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German Family Policy and the Idea of “Wahlfreiheit”

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What are some traditional aspects of the liberal and conservative welfare state models?

How does the idea of “freedom of choice” influence German family policy?

Is family policy effective at encouraging women’s participation in the work force?

At 3.1 percent of GDP, Germany spends far above the OECD average on family benefits.¹ The biggest proportion of the total amount is spent in cash benefits, with two smaller amounts going to services and tax measures. The United States spends only 1.3 percent of its GDP on family benefits, with the largest proportion being spent on tax breaks and almost no money assigned to cash benefits.

Differences in spending are not the only contrasts regarding family policy in Germany and the U.S. They also differ significantly with respect to parental leave systems, maternal employment rates, and the number of children born in each country. While the conditions for starting families seem to be much better in Germany from a governmental support standpoint, the U.S. has a significantly higher birthrate, with 2.1 births per woman compared to 1.4 in Germany.² This essay does not address this phenomenon but it will try to shed some light on the distinctiveness of German family policy.

Conservative Welfare State vs. Liberal Welfare State

Welfare states in general can be divided into three main categories: liberal, socio-democratic, and conservative regarding the role of the family. Germany and the United States belong to two different categories: conservative and liberal, respectively. On family policy Germany has traditionally been classified as a conservative welfare state: the state provides the resources for families to thrive, but does not control the choices of how the family functions. In the U.S. where the market rather than the family is the arbiter, the state plays only a minor role compared to the market and citizens’ dependence on the market.³

Family policy in the liberal regime is regarded as gender neutral because social security is largely market-driven, while the conservative welfare state traditionally promotes the one-income, male-breadwinner family and encourages the female role of the homemaker and care-taker. Females gain access to social services primarily through their spouses.⁴ Despite changes over time, Germany may still be considered a prototypical example of a conservative welfare regime. Defending the stable nuclear family emerged as a particularly important political focus in the early Federal Republic. This was accompanied by a strong patriarchal order and a very traditional notion of the family and women’s role in it. For a long time German family policy followed the principle that a wife’s household labor was the equivalent of a husband’s work for wages outside the home. Until 1977 Section 1356 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) read as follows: “The wife does the housework in her own responsibility. She is entitled to work outside the home only as far as this is compatible to her family obligations.” Later this was changed to: “The spouses arrange the housekeeping upon mutual agreement. They are both entitled to work outside the home.” While politicians of all major parties acknowledged that democracy meant allowing women the freedom to choose, they also held the opinion that given a choice of places to work, women would naturally prefer the home. Attempts to expand women’s equal rights, including women’s job opportunities, were consequently met with little enthusiasm. Even today the presence of children is associated with upholding the old-fashioned structure of the one-income family while the dual career model is still widely met with skepticism. The result is a situation that creates a polarization between mothers and women of the same age without children.⁵

“Wahlfreiheit” as the Aim of German Family Policy

Having experienced two dictatorships that had actively influenced families and used child care facilities to exploit children against their parents, it is the state’s first priority not to intervene in families but to provide them with the best support possible for the living arrangements of their choice. The protection of marriage and the family is guaranteed as a constitutional right through the German Basic Law (*Grundgesetz*). The German term *Wahlfreiheit* (freedom of choice) means freedom of lifestyle for families with children in all respects: division of labor and responsibilities, care-giving, and upbringing. It ensures that individuals may arrange their terms of living without government interventions. Federal Constitutional Court decisions give the government the responsibility to enable parents to have a free choice between an occupation outside the home or full-time care-giving to their children.

