family policy outcomes of the two cases under investigation.

Process tracing is often used in small comparative case studies or in single case studies and is an excellent method to use with data collected from elite interviews and research focused on historical developments over time (Tansey, 2007). As Bennett and George (1997) write, process tracing : “. . .requires converting a purely historical account that implies or asserts a causal sequence into an analytical explanation couched in theoretical variables that have been identified in the research design” (no page number). With this method researchers can carefully trace the process and development of patterns over time. This allows them to specify the relationships and connections, or lack thereof, between explanatory factors and outcomes (Checkel, 2007). This method is able to capture the world as it really is, including the complexity that is present in the indicators used to capture the social construction of gender norms over time. With this method researchers can focus on investigating causation and determining the fit of a theory by closely scrutinizing all of the causal steps along the way. Researchers can validate a proposed theory, or if the fit is not there, then new information uncovered can be used to generate new theories and hypotheses.

The benefits of process tracing include: it well-suited for capturing the more nuanced connections between variables, it does an excellent job of uncovering causal mechanisms, and it can be used to help validate and build confidence about proposed hypotheses and theories. Lastly, process tracing can track historical developments, policy

changes and dynamic forces at work over time (Falletti, 2006, p.1). Once created, policies tend to get locked in and continue to reinforce themselves over time in a path-dependent manner (Pierson, 2000a and 2004). As Pierson notes, once a policy gets locked in, it becomes hard to break away from. Breaking away from the current path then becomes possible only if some critical juncture is reached where a major occurrence or accident allows for a change in trajectory of the policy.

Historical analysis is an important tool in process tracing. One of the primary reasons is because it allows a researcher to convert a historical narrative into an analytical puzzle which is based in relevant theories and logically grounded assertions about patterns of events over time and their connected causal mechanisms (Bennett & George, 1997). Researchers are able to uncover the causal mechanisms in historical events “. . . By tracing the process and impact the independent variable has on the outcome variable generally over time and across cases” (King, Keohane & Verba, 2001). This method is also able to help the researcher rule out influences which may not have an impact on the outcomes being investigated (George & Bennett, 2005). For example, if a change in one of the inputs under investigation does not have an impact or create the expected change in the outcome, this will signal to the researcher that there is not a causal connection between these two entities. For this research I am interested in exploring if and how the social construction of gender, evidenced by the legal framework and civil society activity, influences family policy outcomes.

Bennett and George (1997) distinguish between two types of process tracing: process verification and process induction. They note that it is important to specify which type is being used because they do very different things in terms of data analysis.

Process verification: “Involves testing whether the observed processes among variables in a case match those predicted by previously designated theories” (Bennett & George 1997, no page number). Process induction takes a different approach by observing the patterns of events and causal mechanisms at work as a way to create hypotheses and theories which will be tested in the future. I use process induction because I am interested in observing the processes of events over time as a way to understand the connection between the main elements being investigated here. The literature and scholarly research conducted on this subject has allowed me to focus on these processes and influences as important to the policymaking process. Research such as this is needed in order to build confidence and accumulate knowledge about the specific relationships between the concepts under investigation.

The foundation of policies that govern family policies are essential to understand as they can tell us important things about what the future may hold for policy development. The early policies which I explore in this research tell us much about the realm of possibility for future maternity and family leave policies. I argue that when the early policies were constructed they reflected different values around gender. This is because the earliest family policies were passed at a time when the nations started to diverge from each other regarding the social construction of gender. The foundations of today’s family policies were created in the 1960s. These different values have continued to influence the policies demonstrating how policies can get *locked in*. Process tracing is an excellent tool for following the historical development of policies over time because it treats historical developments as patterns and processes to be analyzed.

Any methodology has potential downsides. One weakness of process tracing is

that it is not well- equipped to develop parsimonious or generalizable theories. Other potential downsides of process tracing include its' intensive data requirements and a tendency for researchers to overly focus on detail at the expense of the bigger picture. A potential danger of using the historical record as a source of data is that much of the richness and detail of the events may get lost in the analysis of tracing a process over time. But this is a necessary sacrifice because I am concerned with more than the historical narrative; I am interested in converting historical evidence into part of a larger process for theoretical and analytical reasons.

The strengths of process tracing outweigh the negatives for this research project. This brief discussion highlights the potential and capability of process tracing for this research question. I am aware of the both the strengths and weakness of this method. My primary goal is to determine if it is accurate to assert that changes in the social construction of gender do frame and help to explain differences in family policies over time and space.

### **The Research Design**

This section describes the research sample and the population it was drawn from. I first discuss the rationale behind the case selection. Next, I outline the rationale of the time frame and the sampling strategy used. The question this research answers is: why do such similar countries end up adopting such different family leave policies?

#### **Case Selection**

The United States and United Kingdom are countries that share a great deal including: cultural heritage, legal structure based on common law, shared democratic principles reflected in stable governmental structures, similar economic worldviews,



comparable numbers of women in the workforce, and the countries are close diplomatic partners. What makes these cases useful for comparative study is that they demonstrate surprising variation in their family policy outcomes. These cases constitute a most similar systems approach (Lijphart, 1971; Przeworski & Teune, 1970; Mill, 1874). The similarities between the cases will offer a degree of control to the design because from the outset I can rule out a number of similar factors that cannot explain this policy divergence.

The countries have a *special relationship* which dates back to at least WWII and have often been described as each other's closest ally (Dumbrell, 2009). Their close relationship on multiple fronts and shared traditions has been described as unparalleled on a global scale (Wither, 2004). Both countries also rank high in levels of economic development and quality of life indicators. Additionally they both have stable democratic political systems derived from the same common law traditions and values. The similarities between the countries are more than some political or imagined event. In 1998 poll by ICM in Britain revealed that 61 percent of Briton's surveyed believed they had more in common with Americans than they did with Europeans (Halisdemer, 1998). British politicians often cite that the US is the UK's most important ally based on shared cultural values (BBC News, 2007). In the US in 2010 a Leflein poll found that 60 percent of Americans believed that Britain was the country most likely to come to the aid of the US in a crisis (Inboden & Aronsson, 2010). These poll results suggest that the special relationship endures and reflects the shared democratic and cultural principles these nations were founded upon.

In addition to the shared cultural, democratic traditions, the nations have much in

common from an economic standpoint. Today both countries have developed service industries as a large percentage of their economy, and women make up approximately half of the work force on the national level (US Department of Labor, 2008; Office for National Statistics, 2009). Both countries have a shared economic outlook on the world based on free markets and capitalism. Importantly, the country's economic and political infrastructure based on capitalism and liberalism influences the ways that the welfare state operates. Esping-Andersen (1993) has classified both countries as Liberal welfare states meaning that are minimal, based on means-tested programs, rely on the market to provide benefits to many citizens, and the market produces a high level of worker commodification.

The many similarities that the countries share makes them appropriate for use in a most similar systems design because, despite the similarities the countries exhibit quite different family policy outcomes. A most similar systems design allow the researcher to hold constant many influences or potential independent variables while exploring some other potential influences of the divergent outcomes. The researcher can then determine that the independent variables which are held constant cannot explain the different outcomes. Many scholars have utilized most similar systems designs in studies the English-speaking democratic world, including the US and UK (Alford, 1963; Aucoin, 1995; Books & Reynolds, 1975). The semblance between these two countries is well-established and provides a solid foundation for creating a most similar systems research design from which to explore what factors can explain the differences in family policy outcomes.

## **Acknowledging Internal and External Institutional Differences**

### **Internal Differences**

Some may assert that the cases are not comparable because the US is a federal country and the UK is not. While this distinction can and does influence policy outcomes, the most influential aspect of family policymaking occurs on the national level. Only in some circumstances do sub-national units have some ability to mold and these policies to suit their constituents' needs. States in the US may expand or increase the generosity of federally mandated maternity and parental leave—they must meet the minimum requirements set out nationally. As of 2010 only a handful of US states have taken steps to augment the federal policy of FMLA (K. White, personal communication, 2011). While there is some variation in family policy outcomes by state, the outcomes are not drastically different than the federal mandates. Several states offer some financial support to new families but they do not even approach the levels of support offered by other industrialized countries. For example, as of 2009 New Jersey offered employees taking parental leave up to two-thirds of their weekly of wages (with a cap of \$546 per week) for a period of up to six weeks (Fass, 2009). The number of states providing paid parental leave or disability insurance has not altered the national family policy environment although information gathered from interviews indicates that most policy experts expect future changes to family policies to occur on the state level. Federalism and family policy is a rich topic for a separate research project.

In the UK the sub-national units have only just recently been able to shape local policies and only in certain policy arenas. To date there has been little research demonstrating if and how the nations of Wales, Scotland and Northern Ireland have

altered policies regulating maternal or family leave under the process of devolution. Devolution is similar to federalism in the US, an important aspect of governmental structure which is the topic for a future research project. The small changes that have occurred to the family policy landscape on the sub-national level are fairly small and to date these changes have not yet impacted national policymaking efforts. In this research I focus on the national policymaking landscape as it is the policymaking arena with the most longevity, most activity, and most far-reaching scope in both the US and UK. While there is potential for state/sub-national level activity to influence national family policymaking, to date there is no evidence that this has yet occurred.

## **External Differences**

### **The European Union and United Kingdom**

The United States and the United Kingdom are susceptible to external pressures that may have the potential to significantly shape policymaking and the development of family policies in the future. The most notable external pressure is the European Union's ability to influence policy in the UK. The UK has continued to remain an active but still fairly autonomous actor in the EU. They have retained their distinct British identity and have held strongly onto their national currency (James & Opperman, 2009). The UK's unique position and power in the EU demonstrates that the country is susceptible to external pressures from the EU but is in no way controlled by this external force. The evidence collected highlights that the relationship between the UK and EU is dynamic, and since 1997 when Prime Minister Blair signed the Social Charter, the EU has had more of a direct influence on the family policy outcomes of the UK. But, even with this change the UK remains an autonomous player within the EU. The unique history, culture,

and dominant gender norms make many of the social policy mandates coming from the EU out of sync with British society. The lack of fit between the policies and specific norms will be discussed in more depth in chapters 6 and 7.

The UK joined the EU in 1972, then called the European Economic Community, under Conservative party Prime Minister Heath. But since this time the UK has often been seen as a hesitant European partner with the desire and ability to opt out of many of the most broad sweeping and controversial mandates (George, 1994; BBC News, n.d.; Lister, 2011). Two such policy arenas the UK has opted out of include the acceptance of the single European currency and the Social Chapter of the Maastricht Treaty of 1992. In preparation for passage of the Maastricht Treaty, Britain was the only country out of the then 12 member states to oppose these two issues, it was also the only country willing and able to opt out of them (BBC News, n.d.). This issue is of importance to the current project because the Social Chapter of the Maastricht Treaty included guidelines which would have altered the family policy landscape in the UK at that time. It was not until 1997 under the leadership of Prime Minister Blair that the UK signed on to the Social Charter. Concerns still exist about the loss of the unique British identity and fear regarding the Europeanization of the UK. Most all interviewees in the UK noted the contentious relationship between these bodies and expressed the general feeling of Euroskepticism present in the UK.

I show that the EU does influence the direction of social policy in the UK, but only to a certain extent. The actions of the EU do not exclusively determine UK social policy outcomes. There is widespread resentment and reluctance to accept many of the social policies which are handed down from the EU Parliament, especially regarding

social issues. The UK has also been able to maintain their independence more than other member states (James & Oppermann, 2009).

Evidence of the continued isolationist attitudes in the UK are present in data collected by a EU- wide poll which found the UK was one of the three nations that had the lowest support rating for EU membership (Eurobarometer, 2009, p. 71). In 2009 only 30 percent of Britons polled thought that EU membership was a positive thing for the UK and a surprisingly high 49 percent thought that the UK had not benefited for EU membership (Eurobarometer, 2009, p. 72). These findings highlight what a controversial and divisive issue the UK's relationship with the EU continues to be.

I have attempted to articulate that the multiple tensions within this relationship create an atmosphere where the political parties, media, pressure groups, and citizens of the UK do not blindly accept social policy directives coming from the EU. Even when the UK must amend or change their laws to meet EU regulations, I find that the impact of these policies is often much smaller than imagined at the outset in part because policies are crafted and implement in the most minimal ways. For example in 1999 when the UK began to offer citizens unpaid parental leave policies, in part to conform to EU standards, the take-up rate of the policies was very low (Unison, 2012). The take-up rates for paid paternity leave and extended paid paternity leave introduced in 2010 also remain low. The UK government found in 2005 that only one in five fathers was utilizing the paid paternity leave policy (Fatherhood Institute, 2005). This is an example of how even if a policy is offered, if it is not necessarily viewed as valuable, relevant, or useful. Further, policies that do not reflect the dominant social norms will not be well-used by citizens or fully-supported by elected officials and the structures of government.

### **Time Frame: Starting Point for Policy**

The starting point of 1960 is a logical place to begin this research because the foundations of family policies were established at this time. There are also salient demographic, employment, and social changes that are captured in a historical analysis of developments beginning at this time.

In 1960 both countries look similar regarding their social construction of gender. In 1960 the policies, civil society, and legal activity in both countries demonstrate adherence to the tenets of difference or cultural feminism. In cultural feminism the differences between the sexes are recognized and inform the idealized roles for men in women in the public and the private spheres (Chamallas, 2003; Kaminer, 1990). At this time neither country had a clearly developed policy towards maternity and family leave outside of the dominant view that pregnant women and mothers of small children should not work outside the home (Smith, Downs & O'Connell 2001; Lewis, 1992: 76; O'Conner, Orloff & Shaver, 1999; Kammerman & Kahn, 1997).

In both cases, 1960 marks the beginning of the massive surge of women in the workforce and a time when the women's movement in each nation began to build strength and enter the public's awareness (Meehan, 1990; Lewis, 1992; MacLean, 2009). In the US particularly, this movement was influenced by the civil rights movement and the passage of the 1964 Civil Rights Act. Action was focused on righting a myriad of inequalities in society including workplace discrimination, improving reproductive rights, and righting other legal inequalities (MacLean, 2009). The 1964 Civil Rights Act is a moment of critical juncture in the US. It was at this time that the US established the roots of liberal feminism and broke away from its historical observance of cultural feminism.

It was also around this time that society and governments started to highlight the tensions inherent in the new dual roles many women were forced to fill, often for economic reasons. Not only were more married women with children in the workforce than ever before, many struggled to fill the dual roles of employee and caretaker/mother/wife—in essence juggling two full time roles with varying levels of success. In 1960 women made up 33 percent of the entire workforce in the US and 38 percent of all women worked in some sort of employment (US Census Bureau, 1999). By 1990 these numbers had jumped considerably as women made up 45 percent of the workforce and 58 percent of all women worked (US Census Bureau, 1999). In 1951 women made up 31 percent of the labor force in the UK. By 1971 women made up 37 percent of the UK work force and in 1987 this number jumped to 45% (Lewis, 1992, p. 65). Today women make up around 50 percent of the workforce in each nation (US Department of Labor, 2008; Office for National Statistics, 2009).

As more women entered public employment certain social issues became salient for the first time. People began to question whose responsibility it was to take care of the *private* responsibilities of child and elder care and housework. Around this time people also started to question if and how the government should treat women employees. The debate around if women workers required special protections was revisited, a topic that was discussed many times since the industrial revolution. Society focused on debating such controversial issues as defining proper gender roles and proper behaviors for women and mothers. In many aspects these tensions are still being debated and sorted out today, more than 50 years later.

As society grappled with the issue of more women in the workforce, and people



began to question the traditional gender roles, each government responded by passing some of the first policies which informed the treatment of women in the workforce.

These early policies specifically focused on the treatment of pregnant mothers and set the foundation for the future development of family policies.

## **Data Collection Methods**

### **Elite Interviews**

My research question necessitated that I conduct field research and elite-level interviews with various actors in addition to investigating the historical record. The interview subjects were purposely chosen for their past experience and knowledge of this policy arena therefore making it a non-random sample. I used purposive sampling methods meaning that I targeted experts for interviews. To identify the experts I conducted internet searches of relevant organizations and institutions to find contact information for key staff members and volunteers. I sent out introductory emails to my desired contacts and then waited for a response. In some cases I made several attempts via email and over the phone in order to secure interviews with important contacts. I sent out letters of introduction in the first emails and also requested an interview. Overall I sent out 153 initial contact emails and ended up with 45 interviews.

In addition to sending out emails and making phone calls to secure interviews I also used the snowball sampling technique. At the end of a useful interview I asked the interviewee to suggest potential leads for future interviews. This helped me to increase the sample size and also target experts who were not previously known to me. Examples of interview subjects include: staff members at governmental agencies such as the White House Council on Women and Girls, and the Minister for Women's Priorities in the UK;

staff members of bureaucratic agencies and non-profit agencies; academics and members of a diverse array of civil society organizations. Interviews with policy analysts and leaders of relevant groups include organizations such as NOW, The Institute for Women's Policy Research, National Partnership for Women and Families, Moms Rising, Center for Women and Policy Studies, the Christian Coalition, Catalyst and the US Chamber of Commerce in the US. In the UK interviews were held with analysts and leaders of Maternity Action, the National Childbirth Trust, Women's Resource Center, the Women's Rights Committee, the Fatherhood Institute, the Federation of Small Business, and the British Chamber of Commerce. In both nations I also conducted interviews with labor union leaders and representatives of women's labor union interests.

I conducted 45 interviews, 30 in the US and 15 in the UK (see appendix A for a complete list of interviews). This number of interviews is appropriate for this research because I reached a threshold of information. I started to hear many of the same points and ideas again and again. This meant that holding more interviews would not yield new information or insights (Ritchie, Lewis & Elam, 2003, p. 83). Further if I conducted more interviews, there was a chance that the data would become unwieldy and difficult to manage leading to a possible decline in the quality of the data (Ritchie, Lewis & Elam, 2003, p. 84). Data collected from elite interviews provides important insights into the policymaking process. The information I collected is not available from any other source. Human experience and knowledge present in each expert is crucial for answering my research question. I could not have found similar or relevant information by simply consulting organizational websites or studying past academic research. Elite interviews are valuable because they highlight the motivations, activities, constraints, and goals of

the diverse actors in this policy realm.

I developed a general and open-ended list of interview questions. At the time I crafted the interview guide I had completed my dissertation proposal and had a good deal of knowledge on the subject and what type of information my research question required. I purposely crafted broad and open-ended questions which would be applicable to all interviewees. I used this general set of questions for all interviews. When appropriate I would ask a follow-up question or probe for more information. There was considerable variation in the content and length of each interview. The shortest interview was 20 minutes and the longest was over two hours long. The majority of the interviews took place in person in a place most convenient for the interviewee. Most were held in a private setting such as an office or conference room. Some interviews took place in public places like a coffee shop. Several interviews took place over the phone. I also corresponded by email with many of the interviewees both prior and post interview. See appendix B for the list of interview questions.

I decided prior to conducting my first interview that I did not want to record interviews with a tape recorder or take in-depth notes during the interviews. I wanted to focus my attention on creating a feeling of rapport with the subject where we could have an open and comfortable discussion which was guided by open-ended interview questions. During interviews I took notes and highlighted key pieces of information. Immediately following an interview I wrote detailed notes and filled in any gaps from the brief notes I took during the meeting. Within the next two days I would type up these notes. This process was a way for me to make sure I had backed-up my data. It also helped me to be immersed in the information and context I was researching.

### **Use of the historical record for evidence**

I also use the historical record as a source of evidence. I reviewed relevant historical documents from a variety of sources. Sources I consulted included: governmental websites and documents, websites of civil society groups, court case proceedings, Supreme Court decisions, archives of governmental agencies, and virtual libraries of civil society and governmental organizations. These were a good source for historical background and context. For example the Women's Library at London Metropolitan University was a good source of historical data. I also used newspaper and magazine articles from popular magazines and new sources to help set the context for relevant activity and salient social issues and language. Data collected from the historical record were the only available data source for the period of 1960 to the 1980s. The historical record also proved useful for setting the context for the later period of time the research covers.

One of the main reasons I needed to use the historical record for data is that many individuals who were active and knowledgeable about relevant happenings in the early 1960s are not available for interviews today. Also many of the individuals interviewed were very knowledgeable about only one specific aspect of family policymaking and I needed to also understand the larger context within which family policymaking occurred. The historical record is a rich source of information for capturing the dynamic and complex nature of the social construction of gender and civil society activity. Historical documents are so important in setting the context in which family policymaking occurred. See Appendix D for a list of historical events and legislation by year for the US and UK. I could not capture these key pieces of information from elite interviews alone.

The use of two methods for data collection, or triangulation, improves the validity of the data collected. Triangulation increases the credibility and confidence of the results by reducing the likelihood of misinterpretation of the data. Misinterpretation is a danger with the use of interviews as a sole method of data collection. Consulting multiple sources for data collection also helped to create an in-depth understanding of this policy arena. Another way I was able to improve the validity of the data collected from interviews is that I reached a threshold of information. Many of the interviewees had similar responses to the same questions. I essentially reached a point where I was not collecting any new data in the interviews (Guest et al, 2006). This signaled to me that the data I collected from interviews was valid and that continuing to hold interviews would not yield new data. It was at this point that historical documents became so important.

### **Ethical Considerations**

I constructed this study in a way that minimizes the potential harm to all those involved in the data collection and research process. In the early stages of this project my proposal, research questions and data collection methods were reviewed and approved by the institutional review board (IRB) at the University of Wisconsin--Milwaukee. I was sensitive to the potential concerns and problems that could arise during my interviews as I constructed my research plan and interview guide. The main concern I had was that an interviewee may share something confidential with me that would not be received well by his or her employer. In order to minimize any problems and confusion I gave all interviewees a letter of informed consent. See appendix C for the letter of informed consent. This included a note of introduction, my research plans, and contact information in case they had any issues that needed to be discussed with either my advisor or the IRB.

This letter also stated that participation in the study is voluntary, they may withdraw at any time, and if they wish they can remain anonymous. At the beginning of each interview I also specifically asked each person if they wished to remain anonymous and if they minded if I take notes. None of the interviewees wished to remain anonymous or asked that I not take notes. I also attempted to create a feeling of trust and respect at the beginning of each interview by reviewing the informed consent and introducing myself. While no one decided to remain anonymous, two interviewees shared some information with me that they did not want to be connected to them. This information will not be reported in the analysis for ethical reasons. I made sure to protect all data that were collected by storing it on my personal computer.

### **Limitations of the Study**

The limitations of this study derive from the limitations of qualitative research more broadly. These limitations include: the number of cases is small which can lead to problems of generalizability and the number of individuals interviewed is also relatively small and non-random. Another potential limitation of a most similar systems design I will discuss is the problem of an omitted variable.

Generalizability is concerned with determining if the results from this research sample are generalizable to the entire population (Meyers, 2000, no page number). Generalizability is a controversial issue in qualitative research and many researchers, including myself, believe that the main goal of smaller qualitative studies is not generalizability to the entire population (Maxwell, 1992). I am not overly concerned with issues of generalizability because the intended goal of my research is not to make a blanket statement about the generalizability of the influence of the social construction of

gender on policymaking. Rather, I am interested in building knowledge about the factors being studied and connecting the ways that social norms influence policymaking in this arena. It is also my hope that the evidence and research presented here will help to inform others about these complex relationships, bring awareness to the importance of gender norms on policymaking, and to inform future research on the subject.

Most similar systems research designs have been criticized for being prone to the omitted variable problem (Peters, 1998, p. 36-41). This problem occurs when some causal influence(s) are unknowingly left out of the analysis creating a problem of either over or under-determining the influence of the included variables. This is a danger in a most similar systems research design because there are many potential influences on the outcome being studied in the several cases and all of these differences cannot all be held constant, no matter how similar the countries are. This is a problem in most similar systems research designs and one that needs to be acknowledged in this research. Because this research is focused on theory building and providing hypotheses that can be tested in the future on other cases, I believe that if a problem of an omitted variable does exist, it will be exposed through future work with the theories developed here.

While this study explores only a small universe of cases they have been chosen for important theoretical and empirical reasons. There are both practical and theoretical reasons to include just two cases in the research design. Practically speaking there are financial and time restraints which necessitated just two cases. Detailed historical analysis is time consuming and difficult to conduct on more than two cases for the long time period under consideration. The expense of travel to conduct elite interviews in various places is also high and is an obstacle for adding additional cases. Much past

scholarship on gendered aspects of the welfare state has been theoretical or normative in nature or research has focused on over-achieving welfare states such as Norway, Sweden and continental European countries. In order to build knowledge about the subject matter research should take place in diverse contexts. This comparative empirical study is well-equipped to build knowledge on family policymaking and help to move the discussion beyond the commonly investigated countries and the often normative and theoretical discussions.

The goal of this research is to determine if and how the social construction of gender norms influence family policymaking in these two places during the time under investigation. I do not make claims of generalizability to policymaking in all welfare states. I realize and qualify this research with the fact that it is still nascent. It is my hope that the results of this research will take scholars one step closer to highlighting important influences on policymaking in welfare states. I also hope it will allow researchers to begin to build more confidence about the idea that the social construction of gender matters of understanding policy outcomes. More research will be needed to build generalizability, create specific hypotheses to be tested, and to increase confidence about the ways that the social construction of gender influences policymaking in diverse welfare states across time and space.

### **Contributions**

This research seeks to determine if and how the social construction of gender norms influences family policymaking in the two similar cases under investigation. My focus on the ways that the social construction of gender influences family policymaking is my primary contribution. I am also accumulating knowledge by highlighting the ways



that the social construction of gender influences family policymaking over time in a comparative and empirical research design. This research will help to bring attention to explanatory factors which have often been overlooked in the search to explain differing outcomes of similar welfare states. Bringing attention to these potentially impactful factors will help to generate relevant theories and hypotheses which can be tested in the future.

This project will be of interest to scholars of the welfare state and actors hoping to influence gendered outcomes of welfare states. It is my hope the findings will help provide clues which can be used to better understand policymaking in diverse welfare states. There is potential to use a similar research model in varied settings where maternal and family leave policies are meaningful and utilized policies. All of the aspects of policymaking I have included in this research can be found in most all industrialized countries. Use of a similar research model in diverse settings would be a way in which to understand the similarities and difference of welfare state development across the globe. Using similar research designs with other cases would be a way to build the generalizability of the findings in the future, specifically making an argument for partial generalizability to other advanced welfare states.

This research will help to bridge the disjuncture between political science scholarship and gender issues. This gap continues to exist despite the increased attention paid to gendered dimensions of politics and policymaking. I hope to advance research beyond the attempts of many in political science to only include women in research in a superficial manner (Sapiro, 1995, p. 67). By addressing gendered dimensions as both the inputs and outputs of the political system it is my goal to incorporate a meaningful and

accurate understanding of how the social construction of gender influences family policymaking.

Lastly, this topic is important because it brings awareness to the very real and meaningful impacts of policies like those that govern maternal and family leave. Not only do these policies impact the quality of life for millions of families, they also inform the choices and preferences that women and families have, and impact gender relations within society. These policies are also important on the national level as they influence economic growth, demographic change, and citizen participation in public and political life. The far-reaching importance of family policies provides a strong motivation for accumulating knowledge on the making of maternal and family leave policies.

## **Chapter Four: The Foundations of Family Policies 1960-1975**

This chapter highlights key developments and events surrounding the social construction of gender norms between 1960 and 1975. I specifically trace the developments in two key areas: civil society activity by and for women and legal activity which informs gender norms, identities and behaviors. The analysis will focus on events and developments which are most pertinent to the policymaking process surrounding family policies. This time period is marked by a few defining features: increased civil society activity pertaining to issues of equality and an increasing number of women employed in the public sphere. During this time governments in both countries pass legislation which lays the groundwork for the policies which shape the collection of family policies that exist today. The foundations for family policies begin with laws that for the first time legally define pregnancy and outline how it should be treated from an employment perspective. In the UK during this time we also see the passage of the first policies which grant maternity leave rights and pay to some women. The foundational aspects of future family-policymaking are established during this period. In subsequent chapters I explore how these foundations are developed in each country in a path dependent manner.

The analysis for this and the following two chapters is a chronological discussion of events and developments first in the United States and then in the United Kingdom. The analysis covers developments in both civil society and legal frameworks using historical and interview data. This chapter is unique because it

relies more on the historical record than the others. This is due to the challenge of locating and interviewing individuals who had personal experiences relating to family policymaking during this time period.

### **United States: 1960-1975**

The early 1960s in the US was a time of widespread social mobilization. Large segments of the population, especially women organized around anti-war and civil rights issues. Many women active in the Civil Rights Movement realized that they did not have the access to equal rights that they were working to promote for other groups with minority status. The fact that many women were not even equal members within these social groups working to promote civil rights led to feelings of marginalization for many women. It was not that the male members did not support women's equality; rather it was rather that they were not focused on it (Borman, 1996). It was mostly men who held positions of power within these organizations. They tended to put their own interests front and center and women were given most of the administrative and clerical work.

It was during the middle to late 1960s that women, especially middle and upper class women, began to come together to organize specifically for the rights of women. Early on in the women's movement many of the members were women who were active in the civil rights movement. They were trained and educated about how to run a civil society organization by their previous involvement with civil rights groups (Borman, 1996). The key issues of the day for the women's movement were reproductive rights and creating equality between men and women in such arenas as education and employment and health care. They also focused on promoting access to appropriate protections for women workers during times of pregnancy and illness. During this time one of the most

influential and largest membership feminist organizations was formed: the National Organization of Women (NOW). This time period of intense social mobilization and dissatisfaction with the status quo acted as a catalyst for legal action, and further civil society activity.

### **Presidential Commission on the Status of Women**

A heightened sense of mobilization, awareness, and dissatisfaction with women's place in society was absorbed even at the highest levels of government. In 1961 President Kennedy issued a Commission on the Status of Women with Executive Order 10980. During his campaign for president he promised that he would focus on investigating the discrimination women faced in society in order to improve opportunities and the general status of women. He established the Commission as a politically popular way to do this; he wanted to fulfill his campaign promise but he did not want to estrange any of his supporters who might be offended by a push to rectify longstanding gender discrimination.

Members of the bi-partisan Commission included a mix of individuals from labor unions, professional groups, religious organizations, politicians, federal agencies, academics, and a variety of political and social groups including women's rights groups. In all there were 26 members (Leuchtenberg, no date). The Commission was chaired by Eleanor Roosevelt. The main focus of the Commission was to research and report on the status of women in the US at that time. This process of research and awareness building was a transformative experience for many members of the Commission whom, based on their experiences, began to organize for women's rights. Several prominent members such as Richard Graham, a former EEOC Commissioner and Marguerite Rawalt a lawyer

and former president of National Federation of Business and Professional Women's Clubs went on to be some of the founding members of the National Organization of Women (Davis, 1999).

The Commission was created to address the growing social discontent regarding the position and treatment of women in society and it was it reflected the desire by many in the women's movement to move away from the dominance of tenets of cultural of difference feminism. Difference feminism created a rationale for creating differential legal treatment and a separate group of employment policies for men and women. The focus of the Commission was primarily on research. This was a politically popular way to address the issue. This report was so important because it established from the highest levels of government that women were discriminated against in most all facets of American life. This led to a discussion within society about how inequalities that women face might be addressed through policies such as maternity leave, access to expanded childcare and policies which would mandate equality in employment practices. The research of the Commission led to executive changes and policy action, name the Equal Pay Act (Leuchtenberg, no date). The Commission also advocated for changes to state laws and their influence led most states to create their own women's commissions. There was some controversy around their findings and the primary opponents to promoting equality for women were organized labor and people who were opposed to the Equal Rights Amendment for a variety of reasons (Davis, 1999). The Commission dissolved in 1963 after their findings were reported. President Kennedy then created the Citizen's Advisory Council on the Status of Women and the Interdepartmental Committee on the

Status of Women. These groups carried on the work of the original Commission and published subsequent reports on the status of women in society (Leuchtenberg, no date).

The Commission reported that gender and race discrimination was present in many arenas within American Life (Executive Order 10980). The commission outlined six arenas where more work was needed in order to reduce discrimination against women and to give women an equal playing field: employment policies and practices surrounding wage and contracts; social insurance and tax laws; labor laws governing working hours; differences in the legal treatment between men and women must be restructured; new and expanded services for women to support them in their dual roles as mothers and wives and employees (i.e. education, child care, counseling, and home services); and the non-discrimination on the basis of sex in employment opportunities must be guaranteed (Report of the President's Commission on the Status of Women, 1963).

### **Legal Framework in Transition**

The early 1960s was a time of transition regarding the treatment of women in employment and society more broadly. In 1960 Congress first passed the legislation which made hormonal contraception legal for women. In 1965 the Supreme Court made a landmark decision in *Griswold v. Connecticut* which outlined that women have the right to privacy in their decision about their use of contraceptives, specifically within their marriage. The case set the precedent that women had a legal right to privacy regarding bodily issues like reproduction. This tenant was used to inform other cases, namely *Roe v. Wade* where a woman's choice to have an abortion was constructed as a private decision between a woman and her doctor.

Legally and socially the rules which governed appropriate behavior for women were changing. At this time there is a shift away from reliance on cultural feminism. Kennedy's Commission helped to bring the discussion about the position of women in society to the general public's consciousness. In 1960 women in the US were still treated according to the tenets of difference feminism (Davis, 1999). This meant that women were subject to state and federal laws which often treated them as a special category of citizen in need of protections. These laws usually reinforced women to be the caretakers of children and families and created obstacles for public service, property rights, and employment.

Elements of cultural feminism were especially evident in laws which governed treatment in the workplace. At this period in time the US and UK looked quite similar in terms of how women were treated legally regarding employment practices and in the family policy arena. The dominance of the male breadwinner model in both cases meant that it was socially expected that once a woman got married and especially if she had a child, she would no longer work outside of the home (Lewis, 1993). This norm was especially powerful for white middle and upper- class women (Lewis, 1993). Women of lower socioeconomic status and minorities often could not follow these norms for economic reasons.

There were many legal protections governing the circumstances of women's work in the public sphere because at the time it was thought that women needed protection from the dangers of public work. These protections are evidence of the paternalistic structure of society. Women were thought to be biologically different from men, weaker in mind and body, and therefore unable to work in physically demanding situations or for



long periods of time. Laws regulated many aspects of women's employment and essentially created a situation where women were overwhelmingly employed in lower paying, less desirable and less stable jobs. Help wanted ads in the US were segregated by sex (NOW: Highlights from Forty Fearless Years, n.d.). This created an environment where women were a special and protected class of worker and they suffered economically because of it. In the early 1960s women earned only 60 percent of what male workers made (Schaffner, 2003, p.603).

Other examples of laws which were based in cultural feminism at this time include: several state laws prohibited women from working more than 10 hours per day. The rationale behind this was that women's maternal functions made them unable to keep the same working hours as men (see *Muller v. Oregon* 1908). While the outcome of the Muller case was many years prior to 1960 it set a special and lasting precedent in terms of how women were to be treated before the law. It outlined that women should fulfill their 'maternal function' above all else (Vogel, 1993, p. 25). This case helped create a societal view that lasted for many decades and established cemented some of the tenets of cultural feminism, namely that women were different than men and should legally and socially be treated as such. It established that women were viewed as mothers rather than wives, daughters or workers (Vogel, 1993, p. 25). It was not until the 1950s that women's civil society activity began to actively refute these claims or try to situate the tenets of cultural feminism within an equality framework.

Another example of cultural feminism embedded in law in the early 1960s is the fact that women in states such as Florida and Louisiana were exempted from jury duty and had to explicitly register in order to be summoned for jury work. In 1961 *Hoyt v.*

Florida upheld the jury selection law which exempted women from jury duty and made it so they did not appear on any jury lists. The ruling was based on the dominant ideal at the time that women were “the center of home and family life,” as stated in the findings of the Court (*Hoyt v. Florida*, 368 US 57, 1961). The Florida Supreme Court upheld this ideal; they asserted that women were not required to fulfill this civic responsibility due to their differential status and idealized role as caretaker and homemaker. The court found no meaningful difference in the gendered make-up of juries. This provides another example of the impact that coverture has had on the law, even hundreds of years after it was declared as not applicable or relevant to society.

Women were treated before the law and in society more broadly as second-class citizens who required special protections due to their biological nature. These protections were couched in definitions of what it meant to be a man and woman that were thought to be scientific in nature. While the differential treatment of men and women was a dominant gender norm at this time; special protections for women were also supported by feminists who embraced the tenets of cultural feminism. Around this time the larger women’s movement in the US started to question traditional gender norms based on the male breadwinner model. They also began to move away from the reliance on cultural feminism as a guiding principle for action. In the early to mid-1960s feminists and the women’s movement more broadly begin organizing on tenets of liberal feminism. Their goal was to push for changes that would treat men and women as complete equals before the law. Many women experienced first-hand how special protections were closely tied to legal discrimination in the US; for example in the arena of employment.

### **The Equal Rights Amendment**

In the mid-1960s a large part of the women's movement worked to pass the Equal Rights Amendment (ERA). The ERA was designed to guarantee equal rights for women and to end the embedded legal discrimination that women suffered. The ERA would prevent any law which would hold men and women accountable to different standards before the law. It was first proposed by Alice Paul, a suffragist, many years earlier, in 1923. It had come before Congress many times prior to 1960, but never had enough support to pass through both houses. The writing of the law is straightforward: *Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex* (Equal Rights Amendment, US House of Representatives).

Many of the efforts to pass the ERA were spearheaded by NOW after it formed in 1966. This move reflected the desire of many in the woman's movement to move away from the core values of cultural feminism; specifically their special treatment before the law. They believed this validated the treatment of women as second class citizens in arenas such as employment and education based on the idea that women needed to be protected from some of the dangers of public life. Another prominent supporter of the ERA in the early and mid-1960s was the National Women's Party. Opponents of the ERA included: the League of Women Voters and Eleanor Roosevelt who chaired the Kennedy's Commission on Women. Opposition from these feminists was largely based on the concern that the special protections already granted to women would be taken away and this would have an overall detrimental impact on the well-being on women in all facets of public life. Some feminists, namely those that were part of labor unions and those who continued to embrace the tenets of cultural feminism generally did not support the ERA because they believed it would take away rights and protections that women had

worked hard to earn. Many male labor union members also were against the act because it might make their positions more vulnerable. Other opponents of the ERA were and continue to be conservative politicians and *pro-family* leaders such as Phyllis Schlafly and the Eagle Forum who believe that women are and should be treated as different from men. They feared passage of the ERA would harm women and take away the special protections that they worked so hard to put in place. For example they feared the ERA would make it so women could be drafted into military combat and that it would abolish the societal belief that a husband should support his wife and would therefore jeopardize the family unit (Schlafely, no date ; Frum, 2008). They believed that women needed special protections before the law, this debate became especially heated around employment issues.

The ERA became a controversial topic in the mid-1960s in part because it was thought that President Kennedy supported the ERA and would work to pass it into law. The labor union movement also played an important role in this story: although in theory the President supported the ERA, he would not demonstrate political support for it because it would have angered one of his most important supporters: organized labor. Organized labor opposed the ERA in the 1960s because if it passed it would mean that many of the best-paid and most desirable positions within unions would have to be opened up to women. It would no longer be legally acceptable to keep women from competing against men for these traditionally male dominated positions. Some within organized labor also believed that women did require these special protections and were not capable of holding many positions traditionally held by men. This debate exemplifies a larger tension within the women's movement at this time. The movement was fractured

and intense debate about how best to achieve equality for women was commonplace. Pro-family or conservative women led by Phyllis Schlafly organized against the feminists of the women's movement. They were fighting to protect the rights of women as mothers, wives and homemakers. They believed that treating women like me in public life jeopardized women's place in society and would lead to a denigration of family and social life. These conservative or anti-feminists also organized to oppose specific legislation which they believed would jeopardize the special treatment women received. For example they organized against the Equal Rights Amendment. Schlafly organized a visible campaign against the ERA as discussed above as a way to mobilize conservative or anti-feminists (Hymowitz & Weissman, 2011; Cords & Gerster, 1991). The name of the group was STOP ERA with STOP standing for Stop Taking Our Privileges (Hymowitz, 2011; Cords & Gerster, 1991).

Differing views on the ERA exacerbated the tensions within the women's movement during this time. Debate about the ERA created a theoretical rift within the women's movement. On the one hand liberal feminists believed that women should be treated just like men in all aspects of public life. Cultural feminists feared equal treatment would engender the family and put women in dangerous positions, specifically regarding military service. In the end the debate was irrelevant because the ERA has never become a law. The closest it came to passage was in 1982 when the bill expired after being passed in both houses in 1972. Even though the ERA continues to be a controversial issue today—in the mid-1960s many other pieces of legislation were passed which addressed many of the key issues of the growing women's movement.

The politics behind the ERA is important because it highlights the slow shift away

from the embrace of the tenets of cultural feminism in the US. The shift happened slowly, and is still occurring today in part because values and norms transform slowly and change can be hard, even with legislation behind it. The fact that the ERA has been formulated, and been a subject of intense scrutiny and discussion demonstrated both how far the US has shifted away from cultural feminism and also illuminates that the complete transformation to liberal feminism has not yet occurred.

### **1963 Equal Pay Act**

An influential piece of legislation which governed how women were treated in the public realm of employment was the Equal Pay Act (EPA) of 1963. The EPA was the first federal law to end employment discrimination on the basis of gender (Baer & Wirenius, 2003, p. 69; Vogel, 1993, p. 54). There was broad support for the law at both federal and state levels. Within two years after the passage of this law, 36 states established state level commissions tasked with research and the ability to make recommendations aimed at rectifying discrimination women faced in all aspects of life (The Women's Bureau, 2012). It was passed as an amendment to the Fair Labor Standards Act and outlined that employers must not pay workers of one sex less than workers of the other sex if they are doing essentially the same job. Differences in payment must be based on other pertinent factors not related to sex such as merit, time with the company or differences in the quality of work. This last clause has created somewhat of a loophole in the law that legally accepts some wage differentials to occur for a variety of reasons. A court case which found that pay must be based on job duties performed, not on the title of the job was *Schultz v. Wheaton Glass Company* (1970). This finding helped to end the practice of simply changing the job title for men and

women as a reason for differences in pay.

The EPA passed in part due to the prior work of the Commission on the Status of Women created under President Kennedy. The Commission created awareness and concern about the multiple forms of oppression and discrimination that women faced in employment. These issues became public concerns. The EPA was framed as necessary in order to reduce gender discrimination, such as the massive wage disparities between men and women, which had an overall negative impact on society, the economy, workplace productivity and the standard of living for all Americans.

Congress outlined that the passage of the EPA was necessary to reduce the unfair discrimination women faced in employment. In his speech on the topic, Kennedy outlined how one out of three workers were women and labor laws must be changed to reflect this change. He acknowledged that women face multiple barriers to work; notably their child and home care responsibilities. He outlined this as the first step of many which were needed to create an equal playing field in employment between the genders (Kennedy, 1963). The Act passed through Congress easily. The only opposition it faced came from several elected officials who worried that the EPA might increase unemployment and discrimination in certain arenas of work. This could make it hard for some women to secure certain types of employment (109 Congress, Representative Colmer, 1963).

The passage of the Equal Pay Act was a major accomplishment for women in the workforce because it outlined that women cannot be paid less than men for the same job, or work of equal value. But, this covered just one aspect of discrimination women faced in employment. For example issues related to hiring, firing and promotions were not part of the EPA. It was not until a year later that the other forms of discrimination women

faced in employment were addressed with Title VII of the Civil Rights Act of 1964. This will be discussed in more depth below. Also frustrating for proponents of the EPA was the lack of an enforcement mechanism in the EPA. The Equal Employment Opportunity Commission had a difficult time enforcing the law (US Senate Hearings, 1963). While the passage of the EPA was a major accomplishment its impact was not immediate or dramatic, in 1971 women were only paid approximately 60 percent of what men were paid (AAUW, no date, p. 3).

One of the most important elements of the EPA was the powerful way it impacted the way people thought about the position of men and women in society and employment. The idea that men and women were equal began to pervade the consciousness of the women's movement and Americans more broadly. At this time the conventional notions about the differences between men and women were becoming harder to support as more women, especially white mothers and wives entered the workforce in increasing numbers (Vogel, 1993, 52). Feminists and the women's movement more broadly began to embrace the tenets of equality over difference; the way they framed their concerns and goals was informed by the broader civil rights struggles occurring in American society. The civil rights movement focused on issues of social justice and human liberation (NOW, Highlights from NOW's Forty Fearless Years, no date; Vogel, 1993, p. 55). The women's movement embraced these tenets as their own and cultivated a new direction for the feminist movement which focused on rights and equality and started to draw parallels between racial and sexual discrimination (Evans, 1980).

This new focus on complete equality of opportunity and equality before the law



meant that the women's movement challenged policies and practices which were protective in nature and could be used to discriminate against women. This moment marks the beginning of organizing by and for women moving away from the tenets of cultural feminism and promoting tenets of complete equality or liberal feminism (Vogel, 1993, p. 45). Here they stopped pursuing: “. . . Sex-specific protection from the state (because) now it seemed neither practical as a legislative strategy nor promising from a reform perspective” (Vogel, 1993, p. 45). At this time women's rights activist in the US moved away from following a European path based in treating women and men based on their different social and biological functions towards embracing an equality framework.

### **The Civil Rights Act of 1964**

I argue that the umbrella legislation related to family and maternity leave in the United States is rooted in the Civil Rights Act of 1964. There was a significant amount of women's activism supporting the Civil Rights Act in the early 1960s. The National Women's Party spearheaded efforts to pass the Equal Rights Amendment, the EPA and all other legislation focused on creating equality between the sexes. The National Federation of Business and Professional Women's Groups were also strong supporters of these efforts on the national level. The major opponents of equality legislation were organized labor and conservative women's rights advocates who continued to fight for special employment protections for women on the basis of their special needs, especially related to pregnancy, childbirth and child care. The US Department of Labor, the Women's Bureau and the AFL-CIO strongly support protective legislation for women in the workforce (Vogel, 1993, p. 57).

Civil society organization became intensely mobilized when Congress changed

the wording of Title VII of the Civil Rights Act to add the word sex to the list of race, color, religion, and national origin as all factors which could not be used to discriminate against an individual. The word sex was added to the language of Title VII at the last minute in the House of Representatives by Representative Howard W. Smith, a Republican from Virginia. Some say he introduced the language as a way to kill and ridicule the entire bill (Davis, 1999, p. 39-40). Smith was an opponent of the federal government passing civil rights legislation as he was also anti-union and opposed to racial integration; but he had a history of supporting feminist causes (Freeman, 1991, no page number). He refuted the fact that he included the word sex in order to kill the bill. On the contrary he asserted that he added it in order to support his work with the National Women's Party which supported the legislation promoting equality legislation on the basis of sex (The National Archives, 2012).

Some assert that the insertion of the word sex to Title VII was the work of individuals mocking the work of feminists and others who worked to promote the Equal Rights Amendment and further the acceptance of the tenets of liberal feminism (Freeman, 2008; Vogel, 1993, p. 56). Scholars note the lack of serious discussion about the issue as evidence that no one took it as a serious, meaningful or realistic addition to the bill (Davis, 1999, p. 41-42). When Smith proposed this amendment to the bill, several hours of debate occurred, much of them filled with laughter from congressmen, overall it was mocked as it was called "ladies day in the house" (Freeman, 1991, no page number).

Regardless of the reasoning behind Smith's last minute amendment to the bill, what is most important is that the insertion of the word sex and the passage of the legislation informed the future development of policies along a liberal feminist path. As

Vogel(1993) writes, the inclusion of sex in the Civil Rights Act of 1964:

. . . set the seal on subsequent developments. In the next years, the analogy between sex and race moved to the center of feminist strategic thinking. . . The addition of sex to the list of prohibited categories reflected the changing climate for women's issues (p. 55-6).

The addition of the word sex to the legislation, whatever the intention behind it, has had serious consequences which could not have been predicted at that time. The controversy surrounding the passage of the Act neglects the fact that a majority of the House of Representative voted to pass it. Some politicians welcomed the inclusion of sex in the legislation as way to address the concerns represented by the Equal Rights Act, which had not passed into law despite its more than 40 years of being introduced to Congress.

This milestone legislation banned racial and sex discrimination in the workplace and other places including in voting, public accommodations and in education. In many ways it was a response to the growing civil society activity and unrest in American society at the time. Civil rights issues were a divisive and mobilization issue for many Americans. President Kennedy sent the Civil Rights Act to Congress as way to address the growing racial tensions, and increased awareness of sexual discrimination by the American public (EEOC, 2012). Title VII of the Civil Rights Act mandated equality in employment opportunities for all. Title VII states that: It shall be unlawful employment practice for an employer to discriminate “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of an individual's race, color, religion, sex, or national origin” (Title VII of the Civil Rights Act of 1964). This law greatly expanded the dimensions on which women had to be treated equally to men in the workplace. It also greatly expanded the scope for potential discrimination lawsuits.

With the passage of the Civil Rights Act the US shifts away from the UK in terms of treatment of gender discrimination. Equality between the sexes was taking on a new meaning in the US in the mid-1960s. The passage of the Civil Rights Act of 1964 was one of the first times that feminists working to promote the tenets of liberal feminism saw their goals reflected in federal legislation. At this time there is a turning point in the foundation of how gender is treated by American law. With the passage of the Civil Rights Act, gender discrimination would be treated with the same severity and based on same tenets as racial discrimination. The awareness of and meaning of sexual or gender discrimination was founded on the idea that men and women must be treated the same before the law. These views immediately became embodied in the law and slowly influenced the public's perception about the place of women in society and how they should be treated vis-à-vis men. The dominant male bread-winner model which was reflected in the 1908 Muller decision was starting to fade into the past.

The Equal Employment Opportunity Commission was formed in 1965 as the federal law enforcement body for Title VII. This body is able to investigate claims regarding sexual and racial discrimination in the workplace and in federal agencies. The manner in which Title VII was crafted left the EEOC as an ineffective body. It was a bipartisan group with just 5 members. Their powers included:

. . . Power to receive, investigate, and conciliate complaints where it found reasonable cause to believe that discrimination had occurred. Where EEOC was unsuccessful in conciliating the complaints, the statute provided only that individuals could bring private lawsuits, and where EEOC found evidence of "patterns or practices" of discrimination, EEOC could then refer such matters to the Department of Justice for litigation (EEOC, 2012).

The founding of the EEOC made for an ineffectual body that was unable to fulfill its mandate or satisfactorily address all claims presented.

### **The Equal Employment Opportunity Commission**

The EEOC is an administrative agency which is part of the Executive Branch of the US government. It is a bipartisan committee made up of five presidentially appointed and Senate approved members. The committee also includes a general counsel who provides direction to the committee and acts as the lead attorney. Their primary mandate is to eliminate all illegal forms of discrimination from the workplace. To achieve this goal, the EEOC is: “. . . responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information” (EEOC, Overview, no date). The EEOC works to prevent discrimination, investigates charges of discrimination, make accurate findings pertaining to if discrimination has occurred, they attempt to settle charges of discrimination, and in some cases they will file a lawsuit if it is deemed necessary (EEOC, Overview, no date ).

When created as the enforcement body for the Civil Rights Act of 1964, the EEOC saw sexual discrimination as secondary to the key concern of responding to problems of racial discrimination. Not surprisingly, Title VII suffered a similar fate to the EPA in terms of lax enforcement. For example, the EEOC continued to allow employers to advertise for jobs in a sex-segregated manner but employers were no longer able to advertise for jobs along racially segregated lines (Vogel, 1993, p. 58). Since its inception the EEOC has undergone numerous changes to make it a more effective commission.

The lax enforcement of Title VII by the EEOC and the shallow protection it offered women in the workforce that was the impetus for the formation of NOW in 1966 (NOW, 2011). Many prominent feminists including Betty Frieden and Dr. Pauli Murray, a member of the EEOC and the President's Commission on the Status of women, and countless members of women's groups were so unsatisfied with the commitment to enforce sexual discrimination cases that they held a conference in June of 1966 in Washington DC to discuss what should be done. The goal of the conference called "Targets for Action" was to push the EEOC to follow through on its legal purpose as outline in Title VII (NOW, Setting the Stage, 2011). This event provided the impetus for the individuals gathered to form the National Organization of Women, as there was no national umbrella organization which spoke for the rights of women within a liberal feminist framework. The participants at this conference drew a parallel between the need for civil rights organizations to end discrimination against blacks and the need for a similar umbrella organization to work for the rights of women (NOW, Setting the Stage, 2011). NOW was created in response to the inability of the governmental agencies to take sexual discrimination seriously, despite the fact they had a legal mandate to do so. This also demonstrated just how difficult it can be to shift values and change behavior related to long-held social norms. Despite the fact that the EEOC had a legal mandate to target sex discrimination, they were slow to put these new laws and norms into practice.

One arena which exemplifies the challenges with implementing the mandate encompassed in Title VII occurred in the airline industry, specifically with stewardesses who had to fight against their contractual obligations which required that they retire at age 35, set strict weight requirements, and made it illegal for them to get married or have

children. All of these restrictions ran counter to the anti-discrimination mandate of Title VII. Women in the airline industry began to organize for their rights as employees and end the discriminatory practices which were so prevalent in the industry at that time. They worked to bring awareness to their plight by filing complaints with the EEOC, initiating class action lawsuits, reaching out to other already well-established women's groups like NOW, some women also established their own organization, Stewardesses for Women's Rights (Maley, 2011). The organized flight attendants worked to end the stereotype that they were sexy, young, thin, and not necessarily very skilled. To fight this traditional stereotype based in the role of women as caretakers whose main goal in life was to marry and have children, they had to draw on the newly established Civil Rights Act and the accompanying values expressed by liberal feminist thought.

While many women at this time were organizing for increased access to employment opportunities, the flight attendants were already working women who were organizing for the right to have a family and continue to work, something that ran counter to the social norms for white women the early 1960s. The politics of flight attendants organizing for their rights as women workers exemplified the struggle that women in the US had at this time being workers, and wives and mothers simultaneously. With the passage of the Civil Rights Act it was now illegal to discriminate against women in the workforce, whatever their marital status. The flight attendants organized to fight the pervasive norm that women could work up until they got married at which time they were expected to have children and turn away from the public world of work. But the ideas encompassed in the Civil Rights Act of 1964 did not pervade the consciousness of the American public overnight. It took many years of women's organizing and working in

the public, traditionally men's world, to normalize the idea that women can and should have access to a career and the ability to have a family simultaneously. This demonstrates how slowly gender norms change, even when they are supported by federal legislation. The seed of liberal feminist thought was planted by the women's movement, and this was reflected in federal legislation, but it took many years of continued awareness-building and discussion for society to comfortably accept the norm that men and women can and should be considered equal in the arena of employment.

### **National Organization of Women: The Catalyst for Liberal Feminist Organizing**

NOW formed amid the civil rights activity of the 1960s. The women who founded NOW were inspired by the social movements working to achieve equality for African Americans and other minority groups. In their eyes the problem was that this equality was usually focused on men. The needs of minority women and women in general were not the priorities of the civil rights movement. Early on the goal of NOW was to promote equality for women before the law, in the workplace, and society more broadly (NOW, *The Founding of NOW*, no date). The individuals who created NOW did something completely different compared to the past women's movement in the US: they made a conscious decision to take the women's movement in a new direction. This new direction was based on the ideals of liberal feminism where complete equality between men and women is the goal (Tong, 2009, p. 24). This followed from their belief that women and men are much more similar than had previously been embraced under the ideals of cultural feminism which proposed protective legislation for women in their roles as wives, mothers and caretakers. This new direction was influenced by tenets of equality,



social justice, human rights, and civil rights (NOW, *The Founding of NOW*, no date). They moved away from a focus on protections for women. The creation of NOW is a landmark occurrence in the development of family policy in the US as NOW influenced the complete environment of women's civil society activity. It became harder for women's groups focused on providing special protections to flourish and remain relevant as NOW took a stand against the paternalistic special treatment of women (Vogel, 1993, p. 58).

The mainstream women's movement explicitly moved away from their historical roots in cultural feminism and forged a new path, one based in the tenets of liberal feminism and complete equality between the sexes. This is where the dominant gender norms and legal foundations of gender in the US take on a new direction; one quite different than the foundations in the UK. Anoloyce Clapp, a participant present at the creation NOW encapsulated the importance and newness surrounding the event: "28 women met to set up a temporary organization for this purpose: To take action to bring women into full participation in the mainstream of American society now, assuming all the privileges and responsibilities thereof in truly equal partnership with men." (NOW, *Setting the Stage*, 2011). One of the first major acts NOW implemented was to picket the EEOC and bring awareness to the fact that they did not comply with their own regulations; specifically the fact that they allowed job ads to remain segregated by sex (Vogel, 1993, p. 59; NOW, *Setting the Stage*, 2011).

Events culminated in 1968 when NOW filed a suit against the EEOC. Their work resulted in an Executive Order (11375) by President Johnson which reiterated the illegality of discrimination on the basis of sex. The EEOC reformulated its guidelines on

how it would deal with issues of sex discrimination. It committed to make them more in line with the intent of Title VII. This was a huge success for NOW and it essentially cemented the new direction of the legal treatment of issues of sex and gender before the law. It not only impacted the legal treatment of women but also: “Many of the efforts of the new women’s movement proceeded within the same framework. . . No more than race, sex was not a valid basis for differential treatment” (Vogel, 1993, p. 59). With this new direction, one thing became obvious: there was no shortage of discrimination against women in the workplace. Within the first five years of its creation the EEOC received 50,000 claims of sexual discrimination (National Women’s History Project, 2001).

The creation of the Title VII struck a nerve with American women who experienced a disconnect between the changing legal standards relating to the treatment of gender in the workplace and the actual discrimination they were encountering. The nature of how gender norms began to change in the US is demonstrated by the passage of Title VII. While certain pockets of individuals were actively promoting the equal treatment of men and women before the law, ‘mainstream’ America had a difficult time adjusting its behavioral practices to meet the new legal guidelines which passed in 1964. Many civil society groups fought to end protective legislation for women. Their goal was complete gender equality.

A last minute and unplanned change to the language of the amendment played a large role in changing the legal framework in the US. These changes were in part possible because NOW and their network of activists was well-positioned and able to take advantage of the policy window, or critical juncture offered by the unexpected addition of sex to the Civil Rights Act. Their ability to act on this policy change and activate their

members brought increased support for the Act and increased awareness about the issue. Despite the accidental nature of the wording of Title IV, the impact of this legislation has been monumental, and has effectively changed the way that gender is constructed in American society. It reflected the values of the women's movement at this time, they were catalyzed by this new law. The passage of Title VII and the Civil Rights Act significantly bolstered their activity and shaped their goals for the coming years. NOW took advantage of the critical juncture offered by the Civil Rights Act of 1964; they worked to create change in the legal framework and in social norms more broadly. The change in trajectory of family policy in the US can be traced back to this moment, this policy window. Civil society organizations, specifically NOW, played a key role in cementing this new direction of policy and legal treatment of women in the workforce.

### **Title VII and Pregnancy**

Another crucial aspect of Title VII which is relevant to shaping gender norms and behavior is its treatment of pregnancy in the workplace. The formulation and language of Title VII brought the discussion of pregnancy explicitly into the spotlight. If women were now to be legally treated the same as men in terms of all factors of employment, then how exactly should pregnancy be treated? At this time there was no federal law which regulated treatment of pregnancy in the workplace. Laws tended to vary by company and state. In the 1960s women's working hours were still limited *for their own protection*. The limitations were tied to protecting their roles as mothers and wives as established in the early 1900s with cases such as *Mueller v. Oregon* in 1908. Many companies would fire pregnant workers and although rare by the 1970s some organizations such as the Public School System, would institute mandatory pregnancy leaves for women (Baer,

2002, p. 110). It was not until 1978 when the Pregnancy Discrimination Act was passed that treatment of pregnant workers would be mandated at the national level. This will be discussed in Chapter 5.

Much deliberation and debate occurred within the society, in the Executive branch of the government, by legal scholars, lawyers, and feminists about just how pregnancy should be treated by the new tenets outlined by Title VII and the Civil Rights Act of 1964. By the late 1960s the Supreme Court had still not taken up the issue of sex discrimination and the considerable confusion that resulted from the Civil Rights Act due to unclear definitions of key terms (Vogel, 1993, p. 64). Nowhere was this confusion more evident than regarding how pregnant women should be treated by employers. While the new equality framework was put in place by the 1964 Civil Rights Act, pregnancy continued to be treated as a condition which required protection and differential treatment. Employers could still legally treat pregnant women as they thought appropriate, this often led to discriminatory practices such as the exclusion of women from coverage in disability schemes. These were considered legal practices because as late as 1970 the EEOC viewed pregnancy as a normal and unique condition that women experienced, not a sickness, so therefore women could be excluded from benefit plans (Vogel, 1993, p. 65).

The apparent lack of impact of Title VII on the treatment of pregnant women in employment created significant discussion and debate within the women's movement. This discussion was influenced by the language of the ERA amendment, and its goal to provide exactly equal treatment for men and women before the law. This was influential despite the fact that the ERA had still not passed into law. A breakthrough in this

discussion occurred when the Director of the Women's Bureau, Elizabeth Koontz, and efforts by NOW began to distinguish between child-bearing and child-rearing responsibilities as two separate domains. The separation of these two responsibilities created a new perspective to the traditional idea that mothers had no proper place in the public realm of work (Vogel, 1993, p. 61). Civil society leaders and feminist lawyers started to acknowledge that most all aspects of child rearing could be completed by people other than mothers and that it was only child bearing that was specifically the realm of women. Within the equality framework it was most logical to specifically treat pregnancy-related health concerns and health concerns related to childbirth as temporary disabilities that were similar to other temporary disabilities that could be experienced by all individuals regardless of their sex. This line of thought was embraced by the Citizen's Advisory Council on the Status of Women. This bi-partisan group was made up of citizens appointed by the President, made up of both men and women. They presented the idea that all pregnancy and childbirth should be treated similarly to other disabilities in order to avoid further special treatment and discriminatory employment practices against women.

The EEOC outlined that pregnancy was a condition that must be treated like any other disability or illness per the guidelines of the Equal Employment Opportunity Act of 1972 which amended the Civil Rights Act of 1964. The Equal Employment Act also gave the EEOC power by allowing it to conduct its own litigation giving it heightened ability to enforce its findings. With the passage of the 1972 Act special protections for pregnant women were banned in the US, as they would infringe upon rights previously given in the Civil Rights Act of 1964. The EEOC updated its guidelines to acknowledge that

discrimination of pregnant workers was an infringement of Title VII.

Importantly, the amendments in 1972 asserted that special protections for women would legally be viewed as discriminatory because men were not allowed to access these rights. The amended legislation reflected the idea that special treatment of and protections for women would lead to further inequalities between the sexes and discrimination against women. With the updated guidelines it became an illegal practice to mandate maternity leave for employees or deny any benefits related to temporary disability. It was not until the early 1970s that the Supreme Court took an active role in enforcing these EEOC guidelines. It took almost ten years for the legal framework outlined in the 1964 Civil Rights Act to be specified and legally enforced. Prior to the early 1970s cases of sex or pregnancy discrimination were generally not heard and the courts were of little help in promoting the new equality framework (Vogel, 1993, p. 64). The changes resulting from the civil rights movement and the Civil Rights Act of 1964 ushered in a massive change in the way that pregnant workers were treated. Special and inferior treatment for women workers was no longer legally acceptable; maternity could not be used a valid legal or social reason to treat women differently (Kammerman, Kahn & Kingston, 1983).

The decision to treat pregnancy and its related health concerns similarly to any other disability was a challenge for many American feminists, especially those that still promoted and favored the idea of special treatment and supportive policies for women in the workplace (Williams, 1984, p.325-327). Some civil society groups opposed the law on grounds that it would place further strain on the traditional family unit and core

religious beliefs. Phyllis Schlafly, a self-proclaimed leader of the conservative movement since 1964, was the leader of many of these conservative or pro-family groups (Eagle Forum, no date). In 1967 she created the Eagle Forum Trust Fund to collect money to promote conservative causes. In 1972 she created the Eagle Forum to focus on pro-family issues, at this time she was also active in efforts to block the Equal Rights Act with her group STOP ERA (Ford, 2009). Other supporters of preferential treatment for pregnancy and childbirth were some feminists and labor union members who believed that fighting for complete equality would be negative for women as it would reduce their ability to balance work and family matters. Opponents of the liberal feminist view believed that taking away special protections for women would create a threat against women, mothers, and families (Critchlow, 2005, p. 18). With the shift towards treatment of pregnancy like any other temporary disability the legal foundations in the US shift even more towards embracing liberal feminism. This change was established in the early 1970s and marks a time of divergence between the two cases. The US at this point shifts father away from its roots in cultural feminist thought and practice.

### **Further Evidence of A Changing Legal Framework**

A brief investigation of relevant Supreme Court cases and the changing language of policies of the federal government, which reflect the changing gender norms, will demonstrate how thoroughly things changed as a result of the events of the mid-1960s. It is not my intent to provide an exhaustive discussion of all of the relevant cases, but rather highlight some of the key issues brought up by the passage of Title VII and the EEOC. Despite that fact that the intention behind the writing of the law was unclear and some

have questioned the ability and desire of the EEOC to address gender and sex discrimination cases with the same seriousness, the fact remains that the EEOC has been very busy since its creation in 1965. It has made significant changes to the way that women are treated in employment, education and governmental realms as a result of its powers which include: hearing complaints, instigating lawsuits, issuing regulations and implementing and interpreting relevant laws (Baer, 2002, p. 79).

One of the first steps in creating equality in employment was in the realm of hiring. Before anything like pregnancy in the workforce could be dealt with, fair hiring practices needed to be established. One major step in establishing fair hiring practices occurred in 1973 when the Supreme Court banned sex segregation in help-wanted ads in *Pittsburgh Press v. Pittsburgh Commission on Human Relations*. The plaintiff in this case was a member of a local NOW chapter who brought the case based on the fact the jobs being advertised to women were fewer in number, paid less, and were less prestigious. The Supreme Court ruled that this practice did infringe upon the laws outlined by Title VII of the EEOC. This case changed the ways that help wanted ads were used and brought the practices of employers to match the legal requirements as outlined by the Civil Rights Act of 1964. This reflects the fact that the EEOC was not able to take seriously its task to investigate all forms of sexual discrimination- either because of lack of resources or lack of feeling that the issue was as important as its mandate to investigate racial discrimination.

The scope of the EEOC's power helped to create an atmosphere where women were slowly gaining equality with men in public life. More than anything else, the issues of pregnancy and childbirth encompass the essential nature of what it means to be a



woman; treatment of these feminine experiences before the law, signify and reflect the legal and social norms on the topic. With the work of the EEOC and increasing awareness of civil society groups, a new approach to treating pregnancy at work was being crafted in the early 1970s. These changes are evidenced by the EEOC changing their position of the treatment of pregnancy in the workforce. In 1972 the EEOC issued new guidelines which deal with the issue of pregnancy discrimination as falling under the domain of Title VII. At this time they also outlined best practices for employers to avoid issues related to pregnancy discrimination. These best practices included: pregnancy cannot be used as a reason to not hire a woman; pregnancy related disabilities must be categorized as temporary disabilities and employers must offer pregnant woman sufficient time off to avoid the firing of pregnant employees (Equal Opportunity Act of 1972).

These landmark changes were at least in part the result of increased civil society activity by and for women's rights. Many women were mobilized by the decisions of Supreme Court cases around issues of pregnancy and employment. Decisions such as those in *Guduldig v. Aiello* (1974) and *the General Electric Company v. Gilbert* (1976) still embodied the traditional idea that women should not be full-time employees, mothers, and wives. In both cases the court ruled that pregnancy was a unique condition for women that did not have to be covered in temporary disability benefits. These Supreme Court decisions reflected the idea that men and women are equal in theory as outlined by the Civil Rights Act of 1964, but pregnant women are a separate category that are essentially not comparable to men and therefore have different rights. These decisions were based more on the traditional foundations embodied by cultural feminism. It follows

that women deserve separate treatment because of their differing biological functions. The women's movement was energized by these Supreme Court decisions which did not fully embrace the tenets of liberal feminism which were outlined in the Civil Rights Act and tenets of the EEOC. These decisions outlined that sex discrimination and pregnancy discrimination are different and that pregnancy discrimination does not constitute a sex-based classification as outlined by Title VII (Grossman, 2008). These created two categories of people: pregnant women and non-pregnant persons who are not necessarily able to access the same set of rights and protections (Grossman, 2008). Hundreds of women's rights groups, feminists, civil rights and religious activists formed a coalition in response to these decisions: the Campaign to End Discrimination Against Pregnant Workers (Gelb & Palley, 1982; Simpson, 1979). Their goal was to get a law passed which would make pregnancy discrimination illegal. More on the Pregnancy Discrimination Act will be covered in the next chapter.

This brief discussion highlights just what a slow and long process it can be for dominant gender norms to change. It outlines how even when ideas and norms are embodied in law, they are not necessarily embodied in practice or in the everyday experiences of citizens. Clashes such as these led to increased legal pressure and cases coming up to the Supreme Court to address these grey areas where law and traditional practices clash. While the EEOC continued to hear a great deal of sex and pregnancy discrimination cases, the late 1960s and early 1970s was a time of heightened legal and civil society activity. This flurry of activity helped to establish the ideals of liberal feminism and to bring pressure on the courts and government to ensure that the tenets of Civil Rights Act of 1964 were enforced. The development of and enforcement of the

Title VI demonstrates how difficult creating a normative and behavior shift can be. While there was certainly support for the new maternity and employment policies they were somewhat difficult to enforce because the long-held assumptions about motherhood, family and employment were still very much alive in American society (Vogel, 1993, p. 67). Vogel calls the shift in the treatment of women in the workforce as a new set of policy principles which were framed in the tenets of equality and therefore: “. . . challenged the traditional notions of women as different and maternity as special (p. 67).” This was a radical value shift for many and logically the long held views and treatment of women in the workplace were understandably slow to change.

### **US Conclusion**

This discussion highlights some of the most important changes to the treatment of women in the workplace during the 1960s and early 1970s. I have demonstrated the tremendous amount of change that occurred as a result of the passage of the 1964 Civil Rights Act which created a critical juncture in the family policy landscape. The 1964 Civil Rights Act shifted the family policy trajectory away from policies rooted in cultural feminist thought towards a policy landscape that was legally governed by tenets of liberal feminism.

The historical evidence I presented in the above section supports the idea that it was during this time that the gender norms around women, work, pregnancy and motherhood begin to shift away from the historical reliance on cultural feminism and towards liberal feminism. The civil rights movement and accompanying social activity framed the way that Americans viewed women’s rights; it was part and parcel the broader civil rights movement which began as a movement for racial equality. I have shown how

the fight for women's equality before the law in the US is strongly linked to the fight for racial equality. The outcome of civil society activity and its connected legal developments end up creating a very unique and very American solution to the problem of how women, especially pregnant women and mothers should be treated in the public world of work. This new policy trajectory was based on the ideas that employees are gender-neutral workers. Women and mothers were now to be treated as men were in the world of work. Pregnancy and childbearing were now to be treated as a temporary barrier to participation in public work. The decision to have a child and the responsibility to overcome the obstacles related to it rested with individual as a gender-neutral employee (O'Conner et al, 1999, p. 190).

This new set of policy principles is founded on the changing norms surrounding motherhood, pregnancy, child-rearing, and public work. The deep seated values about the world were slow to change, were impacted by the American civil rights movement, and appropriated by the women's rights movement. The new policy framework developed with the 1964 Civil Rights Act envisioned a different type of treatment of women. Namely it outlined that women should not be treated as different from men on a legal or employment perspective. It also outlined that women should not have access to exclusive policies or protections. Rather they shifted the discussion away from difference and towards equality. This put the development of maternity and family policies in the US off in a much different path.

An appropriate way to conclude this section is to mention that in 1975 Time Magazine's Man of the Year was the working woman (Time Magazine, 1976). A group of achieving and notable women in American society were chosen and their

accomplishments were detailed in this edition of the magazine. Among the group were the first lady Betty Ford, sports legend Billie Jean King, and other lesser known politicians, bureaucrats and accomplished businesswomen who were all described as being at the top of their field. According to the magazine these women were chosen to symbolize the new consciousness of women in American society and the new role women now played in public life (Time Magazine, 1976). The collection of articles in the volume highlight the tremendous amount of social change that had occurred since the women's rights movement gained strength in the middle of the century. Despite the dramatic changes which provided women more independence, one article remarked:

In almost all areas—business, the professions, blue-collar work, education, politics, the family—a new sensibility among both men and women has led to more enlightenment—and a restless understanding of how far away sexual equality remains (Time Magazine, 1976).

By 1975 it is clear that the new policy framework based on complete equality and liberal feminism is in place legally, embraced by the mainstream women's movement, and on the minds and magazine covers of mainstream America. In large part this new foundation for family policy is based on the critical juncture that occurred in 1964. The critical juncture was taken advantage of by the already mobilized and focused civil society groups who were working for equality for women and other minority groups. In large part the shift to a new policy trajectory was made possible by these civil society organizations. Their work made it so it was no longer appropriate or logical to continue to push for special protections for American women, whether they were pregnant, a mother, or a wife.

## **UK: 1960- 1975**

During the 1960s women in the UK began to organize for employment and educational opportunities as they did in the US but their tactics, organizational structure and goals looked much different than their US counterparts. The US women's rights and civil rights movement was so large and visible that it influenced women organizing around the world; the US influence was especially evident in the UK (Pugh, 2002). The energy of the women's rights movement in the US was a catalyst for the women's rights movement in the UK. Within Britain the driving forces for organization were quite different than the civil rights and anti-war tradition which was so powerful in the US at this time. The experiences of women in the UK were also much different than their counterparts in the US: there was a much stronger sense of class politics, and they worked within the already prominent labor union structure and the tenets of socialism they were founded on. Importantly, the movement in the UK mostly operated outside of the pressure/interest group structure of politics. Another important difference between the movements is that in the UK is that there was a weaker tradition of action within the courts as there was in the US. In the UK much of the organization for women's rights occurred within the structures of the well-established trade union activity. Trade union leaders tended to be men and activity was often organized around the needs of male workers. For example male trade union members worked to protect the best and highest paying jobs for males (S. Harris, personal communication, 2010).

This section highlights the key developments of the decentralized and grassroots organization of the women's liberation movement in the UK from 1960-1975. The

primary pieces of legislation passed were the Equal Pay Act of 1970, the Employment Protections Act in 1975, and the Sex Discrimination Act of 1975. I demonstrate that even though women were organizing for many similar rights and opportunities as their American counterparts, the cultural, economic and political atmosphere in the UK created an environment where the British women's movement developed along much different lines. Society in the UK was more strongly rooted to the traditional male bread winner model. The liberal feminist tradition had only a small influence on the much more class-conscious movement in the UK (Bouchier, 1983, p. 55). Women organized for equality of opportunities in education and employment but at the same time they continued to press for policies targeted at women which provided protections for pregnancy and child care. The tenets of cultural feminism are evident in women's organizing in the UK. The distinct social, cultural and historical influences on the movements are important for understanding the differences in the development of gender norms creation and the relevant laws in each place.

### **The Rediscovery of the Women's Liberation Movement**

In the late 1950's and early 1960's the women's rights movement in the UK was slowly gaining strength after being fragmented by two world wars and a period of economic boom (Pugh, 2002, 312). The energy of the women's rights movement in the US invigorated women in the UK who began to join forces around the key issues of restricted employment and educational opportunities and unequal pay for women. The movement in the UK developed a bit later than its American counterpart. This was in part due to different historical events. For example the 50<sup>th</sup> anniversary of women earning the

right to vote in the UK spurred women to organize for their rights in 1968. Women realized that there was still so much yet to be accomplished and achieved for achieving equal rights for women, many of which were outlined more than 50 years prior (Pugh, 2002, p.312). The four primary goals of the women's movement at this time were: equal pay for equal work; equal opportunities in education and employment; access to free contraception and abortion on demand and free 24 hour childcare (Pugh, 2002, p. 320; Bouchier, 1983, p. 94). Despite the decentralized nature of the movement in the UK several national coordinating groups developed in the late 1960s and early 1970s. The most visible was the Women's Liberation Movement which was the umbrella organization for diverse grassroots women's groups throughout the UK. The Women's Liberation Movement organized the first national women's rights meeting in 1970. This marked the beginning of the reinvigoration of the feminist movement (Bouchier, 1983, p. 93).

Another difference between the two movements is the saliency of different goals. In the UK issues such as access to free child care, maternity leave and family allowances were extremely visible and crucial aspects to women's organizing. These issues seemed even more important to women in the UK in light of their experiences of increased participation in public employment during WWI and WWII. After World War II ended some women were encouraged to continue working due to the overall labor shortage, but they were encouraged to work only part-time if they were married and/or had children (Lewis, 1984, p. 152-153). Most of the top-paying full-time positions were essentially returned to men when the war ended, this was especially true in industries which were heavily unionized (Harris, 2011). There was also scant governmental provision for



women's child care needs after the war as more than 50 percent of all government child care centers had closed (Lewis, 1992, p. 71). Many women with young children simply could not work because they had to look after their children (Lewis, 1984, p. 152-153).

Overall women felt marginalized by their inability to access full-time jobs that resulted from the growing economic prosperity of the 1950s, this was especially true for women who were employed in so-called men's work during the war. Their experiences added to the growing movement for women's rights, especially the fight for workplace rights and equal pay (Harris, 2011). This led women to question and attempt to break free of the dominant male breadwinner model that was so entrenched in British society. The government spent considerable effort to encourage women that their rightful place was still in the home after the war. For example the government made it known that children of working mothers were not given priority placements in childcare or pre-school and many politicians spoke of the importance of rebuilding the family and nation in large part through full-time motherhood (Lewips, 1994, p. 71). John Bowlby, a famous British psychologist, post- WWII published a much touted hypothesis that in order for young children to be healthy and well-adapted they had to have a secure attachment and close relationship to their mother or mother-like figure. This research was taken up by many in government and the World Health Organization. His work was used for political goals by the British government to encourage women to not work outside of the home after the War due to the negative long-term impact this would have on her children (Rutter, 1997).

But over time women became dissatisfied and in larger numbers than ever before women began to challenge the traditional British role of women as the good wife and

mother who did not work outside of the home (Bouchier, 1984). Some of the key obstacles for women's equality at this time were the strong cultural attitude that women should first and foremost be wives and mothers, and the strength of the institution of marriage based on the male breadwinner model (Pugh, 2000, p. 313). Women slowly realized that they could be successful in the public worlds of employment and education; but felt confined and frustrated by the lack of opportunities provided to them. This spurred more civil society activity promoting women's rights.

Another aspect that spurred the mobilization of the women's movement in the mid- and late-1960s was the impression that the societal position of women had changed for the better. This was in part due to the passage of laws which made gaining access to contraceptives easier for unmarried women (National Health Service Act 1967), an abortion more accessible (Abortion Act of 1967), and divorce easier to obtain legally (Divorce Reform Act of 1969). But these changes were only superficial and lacked real support by the government and their resources (Pugh, 2000, p. 314). The impression that things were getting better for women did not match the every-day experiences of women in the UK. This false perception of change was certainly a catalyst for women's organizing. In the 1960s the social norms and behaviors surround gender identity were changing, but not fast enough for many women. This created a social environment that was responsive to the feminist cause (Pugh, 2000, p. 315).

Labour unions were one of the first sites of organizing for women's rights in the UK. Ironically they were also one of the major impediments to opening up more decent paying jobs and advanced opportunities for women workers. Women within unions

women felt marginalized from their patriarchal structure. Their lower positions was evidenced by the ghettoization of women in the lowest paying positions, the lack of opportunities for advancement and the large pay gap between men and women (Healy & Kirton, 2000). These problems were so acute and social pressure around them quite visible that the Trade Unions Congress, one of the largest union organizations in the UK, created a charter for working women in 1963. It was in part spurred by the fact that the majority of industries such as clothing making and tailoring were populated by women workers, who could essentially bring the entire industry to a standstill (Healy & Kirton, 2000). The charter outlined 6 points for industrial women workers. These included: equal pay, opportunities for promotion, more apprenticeships for girls, improved opportunities for training, more training for older women, and special provisions for health and welfare of women workers (TUCs Six Point Charter For Women at Work, 1963). The impact the charter had was debatable, but it is crucial to underscore the social feeling of the time, especially the frustration that many women workers felt. This frustration helped to further the activity and organization of the women's movement in the mid and late 1960s. On another dimension the charter is important because it signifies the adherence to the tenets of cultural feminism at this time. The recommendations the charter makes, specifically special treatment, policies and opportunities for women workers highlights just how strongly the tenets of cultural feminism were embraced by the women's movement and society more broadly.

On a political level many women felt alienated from the Labour party as many of their political goals and causes were based on the needs of the traditional male worker (Pugh, 2000). There are many examples of how the women's movement in the UK

originated from the labor union structure already in place there. Many labor union strikes were organized by low paid women workers who were influenced by the Socialist Movement and the oppression of women within a capitalist society. They believed that women were the first group within society to be taken advantage of, as it was the unpaid work that women performed within the home made the entire capitalist system possible (Meehan, 1985). This idea extended to the problem that women were taken advantage of in public employment as they were paid less than men, often had more tenuous connections to employment and did not lack representation even within the Labour party. This line of reasoning encouraged women to organize outside of the structures of government. Another reason that women at this time organized mostly outside of the dominant political structures is the poor track record that other feminist groups had trying to lobby the government in the past. Pugh (2000) notes that the hallmark of the British women's movement was avoiding the formal hierarchical structures that were typical of government and politics which were dominated by men (p. 319).

### **Trade Union Strikes**

One of the most widely publicized strikes organized by women as labor union members was the 1968 Dagenham Women's Strike at a Ford plant. The strike took the nation by surprise because although women were known to be union members they did not take a visible role and prior to this time women were not thought to go on strike. Jacqueline Scott, Professor of Sociology at the University of Cambridge, says: "It was a time when people still thought a woman's primary job was the home and looking after the kids, and work was something secondary, largely pin money" (Held & McClatchey,

2010). Despite this climate where women's public work was not often taken seriously, women organized to fight for equal treatment, most importantly equal pay. At this Ford plant women were paid less than men, even if they did exactly the same work. For example both men and women were sewing machinists, making covers for the seats of the cars being produced. The women workers were categorized as unskilled workers and paid less than their 'skilled' male co-workers. The three-week long strike brought the factory to a standstill and brought national attention to the issue of unequal pay for women workers throughout the UK. The strike also spurred other women to protest for equal treatment in employment. A participant of the strike, Mrs. Davis said: "After the strike lots of people came up to us and said that they'd started their own fights after hearing about ours" (Shields, 2010, no page number).

The Dagenham women were a part of a union which largely did not support the equal pay strike. Union leaders did what they could to prevent male workers from supporting their efforts; although there were a number of men union members who were supportive. The strike was only resolved when the Secretary of State for Employment, Barbara Castle came to meet with the women and broker a deal. The women were given a pay increase, almost near parity to men's pay rate, but the larger issue of using the same pay scale for men and women did not get resolved until almost 20 years later. This protest helped to contribute to the passage of the Equal Pay Act in 1970 as it made the issue of equal treatment for women in workplace a very visible issue (MacGregor, 2003). This was such a momentous event that Shields (2010) wrote: "the strike speeded up the introduction of the Equal Pay Act of 1970, which made it illegal to have different pay scales for men and women" (no page number). This strike led to other strikes and

increased numbers of women joining labor unions and being active in local organizations. These events further infused the women's rights movement with the strong labor union and socialist tradition which already had deep roots in the UK.

Another highly publicized protest occurred in London in 1970 at the Miss World Competition Finals. This internationally televised event was a visible target for feminist activists who organized to bring awareness to the discrimination and unequal treatment and societal pressures placed on women. The protest was one of the few feminist events in the UK that used tactics of civil disobedience and was widely publicized. It sent a strong signal to all women who were watching to do something to end the unequal treatment of women. The protestors famously held up signs that read: "We are not beautiful, we are not ugly, we are angry" (Harne, 2010). The protestors said their goal was to raise awareness about the objectification and discrimination women continued to face in public and private life around the world (Harne, 2010). The impact the protest had was considerable; the membership of the Women's Liberation Movement doubled one month after the protest (Harne, 2010).

Another large and visible protest by women union workers occurred in 1970 in Leeds when more than 20,000 women from 45 factories went on strike to protest lower wages for women in clothing factories (Feminist Archive North, 2006). The event in Leeds spurred women all over the country to also mobilize. The grassroots activity was becoming more visible and coalitions were starting to form. These events led to the creation of the National Joint Action Campaign Committee for Women's Equal Rights, which was an active member in the fight for the Equal Pay Act of 1970.

While these events certainly brought increase public awareness to the issues of

equal pay and equal rights for women, it created some tension within the women's movement as well. For example the focus on the working-class woman as a symbol of the feminist movement to some extent alienated the upper and middle class women within the movement. The increased media and societal attention on the women's movement also created tensions within the larger trade union movement and Labour party. Many male leaders felt embarrassed and unsure of how to treat these new demands from women (Pugh, 2000, p. 317).

### **The London Women's Liberation Workshop as an Umbrella Group**

The many visible protests and labor union strikes organized to gain equal treatment for women in the late 1960s led to more national cohesion of the decentralized and grassroots women's groups across the UK. The first National Conference of the Women's Liberation Movement was held at Ruskin College in the spring of 1970. This conference brought together a variety of grassroots groups including Socialist women's rights groups like the International Socialists and International Marxist Group and local groups working on issues related to child care and equal pay.

This conference occurred at a crucial time as it brought together the diverse organizations working on women's issues across the UK. In 1964 there were more than 3 million women active in 120 national groups broadly working on this women's rights issues, 15 of these groups were explicitly feminist (Meehan, 1985, p. 193). It was at this first national meeting that the goals of the movement were articulated: equal pay for equal work; equal opportunities for education and employment; free contraception and abortion on demand; and free 24 hour childcare to make a variety of jobs and careers available to all women (Pugh, 2002, p. 320; Bouchier, 1983, p. 94). This was a major

landmark for the women's movement in the UK as it was at this time a national feminist movement could be said to exist in the UK (Armstrong, Carr, Marcus, & Mark 2010). While this lent an element of cohesion to the movement, it still remained decentralized and therefore distinct from its American counterpart. The local and grassroots nature of the British movement was also part of its strength, it kept the groups able to serve their community's needs, maintain diversity and remain out of the large shadow cast by the government.

The UK began this era with roots in cultural feminism, unlike the US which experienced a critical juncture in 1964 with the passage of the Civil Rights Act; the UK remained attached to its early roots in cultural feminism. In the UK a corresponding critical juncture never occurred. Evidence of this is present in the four goals articulated by the Women's Movement in 1970. The movement focused on promoting rights related to equal treatment and employment that were specific to the needs of women as mothers and as potential mothers. There was still a strong identification with the idea that women and men are different, and women need targeted policies to assist them in the quest for equality with men. This was especially evident in the discussion of policies to support women balance work inside and outside of the home.

The notion of complete equality between men and women in public work never became entrenched in the UK as it did in the US. For example, in 1971 women organized in London to mark International Women's Day. Thousands of women marched in central London to present a petition to the Prime Minister. It stated the four demands of the movement. The goal of this march was to bring attention to the four goals of the women's movement and to the invisible and undervalued work of women. The activists



specifically drew on their identity as women and roles as mothers and wives to bring attention to their cause; they pushed strollers, wore corsets and bras in visible places, held laundry up with them as they walked and performed on topics relating to women's health and sexuality (The Women's Library, no date). Women in the UK played upon their role within society as women to fight for their equal rights in the workplace and elsewhere.

The idea that women should act like men and be treated like men did not figure into their tactics or ideals. The UK movement remained closely tied to the foundations of cultural or difference feminism despite the fact they were working out just how to situate fair and equitable treatment of women, especially women as wives and mothers. Women in the UK also felt a sense of loss based on the fact that government had provided child care during the War, and had taken that benefit away when it was viewed as no longer useful or necessary. In contrast, the women's movement as a whole in the US never explicitly focused on or promoted policies such as women's rights to access childcare in an employment setting. In part this is because it did not fit into the framework of complete equality between the sexes in matters of employment or education. Real life issues that most all women face, such as child care were instead thought of as private matters that would be taken care on an individual level.

### **The Equal Pay Act, the Sex Discrimination Act and Employment Protection Act**

Three major pieces of legislation impacting the treatment of women in public work were passed and implemented by 1975. The direct action, strikes and cooperation within the large national trade unions made equal pay and equal treatment for women a highly visible issue of national importance. The Dagenham strike and the women's

activity it spurred are cited as one of the major reasons the Equal Pay Act passed when it did in 1970 (Parliamentary Debates, 1970; Wainwright Trust, 2006; Hastings, 2006). Additionally women active in the diverse organizations that made up the Women's Liberation Movement were energized by the feelings of frustration regarding the progress they were making towards their four primary goals (Pugh, 2000, p. 313 and 331). This feeling was especially acute in 1975, The International Year of the Women. Pugh (2000) notes that there was a superficial impression of change during the 1960s and early 1970s as the issue of women's rights became a popular one with the public and government. Lending to the impression of change were laws that passed that made divorce easier for a woman to obtain, abortion was legalized and women started to make small gains in their ability to access employment. But this was all on a relatively small scale, overall the gains were not striking and the public believed that the government had already or would soon resolve the issue of unequal pay and treatment of women in employment and education (Pugh, 2000, p. 331). All of this further energized the Women's Liberation Movement to continue their work of pressing for equal treatment before the law.

Another important development in the early 1970s that impacts the passage of these three laws is that at this time the UK was a signatory of the Treaty of Rome when it signed on to be part of the European Economic Community in 1973. Article 119 of the Treaty of Rome outlined that men and women must receive equal pay for equal work and equal treatment in employment. These issues were encompassed in directives issued in 1975 and 1976. Because the UK was a signatory to the Treaty of Rome, it had significant pressure to conform to the standards of the great European Community (Littlejohn, 1994, p. 1). While just how much this entered the consciousness of the members of trade unions

and the women's groups is something unknown to me at this time as there is very little historical evidence related to this issue. It is hard to measure the impact this outside pressure had on the development of policy in the UK.

### **Equal Pay Act**

The Equal Pay Act (EPA) is narrower than the Civil Rights Act in the US as it only pertains to equality in pay and benefits between the sexes and makes no mention of racial or ethnic discrimination. The Act: "introduced an 'implied equality clause' into all employees' contracts. This had the effect of eliminating separate lower women's rates of pay. All such rates had to be raised to at least the lowest male rate over a 5 year period between 1970 and 1975" (London Metropolitan University, 2012). The new pay scale that was created did allow women's pay rate to increase by five percent by the late 1970s. This brought women's pay up to 77 percent of men's (London Metropolitan University, 2012). The EPA did create real changes in pay for women workers but it was also criticized by the Women's Liberation movement for falling short and containing loopholes which made it difficult to prove that discrimination had occurred. For example the way the law was written and developed made it almost impossible for some women to prove they were being paid less or treated *less than* their male counterparts. This was either because some establishments stopped hiring women and more commonly many women workers could not find a male within their company that they could consider as doing roughly the same work as they did. This made it almost impossible to establish unequal pay or treatment on the grounds outlined by the EPA (Littlejohn, 1994, p. 4-5). The intent behind the equal pay act was based in gender equality in line with liberal feminist values, the way the law was written and implements greatly reduced the overall

intent and practicality of the law.

Another problem with the EPA and the other Acts discussed below is a lack of political will in the enforcement of the laws. Many women had a difficult time coming forward with claims of discrimination because of real or imagined social stigma. It was rare for the courts to find that she had been treated in a discriminatory manner. As of 1976 only 31 of the 110 equal pay cases heard by courts were successful (Pugh, 2000, p. 331).

The wording of the EPA is important because it demonstrates the different social climates that were present in each case at this time. As stated above the women's movement in the UK was influenced primarily by a working class union tradition, had socialist roots and was based in the tenets of liberal feminism. It lacked the civil rights tradition which was so powerful in the US.

### **Sex Discrimination Act**

The EPA paved the way for the Sex Discrimination Act (SDA) of 1975. The SDA broadly protects men and women from workplace discrimination on the basis of sex, marriage and pregnancy. It outlines that both direct and indirect discriminatory practices are illegal. The Act made it illegal to discriminate against either sex in education, recruitment, hiring, and advertising. With the passage of this law there is the important change of help wanted ads being listed in newspapers without mention of sex or gender requirements. One of the most far-reaching aspects of the SDA is that the Equal Opportunities Commission (EOC) was established as the enforcing body. It was tasked with monitoring and investigating how the EPA and SDA were working and reviewing areas of concern. It was set up with multiple enforcement powers including being able to:

give individuals advice and assistance if they feel their rights have been violated; bring an individual's claim to an employment tribunal; and to seek court assistance to stop unlawful treatment of an individual (EOC Web Archive, 2007). The creation of the EOC made it possible for thousands of citizens, mostly women, to redress their unequal treatment by employers. The EOC in the UK and the EEOC in the US are similar bodies tasked with a similar mission, they have experienced many of the same challenges around enforcement of sex discrimination claims.

The EOC made it so that individuals who encountered problems with treatment or enforcement of either law could bring their case to employment tribunals and the court. The EOC gave women a place to turn to address their grievances, but still many were reluctant to come forward with claims. The EOC has been condemned by feminists as being ineffective, having too few resources and lacking political will (Pugh, 2000, p. 331). As of 1976 only 5 out of the 20 sex discrimination cases heard before the courts were successful (Pugh, 2000, p. 331).

Most cases brought to the EOC were not heard until the late 1970s and early 1980s and so will be discussed in the next chapter. For example in 1977 the courts heard the first indirect sex discrimination case in *Belinda Price v Civil Service Commission* (1977). This case established that age limits on civil service jobs are discriminatory in nature because women often take time away from public work to have and care for children. Therefore an age limit of entry into civil service of 28 was specifically unfair to women workers who would have a difficult time meeting these requirements. Ms. Price won her case and established a new precedent in terms of bringing awareness to the

ubiquitous nature indirect discrimination as a real obstacle to equal treatment. Littlejohn (1994) asserts that indirect discrimination has had the most negative impact on women's progress:

Indirect discrimination . . . is undoubtedly the greatest barrier toward women's progress in the employment field because even after twenty years it is still not widely understood. It has been described as being a practice which is fair in form but discriminatory in effect (10).

The outcome of this case is relevant to this analysis because it demonstrates how the discussion about equal treatment in the UK was based in a different normative foundation than the discussion in the US. In the UK it was realized, discussed and assumed that at some point most women become mothers. In this view women are seen as having unique needs and a different way of interacting with public work. This line of reasoning fits within the larger cultural feminist framework that celebrates and acknowledges the strengths and differences of women and accepts that narrowly targeted and specific policies for mothers are a necessary part to achieving meaningful equality between the sexes.

### **Employment Protection Act**

In 1975 the Employment Protections Act was also passed. This act outlined multiple dimensions for how employers should treat employees, notably providing employees with increased protections against discrimination. It also created a specific employment tribunal system where relevant employment-related cases could be heard. Most importantly for this research it gave very limited protections to employed pregnant women including requiring employers to pay qualifying employees maternity pay. This included the right to take off up to six weeks of maternity pay at 9/10<sup>ths</sup> the normal pay rate; the right to take up to 40 weeks off with job protection only; and most importantly it

made it illegal to fire a woman for being pregnant. Related to this last right it required employers to offer women a less physically demanding job if the physical work load was not appropriate for a pregnant woman (EPA of 1975). This was an important step in securing the rights for pregnant women and new mothers and their children, but not every pregnant woman was eligible because there was a requirement of two prior years of service to access this policy. The Act has also criticized by many due to its lack of enforcement mechanisms and inability to loopholes (Pugh, 2000, p. 331). The Act solidified the direction of future maternity and family policies along the already established foundation in cultural feminism. When compared to the collection of policies governing the treatment of women in the US workforce the differences in intent behind the laws is evident. As of 1975 women in the US were to be legally treated as men were in employment and most all other aspects of public life. Over time the different intentions of and values of the family policies in each country continue to be reinforced by newly passed laws which only served to strengthen the values encapsulated in these early policies which sought to reduce discrimination women faced in public life.

A large part of the Women's Liberation Movement in the UK was devoted to securing equal treatment for women in the workplace, at the same time the women's movement strongly supported the maternity provisions in the Employment Protections Act (Anttonen, Baldock & Sipilä, 2003, p. 136). The two values were not in conflict with each other as the tenets of cultural feminism informed the way that these early laws were discussed, debated, about and eventually written down. In the UK and for members of the Women's Liberation Movement who supported this legislation, it was both logical and practical to acknowledge that in order for women to have equal opportunities in

employment they required specific sets of policies which would protect them during pregnancy and the time they spent caring for their children. Within the framework of cultural feminism these ideas are supported and within the developing framework of liberal feminism in the US, these ideas would be viewed as illogical, unfair, unequal and thus not desirable. Despite the fact that the 1975 Employee Protection Act was not viewed as a success, it still played an important role of creating the foundations for future policies related to maternity and family leave.

### **UK Conclusion**

Between 1960 and 1975 the trajectory of family policies in the UK becomes solidified around the already well-established norms reflected in culture feminist thought. The male bread-winner model, so dominant in the UK for more than one hundred years, remains relevant and meaningful to society, politics, and policy outcomes. The family policies passed during this time acknowledge that equitable treatment of women in society is necessary. Equitable treatment of women in employment in the UK was framed as consisting of special protections for pregnant women and new mothers alongside of policies guaranteeing equal opportunities and treatment for women employees. These two aspects of the family policy landscape were seen as complimentary parts of ensuring women had equality in the efforts to secure and keep their employment. The UK experienced a solidification of long-held beliefs about women's place in both public and private life. Cultural feminist values became further entrenched as they informed the key policies outlining how women should be treated in employment. The policy window was absent in the UK and this difference significantly alters the conceptualization of equality



and the future development of family policy.

Between 1960 and 1975 civil society activity by and for women becomes more centralized and increasingly mobilized around the issues of equal treatment in employment and other related educational and economic reforms. The three major pieces of legislation passed during this time— the Sex Discrimination Act, the Equal Pay Act and the Employment Protection Act— created a real discussion about discrimination against women in society. The new laws reflected many tenets promoted by the Women's Liberation Movement, but overall the movement during this period embodied a feeling of frustration. In part this was because a variety of issues related to women's liberation became a fashionable cause among citizens and the government. The government was even seen as embracing the fight for equal treatment of women which sapped some energy from the movement (Pugh, 2000, p. 331). By the middle and late 1970s the economy in Britain was in turmoil, the government cut spending even further and women felt that the legislation passed was not creating the change they hoped for. To add to the situation many citizens already believed women rights had been sufficiently improved. This atmosphere led the Women's Liberation Movement to become even more decentralized, fragmented and more focused on issues of sexual rights and socialist politics. By 1983 the number of women's groups grew to 300 nationally but there were only 20,000 activists, a significant decrease from the 3 million members active in 1964 (Meehan, 1985, p. 193). By 1975 civil society activity by and for women moved further outside of the structures of government which was seen as co-opting and diluting the goals which were the focus of the past 15 years of action.

## Chapter Conclusion

The amount of social change that took place during this time period was unprecedented. The opportunities and life choices available to women in employment, education, and in more personal matters such as marriage, divorce and abortion were wider than they had ever been. The policies passed in both cases were so groundbreaking because the causes, values and norms embraced by the women's movement in each nation become embodied in national law. How effective those laws are is another issue, but what is important for this research is that societal and governmental values slowly change to be more inclusive of women. Evidence of this is the laws passed which treat women as full citizens in the areas of law, reproductive choice and regarding issues of equality in employment. As Littlejohn (1994) highlights in her writing on the importance of the passage of the SDA in the UK:

In order to achieve its objective, it (the SDA) required a change in ideas and attitudes which had been in existence from time immemorial. Ideas and attitudes cannot be changed by legislation alone, but the legislation is necessary as a means of enforcing the change. When attempts are made to change attitudes and restructure society, many people will not only have entrenched attitudes, but also have a self-protecting interest in trying to ensure that nothing changes (p.10).

This observation is applicable to all of the major pieces of legislation passed during this time period in both cases. The ways these policies impacted the development of social behavior, long-held values and norms, and future policy development cannot be underestimated.

By 1975 the two countries are beginning to move in very different directions in terms of provisions for maternity leave and pregnancy related job protections. Once in

place these early policies solidify the nature of future policies in this realm. They essentially set a guideline for what is socially and politically acceptable and set the stage for future path dependent development along these already established lines. The policy foundations developed during this time period set the trajectory for the future policies, norms and values surrounding work and motherhood. More broadly during this time period the conception of equality between the sexes is developed. Surprisingly, the definitions of equality look quite different depending on what side of the Atlantic you are standing on.

What is so significant about this time period is that in each place several groundbreaking pieces of legislation pass. In the US, the Civil Rights Act strongly informs the women right's movement future action around equal treatment for women in employment. The issue of pregnancy becomes almost a moot point as pregnancy is defined and treated as any another other temporary disability is. While it was not inevitable that the policy would be created as it was, going forward, it influences policy in a very real way. Alternately in the UK the early legislation makes specific provisions for targeted policies for pregnant women and new mothers. These special treatment policies develop within the larger framework of equal treatment and pay for women. The two goals of equal treatment and special protections for pregnant women and new mothers do not conflict with each other. The brief overview highlights how the discussion around equality is significantly different in each place and the two differing feminist frameworks become even more pronounced in the following 20 years as will be discussed in the next chapter.

## **Chapter 5: Family Policies and Path Dependent Development 1976-1995**

Chapter 5 covers twenty years which are marked by the solidification of the family policy trajectory in both nations. The norms, principles, and policies which were established during the previous time period were built upon and they became further developed through the passage of public policies and the outcomes of court cases. In the US, outcomes of legal battles over issues of discrimination were especially meaningful, as were the outcomes of several landmark cases on the European level for UK policy. While the overarching theme of this time period was solidification or entrenchment of the policy directory, solidification did not occur without a degree of controversy and disagreement. In both nations there is evidence of debate and tension regarding the equality versus difference framework. These debates generally occurred within the civil society groups including unions, feminist legal scholars, and women's organizations. Activists including legal scholars were engaged in a heated debate, especially in the US, asking if the principles of equality or difference feminism were best-equipped to provide meaningful support and protections to pregnant workers and parents with young children. There was disagreement about which framework could balance necessary protections without hindering employment prospects for women. Despite these tensions and internal disagreements, the events between 1976 and 1996 are evidence of path dependent development of the family policy landscape. The US becomes further tied to its equality

framework established in 1964 with the Civil Rights Act while the UK continues to develop its attachment to the idea that women as mothers require special protections and targeted policies.

Despite the debates surrounding the need and use of special protections for women workers, the women's movement in the US further embraces the gender-neutral tenets of liberal feminist thought. The Pregnancy Discrimination Act in 1978 and the Family Medical Leave Act in 1993 were strongly supported by the mainstream women's groups such as NOW, AAUW, and the National Partnership for Women and Families. While vestiges of cultural feminism remain in some policy arenas in the US, it was becoming increasingly difficult for feminists, union leaders, and politicians to promote special protections for women (M. Varnhagen, personal communication, 2010). While the shift to liberal feminism was not easy or immediate, the legislation passed during this time and the activity of civil society groups provide evidence that the shift to a liberal feminist framework was further cemented during this time period.

Between 1976 and 1995, the UK continues to build upon the collection of policies which regulate maternity pay and leave, and treatment of pregnant workers as established by the Sex Discrimination Act and the Employment Protections Act in 1975. The government passed legislation which continued to promote the values of difference feminist thought. These include narrowly written policies targeted at women and supporting them in their unique needs as mothers. The women's movement continued to exert pressure on policymaking in a variety of forms, most notably indirectly through well-established labor unions.

The women's movement in the UK focused on equality legislation but at the same

time they promoted policies which offered special protections for women as mothers and wives. It seems contradictory for British feminists to pursue both special protections and equality legislation, but they did continue down this path without considering themselves to be liberal feminists (Lovenduski & Randall, 1993, p. 7; O'Conner et al, 1999, p. 213). As stated in Chapter 4, the women's movement in the UK was influenced by the parallel movement in the US, but the principles embodied by dominant American feminists did not automatically transfer to the social and political climate in the UK. Members of the women's movement in the UK who attempted to move towards a liberal feminist frame were often criticized as not recognizing that women and men enter the labor market on significantly different terms, and that discrepancy presents many obstacles for women's competitiveness in public employment (O'Conner et al, 1999, p. 213).

This time period is also marked in both countries by the fragmentation of the labor and women's movement and increasing diversity in the type of women's groups which were active, mostly on a grassroots level (Pugh, 1992; Bouchier, 1983; MacLean, 2009; O'Conner et al, 1999). Conversely, the strength of the business lobby builds in both nations (Pugh, 1992). This chapter relies on evidence collected from the historical record and selected interviews.

### **Entrenchment of Liberal Feminism in the US 1976-1995**

The women's movement in the US reached a peak of intensity in the early 1970s (Davis, 1999, p. 69). The energy and momentum gained by the second wave feminists were apparent during the mid-1970s. For example, 1975 was declared International Women's Year by the United Nations. In 1977 President Carter responded to this increased visibility of women's issues by creating a new Commission on the Observance

of International Women's Year. The goal was to create equality between men and women. The work of the Commission culminated in 1977 with the first National Women's Conference. At this conference the 20,000 participants created a 26- item- long action plan which was presented to the President. There was great excitement around the impact of the conference, primarily due to the fact that the President agreed to give a 3- year extension for the Equal Rights Amendment to be ratified by Congress, something that the mainstream women's movement strongly supported. All of these achievements took place within an atmosphere of change for the women's movement. Many earlier women's liberation groups ceased to exist and in their place issue-specific women's groups formed. These changes lead to an increase in the diversity of groups, more grassroots and local activity and fragmentation of the women's movement (Davis, 1999, p. 145).

Most important for this research is that liberal feminism became the dominant framework of the women's movement (Davis, 1999, p. 137). There was significant debate about which framework would best serve the interests of American women (Vogel, 1993, p. 77). This dispute created a division within the movement. The differences between the views were especially evident in the treatment of pregnancy. The core question was: should pregnant women receive special protections? The answer to this question has major impacts on how women are treated as employees, for many women it also impacts the decision of if and when to have a child. Organizations including women's labor unions, health groups and the gay community supported special treatment as outlined in difference feminism. Larger multiple-issue groups such as NOW, the American Civil Liberties Union, League of Women Voters and the National

Women's Political Caucus supported the equality framework (Vogel, 1993, p. 77-78).

The impact of their organizing was evident on multiple fronts, especially in the language of Title VII of Civil Rights Act of 1964, the Pregnancy Discrimination Act and Family Medical Leave Act. These latter two pieces of legislation will be discussed below.

By 1995 the women's movement in the US embraced the equality framework and even took it for granted (Davis, 1999, p. 48; M. Varnhagen, personal communication, 2010). Tensions and controversies about the frameworks did not totally disappear during this time, although the policies passed made it so the liberal framework became further embedded and the chances for the passage of special protections for women became more unlikely with each passing year. The development of policies along the liberal feminist framework in the US during this time is an excellent example of what Pierson (1993) has termed policy feedback. Policy feedback refers to how policies frame or shape future political activity and policymaking by outlining what is possible and accessible in the political landscape. Despite the fact that some groups within civil society still believed that special protections were best for women in their quest for quality, the policy landscape in place by 1976 made it so there was very little chance that any policy promoting special protections would become law.

### **The Pregnancy Discrimination Act**

The Pregnancy Discrimination Act (PDA) was passed in 1978 and was a major win for activists embracing the liberal feminist framework. The Act amended Title VII of the Civil Rights Act of 1964. It prohibited sex discrimination on the basis of pregnancy, childbirth and other related medical conditions (EEOC, 2012). The reasoning behind the law is based in the 1964 Civil Rights Act which outlined that all individuals must be



treated equally regardless of sex, race, religion or linguistic differences. Despite the fact that pregnancy is something only women experience, the PDA asserts that pregnancy must be treated the same as other temporary disabilities. The Act asserts that differential treatment based on pregnancy is a type of discrimination. The logic is that because men cannot be pregnant, they cannot take advantage of any special protections available to pregnant women (Chamallas, 1999, p. 41-43). With this logic, to provide any special protection or policy only to pregnant women would be discriminatory in nature, as men could never hope to benefit from it.

There was a real need for this law because prior to its passage it was common practice for employers to refuse to hire pregnant women, or women who might become pregnant (Davis, 1999, p. 299; Schroeder, p. 44- 46, 1989). It was also common for pregnant workers to be fired or demoted and many health insurance plans did not offer meaningful coverage for pregnancy-related expenses (Baer, 2002, p. 112; AAUW, 2012). The treatment of pregnant women by their employers prior to the PDA was based on the idea that pregnancy is a voluntary or elective condition (Davis, 1999, p. 299). The mainstream women's movement led by NOW and the Center for Women and Policy Studies attacked this idea as just an excuse for excluding women from the workforce (Davis, 1999, p. 299; Baer, 2002, p. 112). Mainstream women's rights groups believed that women, must act like, and be treated like men in order to be successful in the world of work (Davis, 1999, p. 299). Considering the policy framework already in place, and acknowledging the social norms dictating equal treatment between men and women as established by the 1964 Civil Rights Act, many feminists believed that pushing for special treatment for pregnant workers would be ineffective and unlikely to gain traction.

Completely equal treatment, even around issues of maternity and pregnancy, was the only way they believed women would be able to achieve true employment equality. This equality framework reflected the values outlined in the 1972 guidelines of the EEOC and helped to further entrench the family policy landscape along the liberal feminist path (Vogel, 1993, p. 72).

There is a significant amount of discretion over how companies treat temporary disabilities, which leads to diverse interpretations of the PDA. For example, as late as 1978, the Olin Corporation barred all women employees of childbearing age from jobs which would expose them to high levels of toxic substances. They defined childbearing age as between 5 and 63 years of age (Baer, 2002, p. 112). Other companies forced women to take alternate jobs which generally paid less and in some rare instances, companies would force women working with toxic substances to undergo sterilization as a way to avoid future dangers to unborn children (Baer, 2003, p. 112). These examples demonstrate how quickly and easily special protections for women, even with the best intentions, can harm women in their career efforts and also be detrimental for their health.

Each of the fifty US states may also make their own legal policies concerning the treatment of pregnant women. Before the PDA was passed, several states including Wisconsin, California, Montana, had laws significantly more expansive than the rights outlined in the PDA. This led to confusion and increased litigation around the issue of treatment of pregnant women, especially as employees. It is not possible to discuss how the PDA came to be without first discussing the outcome of several Supreme Court cases which led up to its passage. The two cases that are directly responsible for the PDA are *Geduldig v. Aiello* in 1974 and *General Electric v. Gilbert* in 1976. The outcome of these

cases contradicted the rulings of other courts around the US and led to a great deal of civil society activity. Many women's groups became mobilized around the issue of treatment and rights of pregnant workers. Wisconsin, California, Montana and Rhode Island were the states which saw the most conflict on this issue on a state level (Vogel, 1993, p. 73-75). These cases also invigorated the women's movement and highlighted the tensions between the equality versus difference framework (Vogel, 1993, p. 77; Davis, 1999, p. 299).

In *Geduldig v. Aiello*, the court held that it was not a violation of the Constitution for the State of California to exclude pregnancy from the list of conditions which were covered by the state health insurance plan. Other similarly voluntary conditions, such as drug addiction, were also excluded from the plan. The rationale of the state was that it was a cost-saving and effectiveness measure (Baer, 2002, p. 112). The Court found that the State did not violate the 14<sup>th</sup> amendment or the Civil Rights Act because workers were not discriminated against based on sex. The Court found that there was a clear rationality to this decision to exclude pregnancy from the list of covered conditions, and it was not based on a sex-classification. The majority opinion written by Justice Potter Stewart highlighted that the creation of two categories of people (pregnant women and non-pregnant individuals), not based on sex, determined that there was no sexual discrimination involved (*Geduldig v. Aiello*, 417 US 484 - 1974). This was in spite of the fact that it was only women who can experience pregnancy and the medical risks that accompany it. The majority decision of the Court reflected the idea that men and women would be treated completely equally in the spirit of the Civil Rights Act. The Court found that special protections should be available to neither men nor women.

General Electric v. Gilbert in 1976 mirrored the precedent set in the Geduldig case. The Court found that General Electric could legally exclude conditions and disabilities relating to pregnancy from their employees' health and disability plan because it was not using sex-based discrimination to arrive at the exclusion. The logic used by General Electric was similar to the logic used by the State of California in the Geduldig case. That case created two categories of people: pregnant women and non-pregnant people (Davis, 1999, p. 299). The majority opinion written by Justice Rhenquist in the General Electric case presented the idea that pregnancy was a voluntary and often desirable condition which justified its exclusion from the health plan. Further, he highlighted that the health plan to date had spent similar amounts of money on both male and female workers, demonstrating that there was no evidence of sexual discrimination (General Elec. Co. v. Gilbert, 429 US 125, 1976). His writing reflects the logic of Justice Stewart Potter in the Geduldig case, essentially outlining that pregnancy is not a sex-related condition (Schroeder, 1989, p. 46). The findings of the Court reversed every prior appellate court decision on this issue. The outcome of this case was also a major catalyst for civil society groups who were working to promote the equal treatment of women employees (Davis, 1999, p. 299). Activists were furious about the outcome of the case and this anger reinvigorated their activities.

Shortly after the General Electric decision, civil society groups formed a diverse coalition to lobby Congress to reverse the findings of the Court. The coalition was called The Campaign to End Discrimination Against Pregnant Workers and was led by the Women's Legal Defense Fund (later called the National Partnership for Women and Families) and NOW Legal Defense (later called Legal Momentum). The several hundred

members from all sides of the political spectrum including civil rights groups, women's rights groups, feminist legal activists, union groups, and church groups (Davis, 1999, p. 299-300; Schwartz, 2005, p. 64-66). The inclusion of broad civil rights groups was of key importance, as it sent the clear message to Congress, the Court and the public that this was issue of discrimination that was of equal importance to racial and sexual discrimination. The broad civil rights coalition called the Leadership Conference on Civil Rights took an active role in the Campaign and their participation signaled that this was an issue that was part and parcel of the Civil Rights Act of 1964. The participation of civil rights groups also demonstrated the importance of the broader equality norm at stake with the recent findings of the Court (Schwartz, 2005, p. 66). The fact that the Campaign was so diverse and included a broad array of civil society groups, including both pro-life and pro-choice groups demonstrates how thoroughly the findings of the Court were felt to have violated the principles of equality feminism which had been established. The established norm of equal treatment for men and women could not support the findings of the Court which essentially marginalized women from equal treatment in employment.

Activists on all sides took issue with the idea that providing women with health care coverage for pregnancy-related concerns was not legal because men could not access such a right; activists believed that this logic was pushing the equality framework beyond its limit. The Campaign responded by discussing their goals and ideal outcomes of the situation. After much deliberation they promoted the idea that equality principles must be the cornerstone of further legislation, but that pregnancy cannot be used as an excuse to exclude women from employment rights or medical coverage (Schwartz, 2005). Working within the equality framework, they found that contrary to the previous findings of the

Court, pregnancy discrimination is a form of sex discrimination. Therefore it is unlawful on the basis of Title VII. The findings of the Campaign further cemented the liberal feminist framework as the dominant norm surrounding treatment of women workers. Because the wording (and some may argue intent) of Title VII was unclear, legal battles and civil society activity were needed to refine the writing of the law. These events further solidified the dominant principles of equality at this time (Schwartz, 2005, p. 74).

The findings of the Court brought these diverse groups together; overturning the rulings in *General Electric* and *Geduldig* was a unifying force for the women's movement. The Campaign worked to lobby Congress and worked closely on the legal side as well. Members of the Campaign such as NOW, the ACLU Women's Rights Project, Women's Legal Defense Fund, and the National Education Association all worked on the litigation side by providing information to the Court in the form of Amicus Briefs (Schwartz, 2005, p. 64). Labor unions such as the AFL-CIO and United Auto Workers took a leadership role in what they saw as a serious threat against female and male workers and a threat to equality for women in the workplace (Schwartz, 2005, p. 64).

Through the work of the Campaign, the issue of pregnancy discrimination became one that Congress could not afford to ignore any longer. The issue was a hot topic for the public as well as civil society groups. Through lobbying, grassroots, and judicial efforts, Congress came out in agreement with the Campaign. Congress outlined that the findings of the Court in *Geduldig* and *General Electric* did not reflect the intention behind Title VII. Congress took issue with defining pregnancy as a voluntary and desirable condition (Schroeder, 1989, p. 48). They responded to the widespread concerns by passing the PDA

which was introduced by Congresswoman Schroder and supported by 81 other members of Congress in March of 1977. The PDA amends Title VII of the Civil Rights Act so it includes pregnancy. The PDA further refines the meaning of liberal feminism/equality framework in practice by outlining that sexual discrimination includes any discrimination a woman faces due to pregnancy and its related conditions. Pregnancy discrimination was now considered a type of sex discrimination (Schwartz, 2005, p. 74). It logically follows that pregnancy discrimination was and is not tolerated under Title VII of the Civil Rights Act. The PDA made it so the findings of the Court in both *General Electric* and *Geduldig* were in violation of the Civil Rights Act of 1964.

While the PDA was a victory for the women's movement it still had significant limitations. In part these were the result of the business lobby which was able to dilute the law by excluding companies with fewer than 15 employees from being required to follow the guidelines of the PDA (Davis, 2005, p. 299-300). As written the PDA also lacked strength because outlining that companies must treat pregnant women as they treat other temporarily disabled employees was not very meaningful because most companies did not offer many concessions to temporarily disabled workers at this time. As Catherine East, a member of the Campaign to End Discrimination Against Pregnant Workers stated after the victory: "The PDA was simply the best that was possible at the time in our legal and political environment" (as cited in Davis, 1999, p. 300). The PDA added some much needed clarity to just how pregnant women and new mothers should be treated in an employment setting, but there was still a great deal of uncertainty. For example, some state laws continued to conflict with federal law, leading to further litigation. The PDA also did not set a time-frame for the definition of an appropriate time away from work

after the birth of a child; it also lacked any job protections. This meant that a company did not have to reinstate an employee after she recovered from the temporary disability of pregnancy and childbirth (Schroeder, 1989, p. 49).

The PDA was an important amendment to the Civil Rights Act which gave pregnant and potentially pregnant women the right to equal treatment in some employment situations. Many women's rights activists were still not satisfied. The PDA cemented the equality policy framework, but feminists still were in disagreement about if and how more rights and protections could be given to women within this framework. This created another round of tension and debate regarding the equality and difference framework (Vogel, 1993, p. 77-78; Davis, 1999, p. 299-300).

The lead-up to the passage of the PDA demonstrates the influence of earlier legislation, for example the Civil Rights Act of 1964. Specifically, the passage of the PDA demonstrates how previous policymaking in this arena influenced social values and norms around pregnancy and equal treatment of women. The new policy trajectory established in 1964 with the Civil Rights Act shaped the debates within government and civil society. The dominant civil society groups organized around these new gender norms, activists believed that men and women should be treated completely equally. By the late 1970s, the activities of civil society and the continued passage of policies which outline equal treatment of men and women in the workforce demonstrate the path dependent development of policies in this arena. The developments over time further entrench the policy trajectory along its liberal feminist path.

### **The Long, Slow March Toward Family Leave**

While running for President in 1976, Jimmy Carter made a campaign promise that



he would focus attention on the special needs of American families. In the late 1970s there was a feeling that traditional family values and the make-up of the family was in danger (Ribuffo, 2006, p. 311). After Carter was elected he planned the White House Conference on Families in order to stimulate a national discussion on the topic including a focus on how employees balance the demands of work and family, and how public policies impact the family (Ribuffo, 2006).

The lead-up to the Conference on Families which was finally held in 1980, was slow and marked by disagreements and tension within the Carter administration and the committees organizing the event. This conference is important to the more general discussion about the social construction of gender for several reasons. First, it showcased on a national stage the tension both in and outside of the women's movement about the proper roles of women in society and socially appropriate behavior for wives and mothers. As Ribuffo (2006) notes, the conference displayed: "Cultural moderates, feminists, gay rights activists, devout Catholics, and evangelical Protestants disagree(ing) about policies ranging from legalized abortion to family leave" (p. 311). Many of the participants in the conference were members of the Coalition for the White House Conference and Families. The Coalition included 52 diverse groups such as Planned Parenthood, the National Gay Task Force, and the National Conference of Catholic Charities (Ribuffo, 2006, p. 323). The debate that surrounded the conference is important because it demonstrates that society at this time in the US was still grappling with the ways that gender was socially constructed within society. There continued to be debate about if the equality or difference framework would prove the best alternative to women. This debate continued despite the fact that all of the major federal legislation relating to

treatment of women in the workforce which passed from 1960 up until this point reflected the equality framework. By the late 1970s the legal and political environment around family leave had already become entrenched around the liberal feminist framework.

The continued civil society debate demonstrates the difficulty inherent to changing normative constructions of gender in society. The very public debate that accompanied the White House Conference on Families was not surprising, considering the diversity of the participants and their disagreements about core values that underpin treatment of women, especially pregnant women and mothers in the public sphere. The intense debate that surrounded the Conference overall had negative political implications for Carter and his administration.

The White House Conference is also important because it invigorated civil society activity around family concerns. Specifically it invigorated the grassroots conservative women's movement (Ribuffo, 2006). The Right effectively mobilized around defending the traditional definition of the family, which seemed to be in jeopardy at that time. The women on the right were especially concerned about the increasing divorce rates and the fact that more women than ever worked on a full-time basis outside of the home. The conservative women were mobilized around what they saw as a threat to family values, the eroding of American society and what they perceived to be a US president whose views ran counter to their own on such key topics as the definition of a family. To add to this threatening environment, in 1977 at the International Women's Year Conference in Houston, the convention endorsed equal rights for gays, and abortion. This further fueled the conservative women to organize to defend their values (Ribuffo, 2006, p. 324).

The conservative grassroots women's movement, alive and well since the early 1970s, favored protective legislation for women. They embraced the tenets of cultural or difference feminism. Many women that were part of the conservative movement had religious connections to their civil society activity and were influenced by conservative groups which started to proliferate in the early 1970s. These groups often included women, but their goals rarely focused on promoting the rights or needs of women members. Prominent conservative groups included the John Birch Society, The Christain Voice, The Moral Majority (later the Liberty Foundation), and The Religious Roundtable (Himmelstein, 1989, p. 97). Many conservative women looked to Phyllis Schlafly as their leader. She led the anti-ERA group, Stop ERA, and was active in Concerned Women of America. Schlafley and other leaders of the conservative women's movement highlighted their religious convictions and played upon long-held stereotypes and fears. Many groups, including Schafley's, disseminated: ". . . Lurid images of women drafted into combat and forced to use same-sex bathrooms, Schlafly resurrected the old argument, accepted by some feminists during the 1920s, that the ERA would invalidate gender-specific legislation." (Ribuffo, 2006, p. 324).

The controversy around the White House Conference highlights the power of family policy and the social construction of gender as mobilizing issues for the American public. This heated debate continued on a similar track throughout the 1980s and started to explicitly focus on the crafting of maternity or family leave benefits. The debate was broadly between social conservatives and liberals, or more specifically between cultural and liberal feminists. They sparred over the nature of gender identities, the proper definition of family and the nature of maternity benefits on a national stage. The debate

framed the national discussion about maternity benefits which by the late 1980s reached a boiling point in the US. At this time the US and South Africa remained the only industrialized countries which did not require employers to give women time off for childbirth (Davis, 1999, p. 298). The lead-up to the passage of the FMLA will be discussed in more depth below.

Another event relevant to the dynamism of the social construction of gender is the decision of the Supreme Court in 1981, *Rostker v. Goldberg*. In this case the Court rejected President Carter's proposal that women register in the Selective Service System so they could be drafted into military service just as men were (Hasday, 2008, p. 100). The Court found that male-only draft policies did not violate equal protection laws, meaning that gender distinctions in this arena were ruled to be constitutional. The decision of the Court occurred after the women's rights movement worked to bring awareness to such laws that would hold men and women accountable to different rules. The women's movement, led by NOW and the National Women's Caucus, worked to repeal all sex-based distinctions in law. But, the decision of the Court in *Rostker* set a precedent by confirming the long-held gender norms that women should not see combat and therefore should not be drafted. The argument was that women should not see combat because their most important responsibility is to family life and caretaking in the private sphere. The Court outlined that the domestic, motherly and care-taking attributes inherent to women supersede any responsibilities in public or political life (Hasday, 2008, p. 102). This case demonstrates the way in which civil society groups and society more broadly were grappling with the equality versus difference framework in some key areas such as treatment within the military and workforce. At this time the US was already

entrenched on the liberal feminism policy track. Family policies were already developing in a path dependent manner along the liberal feminist track. The events of the 1970s and early 1980s demonstrate that the shift away from the roots in cultural feminism was neither easy nor clean.

The conflict between difference and equality feminists continued and the debate was most evident and heated regarding family issues—for example, the question of maternity leave (Davis, 1999, p. 305). While most groups within the women's movement agreed that something had to be done, there was little agreement about exactly the best way to approach the problem. It proved to be a divisive issue for the women's movement and one that would be resolved with the passage of the Family Medical Leave Act.

Civil society activity is an extremely important element to the family policymaking landscape. Not only does civil society help to frame the issues, problems, and overall atmosphere around the treatment of women and families in employment, their activity also develops in a path dependent manner. For example in the early 1960s when so many women were organized for change, either as part of civil rights or women's rights groups, they set the tone for society and influenced governmental actions regarding how women should be treated in matters of employment. Going off their successes, the early women's rights groups continued to develop and influence policymaking and American's perceptions around women, work and family. Of course civil society groups had developed since the 1960s that oppose the goals and views of the dominant women's organizations. Groups like Stop ERA and the Moral Majority promoted a very different vision of the future for women in America than did groups like NOW and the Women's Legal Defense Fund. Debates within civil society about just how women be treated in

employment and other public arenas demonstrates that civil society also develops in a path dependent manner, with more well-established and prominent groups becoming increasingly dominant over time. Smaller, potentially antagonistic groups appear to have a harder time finding their footing, reaching a larger audience, and influence policymaking in general. Overall, civil society activity helps to frame and shape the debate within the family policymaking landscape. Because many of the active groups are so well-connected to the structures of government and the American people they can take advantage of opportunities to further their goals. More marginalized groups continue to exist on the fringes, may capture some public attention, but tend to have little overall impact on policymaking or legal decisions. The dominant civil society groups of this time all promoted the liberal feminist framework, other smaller cultural feminist and other groups appear to have little meaningful impact on outcomes. It is the dominant civil society women's groups who leave their mark on the family policy landscape in the lead-up to the creation of the Family Medical Leave Act.

### **The Campaign for Maternity Rights**

Cultural feminists believed that women would not be able to compete with men in the workforce unless they had access to special protections, namely maternity leave and pay. Cultural feminists also believed that proponents of the equality framework ignored the needs of mothers (Davis, 1999, p. 298). But, liberal feminists believed that special protections embodied in maternity leave would only serve as another tool to exclude women from full participation in the workforce (Davis, 1999, p. 298). The debate became especially heated in 1978 when California passed a maternity-leave policy, called Pregnancy Disability Leave. California was the first state in the nation to pass such

legislation. The California law outlined special protections for new mothers as it stated that women had the right to take time off due to pregnancy or childbirth issues, up to four months, and the right to receive their job back when they returned. This was the same year that the PDA was passed and the issue of treatment of pregnant women in the workforce was on the mind of the American public. Shortly after the California law passed, a bank sued the state, claiming that the new law violated the PDA because the state did not provide other policies mandating time off for employees experiencing other types of temporary disabilities (Davis, 1999, p. 300). It took more than ten years for the US Supreme Court to rule that the maternity legislation in California did not infringe on the PDA because it actually promoted equality in the workplace (Davis, 1999; Kelly & Dobbin, 1999). What is important is that the California issues invigorated the women's movement to more thoroughly discuss the issues of maternity and family leave.

The late 1970s in the US was a time of mobilization around the issue of maternity leave. Not surprisingly, the business community, namely the US Chamber of Commerce, was against any such move, slowing down the process of crafting new legislation (Davis, 1999, p. 301; Elving, 1996, p. 12-13; M. Freedman, personal communication, 2010). The intense debates within civil society made the process even slower and more painful than would likely have been imagined at the outset (Elving, 1996, p. 13).

Another key event in the slow march towards the passage of family leave was the Lillian Garland case in 1987 (Elving, 1996, p. 17). Lillian Garland filed the suit against her employer because she had not been reinstated in her position after she came back from four months of time off for having a baby. Garland sued her employer because at the end of her 2 months of leave she was told that her job had been given to the person

she had trained to fill in for her temporarily and there was no other equivalent position available to her. Ms. Garland was without a job, lost her apartment and had to let her ex-boyfriend care for her daughter while she searched for a new job and home (Shiu & Wildman, 2009, p. 130). She even lost custody of her daughter as a result of her situation (Kleimanis, 1987). Not surprisingly, this situation caused an extreme amount of suffering and stress and Ms. Garland sought out legal channels to address her mistreatment.

Ms. Garland's case became symbolic of the problems that all working women, without a safety net, faced if they lost their employment (Shiu & Wildman, 2009, p. 130; Kleimanis, 1987). The plaintiff said that she wanted to be: "The last woman to suffer for deciding to have a baby" (Morrison, 1987). The case captured the attention of the American public and Ms. Garland appeared on *60 Minutes*, in *Time Magazine*, and became a minor celebrity (Kleimanis, 1987). Garland went to California's Department of Fair Employment and Housing which sided with her and filed a complaint against her employer Cal Fed. In response, Cal Fed filed suit in federal district court. In this case the Court had to determine if California state law embodied in the Pregnancy Disability Leave (PDL) or the federal legislation in the PDA, took precedence.

The California business lobby strongly supported Cal Fed, as did women's groups who were firmly attached to the tenets of liberal feminism and the equality framework. NOW and the Women's Rights Project of the ACLU supported Cal Fed because they believed that the PDL violated Title VII as it outlined special benefits to women alone (Shiu & Wildman, 2009, p.138). They would have been supportive of the PDL if it had been written in a gender-neutral way which allowed men to access the same leaves and job protections as women. As written, NOW and other liberal feminist groups believed



that the special protections provided to women under California law would be detrimental to women in their efforts to secure and keep employment. There was significant mobilization on Garland's side by women's groups, civil rights organizations and labor unions, including the California branch of the ACLU. A coalition called the Coalition for Reproductive Equality in the Workplace (CREW) formed to support Garland. Members included Planned Parenthood, Betty Frieden and unions such as the Teacher's Federation and 9 to5 (Shiu & Wildman, 2009, p. 138). The district court judge, Judge Real, ruled that Cal Fed acted within legal limits as outlined by the PDA and that the California state law, the PDL, was illegal as it required preferential, yet still discriminatory treatment of women workers. The Court found that the PDL violated Title VII of the Civil Rights Act of 1964 (California Federal Holding, 1984). Further, Judge Real noted that the PDL would open up California employers to discrimination cases from male employees who did not have access to such benefits.

The case went through a series of appeals and finally made its way to the Supreme Court which ruled that the PDL did not violate the PDA or the intent behind the Civil Rights Act of 1964. Ms. Garland settled with Cal Fed out of court for back pay and thereby influenced the future direction of family policies and job protection for women.

The Garland case was an important part of the debate about the meaning of equality for women in the workplace. The Courts' findings helped to fill in gaps in the wording of the PDA (Shiu & Wildman, 2009, p.126). It also galvanized the women's movement as well as politicians and lawyers who were already actively working on the issue of equality for women in the workplace. Further, it highlights the lack of consensus among feminists about what equality means and how legislation should be crafted to

promote equal and equitable treatment of women in the workplace and full social participation for women (Cooney & Krieger, 1983; Williams, 1984).

The debates about the future values that family legislation should embrace continued for years as a result of the Garland case and other similar lesser known cases. In many senses the issue broadened away from a special challenge for women to a family concern that had far-reaching implications (see *Miller-Wohl Co. Inc. v. Comm'r of Labor and Industry* 1981). The long process of court involvement in trying to outline what equal treatment for women, specifically pregnant women, should look like also exhibits path dependent development. Precedents sets in key cases help to inform future court decision, inform civil society activity, and the actions of elected officials. The early legislation set in 1964 also helped to establish the new trajectory of family policy along the liberal feminist path.

### **Early Days of Policymaking**

Shortly after the ruling of Lillian Garland's case, a state legislator from California, Howard Berman, formed a group of experts to work on passing some sort of maternity leave on the national level. He was motivated to do something about the issue of maternity leave because it was his state law that was being dissected in the Lillian Garland case. He believed that since the public's attention was already focused on the issue, he should begin the work. His goal was to create a law that would require employers to grant leaves to new mothers without it infringing on the PDA or the Civil Rights Act of 1964 (Elving, 1995, p. 19). Berman and Maxine Waters, a state representative from California worked to get this issue to Congress. They formed a group made up of prominent women's rights advocates and lawyers who took up the issue of

maternity leave. The group was led by Donna Lenhoff of the Women's Legal Defense Fund, an expert on these issues who had also worked closely on the PDA; and Wendy Williams, a law professor at Georgetown (Elving, 1995, p. 20). The newly consulted lawyers argued that the special protections approach was not the way to go, even though that is what Berman had originally said was the direction he wanted to go. Lenhoff and Williams consulted with other experts in the field and they strongly expressed that they believed women could not 'have it both ways' and that to argue for special protections in one arena and not in another would lead to further marginalization of women from all facets of public life (Williams, 1984, p. 196). They highlighted that any special protection, no matter how well-intentioned, would end up being used against women (Elving, 1995, p. 20). The group embraced the liberal feminist or equality framework even though they thought it would be much harder to pass gender-neutral legislation through Congress because it would impact such a large segment of the population and have widespread impacts.

Lenhoff and her associates were firmly in the liberal feminist camp, they believed it made the most sense in the long-run for women and that based on the legal framework in place, it was the most logical way to argue the issue. The legal and political framework in place at this time was essentially shaped by earlier policymaking, namely the Civil Rights Act of 1964. Elving (1995) notes that the main actors who crafted and promoted FMLA were influenced by this earlier legislation, and the FMLA essentially began with the Civil Rights Act of 1964 (p. 21). The reality of the legal and political framework in place by the 1980s made it such that crafting gender-neutral leave legislation was possible. One of the main concerns Berman and Waters had was that any gender-neutral

leave would be quite open-ended and would be accessible to the majority of American workers, something that many in the business community would look upon unfavorably (Elving, 1995). Their fears proved right and it took many years of sustained activity for the FMLA to become the law.

The first draft of the legislation was written in 1984 and vetoed by President Reagan. By the mid-1980s the coalition working to pass FMLA was firmly entrenched in the liberal feminist framework. While members of the coalition were diverse, they set aside their differences on other contentious issues as a way to gather support for the new family leave policy. The group was led by the Women's Legal Defense Fund (now called the Partnership for Women and Families) (Lenhoff, 2004, p. 3). Members included the AARP, the US Catholic Conference, the League of Women Voters, National PTA Association, Epilepsy Foundation, American Association of Pediatricians and Businesses for Social Responsibility (Lenhoff, 2004, p. 3-4).

Several politicians also took part in the group and their interest in the FMLA varied and reflected the broad nature of the bill. Republican Senator Kit Bond from Missouri came around to strongly support the bill as a way to appease his constituents, specifically the large elderly population. He also believed that by supporting the bill he would be able to win the support of more women voters in his state, some of whom were turned off by his extreme pro-life, anti-abortion stance (Lenhoff, 2004, p. 4). Coming out in support of the FMLA was a way for Bond to try to gain approval leading up to his 1992 re-election. Senator Dodd, a Democrat from Connecticut, also took a visible stance in favor of the legislation for ideological reasons (Lenhoff, 2004, p. 6). Lastly, Representative Marge Roukema from New Jersey was a strong supporter of the

legislation from the beginning, mainly based on her personal experiences of raising her children and trying to balance the demands of work and family (Lenhoff, 2004, p. 6).

The coalition favored broadly written legislation that would apply to all employees in diverse family situations. The legislation also covered the birth or adoption of a child. The voices of feminists who embraced the tenets of difference or cultural feminism did not disappear, but the debate on the issue of maternity and family leave changed considerably by this point in time. The key debate about the passage of the new legislation was now between the broad coalition in support of FMLA and the well-connected business lobby led by the US Chamber of Commerce and the National Association of Manufacturers, The Society for Human Recourse Management, and the Federation of Independent Business (Lenhoff & Becker, 1989; Elving, 1995, p. 151; M. Freedman, personal communication, 2010; M. Varnhagen, personal communication, 2010).

The business community attacked the legislation on two key points. First, they opposed any sort of government mandate that would create more regulations and increased expenses to do business (M. Freedman, personal communication, 2010). Connected to this reason they believed that FMLA, although written in gender-neutral language, would influence hiring practices, making it so businesses would hire fewer women of child-bearing age because they would end up taking more time off and being more expensive than male employees (M. Freedman, personal communication, 2010). Secondly, business groups embraced the: “. . . Undercurrent in the American public life that women with children, especially infants, shouldn't work outside of the home” (Lenhoff, 2004, p. 4). While the coalition in support of the legislation included many

more members, the business opposition had strong connections with Congress and so was able to exert significant influence on the topic through their personal connections and ability to mobilize their members across the country (Elving, 1995, p. 151).

The Coalition pushing to pass FMLA proposed a broadly written piece of legislation which appealed to so many Americans for multiple practical reasons. In public opinion polls a majority of Americans supported the bill and said they would vote for politicians who worked to pass it (Lenhoff, 2004, p. 4). The legislation was gender-neutral and applied for a variety of reasons including that it could be used to take care of aging parents and spouses. This captured the support of large civil society groups like the AARP and religious organizations. It was also hard to oppose the FMLA; even staunch conservatives who might be against the bill could not very well argue against the practice of unpaid time off to care for aging or ill family members. Conservative values tended to center on the male bread-winner model and their religious convictions which were in part based on the idea that a woman should take care of the family. From this perspective they could not logically argue that new parents, especially new mothers, should not be able to take time off to care for a new child.

The fact that it took so long for FMLA to be signed into law demonstrates the challenges inherent to passing new social policy. Despite the fact that the FMLA only outlines minimum labor protections and guarantees only unpaid leave, it took nine years of work by a well-organized coalition working closely with elected officials to pass (Lenhoff, 2004). Civil society was well-prepared and well-positioned to take advantage of the policy window which opened in 1993 with President Clinton's election. This policy window did not alter the previously established policy trajectory cemented in

1964, rather the FMLA helped to solidify the liberal feminist path that was already in place. The strength and connects of liberal feminist activists in large part helped to cement the future policy direction; they overwhelmingly supported family leave rather than any type of special protections or policies for women. The gender-neutral wording of the legislation provides further evidence that gender-neutrality and complete equality between the sexes was the only way forward. Special protections for women seemed irrelevant, antiquated, and illogical in the current social and political environment.

In part, it took so long for the legislation to pass because it required a Democratic Congress and President (Lenhoff, 2004, p. 1). This was not possible until Clinton came to office in 1993. Prior to Clinton passing the FMLA, it was vetoed by President Bush two times (Moberly, 2006). It also took the coalition pushing for the passage of the bill time to organize their diverse members and incorporate key supports in the form of organized labor and religious groups. Another boon to the coalition was the fact that in the late 1980s and early 1990s several states (California, Puerto Rico, Connecticut, Iowa, Louisiana, Montana, Tennessee, and Massachusetts) had passed some disability insurance and/or leaves for pregnancy which proved to be successful, cost-effective, did not harm business, and were well-reviewed by citizens who used them (Lenhoff, 2004, p. 5; Lenhoff & Becker, 1989, p. 411). This was tremendously important to politicians who could then safely vote for the bill, knowing that it would not live up to the negative cost estimates as outlined by the US Chamber of Commerce and their allies (Elving, 1995, p. 279-80).

The women's movement and a broad coalition in support of the FMLA had to compromise on some aspects of the law in their efforts to get the legislation passed. Its

eventual passage marked a triumph for the women's movement and its varied allies. The largest area of compromise came with the fact that as it was passed, employers with fewer than 50 employees were not required to provide FMLA benefits. The number of weeks off was also reduced. This compromise was made in order to appease the strong business lobby and garner the votes of conservative politicians (Lenhoff, 2004; Elving, 1995; Schroeder, 1989, p. 54; M. Freedman, personal communication, 2010).

The FMLA was the first major bill of Clinton's presidency. To celebrate the momentous occasion a ceremony was held. Many politicians and members of key organizations attended, especially members of the coalition led by the Women's Legal Defense Fund, which was widely given credit for making the passage of FMLA possible (Elving, 1995, p. 285). Judith Lichtman, then president of the Women's Legal Defense Fund, was one of the speakers. She explained to the audience that the passage of this bill would not have been possible without the activists, namely from within the feminist movement. She said: "Women in America don't know and can't figure out what the feminist movement has done for them. . . . In the case of family leave, we saw a need and created a public policy that would make an everyday difference in people's lives. . . . The message is that the feminist movement cares about working families" (as cited in Elving, 1995, p. 285). Lichtman's message reflected the evolving feminist theory in the US, namely that issues previously thought to be women's issues, such as maternity leave and care for infants, were now framed as family issues in a gender-neutral perspective. This move even further entrenched the liberal feminist values into the broader American consciousness. Now pregnant women and new parents, regardless of the sex, could access the very same policy.



By 1993 it would be increasingly difficult for federal legislation dealing with family and maternity leave to be crafted in a way that offered special protections to women as a class of citizens. The passage of the gender-neutral family leave policy further added to the path dependent development of the collection of family leave and employment protection policies. Scholars confirm this assertion as they note that the whole discussion about maternity and family leave began with the Civil Rights Act of 1964 (Elving, 1995, p. 21; Davis, 1999, p. 306). This critical juncture was one that began in 1964 and became established over time. The adherence to gender-neutrality and the tenets of liberal feminism as the way forward in the US is reflected by the content of the PDA and FMLA. The American belief in equality, privacy, and rugged individualism also bolstered this embrace of liberal feminism in the US (Davis, 1999, p. 278).

### **US Conclusion**

The years between 1976 and 1995 witnessed intense debate, heated legal activity and sustained efforts which led to the eventual passage of family leave policy. Specifically, this time period witnessed continued mobilization and activity by feminists and civil society organizations. The dominant and well-positioned women's groups like NOW and the Women's Legal Defense Fund took advantage of the opportunity to push for gender-neutral parental leave. They made their mark on the language of the PDA and took advantage of the opportunity that occurred in 1993 with Clinton's election; they were able to make their mark on the shape of leave for pregnant women and new parents. Without the push for gender-neutral parental leave from women's organizations, Clinton might have had a very different type of bill on his desk. Civil society organizing was instrumental to the passage of FMLA.

Family policymaking and employment protections experienced path dependent development between 1976 and 1995. The intense civil society activity and debate not only captured the attention of the American public, politicians and courts, it also significantly transformed the normative construction of gender in the US. The idea that women, as mothers and wives, should receive special treatment in the workplace was no longer acceptable or legal by the end of this time period. The treatment of pregnant women and new mothers in the workforce in 1976 was radically different to their treatment in 1995. This was in large part due to the growing prominence of the liberal feminist framework in American society, courts, politics, and employment policy.

#### **Path Dependent Policy Development in the UK 1976-1995**

Between 1976 and 1995 family policies in the UK develop along the already established foundations based in cultural feminist ideals. Specifically the policy landscape become more complex and multiple policies are passed which further embed the family policy landscape in cultural feminist roots. Women workers continue to be targeted as deserving of special protections during pregnancy and in their roles as caretakers of young children and family. The three primary pieces of legislation that passed were amendments to the Equal Pay Act in 1983, Statutory maternity Pay in 1987, and the introduction of the Maternity Allowance in 1992. The passage of these three policies cements the social construction of gender already in place where women are believed to require special protections in employment at the same time that they are conceptualized as equal to men and deserving of equal access to employment, equal pay, and equal opportunities for promotion in the workforce.

Between 1976 and 1995 civil society organizations continue to fight for employment rights for women. Activity is mostly local and grassroots in nature. Most visibly women mobilize as union members in their fight for equal treatment. Unions provide an important avenue for women to organize. These union women are often organizing specifically because the unions they are members of have failed to grant them the rights that they had organized for in the past. The frustration the women experience because of their poor treatment by their unions acts as a catalyst for action. Most unions continue to operate on the male breadwinner model and have been slow to embrace the changes that were achieved between 1960 and 1975.

### **Setting the Stage: The Changing Face of Feminist Activism**

The women's movement in the UK began to lose members and strength in the mid-1970s as it became further decentralized and diversified (Meehan, 1990, p. 193). Some go as far as to say that the larger feminists group during this time declined to extinction (Bruley, 1999, p. 155). This in part occurred because the government incorporated some of the demands and goals of the women's liberation movement into legislation and into stated governmental goals. The fact that the government embraced some demands from the women's movement made it so issues around family, gender norms and proper gendered behaviors became politicized as never before under the leadership of Thatcher (Bruley, 1999, p. 147).

Alongside the government incorporating several stated goals of the women's movement, there also developed a broad acceptance in society that a lot of progress had been made on women's rights (Pugh, 1992; Bouchier, 1983). This led to further frustration on the part of many women activists who felt frustrated by the co-opting of

their goals by government. The decline in numbers of women activists demonstrates these changes within the movement: in 1964 it was estimated that there were 3 million active women organized broadly for women's rights in 120 national groups, 15 of which were explicitly feminist in nature. By 1983 there were more groups, at 300, but far fewer activists at only 20,000 (Meehan, 1990, p. 193). These numbers do not include trade union groups.

A constant force in the UK is the continued grassroots mobilization of women's groups, often in the form of union activity. One of the most prominent examples of union women organizing during this time frame occurred in 1976 at the Trico-Folberth factory strike in London where 350 women and 150 men went on strike for equal pay. The plant manufactured windshield wipers for cars. The protestors were trying to secure the same pay rate for women and men. They were on strike for 5 months before their demands were met (TUC, 2012). This strike is similar to many other women-led labor union strikes which occurred in the 1960s, for example the 1968 strike in Dagenham. What is different in 1976 is that as of 1970 the Equal Pay Act had already passed. It outlined, among other things, that men and women must be paid the same wages for the same category of work. The 1976 strike demonstrates the lack of enforcement mechanisms behind the law, the loopholes within it, and the difficulty in bringing discrimination cases before tribunals. By 1976 a prominent UK newspaper reported that out of the 145 cases brought before the industrial tribunals, only 41 were ruled by the court in favor of the women plaintiffs (Journal of the Women's Commission of the Spartacist League, 1977).

At this point, visible labor union strikes remained one of the best ways to bring

attention to issues of discrimination against women in employment. This tactic was most available to workers who were part of labor unions and worked in companies which employed both men and women doing similar types of work. Strikes often garnered media attention and took the activism outside the system of government. Protests outside the structures of government were essential as most women activists were marginalized from government activity and had few direct access points to influencing policies in other ways.

Other prominent events which demonstrate the continued efforts of women to protest and strike for the stated goals of the women's liberation movement include the Greenham anti-nuclear strike beginning in 1981 and the mining strikes of 1984-85. The women of the Greenham strikes mobilized to oppose the decision to store nuclear weapons at US air bases in Britain. While the strike was not especially relevant to issues of family policy or equal pay, it was important to this discussion for two reasons.

First the anti-nuclear strike continued for years and thousands of women from all walks of life, from all over the UK participated. During some mass organized protests, more than 70,000 protestors, mostly women were present at the Greenham site (Brown, Perera & Wainwright; 1983). The Greenham strikes represent the last example of a cohesive mass feminist activist before the movement became further decentralized (Bruley, 1999, p. 154). The Greenham women continued to protest on the site until 2000. They not only garnered significant media attention, they also influenced the creation of similar groups within the UK and elsewhere. Their efforts exemplified and influenced the development of global women's activism during this time. The focus on peace and the life-affirming powers of women as mothers and caretakers eclipsed many other efforts of

British women on other issues like equal pay or maternity rights.

Second, the protest was important because it set the stage for the debate between the social norms embodied by cultural feminism and those reflected in tenets of liberal feminism. By this time, some ideals of liberal feminism were beginning to influence the women's movement in the UK. In order to demonstrate that the storage of nuclear weapons was a danger to human life and peace, the women played upon their role as mothers, life-givers and caretakers in order to make their demands known. The activists at Greenham were criticized by other feminists based on their use of maternalist feminist values such as associating women with nurturing, peace and mysticism while they associated men with technology, warfare and violence (Bruley, 1999, p. 155). The women of the Greenham protests used cultural feminist values as a way to connect with British society more broadly, most of whom already embraced the values of cultural feminism whether they were aware of it or not.

The mining strikes of the mid-1980s are important because they reflect the ways that women were simultaneously organizing as wives in support of their striking husbands at the same time they were experience an awakening of class consciousness and activism (Bruley, 1999, p. 156). These events demonstrate how in the UK much of the political agitation for the goals of the women's movement took place along class lines, often within the framework of well-established labor unions.

During this time the women's movement in Britain began to embrace elements of the equality framework, mostly in relation to issues like equal pay for equal work and in employment practices (O'Conner et al, 1999). For example, the Employment Protections Act of 1975 introduced three important rights for women: protection from unfair

dismissal due to pregnancy-related reasons (1976); the right to return to work after the birth of a child—only women with two years of prior service were eligible (1976); finally, in 1977 women were guaranteed the right to 6 weeks of maternity pay, within strict eligibility guidelines (Maternity Action Document, 2010). These rights were thought to provide protection to women workers and remove obstacles for securing work, maintaining job security, and providing equal opportunities for promotion.

Despite this push for equality between the sexes, even the conceptualization of equality legislation such as the Employment Protections Act contains evidence of the continued strength of the difference feminist perspective. Special protections for women workers were part and parcel of the idea of equal treatment.

This following section examines several key events and three pieces of legislation. The legislation covered includes the amendment to the Equal Pay Act in 1983, passage of Statutory Maternity Pay in 1987, and the introduction of the Maternity Allowance in 1992. The continued commitment to special protections for women is evident in this legislation and demonstrates the ways in which the UK remained tied to the tenets of difference feminism.

Legal activity, primarily on the European level, at the European Court of Justice also pushes the UK to continue to pursue equality legislation for women in employment while simultaneously allowing space and providing legal backing for protective legislation for women workers. There were also a number of national cases held in the Employment Appeals Tribunals; they primarily demonstrate the complexity inherent in family and maternity leave in the UK. Most of these cases were needed to clarify unclear language within the legislation or to fill in the details of vaguely written laws. The

number and nature of these national cases also draw attention to the lack of enforcement mechanisms within the relevant legislation. I will not spend much time exploring the majority of these UK cases because they deal in technicalities and do not generally modify the trajectory or nature of pertinent policies. The activity of the European Court provides an impetus for the expansion of UK policies dealing with equal pay and maternity leave, adding further intricacies to the already complex collection of family policies. The changes during this time do not challenge the established trajectory of cultural feminist values.

### **Amendments to the Equal Pay Act**

Women continued to be paid less than their male counterparts despite the fact that a legal mechanism existed in the form of the Equal Pay Act of 1970. A serious wage gap persisted as late as 1982 when women were paid 73.5 percent of what men were paid (Equal Opportunities Commission, 1982). One of the primary limitations of the 1970 law was that it allowed many women who experienced pay discrimination to fall through cracks as the law was only able to address issues of overt discrimination (Byrne, 1984, p. 248). The 1970 law only pertained to women who were working in situations where there were men employed doing the very same work. Many companies, especially those dealing in manufacturing, would either not hire women or place them in segregated types of positions. This meant that there were not many *comparable* jobs being done by men and women and so direct discrimination was difficult to prove. Many women believed that the continued pay gap reflected the social manifestation of male dominance over women (Townshend- Smith, 1984, p. 201).

The work of civil society groups, most notably trade unions, raised awareness



about the continued discrimination against women in employment. The issue was eventually taken up by the European Court of Justice. In 1983, in the *Commission of the European Communities v. UK*, the Court found that the EPA failed in its attempt to rectify the situation of unequal pay and address related gender discrimination. The Court found that the EPA failed to comply with the EEC Equal Pay Directive because it did not provide women as a group with a real remedy for receiving equal pay. The Court mandated amendments in 1983. In a large part, the amendments were ordered because the Court found that the 1970 EPA did not meet the guidelines articulated by Article 119 of the Treaty of Rome. Article 119 outlines the right of equal pay for equal work (Byrne, 1984, p. 248). As a member of the European Communities, the UK was bound to follow the Treaty of Rome.

The 1983 amendments introduced the concept of equal pay for work of equal value (Byrne, 1984, p. 247). The element of 'like value' was missing from the earlier version of the legislation. This was an essential addition because with the 1970 legislation many women could not find a male employee in the exact same position in their company to explicitly demonstrate that they were being paid less, and this is what the original version of the law required for evidence. The 1983 amendments did broaden the scope of the legislation and bring it in line with the minimum standards outlined at the European level. But there was still significant controversy about whether the changes were enough to bring about real reductions in the pay gap (Byrne, 1984, p. 247). It was also widely reported that the Department of Employment in the UK, which oversaw these changes, was planning to change the original amendment as little as possible and to reduce the impact of the changes mandated from the European Court of Justice (Byrne, 1984, p.

250). This contempt for the European ruling in part had to do with the idea held by many in the British government that the market should dictate the terms of employment and that making these changes would result in companies not hiring women workers at the same levels they previously had (Byrne, 1984, p. 249-50). There was also a general fear in the business community that the amendments would prove bad for business overall.

The Amendments to the law were ordered from the European Court and not from Parliament, which meant that an in-depth period of consultation and debate about the shape of the amendments was not required. Therefore, the civil society groups who were actively working on this issue, most visibly trade union groups, got little if any say in terms of shaping the new version of the EPA (Byrne, 1984, p. 250). This led many groups, including the Equal Opportunities Commission, to oppose the amendments.

There was still some uncertainty about whether the court-ordered amendments had gone far enough. In effect, the amendments continued to use a narrow definition of discrimination which tended to favor employers at the expense of women workers. It was still a challenge for women to prove that discrimination had occurred. Byrne notes: “. . . because our equal pay legislation will continue to apply only to women who can point to a male comparator working at the same work place, women who work in female dominated workplaces will continue to be deprived of any rights to equal pay whatsoever” (p. 256).

The interests of the business lobby, in part, impacted the shape of the 1983 amendments to the EPA. Additionally, the way social norms around gender identity and behavior were constructed influenced the eventual outcome of the amendments. The Chartered Institute of Personnel and Development (CIPD), one the largest human

resources professional groups in the UK, commented that the persistent pay gap in the UK has a lot to do with the current and historical notions about men being the ‘breadwinners’ in the family. They go on to note that there are multiple complex factors which impact equal pay related to the continued dependence on the male breadwinner model. These factors include: “Higher value being accorded to jobs requiring traditionally ‘male’ qualities, the concentration of women in certain job roles, the concentration of women in part-time roles, childcare requirements and women missing out on promotion opportunities owing to maternity leave” (CIPD, 2012). The attachment to the male breadwinner model is demonstrated by the 1983 amendments which were forced from above and resisted by multiple powerful groups in society.

The reliance on the male breadwinner model and continued embrace of cultural feminism creates barriers for a full embrace of other views which promote complete equality between men and women. Despite the language of equality, women were, at least according to societal norms, not considered equal to men regarding questions of employment. The norms surrounding women and work in the early 1980s continued to rely upon the idea of woman as wife and mother first and employee second. Lewis (1992) notes that in the 1980s, the government continued to treat women as mothers and dependents and generally not as primary earners (p. 96). In the following chapter I will discuss the changes made to the EPA when in 2010 the act was subsumed under the Equality Act.

Another event in 1983 which demonstrates the UK’s continued embrace of the tenets of cultural feminism was the governmental opposition to the 1983 European Community Draft Directive on Parental Leave and Leave for Family Reasons. This

directive would have offered a gender-neutral parent three months of paid leave to look after his or her children. It also outlined a future provision for tax relief for child care, following a model from the US (Lewis, 1992, p. 31). The directive was opposed by Conservative Prime Minister Thatcher and then by Prime Minister Major, in part due to the strength of the business lobby (Kammerman & Moss, 2011, p. 249). Business interests feared that the increased regulations would make it more expensive to hire employees who might have children at some point in the future and that this would disrupt the workings of business. On another level, the social norms around care work and rearing of small children did not support the idea of gender-neutral parental leave. The continued dominance of the male breadwinner model meant that women were expected to do the majority of care work as part of their duties as wives and mothers; this would occur regardless of whether women worked outside of the home or not (Lewis, 1992; Bruley, 1999). It was not socially acceptable for a man in the early 1980s to take time off of work to care for his young child. The possible ramifications from his employer could include stigmatization and lack of opportunities for advancement (D. Fisher, personal communication, 2011; A. Burgess, personal communication, 2011). These norms were so entrenched that even wives of unemployed men would not often go out and get jobs because of the strong social belief that the wife should be dependent on her husband's work outside of the home (Lewis, 1992, p. 96).

This atmosphere created a situation where it was quite unlikely that men would take parental leave to care for small children, even if a policy was available. The social norms around childcare work were and are still connected with the male breadwinner model and there was little support for policies which would give men the opportunity to

take time off to care for young children, as this was viewed as socially and culturally not relevant to the divided gender roles and needs of working parents in the 1980s. As of 2010 there was still debate about if men will take advantage of policies like parental and paternity leave due to the stigma in the workplace and in society more generally. While paternity leave was not introduced until 2003, as of 2011 it was estimated that 40 percent of new fathers do not use this time off for multiple reasons including economic and cultural ones, and because they are being discouraged by their employers (Working Families Report, 2011). While this evidence is not directly relatable to the time period being investigated in this chapter, it demonstrates that the norms around gendered activities like child care are still thought of as primarily women's roles; this holds true whether it is 1985 or 2011.

### **Trade Unions and the Courts**

Trade unions were also active bringing cases to the national courts. For example, in the mid-1980s the case of Julie Hayward became big news nationally and globally. Julie Hayward, a cook in a shipyard, was a member of the GMB, a general union which has members from multiple sectors, when she discovered that she was being paid less than her male counterparts doing similar work.

The male workers were classified as craftsmen and Julie Hayward as a cook, but their duties were quite similar. She won a landmark legal victory for women's equal pay under the amended Equal Pay Act, which reflected the necessary European Economic Community standards, which dictated that work of equal value must receive equal pay (Trowsdale, 2009). Her victory was hard fought, and took many years and three tribunals, which eventually ended with the House of Lords decision that she had been the victim of

discrimination (Trowsdale, 2009). This case was important because it clarified many of the uncertainties within the legislation and opened the doors for similar cases from women across the country. Ms. Hayward had stated that this case and her victory would not have been possible without the support of her union and her colleagues. She said:

This was much bigger than just my small job. It became escalated to do with this big massive thing that was going to happen. The strength again from just the guys all being together you know calling union meeting you would see 20,000 people. .then that gave you strength to say, you know, you're not an idiot, you're not a fool but, you know, these things are happening to you it's wrong. (cited in Hastings, 2006, no page number).

This was a big win for women workers throughout the UK as many had experienced similar situations, but did not have the union support to help them make their cases. Bringing a case before the Employment Tribunals required knowledge and resources that many working women did not have at their disposal, especially if they were not part of a union.

### **Maternity Leave and Pay Are Expanded**

Within the context where women were working for equal opportunities, access and protections in employment, there was also a push for an expansion of protective policies for women workers. The changes discussed below further embed the family policy landscape in cultural feminism and contribute to the continued path dependent development.

In the broader social context of the 1980s there was debate about the real meaning of equality for men and women in the UK. Lewis (1992) notes: "The claim to equality has proved susceptible to various interpretations. It has been possible for policies to treat women as equal, in the sense of equal to men, without addressing the problem that women may not be in the position to start equal" (p. 36). Lewis also notes at this time that

government did attempt to address issues of gender equality from a formal standpoint through broad legislation, but many of the deeper issues of indirect and structural discrimination were overlooked. The fact that women continued to be the targets of specialized and protective policies is evidence that women were still viewed and treated primarily as mothers in the context of employment concerns. This reflects the dominance of cultural feminist values within a broader framework, which is attempting to create an equal playing field between men and women in employment. The expansion of maternity leave policies during this time reveals the ideals of the cultural feminist perspective.

In the 1980s the women's movement in the UK was still working on its goals as originally outlined at its first national meeting in 1970. These goals as stated in the previous chapter included: equal pay, equal education and job opportunities, free contraception and abortion on demand, and 24-hour nurseries. In 1978 the movement added a fifth demand, legal and financial independence for all women, plus a sixth principle of ending discrimination against lesbians, and a seventh demand for freedom for against violence or the threat of violence for all women (Bouchier, 1983, p. 189- 191). Efforts towards these goals continued despite decentralization of the movement, the growth of an anti-feminist movement, the election of conservative leaders, an economic downturn, and social spending cuts. Within this atmosphere, the movement also had a difficult time achieving success on its stated goals and defending its somewhat contradictory ideas about equality for women and special protections for mothers in employment (Bouchier, 1983, p. 189-194; Lewis, 1992).

The women's movement as a whole resisted the idea that all women are naturally inclined to be mothers and economically dependent on their breadwinning husband.

Second, they embraced the idea that many women are mothers and defended women's territory as mothers (Lewis, 1992, p. 35). Defending women's rights as mothers meant they worked to protect the gains they had made, especially the increased legal rights surrounding custody issues, divorce rights, maternity leave for some women, and improved rights regarding equal treatment and pay in employment situations. Protecting these rights for women meant that these women's groups had to embrace, directly or indirectly, the tenets of cultural feminism which asserted that to compete equally with men, women needed specifically tailored policies.

The lack of historical evidence and discussion around the issue of maternity leave by the women's movements in the UK is surprising. There are several potential explanations for the lack of attention to an issue that was so controversial and prominent in the US. First, it may have been viewed as somewhat of a non-issue at a time when other issues seemed more pressing. Other demands of the women's movement, such as the call for government sponsored childcare centers, received much more attention and activity. Government sponsored childcare may have seemed like a somewhat attainable goal considering that during World War II the government sponsored such centers, and the movement was supported on this issue by multiple labor unions, including one of the largest, the TUC (Bouchier, 1983, p. 188). Also as mentioned in Chapter 4, there was a feeling by many in society that the women's movement had already achieved a great deal, considering the passage of the SDA and the EPA, which even outlined the basic protections and leave for pregnant workers. This took much of the urgency and fire out of their organization.

The late 1970s to the early 1980s was a time of economic downturn and



conservative leaders. This environment made it difficult for the decentralized and diversified women's movement to achieve its goals, which in the eyes of many would have been considered unnecessary and expensive. From approximately 1980 to 1997 the women's movement has been characterized as divided, increasingly diversified and lacking a favorable political opportunity structure, especially during rule by the Conservative Party (O'Conner et al, 1999, p. 214). During the 1980s and early 1990s scholars have noted that the political atmosphere was hard to access and highly centralized, leaving the women's movement generally outside of government workings (O'Conner, 1999, p. et al 214; Pierson, 1994; Lovenduski & Randall, 1993, p.363).

The historical evidence relating to the passage of the Statutory Maternity Pay in 1987 and the reforms in 1992 is strangely quiet regarding the role women's groups played in the passage of the law. The women's movement as stated above had a goal of legal and financial independence for all women, equal pay, equal access to education and job opportunities and the right to free or government subsidized child care. But the issue of maternity leave was not stated directly in these demands. Rather than the women's movement being an impetus of change for maternity leave and pay, other forces appear to be at work, namely pressure from the EU and the labor union movement to influence the development of the policies (Rubery, 2012). The majority of the developments during this time were framed as relating to issues of equal pay. In the UK, maternity leave benefits as they were first implemented were connected to issues of equal pay, as the Employment Protection Act of 1975 contained the first elements of maternity pay.

### **Statutory Maternity Pay and Maternity Allowance**

Within this somewhat tumultuous social context, Statutory Maternity Pay was

passed in 1987. It broadened the scope of maternity leave and pay which had been passed in 1976 as part of the Equal Protections Act. Since 1977 the EPA outlined that eligible women had the right to take six weeks off with maternity pay and up to 29 weeks of extended leave without pay (Maternity Action, 2010; Bruley, 1999, p. 159). The 1987 legislation provided pregnant women and new mothers up to 18 weeks off with varying levels of pay based on qualifying conditions. Eligibility was based on length of service with a women's current employer and average weekly earnings (Maternity Action, 2010). These conditions made it difficult for most women to qualify to receive the full benefit. A major change in the 1987 law made it so women who met the eligibility standards could take up to 40 weeks off, 18 of these with pay (Waldfoegel, 1998, p. 509). The problem of eligibility was a carryover from the original maternity leave policy passed in 1976. It was estimated that only about half of women workers had access to maternity leave legislation up until 1993 when significant amendments were made (Waldfoegel, 1998, p. 509).

In 1992 the Maternity Allowance was introduced. It came into force in 1993, and it made it so more women than ever before could qualify for some sort of maternity pay benefit. The allowance was available to a woman who did not qualify for the Statutory Pay either because she did not make enough money, did not work at her job for a long enough time, was out of work, under-employed, or self-employed. The amount of the maternity allowance is a lesser rate than the Statutory Maternity Pay and lasts up to 18 weeks (Department of Work and Pensions, 2012).

How and why did new policies providing more time off and pay to more new mothers pass in this environment which was seemingly inhospitable to the passage of

expanded maternity rights? In order to understand these developments, I turn to two primary agents of change: external pressures from the EU and internal pressures in civil society, namely in union groups.

### **External Pressures**

Scholars note that the EU has had an important impact on the shape of equalities legislation in the UK, mostly due to the fact that the UK's body of employment law was undeveloped prior to the passage of EU directives between 1975 and 1995 (Callender et al, 1996, p. 27; Rubery, 2012). O'Conner et al (1999) find that the EU was generally perceived to be a gender equality force in Britain (p. 215). While the body of employment law created in the UK during this time was influenced by EU- level activity, many leaders of the UK did what they could to avoid complying with EU standards (Earnshaw, 1999). For example, the Conservative governments of Thatcher and Major continued to oppose any attempt by the EU to regulate social policies such as maternity and parental leave (Fusulier, 2009). The UK was the only EU member to decline to sign on to the Social Charter of Workers which outlined maternity leave rights in 1989. The opposition to social directives from the EU continued well into the 1990s when, along with Italy, in 1992, the UK did not support the Maternity Directive. The UK and Italy were not in the position to veto the legislation, so they eventually had to conform to the standards outlined in the new EU law. This meant the UK had to extend access to its maternity leave policies already on the books, and limit the strict eligibility requirements which existed at the time (Fusulier, 2009, p. 244). The UK remained an outspoken opponent of EU maternity and parental leave regulations during this time. Fusulier notes:

. . .The proposal for a directive remained deadlocked for almost ten years because of the implacable opposition by the Conservative government in the United

Kingdom, first under Margaret Thatcher and then under her successor, John Major, Euroskeptical and resistant to any attempts to re-regulate the UK labour market, the UK government refused to allow legal competence in this to be consigned to Europe; it believed these measures had to be the prerogative of the member states (p. 249).

The British government continued to oppose family policies introduced by the European Union. For example, in 1994 the UK was the only EU member state to oppose the EU Pregnant Workers Directive. This directive made dismissal on the grounds of pregnancy illegal. It also created a new right to basic maternity leave which superimposed the right to 14 weeks off regardless of employment history. Despite firm opposition, the Conservative government was forced to implement the directive (Maternity Action, Unpublished Document). This directive greatly increased the number of women eligible for maternity leave and pay, and made it necessary for the UK to create some major changes to their legislation. While prior to this time it was illegal for employers to fire pregnant workers, they could: “. . . Evade this if the woman's pregnancy made her unable to carry out her job and there was no suitable alternative available. Hence, substantial changes to the UK legislation were required in order to comply with the Directive” (Earnshaw, 1999, no page number).

As stated earlier, the UK government had a history of opposing social directives coming from the EU. This was evident in the arena of family policy. As late as 1996 the government of the UK stated that: “The statutory maternity rights in place in the UK are designed to provide a minimum standard of protection to help women reconcile their work and family responsibilities. These rights have been significantly strengthened in recent years, partly as a result of requirements laid down in the EU Pregnant Workers Directive. . .” (Callender et al, 1996, p. 27). Between 1976 and 1995 the EU pushes the

UK to make maternity benefits more widely available to citizens. This change does little to alter the path dependent development of family policies along the already established course. During this time the EU also introduces new ideas to the UK about gender-neutral policies like parental leave, which the UK continued to push against. In large part the already well- established social construction of gender norms around the male-bread winner model and cultural feminist values made it so the gender-neutral policies being suggested by the EU appeared out of sync or not very applicable to British society, politics, and culture.

It was not until 1997 when Labour came to power that a change in the direction and scope of maternity leave policies occurred. Notably, Blair's acceptance of the Maastricht treaty and other social mandates from the EU allowed the UK to be more susceptible from EU-level social mandates. These changes included: the introduction of parental leave and the expansion in the levels of maternity leave and pay. There was also a notable decrease in the eligibility requirements making maternity pay and time off available to more women than ever before. In 1979 only 54 percent of all working women had access to maternity rights, by 1988 the number increased to 60 percent (Saurel-Cubizolles, Romito & Garcia, 1993, p. 52).

The slowly expanding scope, type and length of leave available to new parents in the late 1990s in the UK marked a departure from the previous adherence to narrowly written and protective policies for women workers. This change was imposed from above in the form of EU directives. Although these directives embraced tenets of gender-neutrality such as the introduction of parental leave, the UK remained a resistant partner to these new policies and continued to embrace the idea of special protections for women

workers. More detailed information regarding Prime Minister Blair's role in the crafting of family policies will be discussed in the following chapter.

### **Internal Pressures**

Despite the fact that during this time period union women and to a lesser extent men continued to stage protests in their efforts to secure equal pay, unions also played an important role in securing equal treatment for women in employment. Rubery (2012) notes that:

The Equal Opportunities Commission now the Equality and Human Rights Commission and UK trade unions have made frequent use of European legislation and policy to promote gender equality. However, the UK has faced specific barriers to equality that mark it out from many other European member states. These relate to the characteristics of its regulatory, employment and welfare systems (no page number).

British politicians working within the structures of government did not have a habit of using European legislation as a leverage to change national policies which they found wanting, it was not a popular route to go. But, trade unions and other groups who had members who would benefit from the new European standards often had to work outside of the structures of government to try change the national laws which they say as falling short.

O'Conner, Orloff and Shaver (1999) go so far as to say that political environment in the UK during this time was relatively hostile to the demands of the gender equality movement (p. 214). Because the women's movement was closed off from the mainstream political system, women activists sought other routes to try to achieve their goals. Many union women and members of the women's movement were able to work within the well-developed trade union movement, as a way to further their stated demands of issues

related to equal pay and equal treatment in employment (O'Conner et al, 1999, p. 214). Because members of the women's movement felt marginalized by the hard-line of the Conservative governments of Thatcher and Major, they believed that using their connections through labor unions and the Labour party would help them to eventually affect the change they desired.

Since the late 1960s, feminist organizations encouraged their members to join labor unions and participate in strikes as a way to create a broad base of support and counteract the position of the women's movement as marginalized from the political system (Bouchier, 1983, p. 193). Because the vast majority of women's groups were not situated to directly influence the government, working within the existing union structure, although flawed, was a more accessible way to try to achieve the demands of the women's movement. Unions were a convenient place for women to mobilize and to organize significant numbers of activists. Rather than operating as a whole to influence governmental legislation, women and others sympathetic union members took advantage of the structure of the unions to mobilize for women's rights, in some instances these women union members were mobilizing against the unions where they were employed.

Six major trade unions in the UK, including the large public service union Unison, the banking union Unifi, and numerous teaching unions were active in supporting cases of equal pay that were sent to the European Court of Justice (Rubery, 2012). UK unions with a large number of women workers were motivated to work on the issue of equal pay on a European level as the UK continued to have one of the largest pay gaps between men and women workers (Rubery, 2012). Rather than focus their efforts on a national scale, the unions and feminist activists within them found it more efficient to

direct their efforts to the European level, as the EU had much stricter standards regarding equal pay. The many loopholes that existed within the UK legislation made it difficult to win cases and prove that discrimination had occurred (Rubery, 2012).

By the late 1980s the women's movement, although it included more than 300 feminist groups and 20,000 dedicated members was decentralized and not visible from a national political standpoint (Bouchier, 1983, p.177-78). In part this had to do with the fact that women tried to affect change not as members of women's groups but as members of broader civil society groups and political parties that were better situated to access the policymaking structures of government (Meehan, 2005,193-95). Because women activists felt marginalized from the workings of government, were not well-situated to lobby government, and lacked a centralized structure or leader for their own movement, they were able to participate in more conventional forms of politics:

Women with experience in the feminist movement, often in women-only groups, were able to use this as a base for fuller participation in other organizations such as political parties, trade unions and professional associations. But because of the decentralism of the feminist organization, much of women's political activity is not visible from the national level (Meehan, 2005, p. 195).

The lack of information regarding the activity of the women's movement on the issue of maternity and equal pay issues makes sense as the women's movement had to find other outlets in order to influence the workings of government. It is logical that the women activists would take advantage of their position within labor unions as a way to meet their goals. As discussed in this chapter and Chapter 4, women members of unions were able to participate in highly visible protests and campaigns relating to equal pay and equal treatment in employment. These protests often captured the attention of media and elected officials in a way that smaller events or activities of the women's movement



would have never been able to do.

Through these indirect channels women and men working to end discrimination against women in employment, were able to influence the discussion and build awareness around these issues. It is difficult to enumerate these activities as they are not part of a neat or clear history of women's political organizing, but they were impactful none-the-less. They brought awareness to issues of pregnancy and sexual discrimination which were still commonplace in the 1990s despite the collection of legislation in place. Their anti-discrimination efforts, mostly protests, strikes and the overall bringing awareness to these issues played a large part in the eventual provision for expanded maternity rights and equal pay legislation.

### **UK Conclusions**

The developments between 1976 and 1995 demonstrate path dependent development of the family policy landscape. Civil society organizing becomes highly decentralized. The women's movement continued to influence society and government in indirect ways, mostly using the structures of labor unions as a springboard for organizing. The issue of equal pay for work of equal value is one that frames most of the developments during this time; even the earliest examples of maternity pay and leave are part of larger pieces of legislation whose goal is to fight discrimination in employment. Interestingly, with the focus on equal pay for work of equal value, society continues to be tied to the traditional male-breadwinner model. The social construction of gender remains fixed on the stereotype of woman as wife, mother and caregiver, even though it was then socially acceptable for wives and mothers to work outside of the home (Bruley, 1999, p. 174). The conceptualization of women as mothers and caretakers remained, even though

as of 1995, 67 percent of all women in the UK worked outside of their homes (Walsh & Wrigley, 2001, p. 2) As of 1997, only 15 percent of all British households contained one husband working full-time outside of the home, and one woman working only in the home (reported in Milhill, 1997, p. 4). The social construction of gender remained tied to the male breadwinner model; this is one of the primary reasons that the UK continues to embrace narrowly written legislation for women workers. The social, economic, and business conditions in the UK made it difficult for men to embrace a potential new dual-role as caregivers and workers (D. Fisher, personal communication, 2011).

Despite the fact that by 1995 more women work outside the home than ever before, British society remained slow to shift their traditional ways of thinking about women and work. As scholars note, the gendered divisions of unpaid work remained strong inside and outside of the home. The government continued to treat women as dependents on men, that is, as long as there was a man in the house (Lewis, 1992, p. 96; Bruley, 1999, p. 174).

This period of path dependent family policy development was accompanied by the further entrenchment of social norms around gender. These two influences kept Britain on the track of providing special protections for women workers. Within this atmosphere it was very difficult for gender-neutral policies to be passed and/or embraced by society as a whole. The impetus for policy change generally came in the form of internal pressure from women activists, often organized with the structure of labor unions and external pressure from the EU to expand the scope of policies in place. During this time frame, improvements were made to the Employment Protection Act to make it more meaningful and maternity benefits were also expanded and made available to more

women. These changes demonstrate that special protections for women in the workforce continued to be developed within a larger atmosphere which was concerned with equality between men and women in the workplace. Equality and special protections are the dual foundations of family policy in the UK. Between 1976 and 1995 these foundations were only strengthened.

While lacking a strong presence and unable to chalk up many victories, the women's movement continued to influence legislation in indirect ways. There was also a significant debate about what equality should look like in the UK. These debates often occurred in the face of pressure from the EU to conform to their standards, because the collection of family policies and those offering workplace protections in the UK were under-developed from the European perspective (Rubery, 2012, no page number). Despite the foot-dragging and opposition to the imposition of many of the EU's policies around women and work, new EU legislation enforced from above becomes legally binding in the UK. This new legislation contradicts many values around the social construction of gender, especially the dominant male breadwinner model.

### **Chapter Conclusion: 1976-1995**

This time period is marked by the solidification of gender norms and path dependent family policy development. Each country passes a significant amount of legislation within a changing social and political context. The policies passed in each country build upon the tenets of earlier policies dating back to the 1960s, exemplifying policy feedback. For example, in the US, the passage of FMLA is informed by the 1964 Civil Rights Act. The FMLA cements the adherence to the tenets of liberal feminism. Within this context it became next to impossible for federal legislation regarding family

policies to offer women specifically targeted policies, such as maternity leave, to support them in the efforts to balance the demands of home and work life (M. Varnhagen, personal communication, 2010). The women's movement struggled with internal debates but continues to be fairly well-organized, with clear leaders and connections to government. Groups which embraced a return to the ideals of difference feminism, generally religious and conservative groups, become further marginalized. A great deal of Supreme Court activity occurred, the rulings of the Court helped to define the evolving definitions around motherhood, treatment of pregnancy and time off for caretaking activities. The outcome of these events meant that pregnancy was treated as a temporary disability, legally treated as any other short-term gender-neutral illness.

In the UK, this era is marked by continued fragmentation and diversification of the women's liberation movement. Much feminist activity was absorbed by other civil society groups, especially labor unions. There was also a healthy and on-going debate between different camps of the feminist movement regarding whether or not continuing to develop specially targeted policies to new mothers is best for women, the family, and the nation. Despite the heated debates, the adherence to the male breadwinner model remained. While the UK faced pressures to adhere to standards outlined by the EU, under the leadership of the Conservative Party, tactics such as obstructionism were used to avoid the new policies. The government exuded Euroskepticism and demonstrated resistance to passing any family policy legislation which would challenge the cultural feminist ideals which were so prominent. Even though the government demonstrated the lack of desire to change or expand maternity leave, pay and anti-discrimination policies, the policies did change because of external EU pressure and internal social pressure,

mostly in the form of women organizing through their unions. The British embrace of cultural feminism was slowly being challenged by these external pressures which will lead to substantial policy changes during the next time period under investigation, from 1996-2010.

The impact of civil society organizing is significant in each country. In the UK women continued to mobilize in a grassroots fashion and also organize within the well-established union structures because it was efficient and accessible. But in many cases union women brought awareness to the continued patriarchal structure of the unions themselves. In the US, the women's movement continued to operate along the channels established in the 1960s. Leaders like NOW and the Women's Defense Fund led women in their quest for equality along liberal feminist standards. Civil society developed in each country along path dependent lines with dominant views and ideals becoming more prominent and entrenched over time. Smaller groups informed by ideas that did not match the cultural norms in place continued to exist, but on the margins. Debates occurred within civil society, but the dominant groups tended to be so well-connected and relevant that smaller groups with different goals had a difficult time gaining any real traction.

The policies passed between 1976 and 1995 are evidence that the US and UK embraced a different perspective about what form family policies should take and who they should target. By 1995, the foundations of family policy in the US had shifted significantly away from the cultural feminist ideals that were present at mid-century. On the other hand, the UK continues to develop policies which bolster cultural feminist ideals. By the late 1990s women made real gains related to the pay gap, combating

discrimination in the workplace and in bringing awareness to the fact that childbirth and child-rearing are two separate concerns. Women in both countries gained many legal rights during this period, but remained marginalized from many opportunities in society.

Writing of Britain at the close of the twentieth century, Bruley (2012) finds that the: “. . . Forward march of women is still flawed and incomplete. Women have gained formal rights but very little power. The home and childcare is still seen as primarily women’s responsibility, but now they are expected to work as well. Many working women are disillusioned and exhausted” (p. 178). This description aptly applied to the US context as well. It serves as a difficult reminder that despite the genuine differences in the social construction of gender, the social and cultural environment still acted as an obstacle to women in their quest to find equality with men. I will next turn to 1996- 2010, a time period marked by the continued persistence of liberal feminist values in the US and time of change in the UK.

## **Chapter 6: Path Dependence and the Opportunity for Change 1996-2010**

By the late 1990s both countries have progressive leadership in place and are well-positioned to pass more expansive family leave policies. Surprisingly, the US experiences few changes to the family policy landscape and the UK experiences some policy changes, notably the addition of some gender-neutral policies. The US continues to follow its established liberal feminist path. In the UK, the story is more complicated. The EU begins to exert pressure to further develop its family policies along the more gender-neutral lines embraced by the EU. Civil society groups also begin to push the UK to alter its family policy landscape. These pressures lead to some policy changes, notably the introduction of gender-neutral policies and policies focused on fathers. But, the social construction of gender norms continues to be tied to the male breadwinner model. These changes result in a policy landscape which focuses on providing new mothers with protections and rights while simultaneously providing some gender-neutral aspects to policy. These influences create a shift away from the strong attachment to cultural feminist values in the UK.

In the US this time period is marked by relative inactivity on anything related to family leave. Federal family leave policies undergo only minor changes, most notable are clarifications to contested definitions such as the term family member. More activity

occurs at the state level as several states such as New Jersey and California begin to offer citizens opportunities to access paid family leave. The embrace of liberal feminist values is further cemented by both national and state policies which are based on gender-neutral language. In contrast, there is significant policy activity during this time in the UK. Policy changes provide clarification and provide only small changes to the established policies. For example, eligibility requirements are relaxed for some benefits. There are also efforts to simplify and modernize the confusing collection of family policies and labor law. The policy changes exhibit continued reliance on cultural feminist values, while introducing some new types of policies and ideas. I will explore how and why the UK remains a reluctant partner to much of the family policy developed at the European level. Because the UK becomes a signatory to the Social Charter of the Maastricht Treaty in 1997, they remain bound to implement family and other social policies developed at the EU. Under pressure from the EU, the UK begins to implement gender neutral policies such as parental leave. The existence of these new gender-neutral family policies in the UK marks a potential for the creation of new family policy trajectory. By 2010 the UK still relies on providing targeted policies for men and women, but new gender-neutral policies demonstrate policy change and the influence of liberal feminist values.

Between 1996 and 2010 civil society organizing modernizes and grows in dynamic ways in each country. The movement's takes on a more global perspective during this time period. Their focus is no longer to fight for family policies like maternity leave or pay because as Jan Erikson, the Government Relations Director of NOW said in a phone interview, they try to work on women's issues that are new or groundbreaking. Policies like parental and/or maternity leave already have a solid



awareness about them and have become the status quo (J. Erikson, personal communication, 2010). Issues such as legalizing same-sex marriage, the protection of abortion rights, sick pay, immigration issues and empowering women in developing countries have become more relevant and meaningful to the women's movement. As one US interviewee pointed out, it was perceived as early as the 1990s that the women had already achieved equality (M. Varnhagen, personal communication, 2010). Ms. Varhagen, the Labor Policy Director, for the Committee on Education and Labor in the U.S. House of Representative (HELP Committee) also noted that in the late 1990s many politicians, bureaucrats and community leaders stop focusing on women's issues because women already had their *moment* and "women's interests are now considered so yesterday." While she was speaking specifically about the US context, the evidence from the UK also supports her ideas. I next discuss the key developments around family policy in the US and then the UK. The chapter concludes with a brief discussion of key findings.

### **Path Dependent Development in the US**

#### **Setting the Stage: The Social and Political Environment**

What marks this time period more than anything else, is the lack of change of family policies (V. Young, personal communication). Valerie Young, a public policy analyst with the National Association of Mother's Centers and Your (wo)Man in Washington, goes so far to say that progress for women and families over the last twenty years, aside from the passage of FMLA, has been glacial in speed. I will explore how this lack of change demonstrate the continued persistence and complete embrace of the dominant gender norms based in liberal feminist values.

Despite the general lack of activity or change, there are several developments that

merit discussion between 1996 and 2010. First I will explore the changing face of civil society activity. Then I will analyze the development of state-level family policymaking. The federal nature of the US makes these developments possible, as FMLA outlines only a baseline or legislates to the bottom on the issue of family leave issues (L. Horn, personal communication)<sup>2</sup>. I will then highlight the relevant language clarifications and changes made to eligibility requirements of the FMLA. Next I discuss the lack of change in the legal environment. The activities and findings of the courts and other regulatory bodies continue along their established liberal feminist framework in a path dependent manner. This time period is marked by continuity of dominant norms; this is reflected in the activities of both the courts and civil society. I conclude with a brief discussion about the prospects for future changes to FMLA. During this time there are few challenges to or alternations to the family policy landscape and established policy trajectory.

### **The Changing Face of the Women's Movement**

The women's movement experiences dynamic growth and begins to focus more on global issues. Concerns like family and maternity leave are left behind. Early in the new century issues such as reproductive rights, gay rights, and protecting of the right to access abortion are at the forefront (MacLean, 2009). These goals were not new, but took on a different meaning to many who believed that rights which many had taken for granted, such as the right to access reproductive rights, might be in jeopardy under the conservative leadership of President Bush. The passage of the Partial-Birth Abortion Ban Act of 2003 by Bush was one of the catalysts for the organizers. The March for Women's Lives, one of largest protests in US history took place on the Washington Mall on April

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<sup>2</sup> California became the model for these state level policies in 2002. This is a complex topic and I will spend time discussing only the most relevant points for this research project.

25, 2004 (Gibson, 2011). It was estimated that between 500,000 and 1,000,000 people took part in the march which was organized by a broad coalition of women's rights groups (Gibson, 2011; NOW, 2004). Organizers included NOW, Planned Parenthood, NARAL Pro-Choice America, the Feminist Majority Foundation, the American Civil Liberties Union and the NAACP (Gibson, 2011; Charles, 2004). Their goal was to bring attention to the potential threat to reproductive rights and women's health concerns under the president before the upcoming election (Charles, 2004; NOW 2004). The large march demonstrates the fact that other issues were more pressing for women's civil society groups. One interviewee stated that not much, if anything had been done to expand or modify family leave since it first passed in 1993 (M. Varnhagen, personal communication).

It is not that women's right activists did not care about issues like family leave; it is just that they perceived there were more pressing concerns. Redefining or changing family leave policies, which were still relatively new, was not politically salient. Many believed that the passage of FMLA marked a huge victory for women and parents. Activists argued that there was not much left to do on this front and there were many other more salient and pressing issues for women that deserved attention (V. Young, personal communication, 2010; J. Erikson, personal communication, 2010).

### **States as Family Leave Innovators**

The general lack of attention to family leave issues in federal policy occurred alongside increased interest and growth in developing state level family policies. Since early in the new millennium, states have taken the lead in efforts to address the needs of American workers by providing benefits that go above those guaranteed in FMLA. Civil

society organizing around family leave concerns focused on creating and passing state laws. In large part this occurred because activists believed that they would have the most success at passing new and more expansive state policies at the state level. This was especially the case after California successfully passed the first paid family leave policy in 2002. Family policymaking was an issue with little traction in Washington D.C. so activists re-grouped and many new state-level groups were created.

The activity of state level groups working on family leave issues demonstrates continued path dependent development of this policy arena. The liberal feminist values present in earlier legislation such as FMLA and the PDA continue to influence policymaking whether on a state or local level. Innovation occurs during this time, but the liberal feminist foundations remain dominant and continue to shape the state-level family policies. At this time it is both illegal and not socially relevant for civil society groups to press for any type of legislation which would provide women workers with special protections or benefits of any kind. I next turn to a description of the trends in family policymaking.

A bipartisan Commission on Leave was established under President Clinton, the group was tasked with studying the impact of FMLA and reporting the evidence to Congress in 1995, just a few years after implementation. The Commission studied the impact FMLA had on multiple fronts including on employers, employees and its overall costs and benefits to government and business. The Commission included a variety of political, business and civil society leaders (DOL Report, 1995). Ellen Bravo, a member of the committee, noted that the members of the Commission organized themselves into two sides, one supportive of the legislation and the other opposed to it. In the end all

agreed that the policy as written was 'fine' and that future innovation to family policies should occur on the state level where policymaking would be more manageable (E. Bravo, personal communication, 2010).

By 2010 there were a handful of states which provided some sort of paid or expanded family leave. They included New Jersey, New York, California, Hawaii, Rhode Island, Puerto Rico, and Washington state is in the early stages of implementing a program. There is a significant amount of diversity in the nature and scope of state-level family policies, but a commonality among them is they reflect the core values of the liberal feminist framework. All use gender-neutral language and provide varying amounts of paid leave and time off to both men and women for reasons pertaining to childbirth, adoption, care work, and illness of themselves or a family member. Similar to the National Title VII legislation, pregnancy is considered a temporary disability in these schemes (Fass, 2009). The language of state level temporary disability (TDI) schemes all rely on gender neutrality as the cornerstone of provision of benefits to pregnant women and new parents (K. White, personal communication, 2010).

All states which offer expanded family leave, except Hawaii, have a long history of state use of temporary disability schemes. States which offer more expansive family benefits than required by federal law, all have temporary disability insurance schemes in place (TDIs). In many states these structures have been in place since the 1940s. The original disability schemes did not cover pregnant women and they were not available to new parents (Fass, 2009). TDIs provide varying levels of wage replacement to workers who experience a temporary disability and provide the essential framework for the provision of such leave.

In 1978, with the passage of the Pregnancy Discrimination Act, the states with TDIs were forced to modernize their systems to match the federal legislation. This meant that pregnancy and childbirth related conditions were considered a temporary disability, and not an elected condition. The TDI's provide an important level of financial security to workers who utilize them, but they do not provide any sort of job protection. This means that some workers who take advantage of state benefits may be in danger of losing their employment if the national policy does not apply to their situation. For example an employee at a company with fewer than 50 employees may be able to take state level benefits but not qualify for national FMLA benefits. If for some reason the employee is not able to return to work at the specified time they may have little recourse to secure their employment, other than going back to work. This creates a situation where there are gaps in policy, in many cases leading to confusion and incomplete protection for workers (Fass, 2009, p. 6).

California was the first state to pass such paid leave in 2002, it was used as a model by other states such as New Jersey and New York (Fass, 2009). Other states which have a system in place for paid family leave share one similarity: they all had a scheme for temporary disability in place long before they introduced paid leave for new parents. Through TDI both employees and employers contribute to a state fund which is set up to pay workers when they access leave. States offer varying level of payment to workers who qualify, usually a percentage of weekly wages. For example, New Jersey offers qualified workers 66 percent of their weekly wages up to \$564 per week, California offers 55 percent of weekly wages up to \$959 in 2009, and New York offers 50 percent of weekly wages up to \$170 in 2008 (Fass, 2009, p. 6-7). Many states do not have the

TDI structures in place, and they are expensive to implement. The Obama Administration has made efforts to make seed money available to states which wish to set up a disability system. This money would go towards building the expensive TDI infrastructure (K. White, personal communication, 2010). This federal funding for states has been cut over time making it more challenging for states to offer expanded family policies to workers.

In addition to the presence of already established TDI programs, states which have passed family policies more expansive than the guidelines established by FMLA, experienced a great deal of civil society activity, especially on the grassroots level around this issue. Groups like the National Partnership for Women and Families have taken the lead at the national level to help coordinate the efforts of smaller state level groups like New Jersey Time to Care. Time to Care acts as a coalition leader for a variety of groups in New Jersey and their work is focused on passing more expansive family policies and paid sick days for all workers. During an interview with Karen White, the Director of Time to Care, she noted that a crucial aspect of what led to the passage of the New Jersey policies in 2008, was the broad civil society coalition in place. The 70 plus legislative sponsors of the bill, including some in the business community, were instrumental to the passage of the legislation (personal communication, 2010). She describes that the coalition had been loosely in place for years, and when a governor supportive of the legislation was elected, (Governor Corzine) the coalition was in place and ready to mobilize. Mothers groups and unions were the prominent members of the New Jersey Coalition. The coalition contains a variety of member from both state and national organizations. Prominent members include: 9to5, American Association of University Women, Partnership for Working Families, NOW, United Auto Workers, United Steele

Workers, Center for Women and Work, the Older Women's League and a multitude of New Jersey union groups (Time to Care, 2012a). Ms. White also discussed how the passage of paid leave by California in 2002 was a catalyst for other state centered efforts on family leave. The fact that others can point to California and say it has worked there and not been too expensive is a great way to convince politicians and community members of the need for these policies.

Since 2000 family leave policies have been the focus of state level activity. All state level policies passed reflect the already established trajectory of liberal feminist values. State level activity on family leave continues to develop the family policy environment in a path dependent manner. All state level family policies adhere to gender-neutral standards and continue to entrench the idea that both men and women should be able to equally access time off to care for new children. Civil society activity on this issue also demonstrates path dependent development as national and state level groups have come together to fight for expanded gender-neutral family leave policies in states which have demonstrated the capacity and interest in such policies. By 2010 it is not only illegal for states to pass special protections and benefits for women workers; it is also not an idea which is popular with the American public and civil society groups working on the issue. The state- level development of family leave policies is an example of how civil society helps to frame relevant family issues and problems and how well-positioned groups can take advantage of policy openings. For example national groups can activate and organize their local networks in states which have TDI structures already established and have Democratic governors in place who appear open to passing such policies.

The patchwork nature of state level family policies appears to be the way that the



family policy landscape will change in the US in the coming years (V. Shabo, personal communication, 2010). The coalition in place in New Jersey is now well-positioned to reach out to citizens of other states in order to make state level family policies available to all Americans. As their slogan states: “Working families and advocates are uniting across the state and across the country to ensure that American workers do not have to choose between being a responsible employee and a responsible family member” (Time To Care, 2012). Their efforts appear to be making an impact, as of 2010 more than half-a-dozen states have witnessed the introduction of paid family leave bills. Arizona, Massachusetts, Hawaii, Missouri, Oregon, Texas, New York, Pennsylvania, Vermont, and New Hampshire are the latest frontiers of family policy innovation (National Partnership for Women and Families, 2010).

Activists and researchers working to promote paid and expanded family leave in the US consistently find that the majority of Americans support the idea that the government and business should provide workers with access to some sort of paid leave for pregnancy, childbirth, and care work (Bushey, 2011, p. 1). It is most likely that these policies will appear on the state level where policymaking tends to be somewhat easier to navigate for civil society groups and politicians alike (H. Bushey, personal communication, 2010). It appears that the future direction of family policy development will continue along the already established trajectory based in liberal feminist values.

Jennifer Owens, a Director at Working Mother Research Institute works closely with employers on the issue of family leave. She generally sees the best of the best in terms of the companies because she publishes lists of the best companies for working parents and organizes yearly conferences on the topic. In general she believes that within

the policy environment in the US, the best tactic for creating a powerful force of change is by highlighting the best and encouraging corporations to change through the spirit of competition and innovation. She asserted that Working Mother, and other organizations like them are agents of cultural change and they will be effective in creating the change they desire without the need for governmental intervention. She notes that the future direction of policy will be along the lines of parental, not maternity leave because the majority of businesses and corporations she is familiar with are pursuing this line of development, and few companies continue to offer special protections and benefits for women alone (J. Owens, personal communication, 2010). Civil society groups, major employers, and elected officials on both the state and national level are working to promote family leave along gender-neutral lines. The synergy between these forces and the legal framework in place create an atmosphere where the tenant of liberal feminism and gender-neutral become more entrenched in the family policy framework over time.

### **Clarification of Definitions in FMLA**

As of 2000, FMLA had been used by more than 50 million workers and 62 percent of all full-time US workers were eligible for FMLA benefits. Of these 50 million workers, 58 percent of them were women (U.S. Department of Labor's, 2000 report). Of all the workers who had used these benefits, 26 percent took the leave in order to care for a new child (U.S. Department of Labor, 2000). The intense controversy, opposition and debate that surrounded the passage of FMLA receded into the history books after the policy had been in place for several years. Whether leave should be available to only women, or both parents, was no longer the focus of debate or questioning, at least on a

governmental level. FMLA became the status quo, and while certain groups still took issue with it, there was little chance of the policy being taken away or dramatically altered. The FMLA helped cement society's commitment to gender neutrality. As Ms. Varnhagen explained, people don't really question the role of gender anymore (personal communication, 2010). Thanks in part due to the language and impact of the Civil Rights Act of 1964 and the FMLA of 1993, most Americans think of men and women as more or less equal, as the tenets of liberal feminism would suggest.

Despite the gender neutral language and intent behind the law, women use FMLA more than men, this is especially true regarding take up rates for the care of young children. The Institute for Women's Policy Research finds the FMLA indirectly promotes gender inequalities through unequal take up rates by men and women, the unpaid nature of the leave, and the eligibility requirements (Miller, 2011). They reported:

Among eligible workers with young children . . . women are more likely than men to take leave—76 percent compared to 45 percent. The unpaid nature of FMLA leave means that married couples may need to choose one parent to take leave while the other continues to work (and receive pay). The average full-time female worker made 77 cents on the dollar compared to male workers in 2009, so it often makes financial sense for wives to take leave (or leave work entirely) while husbands remain on the job, a strategy that can leave women earning less for years after they eventually re-enter the labor force (Miller, 2011, no page number).

The stated gender neutrality of the FMLA encourages the social construction of gender to continue along the path of complete equality between men and women. The embrace of complete gender equality continues despite the fact that the way the policy is used has the potential to negatively impact women in their efforts to achieve equal pay, equal access to employment opportunities, and promotions. The negative impact the FMLA has on

women workers has been well-established, but it does not jeopardize the liberal feminist framework so entrenched in the US (V. Young, personal communication, 2010; Gornick & Meyers, 2003).

The perceived flaws in the way FMLA was used by Americans caught the attention of President Obama, who in connection with the Department of Labor made changes to the language and eligibility requirements of FMLA with an Administrator Interpretation, which into effect in 2010. The changes were small in scope, and they made provisions to include families which do not have a traditional make-up. The changes expanded the definition of eligible family members and of parent. This meant that many same-sex couples could now both be considered parents of their children, as could other caregivers including grandparents, aunts and uncles (US Department of Labor, Administrator's Interpretation No. 2010-3). Military families have also gained expanded rights to FMLA with these changes. Military families were provided with increased opportunities to take time off to care for family members in need (U.S. Department of Labor. 2010-06-22). These changes did not alter the gender-neutral essence of the legislation; they also did little the gendered way the FMLA is used.

### **Liberal Feminism and Legal Framework**

The liberal feminist legal framework which was established by the Civil Rights Act of 1964 and cemented by the passage of FMLA in 1993, continued to inform policymaking and civil society activity around family policy issues. The dominance of liberal feminist ideals is best understood by a brief discussion of just how little the legal framework changed between 1996 and 2010. The path dependent development of family policies along liberal feminist lines was so entrenched by the late 1990s that there was

little challenge to the legal framework. Specifically, since the FMLA was passed in 1993 the federal government has done very little to change or challenge the intent, gender-neutrality, or other core elements of the policy. The Supreme Court has only taken on two cases which directly relate to FMLA (Shimabukuro, 2005) since 1993. Neither of the cases sought to challenge the gender-neutral foundations of the law. The two cases are *Ragsdale v. Wolverine Worldwide, Inc.* in 2002 and *Nevada Department of Human Resources v. Hibbs* in 2003. Both cases dealt with employees taking time off for medical or caregiving reasons, not related to pregnancy or caring for an infant. The cases both re-established FMLA as a policy that should be available to all eligible employees, regardless of their gender. They also established that if an employee is mistreated by their employers regarding their rights under FMLA, then the employee has the right to seek legal assistance. These two cases helped to establish how FMLA can legally be used by employees and employers. The outcomes of the cases did little to change or challenge the liberal feminist values or established legal framework. The liberal feminist values were so entrenched in this policy arena that they began to operate with little critique or acknowledgment to their existence.

### **The Future of Family Policy in the US: The Prospects for National Paid Leave**

The majority of activity focused on expanding family policies has taken place on the state level since the late 1990s. But there have been efforts on the national level to push for paid parental leave for both federal workers and for all workers. Members of Congress, working closely with civil society groups such as the National Partnership for Women and Families and the Center for American Progress have focused on crafting legislation which would guarantee four weeks of paid parental leave for

federal workers in the Federal Employees Paid Parental Leave Act. These efforts began in 2000 and continue through 2010. Proponents of the Act argued that paid leave would cut costs for the government by retaining high-quality employees, increasing productivity, and promoting the development of healthy children and families (United States Office of Personnel Management, 2001). It is estimated that in general it costs 150 percent of a salary to replace an employee, and closer to 300 percent of a salary to replace a lawyer as an employee (J. Owens, personal communication, 2010). The Act has died numerous times in various stages of the policymaking process but has continued to be re-introduced, including in 2009 and 2011.

Efforts spearheaded by national civil society organizations such as the Center for American Progress, Mom's Rising and the National Partnership for Women and Families have focused on passing some sort of federal policy which would provide paid parental leave to most all employees. There have also been several proposals being introduced by groups, all to promote paid parental leave rather than specifying paid maternity or paternity leave. Most of the plans for national policies are based on the state level policies which have proven successful in California and New Jersey (National Partnership for Women and Families, n.d.). A proposed national policy would provide eligible workers with a percentage of their weekly wages if they take time off under the already established guidelines of FMLA.

One such plan proposed by the National Partnership is called the FAMILY Act and would provide workers with up to 60 paid caregiving days off within one year. Similarly to the state level policies, the FAMILY Act would be funded by a small tax on

employers and employees. A suggested level of taxation is .2 percent from employers and employees. This would provide for 66 percent of an employee's monthly wages, up to a capped amount (National Partnership for Women and Families, 2010). The new benefits would be overseen by a newly created office of Paid Family and Medical Leave housed within the already established Social Security Administration. This would make it so that the new program would be built upon infrastructure that already exists. Another example of federal legislation being developed by civil society groups is a program called Social Security Cares. This program is based on the eligibility requirements already outlined by the FMLA and would also be housed within the Social Security Administration. It would be part of the current Social Security Disability Insurance scheme. This program is being proposed by the Center for American Progress and payments to workers would be calculated based on workers lifetime employment history (Boushey & Glynn, 2012). It is being framed as a way to modernize the social security system and bring it in line with changing demographic factors in the US. The proponents of the legislation also believe that a program of paid leave would help to address gender inequalities by reducing the wage gap between men and women and by increasing the labor force participation rates of caregivers, who are primarily women (Boushey & Glynn, 2012). Such a program would also be available to many more workers than are covered by FMLA because it is based on lifetime employment history rather than your current employment situation. This means that a part-time worker would be covered, as would an employee who had only worked for her employer for a short period of time, or worked for a company with less than 50 employees.

While there is significant civil society support for issues like paid parental leave on the national level, most all interviewees voiced their skepticism about the possibility of such bills passing in 2010 or in the near future. The possibilities for such bills seem slim according to those interviewed due to: the sluggish economy, the strength of the business community and their vocal opposition to such plans, and the focus on other issues. Cecelie Counts, the legislative representative for the AFL-CIO noted that even though the Obama administration is interested in passing family friendly policies we have not seen more policies pass due to the strength of the business lobby and the scare tactics they use. She said they are well-positioned to influence policy and scare businesses by saying that a proposed policy will be bad for business and the economy, even if that is not necessarily true (V. Shabo, personal communication, 2010). Despite the fact that few were feeling positive about the passage of national paid leave, many interviewees noted that under a family friendly president like Obama would be the right time to introduce such legislation. This mirrors the efforts at a state level which required a supportive governor in office to pass such policies.

Seven interviewees discussed how they believed that the future direction of any family policy in the US will be in line with the already established gender neutral language and values already established in previous legislation. The fact that most civil society activists and politicians are not questioning the definition of gender identities or roles, and are not pushing for narrowly targeted policies aimed at either men or women demonstrates the continued reliance on the values of liberal feminist thought. The language and values surrounding gender neutrality and complete equality between men and women is now so entrenched that establishing a different framework from which to



address these concerns seems both unlikely and not likely to gain much traction with most Americans. Valerie Young explained: “We continue to talk about the family policies in gender neutral terms because that is the norm and it makes sense from the standpoint of political expediency. So, largely that means that we don’t talk about gender. Many of the most prominent groups do not talk about gender—they believe it is not useful to their goals” (personal communication, 2010).

### **US Conclusion**

Between 1996 and 2010 there was little change to the collection of national policies governing family leave concerns in the US. While efforts were made to pass policies which would expand the scope of FMLA, or provide some sort of paid family leave on the national level, they were mostly met with frustration. Some smaller scale changes to the language, definitions, and eligibility requirements to FMLA were made. These changes primarily impacted how military families’ and *non-traditional* families access family leave. While these are not insignificant changes, they demonstrate the small scope of change to family policies during this time. They also demonstrate the fact that the gender-neutral tenets of family leave have been well-established by this time. There is little debate or discussion around the social construction of gender norms, or the way these norms are incorporated into policy. The relative lack of change demonstrates the persistence of already established norms and policies. The path dependent development of policies is present and is signaled by the lack of any real change over these almost 15 years.

Civil society groups exhibited path dependent development along the established liberal feminist trajectory. Groups working on promoting the expansion of family policies along the already established legal framework maintained their activity, although on a smaller scale than previous decades. Civil society groups played a role in initiating the small changes that were made, most notably in the passage of expanded state level policies (V. Shabo, personal communication, 2010). Women continued to fight for increased rights despite the fact that many politicians were no longer listening because of the perceived belief that men and women were equal. Civil society groups that opposed gender-neutrality in legislation became more marginalized and smaller in number. All of these changes demonstrate the continued dominance of the norms and laws established in 1964 with the Civil Rights Act and in 1993 with FMLA. The values of gender equality, gender neutrality and equality of opportunity between men and women became even further entrenched during this time even though there was little in the way of policy change.

Despite the increasing dominance of liberal feminist values, women continued to experience unique challenges in balancing the demands of work and family responsibilities. Vestiges of the male breadwinner model remain intact. These can be seen in the practices and everyday experiences of women and families around the country. While all national and state policies reflect the now dominant idea that men and women are equal and should be treated as such in all areas of life, the use of the gender-neutral policies in gendered ways and the social environment where women continue to do the bulk of the care work exist simultaneously. One interviewee highlighted the strong gendered element to care work she said: “In the real world family care work is extremely

gendered. And there is this norm that real men don't take care of kids or at least they don't talk about it. If they do, they may as well admit that their boxers are trimmed with lace" (V. Young, personal communication, 2010).

This situation accurately reflects what Gornick and Meyers (1993) have explained as the incomplete transformation away from the male-breadwinner –female-homemaker model in the US. In this model women can and do join men in the public world of employment in high levels, but often on a part-time basis. This trend has not been met with men shifting their time away from the labor market to caregiving responsibilities in the home (p. 31). The incomplete cultural shift demonstrates that while family policies in the US fully reflect liberal feminist values, the everyday practices and experiences of families reflect the earlier roots of the social construction of gender in line with cultural feminist values. The incremental change and path dependent development of family policies between 1996 and 2010 reflects the increasing entrenchment of liberal feminist values in policy and a slower accompanying shift in everyday experiences and practices.

## **UK**

### **New Pressures and Opportunities for Policy Change**

Between 1996 and 2010 the UK passes numerous pieces of legislation concerning families. Both parental and paternity leave are first introduced, altering the landscape of family policies. This provides an opportunity for change, a policy window. But this policy window closes without real changes in the trajectory of family policy development. Despite the opportunity for change, the UK continues to follow a policy

trajectory rooted in cultural feminist values. Evidence of this includes the growing number and types of policies which govern maternity leave and low take-up rates for both paternity and parental leave. During these years the UK deals with pressures to change its family policy landscape from both the EU (external pressures) and civil society (internal pressures). Despite the pressure to change and the introduction of new policies, the overall family policy landscape and the way it is accessed by citizens exhibits little change. The evidence demonstrates that the social norms around family concerns remained closely anchored to the dominant male bread-winner model and cultural feminist values. The new policies introduced provide an example of what happens when legislation is out of touch with dominant gender norms.

The sheer number of policies passed during this time period increases the complexity of the family policy landscape. I will first discuss the significant policy changes, many of them connected to the election of the Labour Party in 1997. I will then provide a discussion of the agents of change on the family policy landscape during this active period. The agents of change include: increased external pressures from the EU, and increased internal pressures due to dynamism in civil society. Specifically groups developed to promote the rights of fathers. These once marginalized groups were able to break into the mainstream due to their connections to both elected officials and other influential civil society groups.

### **Prime Minister Blair and a Changing Policy Landscape**

The most important pieces of legislation were the amendments to the Employment Rights Act (ERA) in 1999 and 2002; the introduction of paid paternity leave in 2003, and the 2006 Work and Families Act. Much of the legislation passed during this

time either expanded the amount of time available to new mothers, increased the amount of paid time off, or relaxed the eligibility requirements for qualifying for maternity pay and leave. The overall impact of these many legislative changes was to create a complex system where most women had access to paid time off for child birth and family duties, and leave periods were extended for up to a year. Eligibility requirements were complex and based on employment history and wages. There were significant variations to the amount of time off available, the level and length of wage replacement. By the early 2000s the UK had the largest gendered time differential out of all EU countries<sup>i</sup>.

The election of the Labour Party in 1997 marked a new direction for the country after 18 years of rule by the Conservative Party. As leader of the Labour Party Tony Blair successfully rebranded the party as *New Labour*, he marked the beginning of a new more centrist direction for the Labour Party. The new direction focused on the needs of the middle-class, on promoting business and breaking traditional ties with trade unions, notably the TUC. He also promoted closer ties to the EU. To signal Blair's desire to work more closely with the EU, he signed the social charter of the Maastricht Treaty in 1997. His signing the treaty was an important signal to the EU, because the charter was strongly opposed by previous prime ministers, John Major and Margaret Thatcher. Their opposition to the social charter was significant as the UK remained the only EU member to opt-out of the treaty when it was signed by all other EU nations in 1992. Many in the UK feared it would be bad for business, would create unnecessary and costly regulations, and would reduce the competitiveness of UK business leading to increased unemployment (Williams, 1993).

The signing of the treaty made it so that the UK would be bound by the social

policies and regulations drafted at the EU level. Blair felt that it was time to end the opt-out of the social charter and he explained prior to the 1997 election that if Labour won, he would end the opt-out clause. Most importantly for this research, this mandated that the UK introduce gender-neutral parental leave and increased aspects of maternity rights. As a signatory to the Social Directive, the UK was bound to implement these EU regulations and was unable to use their veto to oppose laws coming from the EU Parliament (Archer, 2000).

Among many of the new ideas being promoting by Blair, one was a focus on the needs of working families. Blair issued a White Paper on the topic and it was published as the Fairness at Work White Paper in 1998. White papers serve the important role of signifying the goals and intent of the ruling party, outlining details of a future policy, and gathering feedback on the ideas before the policies are introduced as a bill before Parliament (Parliament UK, no date). Publishing the paper signified the desire of the Labour Party to reform employment law and to create the foundations for a family-friendly policy agenda for the new Labour Party. With this White Paper they also hoped to distance themselves from the hard-line of the Conservative Party and with the traditionally close ties that the Labour Party had with trade unions groups. Finding this middle ground was not easy and was based on tense negotiations with union groups like the TUC and business groups like the Confederation of British Industry who generally opposed an increased social regulation or mandates. The business community believed that the proposed social reforms would only increase the cost of doing business in the UK. They also believed that the reforms would give trade unions too much power (BBC News, 1998a; R. Bragg, personal communication, 2011).

Within this paper the Labour party outlined the reform of labor law, much having to do with improving the position of employees in the labor market. The Labour Party also demonstrated their desire to extend women's access to maternity rights as a way to ease the burden of working families. This was one area where there was general agreement among labor unions, business organizations and other civil society groups (Gilman, 1998). The proposals around maternity leave were not necessarily new ideas, for example the idea of extending maternity leave from 14 to 18 weeks was supported by trade unions and civil society groups such as Maternity Action. Other changes included increasing job protections for women using maternity leave, decreasing eligibility requirements for access to paid leave, and simplifying the obligations of employees in order to access leave. As early as 1998 the Labour Party introduced proposed legislation which would allow new fathers to take one week of partially paid paternity leave as part of its goal to offer citizens more family-friendly policies. But, it was not until 2003 that fathers and same-sex couples could take two-weeks of paid leave off after the birth of their child (Maternity Action, 2010). Offering paternity leave was new, controversial and garnered criticism from many business groups and some groups focused on promoting the needs of mothers (A. Hedgwich, personal communication, 2010).

The introduction of parental and paternity leave signaled new and different possibilities for family policies in the UK. These new policies provided an opportunity for the UK to move away from its strict adherence to policies which provided special protection and benefits for new mothers. The introduction of these policies is an example of a policy window in the UK. They provided an opportunity for significant change in the family policy trajectory, but in the end, no change occurred.

Now a signatory to the Social Chapter of the Maastricht Treaty, Blair had to demonstrate commitment to this new relationship. This drove him to push a more family-friendly policy agenda in line with the EU's values. This was a challenge because of the sometimes intense opposition expressed by primarily the powerful business organizations. The business lobby opposed the move to offer gender-neutral family policies to all employees or paternity leave for several reasons as stated above. Most politicians and civil society groups, including many business organizations, supported proposals to expand the already established paid maternity leave (Gilman. 1998; M. Cahal, personal communication, 2011). This did not interfere with the dominant norms which constructed women as deserving of special treatment in their roles as mothers and family caretakers.

The values of cultural feminism so entrenched in the UK at this time came into conflict with the policies being established from above by the EU. Being a signatory to the Social Chapter made it so the UK had to implement new employment laws like providing part-time employees with the same rights that full-time workers have, and providing three months of gender-neutral parental leave to be in accordance with the EU Parental Leave Directive. The introduction of parental leave marked a change in the way that family policies were crafted and created new options for the British public. The new ideas and values behind some of the European legislation did not immediately catch on. Family policies focusing on the rights of fathers or gender-neutral leaves were controversial in the UK as late as 2005 (E. Gardiner, personal communication, 2010). This is logical considering that even in the 1990s it was mostly women who took time off to take care of infants, young children, and elderly or ailing family members (S. Yeandle,



personal communication, 2011). The norms and values around women and work that were dominant in the UK were out of sync with the more gender-neutral norms reflected in the new EU legislation. The ways that gender was socially constructed in the Parental Leave Directive did not match up to the dominant social constructs of gender norms in the UK. There were many vocal opponents to the new policies in civil society, and the ways that the policies were implemented within the UK made it difficult and impractical for most workers to use the new policies. These aspects all influenced why this policy window or opportunity for critical juncture never led to real change in the family policy landscape.

The culture in place and the nature of the family policies made it especially difficult for men to access time off for care work (D. Fisher, personal communication, 2011). There are economic and cultural reasons for this; the majority of men simply cannot not afford to take parental or paternity leave because of the low wage-replacement levels. There is also a stigma associated with men taking time off for family reasons. Employees may fear some sort of punishment by their employers and co-workers. Another issue is that there is a lack of experience or history with parental or paternity leave in the UK. In 1998 fewer than 25 percent of all employers offered their employees unpaid parental leave and 31 percent of employers offered any type of paid paternity leave (BBC News, 1998). There was little opportunity for men to specifically access parental and paternity leave. This is further evidence of the continued dominance of cultural feminism. In the UK civil society and politicians have focused on making working- life easier for moms only and parents are generally thought of as mothers (D. Fisher, personal communication, 2011). These long-held beliefs and norms around

appropriate roles for men and women in work made it so that the opportunity for the UK to alter its family policy trajectory along more gender-neutral lines never took off. If the new parental leave policies had been crafted in a more user-friendly manner and the government took more care with integrating the new gender-neutral policies into the existing family policy landscape, than maybe real change would have resulted from this policy window.

### **Highlights from the Policy Front**

#### **Maternity and Parental Leave Regulations of 1999**

The number of laws passed related to family issues is impressive, and this follows the desire of the Labour Party, in power from 1997-2010, to create a more family friendly environment for all workers in the UK. Upon taking office in 1997 the Labour Party outlined a ten year strategy that would ensure that: “. . . Every child gets the best start in life and to give parents more choices enabling them to balance their work and family responsibilities” (HM Treasury, 2004, p.1).

In 1999 the Blair government passed the Employment Relations Act which introduced parental leave regulations and simplified maternity leave policies. These changes were required to bring the UK in line with EU directives. The Labour government issued these changes as a way to modernize the body of employment rights and labor law and to implement the required changes mandated by the EU. Of most interest to this research are the changes made to maternity leave and the introduction of parental leave. The parental leave regulations provided for 13 weeks of unpaid gender neutral parental leave. They also reduced the eligibility requirements for qualification for Statutory Maternity Pay and Additional Maternity leave which made it so more women

could access these policies (Maternity Action unpublished document; Legislation UK, Maternity and Parental Leave Regulations 1999). The regulations also simplified the complex collection of policies available for maternity rights and strengthened job protections for women. Specifically new mothers were given increased job protections when they returned to work after the allotted period of maternity leave.

The Blair government undertook these reforms as a way to signal their desire to promote a family-friendly work environment in Britain (McColgan, 2000, p. 125). These regulations, among others such as the National Minimum Wage and Working Time Regulations of 1998 were also needed in order to bring the UK in line with EU law (McColgan, 2000, p. 125). Specifically the UK needed to implement parental leave to be in line with the EU Parental Leave directive and the Pregnant Workers Directive. It became evident that the UK needed to bring itself in line with EU regulations as numerous discrimination lawsuits, specifically claims of discrimination against pregnant women and women on maternity leave, made their way to the European Court of Justice. These cases, highlighted the discrepancy between Britain and the EU relating to rights of pregnant works and women on maternity leave (see Gillespie and Others v Northern Health and Social Services Boards; Boyle and Others v EOC).

The introduction of parental leave offered a potential for change and a new direction in the family policy landscape in the UK. Prior to the 1999 regulations there was little opportunity for workers to access gender neutral policies. The new regulations allowed parents to take a *reasonable* amount of time off (up to three months for each child) to care for ill dependents, take time off for the birth of a child, to grieve in the event of death, or to take care of unforeseen circumstances such as accidents or loss of

child care (Maternity and Parental Leave Regulations of 1999). The Parental Leave Regulations met the minimum standards outlined by the EU Parental Leave Directive whose goal is to provide: “Minimum requirements on parental leave and time off from work. . . as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women” (The European Commission Revised Framework on Parental Leave, 1999). The EU has allowed member states to determine the specific details of the law, as long as they met the minimum requirements. The UK implemented the new parental leave policy to meet only the minimum standards. The new parental leave policy provided no wage replacement for those who used it, therefore significantly reducing the number of workers who would consider using the leave.

### **Paid Paternity Leave Introduced**

The growing desire of the Labour Party to appear family-friendly and the growth of fathers groups in civil society (these will be discussed in more depth below) influenced the passage of the first paternity leave legislation. A report created for the Equal Opportunities Commission in the UK notes that:

The attention given to fathers by national family policies can be seen as a signifier of the importance placed on the involvement of men in the care of children and of their spousal or partnership role in the household. At a very basic level, a family policy that makes reference to fathers allows for the possibility that they may have childcare and home-related responsibilities (O’Brien & Shemilt, 2003, p. 31).

In 2003 the UK passed its first ever provision of paid leave for new fathers. In April of that year fathers who met the eligibility requirements, which were quite similar to the eligibility requirements for accessing maternity leave, could access two weeks of leave at either 90 percent of their weekly salary or near to £100.00, whichever is less. Fathers or

legal guardians of children could take this time off between the birth of the child up until the 56<sup>th</sup> day of life (UK Government, Paternity Leave 2012).

The introduction of Paternity Leave marked a shift in the way fathers were viewed in society. The traditional male breadwinner model so dominant in the UK has characterized fathers as primarily economic supporters of their dependents—namely wives and children (Lewis, 1992; Miller, 2010, p. 363). This social construction of male identity started to shift to a different model that still recognized the importance of economic support, while simultaneously placing emphasis on caring for children and spouses. Fathers and the care work they participated in were slowly starting to be seen as central to raising healthy and happy children. Following this logic fathers were then deserving of specific policies to support them in their dual roles as employees first and fathers second. Terms like *involved father*, *hands-on father*, or *new man* became part of the public's awareness of how men should approach their responsibilities as an employee and father (Sanchez & Thomson, 1997, p. 750; Wall & Arnold, 2007; Knijn & Selten, 2002, p. 171; Ranson, 2001, pp. 6-7). The social construction of gender slowly began to change, in part due to the increased civil society activity of men and the influence of gender-neutral policies coming from the EU. Miller (2010) notes that family policies, specifically maternity and paternity leave: “. . . Have consequences for societal ideas of what men and women do: how caring and work inside and outside the home responsibilities to children are envisaged and organized” (p. 363).

With the introduction of Paternity Leave in 2003 society and government begin to acknowledge that men can and should participate in caretaking responsibilities. But rather than change the social construction of gender norms, Paternity Leave supports

the overall idea that women are the primary caregivers for new children and the family in general. Fathers now have the opportunity to contribute in the care of a newborn for two weeks. The development of a specific set of policies for men and women demonstrate the larger social value that men and women have different needs and roles to fill in the care of infants and young children. The two weeks of paternity leave first introduced to new fathers in 2003 is quite short when compared to the up to 52 weeks off that new mothers had access to. This reflects the long-held belief in the UK that the traditional male breadwinner model is still dominant and relevant for British society (A. Burgess, personal communication, 2011). Family policies continue to develop in a path dependent manner despite the introduction of different kinds of policies. The norms encompassed by the male-bread winner model and cultural feminist values continue to influence policymaking, civil society, and society more broadly.

Despite the growing social awareness around the importance of supporting men in their dual roles of employee and father, few men actually took advantage of the policies in place. By 2005 take-up rates of paternity and parental leave by men remained disappointingly low (O'Brien 2005; D. Fisher, personal communication, 2011). It is estimated that more than 40 percent of new fathers did not use their paternity leave (Snowdon, 2010). In part this may be because of the low wage replacement levels and/or the culture around childcare where women are expected to do the bulk of the care work. Within this atmosphere men felt that taking long leaves for family reasons could lead to job insecurity, hurt their chances for promotion, or make them look bad in the eyes of their co-workers and bosses (Ranson, 2001, p. 22; Browne, 2007, p. 266). As Duncan Fisher a leading advocate for fathers said, "Men are becoming more like women but it is

not socially acceptable or out there to see them in the same light.”

The introduction of Paternity Leave was met with resistance including opposition by major business organizations and low take-up rates. The small amount of wage replacement, and relatively short allowed time off compared to the length of paid maternity leave sent a clear message to fathers that they are important, but in a fairly limited way. The nature of the first paternity leave signals that fathers and men in general should first be thought of as economic providers and as fathers or husbands second.

By 2005 men in the UK continued to work some of the longest hours in all of Europe and had access to the least amount of parenting benefits (Dermott, 2008; Browne, 2007). Women, specifically mothers continue to do the bulk of the care work and men continue to be seen as primarily economic breadwinners demonstrating that society still embraces the idea that women, specifically mothers deserve more protections than men or fathers. Miller (2010) echoes this sentiment as she notes that changing the social and cultural ideals around fatherhood is a slow process. Even in Northern Europe where paternity and parental leaves have been available for a long time, it took many years for cultural shifts around gendered practices to become realized (p. 376).

### **2006 Work and Families Act**

Another piece of legislation the Labour Party passed as part of its attempts to fulfill its promise to provide families with policies that would help them to balance their work and family responsibilities is the Work and Families Act of 2006. This Act is an amendment to employment legislation, specifically pertaining to maternity pay, adoption leave and pay, paternity leave and pay, and the right to access flexible work schedules.

For the purposes of this research I will focus to the changes made to the body of maternity and paternity rights. Interestingly, adoption rights are gender-neutral and couples must choose which partner will take the pay/leave, the other will then be eligible for paternity rights (James, 2006, p. 273).

### **Changes to Maternity Rights**

The changes made to the body of maternity rights in 2006 include the extension Statutory Maternity Pay or Maternity Allowance from 26 weeks to 52 weeks, with only 39 weeks being paid as the rate of 90 percent of weekly wages or just above £100 per week, whichever is less (as of 2006). This was one step closer to the stated goal of the Labour Party to extend paid maternity leave to one year. Another big change related to the strict eligibility requirements which outlined that women had to work for at least 9 months at their current employer to qualify for the 26 weeks of maternity leave. Under the 2006 Act, all women, from the moment they started working would become eligible for the year of maternity leave (James, 2006, p. 273; Work and Families Act of 2006 leg). This change greatly expanded the number of women who could access Maternity Leave, although women still had to work at their employer for 9 months to get full Statutory Maternity Pay.

The changes applied to all employees, so even small businesses were required to provide their employees with these rights. The revisions to the body of maternity leave and pay were controversial, especially in the eyes of the organizations representing the rights of small businesses (Howard, 2006). The small business lobby was overwhelmingly opposed to these changes despite the fact that maternity pay and its administrative costs are fully funded by the government (Howard, 2006). Small



companies feared that the new regulations would impose upon them additional costs and would provide further reasons to not hire women of childbearing age despite the body of antidiscrimination laws in place. John Cridland, the Director General of the Confederation of British Industry remarked that: "Extending family-friendly rights to this extent threatens to make life extremely difficult for small firms" (Brown, 2005). He also called the proposal for shared maternity leave, where men could essentially share time off with their partner, as an administrative nightmare (Brown, 2005). The British Chamber of Commerce and other groups that represent the interests of small business are also generally opposed to further changes to the body of family leave policies (E. Duff, personal communication, 2011; M. Cahal, personal communication, 2011).

Four interviewees expressed how other groups within civil society working for the rights of parents more broadly critiqued the changes as not addressing the real needs of working families and for continuing to promote the idea that mothers are the ones that are primarily responsible for the care of children. In her assessment of the 2006 Act, Legal Scholar Grace James notes: "Increasing maternity entitlement at such a rate (albeit in a piecemeal fashion) without providing equivalent rights for fathers perpetuates the ideology of motherhood, principally bestowing upon her (as opposed to them as parents) the responsibility of ensuring the child has the best start in life" (2006, p. 273). The expansion of maternity leave and pay in 2006 is further evidence of the continued dedication to the tenets of cultural feminism by British society and government. The changes cement the UK along its already established policy trajectory of providing specialized policies for men and women, and special protections for women as mothers. As of 2006, new mothers were eligible for up to one year off, while fathers still had

access to only two weeks paid leave with the strict eligibility requirements in place. I will provide a more in-depth discussion of the changes made to the body of paternity leave below.

Making changes to the family policy landscape allowed the Labour Party to fulfill their promise to provide a more family-friendly work environment, while not significantly altering the trajectory of nature of the family policy landscape. There was little change to the well-established social construction of parenting roles and behaviors.

### **Changes to Paternity Rights**

The Work and Families Act of 2006 did usher in some changes for the way new fathers could take leave. The changes to the body of paternity leave rights were planned to become effective in 2009, but the long consultation process and attempts by the government to meet the needs of employees and employers made it so the rights were not available to new fathers until April 2010 (Gilhooley, 2008). The changes kept in place the right of new fathers to take two weeks of paid Ordinary Paternity leave if eligible, meaning they worked for their employer for at least 26 weeks and are the legal guardian or partner of the mother (Paternity Leave, gov.uk). The 2006 Act also introduced the right for new fathers to access Additional Paternity Leave and Pay, this meant they could take up to 26 weeks off, as long as the mother did qualify for maternity leave/pay or maternity allowance, and had returned to work, meaning she was no longer receiving any maternity benefits. In order to access Additional Paternity Leave, the child must be between the ages of 20 weeks and one year old (Additional Paternity Leave).

The creation of Additional Paternity Leave allowed the government to work towards its goal of providing a family-friendly work environment as promised when the

Labour Party took office in 1997. The goal of this new type of paternity leave and pay was to: “. . . Provide more choice to parents in caring for their child and give fathers a greater opportunity to be involved in the upbringing of their child” (UK Government Response to Consultation, 2008, p. 3).

Wage replacement levels for Additional Paternity Leave were to be available to eligible fathers at the same rate as Statutory Paternity pay rates at just over £100 per week in 2006. Fathers would be able to take one block of time off and it would be between 2 and 26 weeks long. The wage replacement level have been criticized as quite low, especially considering that men generally earn more than their wives, meaning that families cannot generally afford to have fathers access this leave (James, 2006, p. 274).

The introduction of Additional Paternity Leave meant that an eligible woman could transfer approximately half of her maternity leave and pay to the child’s father or guardian after the child was five months of age. This meant that new parents could essentially choose to divide up 12 months of parental leave between them as they saw fit, as long as the mother took the first five months off to care for the infant. This transferable leave, could shift the trajectory of child care responsibilities in the future, although take up rates are thought to be quite low. Government officials estimate that: “. . . between 4% and 8% of those eligible for the new leave will take it, with only 1% of small businesses expected to be affected” (Mulholland, no page number, 2010). The expected low take-up rates of Additional Paternity Leave and Pay are a result of the low wage replacement levels and fairly strict eligibility requirements, in addition to continued cultural stigma associated with men taking long leaves to care for children. The legislation has been crafted in such a way as to not aggravate the business community, and it is the hope of

the government that this legislation will pave the way for increased take-up rates over time (James, 2006, p. 276; Gilholey 2008).

Multiple interviewees criticized the leave saying that it does little to change gender norms or promote equal parenting roles and remains a meaningless policy for the majority of employees because of the lack of earnings-related pay (James, 2006, p. 276). There is hope that over time, and once cultural views start to change, more people will be able to take advantage of the benefits.

The introduction of the Work and Families Act of 2006 brought in a number of changes to the body of family leave policy in the UK. The introduction of new gender-neutral policies provides an opportunity for change in the family policy landscape. On the surface the changes appear to mark a major change away from the tenets of cultural feminism and the values of the male bread-winner model, but the overall impact of the new policies, at least in the near future will most likely be quite small.

The extension of maternity rights to new mothers, offered a significant extension of time to care for their new child, with still fairly low wage replacement levels. These changes reflect the continued embrace of cultural feminist values, and path dependent development. The introduction of Additional Paternity Leave gave new fathers the opportunity to take up to 26 weeks off. This legislation marked an opportunity for change that has previously not been seen in the UK in the time under investigation in this project. The introduction of Additional Paternity Leave marks an opportunity for change and has the potential to be a critical juncture; one which could push the UK away from path dependent development and towards a more gender-neutral family policy landscape. But as of 2010 it is hard to determine if and how this policy will change the future

development of family policy. As of 2010 it appears that Additional Paternity Leave may be more important in theory than in practice, considering that only between 4-8 percent of all fathers are estimated to use it. Critics have noted that the introduction of Additional Paternity Leave and Pay does nothing to change how families will balance work and family responsibilities. Further it does not alter the gendered nature of care work, and misses the opportunity to really change the nature of family policy (James, 2006, p. 276).

I have provided this discussion of the major family policy changes as a way to demonstrate the numerous policy changes that took place between 1996 and 2010. It is difficult to neatly describe all of this policy changes with one title or phrase and some developments appear at odds with each other, for example policies which continue to strengthen and expand maternity benefits with new policies that are written along more gender neutral lines. The policy changes reflect both the continued adherence to cultural feminist values and development of these values in policy and the introduction of new policies that have the potential to change the trajectory and development of family policy development in the future. The passage of Additional Paternity leave provides the opportunity of a policy window or critical juncture, but it is unclear if and how this policy will change the family policy landscape. Such a policy which provides the opportunity to share care giving responsibilities equally between men and women is new to the family policy landscape in the UK. Just how citizens use this policy in the future and how they react to it more generally will determine the future course of family policy development. Policies can and do exist that are little-used and not reflective of the dominant gender norms in place, policies that are not relevant to citizens lives and have been imposed from external sources will do little to affect real change in the future. I will next discuss the

two primary influences on the changing family policy landscape between 1996 and 2010: external pressure from the EU and internal pressure from civil society organizing.

### **External Pressures for Change: Closer Ties to the EU**

Because Tony Blair signed the Social Charter of the Maastricht Treaty in 1998, the UK became bound to the European Union in new ways. EU level dictates and regulations on social policies now had the potential to greatly influence family policies in the UK. Despite these changes, the UK has managed retain their cultural feminist values and to implement European mandates in the most minimal ways. The actions of the EU do not exclusively determine UK social policy outcomes. There are many important national factors to consider when trying to understand social policy outcomes in the UK. Interview data confirms my assertion that the UK still maintains its isolationist attitudes. There is a general acceptance that social policy developed at the EU level can shape family policymaking in the UK, but there is also widespread resentment and reluctance to accept many of the policies which are handed down from the EU Parliament. Interviewees used words such as island mentality, xenophobic, isolationist and anti-European to describe the UK's less than cohesive relationship with the EU.

While some social policy directives are certainly difficult to get out of, there are ways to avoid them such as opting out, blocking, and involving pressure groups at the EU Parliament. Strong pressure groups such as the British business lobby have built effective networks at the EU parliamentary level and have successfully influenced and blocked policy, especially policies that are seen to be detrimental to business (M. Cahal, personal communication, 2011). The UK has been able to maintain their independence more than other member states (James & Oppermann, 2009).

The European Commission held a EU wide poll by nation and the UK was one of the three states that had the lowest support rating for EU membership (Eurobarometer 71, 2009). In 2009 only 30 percent of Britons polled thought that EU membership was a positive thing for the UK and a surprisingly high 49 percent thought that the UK had not benefited from EU membership (Eurobarometer 72, 2009). These findings highlight what a controversial and divisive issue the UK's relationship with the EU continues to be.

The varying viewpoints found among UK citizens are reflected in the political parties. While the Conservative party was the party to bring the UK into EU membership, they have traditionally and especially recently had lukewarm feelings towards the EU. The Labour party is generally more accepting of the UK- EU relationship, but the trade unions have demonstrated their reluctance about the relationship. Lack of trade union support for EU membership is based on fears that further integration will cause manufacturing and other traditional union jobs to be shipped off to far flung realms of the EU where costs of production are lower (S. Harris, personal communication, 2011).

With the changes heralded in by Blair's signing of the Social Charter of the Maastricht treaty, the UK became much more susceptible to pressures from the EU. The multiple social and employment policy directives being crafted on in the EU were now binding on the UK. Three interviewees noted that many of the directives pertaining to family policy have been met with controversy resistance, including heavy lobbying by UK firms on members of the EU parliament. The subjects of social and employment policy have continued to inspire controversy in the UK since they became binding in 1998 (Euromove, 2011). Right from the start the issue of the European Parental Leave Directive was met with debate in the UK. The issue made its way to the High Court when

the TUC challenged the way the Blair government proposed to implement the directive which provided up to 13 weeks off for parents up to the time their child is 5 years old. Also included as part of the Parental Leave directive was the right for new parents to request flexible work schedules, although the employer could say no if there was a valid reason. The EU law allows the member states to determine if the leave is paid, at what rate, and how the details of how the policy is implemented. In Britain the leave would be unpaid and it was proposed that it would only apply to children born after December 15, 1999- the date the Parental Leave Directive came into force in the UK. The TUC, other unions and women's rights groups such as Maternity Alliance believed that this violated the intention of the law because as crafted it was not accessible to the 2.7 million parents with children already under 5 at the time of implementation (Hoge, 2000). The TUC took the bold move of bringing the government to court because they believed the UK's rules around parental leave should match those offered by other EU member states (BBC News, 2000). The High Court in the UK was unable to reach a decision on the issue and the case was referred to the European Court of Justice (ECJ). The referral to the ECJ was perceived as a win for the TUC, whose general secretary John Monks urged the government to back down and reform the legislation before the ECJ made a ruling because if the government continued: "Fighting what looks like a doomed case in the European Court simply to delay parental leave for those parents with children born before the December deadline sends all the wrong signals from a government that says it wants a better work/life balance. It is sad to see the UK government take such a family-unfriendly position" (Hall, 2000, no page number).

The foot-dragging on the part of the UK government to implement the EU



Parental Leave Directive demonstrates the continued dominance of cultural feminist values which focus on support for mothers. Parental leave does not specifically aim to protect mothers, making it harder to incorporate this new gender-neutral policy into the dominant gender norm that views mothers as needing special protection. The UK was the last EU member state to embrace parental leave. Even the US had parental leave in the form of the Family Medical Leave Act more than 7 years prior to the UK's embrace of the legislation.

Ironically the TUC was represented before the UK High Court by Cherie Blair, the wife of Prime Minister Tony Blair, who happened to be pregnant at the time. Ms. Blair, is a long-time supporter of both parental and paternity leave. She even publicly expressed her desire that her husband take advantage of his new parental leave upon the birth of their 4<sup>th</sup> child, but in the end he decided not to, and just worked slightly reduced hours (BBC News, 2000). This usually private debate between husband and wife became national news and illustrated the two very different perspectives on the role that new mothers and fathers should take in the early life of their children.

There is little doubt that the decision of the Labour Party led by Tony Blair to create closer ties with the EU by signing the Social Charter in 1998 created a shift in the way the family policies were crafted in the UK. Specifically the EU influence is seen in the passage of gender-neutral family policies like parental leave. The changes implemented by the UK, like the Parental Leave Directive, were not always straightforward and reflect the tensions between the UK government and the EU. This situation was puzzling because Blair championed the closer ties between the UK and EU, at the same time they he was also marginalizing the impact that these new influences could

have.

When asked about the role the EU has on family policy all UK interviewees in some way referenced the Euroskepticism present in the UK. When asked about the role the EU has on family policymaking in the UK most interviewees noted that the EU has influenced the UK's set of family policies since the signing of the Social Charter, but all also said that the UK continues to oppose EU efforts to extend families policies, specifically paternity, or parental leave. The anti-EU sentiment tends to be strongest within the Conservative Party and trade unions who believe that further EU economic integration will harm manufacturing jobs in the UK and create more costs for business (M. Cahal, personal communication, 2011). Most all of the 16 interviewees mentioned words like island mentality, anti-European, resistance, resentment, strong national culture, and isolationist when describing the relationship between the EU and UK. Others said that the imposition of social policies from the EU is bad for business, created too much regulation and does not speak to the needs of British society. Another common theme about the relationship between the EU and UK is that the UK exists in a world between the US and EU. Dr. Holliday a professor at the University of Leeds explained how the UK looks to the US when is wants to look for more conservative models or policies and when interested in more liberal or progressive policy models they look to the EU. Rosalie Ward a manager at the quasi-governmental body the Equality and Human Rights Commission summed up the general feeling well: "In the UK as a whole there is a fairly strong disregard, or not a great appetite for the EU and things European. Despite this lack of support for the EU, it is still one of the important drivers of (social) policy in the UK" (personal communication, 2011). The general feeling seems to be that the EU is

an important although fairly unwelcome driver of social policy in the UK.

As stated earlier it is difficult to neatly and accurately summarize the impact that the EU has on family policymaking in the UK. The UK is legally bound to implement EU directive and regulations, but the UK continues to do so with little enthusiasm and often much deliberation. The increased pressures from the EU to implement the generally more gender neutral family policies represent the potential for a policy opening, a break from the past. Just how impactful this change will be remains to be seen. The path dependent development of family policies along cultural feminist values continues, but with new influences that have the potential to shift family policymaking to look more liberal and gender-neutral in nature. It seems most accurate to describe this potential for change as a policy window or critical juncture, with still unknown impacts. The efforts and dynamism of civil society activity will play a central role in how the new gender-neutral family policies will be frame, discussed and ultimately received by the British public and elected.

### **Internal Pressures**

#### **Dynamism in Civil Society: The Growth of Fathers Groups**

British society has focused overwhelmingly on the needs of mothers as parents and these values are reflected in the set of family policies in place. There is a significant gender differential in family policies. Family policies treat mother and fathers in very different ways; several interviewees explained how this is a source of societal inequality. Mothers have access to much more paid time off than fathers do. British culture promotes the idea that parents are mothers and this creates conditions which make it easy for a woman to take near complete control over home-life and child rearing (D. Fisher,

personal communication, 2011). This situation marginalizes fathers and men, in some cases prevents them from taking an active role in the upbringing of children; it also makes it more difficult for women to return to full-time paid work (J. Rouse, personal communication, 2011). The dominant British view, in line with the male breadwinner model is that mothers are sacred and the work of mothers is critical for maintaining quality home life and the dominant social structure. Following this line of thought mothers are seen as needing of protection in the public world, fathers do not enjoy a similar status.

The traditional reverence for mothers, motherhood, and the importance placed on breastfeeding and the importance of early bonding of infants with mothers, has impacted the shape of family policies and has proven very difficult to change (Burgess & Jones, 2012). The cultural norms in part are so difficult to break because they are promoted by some civil society groups including women's rights groups and business organizations. Many in the business lobby have allied themselves with the feminist movement as way to provide longer leaves off for mothers, but not fathers. This strong and 'unholy' alliance as one interviewee noted indirectly marginalizes women from employment and increases the discrimination women face in the workforce as women become more expensive employees (D. Fisher, personal communication, 2011). In this atmosphere fathers had become almost invisible, unimportant, and in some instances negatively stereotyped. These negative associations served as the impetus for fathers to get involved with family policies and other family-relevant legislation. In the late 1990s and early 2000s men as fathers started creating organizations to influence the shape of future family policies (E. Gardiner, personal communication, 2012).

One of the most influential and mainstream fathers groups was created in 1999 under the name Fathers Direct; in 2008 they changed their name to the Fatherhood Institute. They developed out of the need to bring a voice to the needs of fathers, but primarily to advocate for the health and well-being of children, who were most likely to thrive under the care of two parents (Burgess & Jones, 2012, p. 3-4). To achieve their goals they promote gender-neutral legislation and work to reduce the family policy gap between men and women. They believe this will alleviate the social and economic problems caused by an over-reliance on the cultural feminist model.

Since 1999 the government has supported the Fatherhood Institute and other groups advocating for fathers and children by providing funding to these organizations (Burgess & Jones, 2012, p. 24). The Equal Opportunities Commission also supported the efforts of the Fatherhood Institute by conducting research on how a more gender-neutral approach to caregiving could be created that would reduce discrimination in the workplace and within the home. Other prominent fathers groups include Families Need Fathers which works to promote the equal rights of both parents, protects the break-up of families, and promote the idea that parenting should be shared (Families Need Fathers, 2012).

Other fathers groups like Fathers for Justice work specifically for the rights of unmarried or divorced fathers to have equal access to their children. This group has garnered a great deal of media attention and some negative press in their sometimes outrageous tactics and views. One of their most notorious acts was flour-bombing Prime Minister Blair in Parliament; they also forced closure of the London Bridge (Fathers for Justice, n.d.). Three interviewees noted that some in society view them as women-haters

and believe they only feed into the negative stereotypes about deadbeat dads or women-haters. Others note how increased lobbying specifically for fathers' rights has divided the normal networks of groups working to promote family policies. This has led to reduced support for family policies in general (R. Bragg, personal communication, 2011).

The efforts of the Fatherhood Institute and other groups working to promote the well-being of fathers, children and families have generally been well-received by feminist organizations and government. For example, the Equalities and Human Rights Commission, whose mandate it is to promote and monitor human rights and promote equality on the basis of age, gender, race, religion and sexual orientation continues to promote the gender-neutral legislation around family policies. The organization was created in 2007 as a quasi-governmental non-partisan body charged with promoting human rights legislation and monitoring government activity. Rosalie Ward, a project manager at the Commission noted that they now embrace the idea that fathers are a very important part of the family policy equation but that many civil society organizations tend to focus on the needs and role of women. She expressed that we need to look at fathers too. She noted that their efforts to promote parental leave have been stalled by government and lack full support (personal communication, 2011).

Some groups working to promote the rights of mothers or to promote breastfeeding have taken a stance against the promotion of fathers' rights because they fear that providing fathers with benefits such as increased paid paternity leave or parental leave will detract from the connection women have with their children. They also fear that gender-neutral legislation may jeopardize the maternity leave rights that women have worked so hard for over the years. Several interviewees noted that groups that continue to

focus only on the needs of mothers are slow to catch up to the changing times and adopt a more gender neutral approach to child-rearing. Most interviewees were not comfortable naming groups who took this view. It appears that the groups that continue to embrace a cultural feminist view and promote the rights and needs of mothers are slowly being edged out from a dominant position. The majority of groups advocating for fathers and working to establish a more gender-neutral landscape to the family policy arena do not tend to promote completely gender-neutral policies for mothers and fathers. Elizabeth Gardiner, the Parliamentary Policy Officer with Working Families, one of the most prominent civil society groups working to help parents achieve a work and life balance noted that now people are looking at the huge gender gap in family policies and starting to ask, “Have we gone too far?” In part she says this occurred due to the continued gender discrimination women face in the workplace (personal communication, 2011).

The growth of civil society groups advocating for fathers and equal parenting, and the continued experience of marginalization many women still face in the workplace is starting to influence the discussion and ideas about the most effective types of family policies. There is little doubt that mothers will continue to receive more paid time off than fathers do, but there appears to be a shift in the goals and language used by many of the most prominent civil society groups in this arena. British family policy is still strongly influenced by the idea that women, especially mothers need to be protected and should enjoy an extended period of time off to recover from childbirth and care for their new child. Interviewees noted that politicians are slowly starting to be more supportive of paternity leave and appear to be more open to changing the ideas in place around how family policies should be crafted. For example groups like Families Need Fathers and the

Fatherhood Institute provide research and consult with other civil society groups, government organizations and parliamentary subcommittees. Maternity Action, one of the most prominent groups working for the rights of mothers, children, and parents has recently responded to government's announcement that they will promote shared parental leave where mothers will be able to share up to six months of their maternity leave with their partners. The group welcomes the move and Ros Bragg, the Director of the group stated:

We welcome any proposals to allow genuine shared parenting, which is good for the baby, mother and father. It is important that families are allowed to decide how to share parenting according to individual need and that fathers can play a full in bringing up a family. This supports progress towards equality between men and women. Robust employment protection for parents must be a priority for a Government committed to supporting families. Unlawful pregnancy discrimination remains widespread, forcing pregnant women and new parents out of the workforce at a time when they most need secure employment (Maternity Action, 2012).

The fact that many of the most prominent groups working to protect and promote the rights of mothers and children have extended their mission to include the rights of fathers demonstrates the impact that fathers groups have had and marks a change in the thinking about how family leave policies should be crafted. The idea that fathers are parents too and should be able to share in the responsibilities of early parenting is no longer a radical or strange idea to civil society. While the practical application of this change may be slow, as of 2010 there is widespread embrace of at least the idea that new fathers should be able to take more time off for family responsibilities.

The norms and ideas surrounding parenting and families policies are slow to change but it appears that the opening for change has been established and the ways that civil society groups frame the issue has shifted to acknowledge the needs of fathers and



the potential positive effects of parental leave. The ways that new parents access policies and the ways employers respond to more fathers taking longer periods of time off to care for children in the future will determine how much the family policy landscape will shift away from the cultural feminist ideals in the future. The Conservative party tends to align with business organizations and to promote maternity rights while being more resistant to the extension of paternity right or parental leave or in general (D. Fisher, personal communication, 2011; Maternity Action, 2012). If it is not practical or easy for new fathers to access their new rights and benefits under parental leave, than there will be little change in the direction or essence of the family policy landscape.

### **UK Conclusions**

The increased influence and pressure from the EU, the growing strength of fathers groups, and the presence of a prime minister interested in creating a family-friendly environment in the UK all influenced the activity of and changes to the family policy landscape between 1996 and 2010. Numerous policies were passed, and several offered new types of benefits which offered the potential for a real change in the trajectory of family policy. The most meaningful changes to the landscape include the introduction of parental leave regulations in 1999, paid paternity leave in 2003, and additional paternity leave in 2010. Taken together these new policies have the potential to shift the family policy landscape away from its foundations in cultural feminist ideals. A critical juncture has opened, most notably with the passage of additional paternity leave in 2010. This new policy offers the possibilities for the most real change in the future. But it is still too soon to capture just what impact this policy will have.

Interestingly, the introduction of the new gender neutral or father-focused policies

existed alongside of the already well-developed body of benefits for new mothers. As of 2010, family policies continue to focus on the rights and needs of mothers, often at the expense of the fathers (E. Duff, personal communication, 2011). The UK also still has one of the largest gender gaps in family policies. The path dependent trajectory of cultural feminist values still informs the family policy landscape of the UK in 2010, but the introduction of gender-neutral policies and policies providing fathers more rights have already shifted the discussion around family policies in civil society and within government. By 2010 the UK appears to be moving towards a more gender-neutral framework in the family policy landscape, but just how much the collection of family policies will move away from their cultural feminist roots remains to be seen.

### **Chapter Conclusions**

The years between 1996 and 2010 witnessed quite different developments in family policy in the US and UK. In the US these years were marked by incremental policy change to the established family policy landscape. Surprisingly, the family policy landscape in the US remained almost unchanged. Overwhelmingly, the gender norms established by policies going back to the 1960s became further developed along their path dependent trajectory. The lack of change to the family policy landscape in the US is evidence of the continued dominance of liberal feminism. On the other hand in the UK, the family policy landscape experienced many changes, notably the introduction of policies informed by gender-neutral tenets. The UK continued to embrace the ideals of cultural feminism, but the introduction of paternity and parental leave policies are significant because they provide evidence of new inputs to the policymaking process and provide an opportunity for change in the future. As of 2010, the UK seemed to be moving

towards a more gender-neutral family policy framework, but the impact of cultural feminist ideals in society and policy making continues. Mother-focused policies existed alongside the newer policies including parental leave. The introduction of the new policies did not appear to detract from the benefits and rights already established around mothers.

In the US there was little change to the national family policy landscape. Civil society activity was still present, but relevant groups had started to focus on other women's issues such as reproductive rights and rights for same-sex couples. In part this is due to the dominance of the liberal feminist framework. In the late 1990's it was a common belief among society and politicians that gender equality had already been achieved. As several interviewees, both within government and civil society noted, women's issues were just so *yesterday*. Many national groups focused on improving the body of protective employment law in gender-neutral ways, such as organizing for paid sick leave for all workers. Despite small changes to the national FMLA policy, more meaningful changes were made to state level FMLA schemes in several states. The incremental change to the family policy landscape resulted from state, not federal activity. Overall civil society groups and society more broadly had little hope as of 2010 that there will be any major changes to the family policy landscape on a national scale in the future, even under a president supportive of family-friendly legislation. The continued embrace of liberal feminist values is evident in both the legal activity and civil society atmosphere.

In contrast to the US, this time period in the UK is marked by a significant amount of activity around family issues and the introduction of new types of family

policies. Like the US, civil society in the UK was active during this time, but along different avenues than earlier time periods discussed in this research. The growing strength of father's groups demonstrates a backlash against the cultural feminist values so entrenched in the UK. Men began to organize to claim some of their rights as parents and fathers. Also new during this time in the UK is the growing pressure to conform to EU standards. When Prime Minister Blair signed the Social Charter of the Maastricht Treaty in 1998, this made the UK susceptible to external pressures as never before. As described throughout this chapter, the EU promotes an approach to family policies more in line with gender-neutral tenets.

The pressure to change the family policy landscape in the UK comes from multiple sources both within and outside of the country. As a result of these pressures to change, the UK began to embrace a more gender-neutral family policy framework. At the same time, family policies continued to demonstrate their adherence to the long-established support of cultural feminist values as were several moves to strengthen and expand maternity leave. Despite the fact that the legal framework of the UK changed during this time in order to conform to duties and responsibilities of EU membership, UK society was slow to embrace the newly introduced family policies and the social construction of gender remained tied to the male breadwinner model. But, the presence of new policies signified the beginnings of change away from the cultural feminist foundations. While the male breadwinner model is still a dominant social construction in the UK in 2010, new gender-neutral pressures are beginning to inform civil society and governmental activity. The gender-neutral family policies passed in the UK between 1996 and 2010 were the first challenge to the long held gender norms that have operated

in the UK for many decades. This time period signifies a break with the path dependent development of family policies, going back to at least 1960. It is not accurate to say that the UK established a completely new path for family policy development, but the seeds of change are there.

The developments during this time period in the US, in addition to developments between 1960 and 1995, in both the US and UK conform to what Pierson (1993) outlined as policy feedback and increasing returns. This means that policies, once set in place, can create strong forces, institutionalized relationships and structures which propel policy along the same path. The continued dominance of social values and behaviors is one example of an institutionalized structure. As Schneider and Ingram assert, social constructions, such as those that govern gender norms and behavior, can become so dominant that they may be rarely questioned and even viewed as natural (1997, p. 75). The policies and gender norms, once established continue along the same path, even in the face of external factors that would be thought to move policy in another direction (Baumgartner & Jones, 1993; Pierson, 1993). Considering all of the internal and external pressure to change, it is surprising that the UK has not yet established a more clearly developed gender-neutral family policy environment. Just why this is the case has to do with the continued strength of the social construction of gender norms based in cultural feminist ideals. The reasons behind why the UK has not changed as much as might be expected will be discussed in more depth in the final chapter.

## Chapter 7: Conclusion

This dissertation began by asking: how can we understand the development of family policies since 1960 in the US and UK? And specifically, how can we understand the different policy outcomes in these two similar countries? By taking a historical account of the activities and events in the family policy landscape since 1960 I have demonstrated, using process tracing, that the social construction of gender norms hold important clues for understanding how and why the family policies of each nation look the way they do today. I have carefully traced civil society activity and the legal framework as a way to track the ways that the social construction of gender norms has changed over time. These two sources have provided rich data from which to draw on to answer my primary research questions. In the conclusion I provide a brief overview of the key developments in each case and then connect these developments with the larger theoretical underpinnings. Next I discuss the three hypotheses that I derived from this research. I conclude with a discussion about possibilities for future research.

There were considerable social, economic, and demographic changes in society over the 50 years under investigation. As of 1960 it was accurate to classify both the US and UK as embracing the values encapsulated in cultural feminism and the male breadwinner model. I have demonstrated through tracing the events and policymaking beginning in the early 1960s that the US experienced a shift away from cultural feminist roots. The US embarked on a path of policymaking that reflected a new set of values beginning in 1964. With the Civil Rights Act of 1964 policies started to reflect the tenets of the liberal feminist perspective which outlined complete equality between men and

women. 1964 was the moment of critical juncture for the US.

The inclusion of sex discrimination as a protected category as part of the Civil Rights Act meant that women had to be treated the same as their male counterparts in employment, education, and other public venues. The policy and legal landscape in the US was forever changed. This law signaled that a new policy trajectory was established and codified into law meaning that legally women had to be treated the same as men. While debate still continues among certain elements of civil society about if women should be able to access special policies as mothers, such discussion is mostly theoretical. This is because after 1964 it was technically illegal to treat women, even pregnant women or new mothers, any differently from men in most all aspects of law. The dominant civil society groups active in this arena have also reflected the values of complete equality between men and women in law.

Laws dictating treatment of women in society continued along the liberal feminist framework in the US after 1964. Law and policies become further embedded in policy and social norms. In the early 1990's pressure from civil society groups and a favorable political and social environment made it so that passing some sort of family leave was a reality. With Clinton's election as president the opportunity was realized; the necessary elements were in place to pass gender-neutral family policy and the FMLA became law. For the first time in modern US history most citizens were legally able take time away from work in order to attend to certain family needs. Since 1993 there have been few legal changes or clarifications to the FMLA, none which changed the core elements of the law. More notable changes around FMLA, specifically offering some sort of paid family leave, has occurred in a handful of states since 2002. Despite these state level

changes, family policy in the US remains on the same liberal feminist policy trajectory established in 1964. The dominant social construction of gender remains based in the idea that men and women are equally capable and should be treated as such in all public arenas. The fact that only women can become pregnant and bear children is unproblematic to the American conception of equality. To get around the problem that pregnancy and childbirth might challenge to the notion of complete equality between the sexes, laws treat pregnancy as a temporary disability or illness, something that any person could experience. The dedication to complete equality is reflected in the law, civil society activity and the body of family policy in place by 2010. Evidence of the persistence of liberal feminist values is present in the lack of change to the family policy landscape between 1996 and 2010. The few legal cases and general acceptance of the policies in place have encouraged civil society groups to focus on other concerns for women, namely issues like reproductive rights, gay marriage, and preserving access to abortion.

Vestiges of the cultural feminist framework remain in some segments of American society and in some arenas of law such as military law and laws governing child custody. But in the body of law governing workplace policies including family policies, men and women must be treated exactly the same. The liberal feminist framework continues to guide the way Americans think about gendered behavior, identities and family policy. Take-up rates of FMLA do remain gendered, women are more likely than men to work part-time, women make less money than men, and women continue to do the bulk of care work, there still exists a dominant belief that men and women truly are equal and have equal chances for a successful career.

In the UK family policies develop in a path dependent manner between 1960 and



in the late 1990s. This path relied on cultural feminist values and developing a complex and more generous collection of policies aimed at providing women as wives and mothers with rights and protections. After 1997 the path dependent development around cultural feminist values does continue, but new influences are introduced which provide pressure to embrace more gender-neutrality into the family policy landscape. In 1997 when Prime Minister Blair forged closer ties with the European Union by signing on to the Social Charter of the EU, he signaled that the UK would conform to the social standards and regulations made by the European Parliament. In addition to the new external pressures from the EU, around the same time internal pressures, in the form of civil society organizing for father rights and parental rights, became more mobilized and worked to influence policymaking. This would seem to have all of the makings for the UK to significantly alter the trajectory of family policy development, but the evidence does not support this assertion. For example, since 1997 the government has passed legislation reflecting gender-neutral values, namely passage of unpaid parental leave in 1999 and paid shared parental leave in 2010. These new policies providing gender-neutral leave opportunities existed side-by-side with the already established maternity benefits and rights. Additionally, the provision of paternity leave did not detract from time off that new mothers could access. On the surface the introduction of these gender-neutral family policies seemed like a departure from cultural feminist values and special protections for women, but upon close investigation they did not significantly alter the family policy landscape. The way the gender-neutral policies were crafted and implemented in the UK made them difficult for most citizens to use. This is in a large part due to strict eligibility requirements, low wage-replacement levels, and continued

social stigma for fathers who use the policies. Because many British citizens and politicians view the new policies with concern, derision, or are simply unaware of them, and because the policies are difficult for most citizens to access; these new pressures for policy change have not led to a critical juncture in the overall trajectory of family policy development.

Cultural feminist values continue to be reflected in the body of family policy, which has tended to focus on providing pregnant women and new mothers time and pay off. As of 2010, Britain had some of the longest leave times for new mothers and some of the shortest leave time specifically for new fathers, out of all EU countries. But, the new influences on the family policy landscape and the introduction of gender-neutral policies demonstrate the beginnings of change. I hesitate to say a critical juncture has occurred because these policies exist alongside of the dominant mother-focused maternity rights. The introduction of new policies has not diminished the policies and benefits new mothers have. As of 2010 it is still accurate to classify the UK as a country which embraces the idea that pregnant women and mothers are deserving of special protections. There is now the corresponding belief that new fathers are deserving of a short amount of time off, if they chose to take it. The fact that new mothers are legally bound to take at least some time off for maternity leave and new fathers are not, demonstrates the continued dominance of cultural feminism. Specifically all women are required to take two weeks off, women who work in factory are required to take four weeks off of work after childbirth (TUC Worksmart, 2013). While there is now more social awareness and discussion around the new gender-neutral family policies and the proper roles of men and women as parents, a complete family policy trajectory shift has not yet occurred. With

the ability for fathers to take more paid time off for caregiving concerns, there will most likely be a broader social discussion around family policies and what shape they should take in the future. With these changes, the UK will most likely shift to embrace more gender-neutral values, and embark on a new path of family policymaking in the future. As of 2010, the laws and values of British society still overwhelmingly support the idea that men and women are different but equal. In the British view, the differences between men and women require specific policies for each as employees and parents.

### **Civil Society**

I have demonstrated that civil society does influence family policy outcomes by framing the debate around the relevant issues and presenting these ideas to both society and politicians. It is a challenge to determine exactly what impact civil society has on policy outcomes, but there are several themes that emerge from this research. First, civil society reflects the salient issues and norms present in society. They mirror the spirit of the times and the debates within society and embody the dominant social constructions of gender. Importantly, civil society groups have been able to bring pressure to bear on the policymaking process. The number of and types of groups present in civil society are amazingly diverse, groups use different tactics, and have different levels of success. Any attempt to understand how and why family policies look the way they do would not be complete without careful attention to the workings of civil society. For example the input from civil society groups significantly framed the way that the FMLA was conceived and ultimately written. It was the impact of groups like the Women's Legal Defense Fund and NOW that ultimately pushed for the gender-neutral writing of the legislation.

Another theme that emerges is that coalitions of multiple groups are the most

effective in terms of their ability to influence policy outcomes. Broad collations around salient issues, with a clear leader tend to be most successful. Broad coalitions are equally important in both the US and UK. The presence of coalitions demonstrates that the issues they are organized around are important and socially salient as outlined by scholars promoting the Advocacy Coalition Framework (Sabatier & Weible, 2007). Sabatier and Weible (2007) outline that the complexity in modern society necessitates specialization for groups who hope to have influence on the policymaking process, creating policy subsystems (also see Hecl 1978; Kingdon 1995; Weible, 2005). Mature advocacy frameworks, such as the family policy arena, are viewed as stable entities which continue to operate for long periods of time without much change (Sabatier & Weible, 2007) Civil society advocacy in the arena of family policymaking reflects this type of structure. Over time civil society groups become entrenched and develop in a path dependent manner. I find that civil society groups develop in a way that reflects the social norms found in society, and they help to further entrench the established set of gender norms in place.

Civil society groups that work alone, or use violent or media-grabbing tactics tend to be looked down upon by the coalitions. These lone groups, such as some of the more aggressive fathers groups in the UK and the groups promoting special protections for mothers in the US, such as the Eagle Forum, may be able to bring attention to an issue, but are not able to productively influence policy. These outsider groups will continue to exist, but mostly at the margins of the major channels of influencing policy in a meaningful way.

Lastly, a more surprising finding of this work is that union groups are not as influential to the family policy environment as much of the dominant political science

research would suggest. Power resource theory would suggest that union activity and class-based organizing would be a site of mobilization with specific policy influences, namely those countries with more class-based union activity and stronger left-leaning parties would have more egalitarian policy outcomes, and more generous social policies. Overall power resources theorists suggest that differences in resources like unions and left-leaning parties help to explain differences in welfare outcomes (Stephens 1979, Korpi 1983). While there is support for power resources theories in much political science research, they often ignore more nuanced elements of how gender operates in society and how it might influence policymaking.

Unions have acted as important members of larger coalitions promoting family policies in the US, but they have generally not been at the forefront of activity. It is not that they do not support the provision of family policies; it is just not one of their primary focuses. This holds true even for women's groups within larger unions. In the UK, unions have played a more important role than their US counterparts, but still their role has primarily been one of bringing societies' attention to relevant issues through strikes and protests, bringing salient issues to high courts, and by being supportive members of larger coalitions. In the UK there were numerous large unions strikes and protests that garnered national and in some cases international attention, such as the Dagenham strike. These events helped to bring issues to the attention of citizens, politicians and bureaucrats. Union members in the UK were a ready force of people to mobilize on salient issues such as equal pay for equal work, workers' rights, and social justice. While there were multiple influential union strikes and protests in the UK, they rarely focused specifically on the needs of families or on family policy. In many instances, women as union

members conducted strikes or protests to bring attention to the patriarchal structure of their union and to fight for equal treatment in pay, hiring, and opportunities for promotion. These union strikes are evidence of continued cultural feminist values and the failure of unions to fully speak to the needs of women workers. Drawing on power resource theories without attention to the social construction of gender misses important elements which impact social policy outcomes. In the UK closely analyzing union activity demonstrates the continued and evolving discrimination women face in employment and public life, this discrimination continues despite the generous maternity leave policies in place.

Civil society activity is a useful marker for capturing changing gender norms in society. In the early 1960s women were mobilizing for things like equal treatment, access to employment and educational opportunities, and the right to work after being married and/or having children. The activities of groups at that time espoused related goals and activities. Fifty years later the civil society landscape looks much different; equal treatment of men and women is often taken for granted. As norms around the proper roles of men and women, mothers and fathers have changed, so too have the make-up and activities of civil society groups. Salient issues come and go over time and help to shape the public's view of problems, definitions and goals. What it meant to be a working mother in 1962 and 2009 are worlds apart and these different meanings are captured by civil society groups who change with the times and provide an accurate marker of changing gender norms. Civil society groups develop in a path dependent manner, they frame the relevant issues, and the most dominant groups become entrenched over time. Groups reflected less popular norms, values, and goals continue to operate without much

influence on policy or social norms.

### **Legal Framework**

The norms embodied by the legal framework provide a crucial foundation for all policies that are crafted. This is especially evident in the arena of family policymaking where definitions concerning proper roles and behavior for men and women, and definitions of equal treatment are often codified into law. In 1960 both countries had an established legal practice based in the tenets of cultural feminism. While there was little in the way of policies pertaining to maternity rights or family leave policies, both countries had a history of providing special protections for women in the workplace, in educational environments and in society more broadly. Both countries also had a long history basing legal activities and decisions on the tenets of coverture which defined a woman as the legal property of her husband, father, uncle or other male relative. Coverture was enshrined in law throughout most of the 19<sup>th</sup> century. Legal elements of coverture were eliminated over time in the US and the UK, but vestiges of the law remained as late as the 1970s.

A snapshot of legal norms in 1960 in both the US and UK reveals that both countries espoused the values of difference feminism. With the passage of the Civil Rights Act of 1964 the US move away from the tenets of difference feminism. The legal treatment of women in the workplace and society more broadly is transformed and it becomes illegal to treat a woman any differently from a man. Treating men and women based on different standards became illegal in 1964. It took many years for actual practices to catch up with these new legal standards. This gap between the legal framework and the everyday treatment of women as workers, wives, and mothers led to

numerous court cases which helped to clarify any legal ambiguity and helped to bring more social pressure and awareness to the newly created norm of equal treatment for men and women. This demonstrates how a law can take many years to be fully-realized in practice and reflected in social values.

The influence of the 1964 Civil Rights Act and the Family Medical Leave Act of 1993 cemented the liberal feminist framework in the US. With these laws the US shifted away from its roots in cultural feminist values. The historical events and legal activities highlighted in this research demonstrate that it took many years for this shift to occur. There were moments of confusion and tension about the proper role and treatment of women in the public sphere there were also inadequacies in the legal and governmental structures put in place to enforce the new laws. The policies enacted since 1964 and the outcomes of legal events demonstrate the policy feedback and path dependent development that placed the US firmly on the liberal feminist trajectory beginning in 1964.

While it is still accurate to describe the UK as embracing the tenets of cultural feminism and the male breadwinner model, the legal norms surrounding treatment of women in public life, specifically the workplace have changed a great deal since 1960. There have been significant legal battles fought nationally and in the European Court of Justice on this issue, but there is still an important tradition of treating men and women differently. Laws outlining equal treatment in employment, especially around hiring, firing, promotion and pay, have passed to encourage fair and equal treatment of women in the workplace. Namely the Sexual Discrimination Act of 1975, the Employment Protection Act of 1975, the Equal Pay Act of 1983, and the Equalities Act of 2010 have



influenced the ideals and practices of equal treatment. By 2010, equal treatment in the workplace is a well-established norm, but there simultaneously exists an idea that men and women are different, have different biological and social roles and are therefore deserving of specific policies.

The legal norms of the UK have also been influenced by external pressure from the European Union. Pressure to conform to European standards was especially evident after Blair signed the Social Charter in 1997. Since this time the rules and regulations around family policy in the EU have started to pervade the legal and social atmosphere. The impact of European standards on the legal front is more pronounced and immediate than the corresponding social change. The European regulations around family policies do not always reflect the UK norms around the social construction of gender and proper roles for men and women as parents and employees. Since 1997 the social EU regulations have started to influence British family policy, but as of 2010, they have not created a radical policy shift in the trajectory of family policy. I say this because the new policies have not displaced the older mother-focused policies and as a whole British society appears slow to warm to the norms espoused by the newly passed gender-neutral policies both on a social and political level.

Feminist scholars recognize numerous types of feminism. Liberal and cultural feminism provide two distinct models for feminist thought and they each outline a distinct way towards achieving true equality for women. The different types of feminism are not mutually exclusive and it is possible for a country to exhibit qualities or tendencies of multiple different feminist values. This research supports the view of the US as liberal feminist nation, most likely, the most developed example of liberal

feminism in the world. On the other hand, the UK has travelled along a different path, one that developed primarily along cultural feminist values until the late 1990s. At that time the UK begins to embrace elements of liberal feminist thought as a way to address the continued discrimination that women faced in employment and the public sphere more generally. As Offen (1988, 2000) notes, there are two separate but overlapping strains of feminism that have developed in Europe in the recent past: individual and relational feminism. Individual feminism focuses on providing individuals (assumed to be male or gender-neutral) with rights, achieving complete equality, and autonomy. She associates individual feminism most closely with the Anglo-American nations, specifically Britain. Relational feminism focuses on achieving equality between men and women by focusing on the distinctiveness of women as mothers and caregivers. Relational refers to the relationship of the family or couple, as much of the policy goals of this view rest on the man-woman couple as the core unit. Offen finds that most of the European continent most closely resembles the relational feminist view, but that the two types of feminism overlap and co-exist in unique ways in different countries. This description of feminism in Europe aptly applies to the UK, especially after 1997. The two ideas: of complete equality between men and women on the one hand, and special protections for women as mothers or “equality in difference” (Offen, 1988, p. 139) coexist, often in a harmonious way. I find that over time, and especially with the new pressures from fathers groups internally and from the EU externally, that Britain provides an excellent example of a country which embraces multiple and dynamic ideals and values regarding the treatment of women in society and how equality between the sexes can be achieved. To classify the UK as espousing just one type of feminism would

oversimplify and overlook the nuance and complexity of the social construction of gender in the UK. It is more accurate to classify the UK (especially after 1997) as embracing cultural feminist values, with elements of liberal feminist thought. Or to use Offen's language as a country that has strong roots in individual feminism as well as embracing relational feminist values.

### **Suggested Hypotheses for Future Research**

This dissertation has sought to generate new theoretical insights through a comparative analysis. As part of this theory-building endeavor, there are three hypotheses that may help to explain the evolutions of family policymaking in welfare states. There are three primary hypotheses that result from the analysis. The first hypothesis is that unique and idiosyncratic aspects of the social construction of gender can have meaningful influences on outcomes of the welfare state, specifically relating to family policy. The family policies in place in a given country will reflect the prevailing gender constructions of their day. Thus in societies where values towards women highlight their reproductive roles and maternal instincts will produce family policies focused on providing women with special protections, extended time off for both recovery and caretaking, and in many cases wage replacement or allowances. These mother-focused policies do not mean that fathers also do not have access to some policies but, they will generally be less generous in terms of time off. In societies where women are viewed as the same as or similar to men and biological differences are not highlighted, family policies will be gender-neutral. Pregnancy and childbirth will be treated as other gender-neutral conditions and thus will not be viewed as deserving of targeted policies or special treatment. The significant differences in the social construction of gender became increasingly evident in this

research. Interestingly, these differences exist in these two countries generally considered to be similar to each other. I believe that scholars interested in understanding policy outcomes of welfare states must focus on clearly understanding and specifying the unique social construction of gender in each case being studied. Without attention to such details scholars will have incomplete information about the cases and potential inputs on the policymaking process.

The second hypothesis derived from this research is that family policies develop in a path dependent manner, with opportunities for change occurring rarely. The opportunities for change or critical junctures occur as the result of external pressures or internal changes which are difficult to predict, as the case of the US demonstrates. In the US it came as a surprise to most involved, that the word gender was added to the Civil Rights Act during last minute deliberations. These critical junctures are important because they alter the course of the policy's trajectory and establish a new direction for social policy through legal codification and by introducing different types of rights and protections. The newly established laws not only influence the actions of the courts but also inform civil society activity creating opportunities for policy feedback to occur. Researchers should look to other countries with a long history of family policymaking in order to determine if this hypothesis holds true in other countries. Such analysis will require retrospective analysis to uncover critical junctures and identification of the legal frameworks that entrench the policy trajectory for each country.

The third hypothesis is that when family policies are out of sync with the dominant social norms around gender, these policies will be under-utilized, not well-received and generally lack much influence. When policies are enforced from sources

outside of the country or from politicians who are not well-informed about the social construction of gender there is a chance that this lack of synergy will occur. Future research should work to determine what, if any, far-reaching impact these types of misplaced policies have. For example, can these policies act as an agent of change? In the UK can the introduction of shared parental leave policies act as an impetus for changing the social construction of gender? Can the presence of new gender-neutral policies in the UK alter the social construction of gender and the family policy trajectory in real ways in the future, despite the fact that as of 2010, the policies have low take-up rates and a great deal of social and career stigma still exists for men who take time-off for family reasons.

### **Last Thoughts**

The social construction of gender norms is a fruitful place for scholars to turn in the search for understanding policy outcomes. This research has demonstrated that the social construction of gender holds potential clues for how and why governments make family policies. Society gives subtle and not so subtle clues about what the proper gender roles for men and women. These clues are embodied in civil society activity and the ever-evolving policy and legal framework. History also holds important clues for addressing how and why policies change, or fail to change. Attention to the social construction of gender over time should be the underpinning future research on understanding policy outcomes of the welfare state.

By comparing two similar cases with divergent policy outcomes I have demonstrated that even small differences and nuances in the ways that terms like gender and equality are defined appear to have real and lasting consequences on the policy

landscape. In the UK it is celebrated that men and women are different, complementary, yet equal. In the US men and women are conceived of as the same and as complete equals. Women are often encouraged to behave as men to be successful in the public world of work. While on the surface these conceptualizations do not appear to be that striking, this research has demonstrated that even small differences in the ways that men and women behave, how they are viewed, and how they are treated in society holds important clues for understanding policy outcomes. The dominant social construction of gender becomes entrenched and helps to explain why it is so hard to change the trajectory of family policies once established.

The three hypotheses that I outlined can serve as a useful starting point for scholars working to understand and specify the relationship between the social construction of gender and policy outcomes. My use of the legal framework and civil society activity are accurate and interesting places to for evidence of gender norms, these two variables also allow researchers to track changes over time in the quest to understand policy outcomes of welfare states.

This dissertation demonstrates that the social construction of gender is a crucial element to studies of policymaking in welfare states. Policymaking in welfare states is an inherently normative practice. Ignoring or bypassing the ways that gendered constructs and impacts policy outcomes means that researchers have an incomplete view of the policymaking process. Further, taking a historical view of policymaking not only allows researchers to identify moments of change and stasis and understand where change comes from, but it also allows for the dynamism present in this policymaking arena to come to life. A historical approach which encompasses the ways that gender is socially

constructed is well-equipped for capturing change and uncovering clues about the causal mechanisms at work. This research approach has allowed me to generate three hypotheses which hold promise for future research and can apply to other related policy arenas. Without explicit attention to the dynamism of gender norms over time, these hypotheses would be rendered invisible.

A similar research approach is well-equipped to answer questions related to other explicitly gendered types of policymaking. For example, exploring the ways that social health insurance schemes are influenced by the social construction of gender would provide an interesting opportunity to further investigate how gender influences policymaking in very real and measurable ways. Specifically, looking at what types of treatment are covered for men and women and under what circumstances would reveal the gendered values of society. The ways that pension schemes are written and operate also would be a fruitful and interesting site for investigating the social construction of gender and how it influences outcomes of the welfare state.

There are multiple practical and theoretical reasons for political scientists to focus on the social construction of gender as a meaningful influence on policymaking in welfare states. Without careful attention to the ways that gender operates and changes over time, scholars will not have the ability to fully understand policy outcomes. Understanding the social construction of gender reveals the values and reflects the power relationship within society. These power relationships by their very nature empower some and disempower others; they also impact the policymaking process in direct and indirect ways. Without explicit attention to these theoretically relevant and empirically real aspects to policy-making political scientists will only ever understand part of the picture.

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## Appendix A

## US Interview List

Marzy Bedford Billingham- Department of Labor, Women's Bureau, Denver, CO (October 19, 2010)

Ellen Bravo- academic and coordinates the multi-state working families consortium, phone interview (November 11, 2010)

Heather Bushey- Center for American Progress, Senior Economist, Washington DC (October 5, 2010)

Jim Backlin- Consultant and previous Vice President of Legislative Affairs at the Christian Coalition of America, Washington DC (September 28, 2010)

Erin Bennett- Colorado Director of 9 to 5, Denver, CO (October 18, 2010)

Cecelie Counts- AFL-CIO legislative representative and former director of AFL-CIO civil, human and women's rights department, phone interview (October 20, 2010)

Ed Egee- HELP Committee- Republican Staff director works with Senator Issacson (R) GA, Washington DC (September 30, 2010)

Katie Ellis- National Program Manager at the White House Project, Denver, CO (November 9, 2010)

Jan Erickson- Government Relations at the National Organization of Women, phone interview (September 20, 2010)

Netsy Firestein- Founder and Executive Director of the Labor Project for Working Families, phone interview (December 8, 2010)

Marc Freedman- Executive Director, Labor Law Policy at the US Chamber of Commerce, Washington DC (September 28, 2010)

Anne Hedgepeth- Government Relations Coordinator AAUW, Washington DC (October 4, 2010)

Ariane Hegewisch- study director at the Institute for Women's Policy Research, phone interview (November 11, 2010)

Lisa Horn- Governmental Affairs for the Society for Human Resource Management, phone interview (October 22, 2010)

Patricia Kempthorne- Founder of the Twiga Foundation and the Family and Workplace



Consortium in 1988, phone interview (November 17, 2010)

Daniela Kraiem- Professor at American University, Washington DC (September 29, 2010)

Mathew Melmed- Executive Director of Zero to Three, phone interview (December 13, 2010)

Jennifer Owens- Director at Working Mother Research Institute, phone interview (November 16, 2010)

Carolyn Purcell- Volunteer at Mothers and More, Denver, CO (September 15, 2010)

Chae Robert- Coordinator of Denver Women's Coalition, Denver, CO (October 22, 2010)

Carol Rosenblatt- Coalition of Labor Union Women (CLUW), Washington DC (October 8, 2010)

Susan Scanlan- Board President of National Council of Women's Organizations (NCWO), Washington DC (September 29, 2010)

Vicki Shabo- Director of Work Family programs at the National Partnership for Women and Families, Washington DC (October 1, 2010)

Michel Varnhagen- Labor Policy Director- Committee on Education and Labor- House of Representatives, Washington DC (October 8, 2010)

Karen White- Director of Time to Care New Jersey, phone interview (November 18, 2010)

Valerie Young, Coordinator of the National Association of Mother's Centers and Your (wo)man in Washington, Washington DC (October 6, 2010)

## UK Interview List

Ros Bragg, Director of Maternity Action, London (February 8, 2011)

Adrienne Burgess, Head of Research, Fatherhood Institute, London (February 10, 2011)

Maxine Cahal, Policy Advisor on Employment, Confederation of British Industry, London (February 8, 2011)

Laura Davies, Graduate student at CIRCLE- University of Leeds (February 4, 2011)

Elizabeth Duff, Senior Policy Advisor, National Childbirth Trust, London (February 7, 2010)

Duncan Fisher, advocate for father's and children's rights, co-founder of the Fatherhood Institute, Wales (February 14, 2011)

Elizabeth Gardiner, Parliamentary Policy Officer, Working Families, London (February 9, 2011)

Scarlett Harris, Equalities Officer, Trade Union Congress, London (February 11, 2011)

Ruth Holliday, Professor of Gender and Culture, University of Leeds (February 4, 2011)

Helen Johnson, Policy Officer, Women's Resources Center, London (February 8, 2011)

Sue Johnson, Greater London Authority (February 9, 2011)

Victoria Joynes, Graduate student at CIRCLE- University of Leeds (February 4, 2011)

Doreen Kenny, Greater London Authority (February 9, 2011)

Julia Rouse, Director of Gender and Enterprise Research, Manchester Metropolitan University (February 18, 2011)

Margarethe Theseira, Greater London Authority (February 9, 2011)

Rosalie Ward, Project Manager, Equalities and Human Rights Commission, phone interview (February 11, 2011)

Sue Yeandle, Director of the Centre for International Research on Care Labour and CIRCLE, University of Leeds (February 4, 2011)

## Appendix B

### Questions for US and UK Maternal and Family Leave Policies

Introduction: My name is Leah Persky and I am conducting field research as part of my dissertation at the University of Wisconsin. The purpose of this research is to bring clarity to the policymaking process surrounding maternal and family leave policies in the US and the UK.

Participation is completely voluntary and you may withdraw from the study at anytime. You may also choose to remain anonymous and no personal identifiers will be used.

Do you wish to remain anonymous?

Do you mind if I tape our conversation?

- 1) If applicable: what is your name and what organization are you affiliated with?
- 2) In what capacity have you been involved in efforts to influence family policy or promote change in this policy arena?
  - a. How long have you been involved and how has your involvement changed over this time?
- 3) Why are you interested in FMLA or Maternity Allowance/Statutory Maternity Pay or Paternity Pay in the UK? How did you first get interested and involved?
- 4) Which groups and individuals do you work most closely with?
- 5) What are your primary goals in this arena in the short and long term?
- 6) What have been the major obstacles and successes for you and your organization?
- 7) Do you feel you have any major opponents? If so who? In what ways do they disagree with and challenge your goals?
- 8) What do you think were the primary factors and forces which originally contributed to the passage of maternity and family leave policies? Have these forces changed over time? In what ways?
- 9) Today women make up slightly more than 50% of the workforce in the US and UK. How, if at all do you think this impacts maternity and parental leave policies?
- 10) What do you think of the current efforts of some politicians to try to expand the rights of FMLA in the US and (maternity and paternity leave and pay in the UK)

to include wage replacement and or longer terms of leaves with job protections?

Do you think these efforts will be successful? Why or why not?

- 11) What do you think the future will hold for maternity, paternity and parental leave in this nation?
- 12) For US: Should policymakers and government officials be concerned that the US is the only advanced democratic country not to offer new mothers some guaranteed paid maternity leave? Why or why not?
- 12) For UK: Should policymakers and government officials be concerned that the UK's family policy package for new parents is less expansive than most all other European countries? Why or why not?
- 13) Who else may be helpful for me to talk to about these issues?

## Appendix C

Leah Persky is conducting dissertation research to fulfill the requirements for her PhD in political science from the University of Wisconsin—Milwaukee. The title of this project is: *The Making of Maternal and Family Leave Policies: The US and UK in Comparative Perspective*. The purpose of this research is to bring clarity to the policymaking process surrounding maternal and family leave policies.

This study has passed the UWM Institutional Review Board and has been assigned number 11.048.

Participation in this research is purely voluntary. Your participation will help contribute to our understanding of political processes and policymaking regarding family and medical leave. You may withdraw from the interview process at any time and for any reason. Should you have questions regarding this study please feel free to contact:

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Sincerely,  
Leah Persky, PhD Candidate

## Appendix D

### Timeline of Events

#### United States

- 1961 President Kennedy creates the Commission on the Status of Women with Executive Order 10980 to bring awareness to the discrimination women face in public life
- 1963 Equal Pay Act
- 1964 Civil Rights Act
- 1965 Equal Employment Opportunity Commission (EEOC) established
- 1966 National Organization of Women (NOW) created
- 1968 NOW files suit against the EEOC for poor record of following up on sexual discrimination cases
- 1972 Equal Rights Amendment passes both houses of Congress (only to expire in 1982)
- 1972 Equal Employment Opportunity Act, amended the Title VII of the Civil Rights Act of 1964 which gave the EEOC more power
- 1973 Pittsburgh Press v. Pittsburgh Commission on Human Relations (sex segregated help wanted ads become illegal)
- 1974 Geduldig v. Aiello
- 1976 General Electric v. Gilbert. This and the Geduldig case set precedent that employers can legally exclude pregnancy concerns from health and disability plans.
- 1976 The Campaign to End Discrimination against Pregnant Workers established
- 1978 California passes the Pregnancy Disability Leave. With this law women have the right to take up to 4 months from work after the birth of a child. They also have a right to return to their job at the end up their leave period.
- 1978 Pregnancy Discrimination Act. Amended Title VII of the Civil Rights Act, prohibits sex discrimination on the basis of pregnancy. This reverses the Supreme Court's decision in Gilbert and Aiello.
- 1980 President Carter holds Conference on Families to focus on the special needs of

American families and highlight the proper role of women in family and public life. This conference reinvigorates women's civil society activity.

- 1981 Rostker v. Goldberg. Supreme Court rejected President Carter's proposal that women be included in the Selective Service System so they could be drafted into military service.
- 1987 California Federal S. & L. Assn. v. Guerra (Lillian Garland Case).
- 1993 President Clinton elected
- 1993 Family Medical Leave Act signed into law by Clinton
- 1995 Bipartisan Commission on FMLA established to review impact of policy
- 2002 California becomes the first state to pass paid family leave policy
- 2004 March for Women's Lives, one of the largest protests in US history
- 2006 Washington State passes paid family leave (implementation delayed until 2015)
- 2008 New Jersey passes paid family leave policy
- 2010 Administrative Interpretation 2010-3 made changes to FMLA definitions and wording. Specifically, it established a broader definition for parent and family member. Also provided military families with more time off for caregiving/recovery.

## United Kingdom

- 1963 The Trade Unions Congress (TUC) creates a charter for working women to address the marginalized position of women in unions.
- 1968 Women's rights groups come together to celebrate the 50<sup>th</sup> Anniversary of women gaining the right to vote.
- 1968 Women strike at the Dagenham Ford Plant. The strike gained national attention about the issues of equal pay and sex discrimination in employment.
- 1970 Equal Pay Act
- 1970 Feminists stage protests at the Miss World Competition in London. Protest gained international attention.
- 1970 Women's Liberation Movement organizes the first national women's rights meeting
- 1970 Approximately 20,000 women strike in factories in Leeds to protest unequal treatment.
- 1975 Sex Discrimination Act
- 1976 Trico-Folberth Women Strike for equal pay
- 1979 Margaret Thatcher becomes Prime Minister
- 1981 Greenham Anti-Nuclear Strikes. Women protestors organize as mothers and caretakers to block storage of nuclear waste in US airbases in the UK. Strike ends in 2000, with more than 70,000 women participating.
- 1983 European Court of Justice v. UK. The Court finds that the Equal Pay Act is insufficient to address gender discrimination in employment and that the UK failed to comply with the EEC Equal Pay Directive.
- 1983 Equal Pay Act Amended
- 1983 The UK opposes the European Community Draft Directive on Parental Leave and Leave for Family Reasons
- 1984/5 Women's Mining Strikes
- 1987 Statutory Maternity Pay
- 1988 Hayward v Cammell Laird (Julie Hayward Case). Example of continued



discrimination of women in the workplace.

- 1989 UK failed to sign the European Social Charter of Workers which outlined Maternity Leave Rights
- 1992 Maternity Allowance. More women than ever before eligible for maternity pay.
- 1994 UK opposes the EU Pregnant Workers Directive, but is obligated to comply.
- 1997 Tony Blair becomes Prime Minister
- 1998 Tony Blair signs the Social Charter of the Maastricht Treaty
- 1999 Employment Relations Act introduces parental leave regulations and simplifies the body of maternity leave
- 1999 Maternity and Parental Leave Regulations
- 2003 Paid Paternity Leave
- 2006 Work and Families Act extends time off for Statutory Maternity Pay or Maternity Allowance and reduces eligibility requirements so more women can qualify for benefits
- 2010 Additional Paternity Leave becomes available creates gender-neutral leave to care for children up to one year old. New fathers can take up to 26 weeks off with some wage replacements.

## CURRICULUM VITAE

**Leah Persky**Education**PhD Candidate, University of Wisconsin-Milwaukee Department of Political Science, 2007- current**

Fields: public administration and comparative politics

Dissertation Title: "Family Policymaking in the US and UK from 1960 to 2010: A Comparative Analysis of Civil Society and Legal Frameworks from a Feminist Perspective"

Dissertation Committee: Natasha Sugiyama (chair), Jennifer Smith, Joel Rast, John Bohte and Erin Kaheny

Expected Graduation Date: May 2013

**M.A. International Studies, University of Denver, 2005**

Fields: conflict resolution, human rights, and Central America

Completed optional thesis: "Social Development in Belize: The Police Force and Human Rights Issues"

Thesis Advisor: Karen Feste

**B.A. Cultural Anthropology, Western Washington University, Bellingham, WA, 2001**Selected Fellowships and Research Awards

Graduate Student Travel Grant in Political Science from the University of Wisconsin, Milwaukee- March 2013.

Full scholarship and Teaching Assistant Position for doctoral study at the University of Wisconsin, Milwaukee- Fall 2007- 2011.

American Political Science Association Travel Grant- Fall 2011.

Graduate Student Travel Grant in Political Science from University of Wisconsin, Milwaukee- April 2009.

Foreign Language and Area Studies (FLAS) Fellowship-Summer 2008 (Awarded but Declined).

Paterson Scholarship at the University of Denver. This scholarship funds the expenses of international internships- Summer 2004.

## Research Experience

**Dissertation Field Research**, Washington DC (September- October 2010); England and Wales (January- February 2011) and Denver (March-April 2011).  
Dissertation research involved holding targeted interviews with civil society leaders, government officials, academics, and policymakers. I also conducted archival research.

**Research Assistant**, University of Wisconsin-Milwaukee. Conducted research on poverty alleviation programs with a focus on conditional cash transfer programs and their impact on women and mothers. I created a comprehensive database of these programs, including the gendered nature of their design and implementation. Research supported by Dr. Natasha Sugiyama- Summer 2008.

## Teaching Experience

**Instructor in Women's Studies, Metropolitan State College of Denver.** Teach upper- level undergraduate seminar titled Women's Health Issues. Covers issues ranging from the feminist movement, unequal access to health care for women in the US and around the world, environmental issues, and reproduction and childbirth- August 2011-present.

**Instructor in Political Science, University of Wisconsin-Milwaukee**  
Design and teach upper-level undergraduate course titled British Politics. Covers issues ranging from: institutional arrangements of government, multiculturalism in politics, the judicial system, and UK's relationship with the US and EU. This is an on-line course- August 2011-December 2012.

**Teaching Assistant in Political Science, University of Wisconsin-Milwaukee**  
Courses include: Politics of Latin America and Gender and Politics (2007); Politics of World Nations (Fall 2008); and Introduction to Political Science (2009- 10). **Online teaching assistant experience includes:** Introduction to Political Science Research and State Politics (Fall 2010); Introduction to Comparative Politics and International Political Economy (Spring 2011), and Methods of Political Science (Fall 2007) - September 2007- May 2011.

## International Experience and Volunteer Experience

**AmeriCorps Project Yes! Chicago, IL**  
November 2001- June 2002.

**Intern for the Human Rights Commission of Belize**  
Conducted interviews with over 80 police officers in Belize about human

rights. Evaluated effectiveness of human rights training using qualitative research methods. This was a service learning trip through the University of Denver- Summer 2004.

**Language Acquisition Course, Academic Programs International in Granada, Spain**  
Summer 2000.

**Semester of Peace and Conflict Studies with School of International Training in Ireland and Northern Ireland**  
Spring Semester 1999.

Skills and Qualifications

Proficient in Spanish, trained in the use of the statistical program STATA, advanced Microsoft Office and internet skills, experienced grant writer, qualitative research methods including elite interviews.