The idea of *Wahlfreiheit* first arose in the 1970s. Until then, married women did not have a choice—as mentioned above it was specified in the German Civil Code that they were obliged to keep the house. Patriarchal principles denied any notion of a wife’s equality in marriage. For example, husbands were allowed to terminate their wives’ contractual agreements, including financial affairs and employment outside the home. While it was taken for granted that a wife’s principal contribution would be her non-wage work in the household, the husband in return was responsible for providing financially for his wife and family.⁶

Leave Arrangements and Monetary Benefits

On the pretext of *Wahlfreiheit*, the German state has always tried to set the agenda for social and moral norms through the implementation of laws and court decisions. Therefore, the state must also be seen as a legislator and sponsor of a range of social and care services, with an impact on the division of paid and unpaid labor and the construction of women as individuals, wives, and mothers. No matter how much one stresses family autonomy, political action for families mentally shapes specific family and employment models. In this respect, different aspects of state activity create strong incentives and disincentives for the division of labor and child care and women’s employment. Until very recently the state interpreted the concept of *Wahlfreiheit* to mean that it was necessary to provide parents with services enabling them to give up one job, and hence one income, once a child was born. It was assumed that given a choice between employment and family-care, women would naturally prefer taking care of their children at home. To fulfill these needs German family policy consists of two distinct pieces of legislation: One that regulates the time parents may take off from their regular employment for childrearing and another that regulates the monetary benefits provided for families.⁷

Family-related leave is divided into phases: maternity leave and parental leave. The former is an employment-protected leave of absence for employed women at around the time of childbirth—six weeks before the expected date of delivery and eight weeks after the child is born. Maternity leave is followed by parental leave, which is also an employment-protected leave of absence for up to three years after the child is born. However, as the name already implies, not only the mother but both parents are entitled to take parental leave alternately or at the same time. Unsurprisingly only a very small proportion of fathers (3 percent) take advantage of this possibility, while 85 percent of mothers stay at home for more than just the maternity leave period.⁸ The great advantage of both maternity and parental leave is that the person who takes the leave is guaranteed return to his or her previous employment after the given time. After parental leave parents are entitled to work part-time (between 15 and 30 hours a week) if they wish as long as their employer employs more than 15 people.

Leave Arrangements	Monetary Benefits
<i>Maternity Leave (Mothers only)</i> 14 weeks, 6 prior and 8 weeks after childbirth Employment protected	<i>Full wage paid through health insurance during Maternity Leave</i>
<i>Parental Leave (Mothers and Fathers alternately)</i> Up to 36 months after childbirth Employment protected	<i>Elterngeld (parental money)</i> Replacement rate of 67% of a parent's average earnings during 12 months preceding childbirth, up to a ceiling of €1800 per month. Sharing bonus: Both parents are equally entitled to the childrearing benefit but if the father takes at least two months of leave, the overall length is extended to 14 months.
<i>Right to part-time employment (between 15 and 30 hours)</i>	<i>Kindergeld (child allowance) up to age 18</i> 1st and 2nd child €184 3rd child €190 4th child and more €215
	<i>Kinderzuschlag (supplementary child allowance)</i> Paid in addition to the regular child allowance to parents who can cover their own living expenses with their income, but not those of their children.

In addition to generous leave policies, families that interrupt their wage-earning occupation receive monetary benefits as well. During the 14 weeks of maternity leave women receive their full wages, financed by their health insurance. Until 2007 this wage continuation was followed by *Erziehungsgeld* (child-raising allowance), which was means-tested and paid as a flat rate of €300 per month for families below a certain income threshold. Thereby it actually encouraged women to stay at home in order to keep the family income low, since the cash benefit, as opposed to small incomes, was not taxable. Moreover women who do not have an insurable employment are automatically insured through their spouse without additional payment, effecting additional savings. However in 2007 the *Erziehungsgeld* was abolished and a new cash benefit came into effect. The *Elterngeld* (parents money) implies that parents may take a paid leave of up to 14 months following childbirth from their employment position in order to care for their newborn child at home. While one parent can take up to 12 months, the additional two months are reserved for the other parent—hence the full amount of time can be taken only if the leave is shared between both spouses. As an income-dependent benefit, the amount of money received depends on the last income of the leave taker, which is replaced at a rate of 67 percent (up to a total of €1800). However, there is a basic allowance of €300 that all parents receive, regardless of their prior work status and income. This was made a condition by conservative government representatives who otherwise would not have supported the new law.

Ideological Shifts in German Family Policies

The invention of *Elterngeld* represents a major ideological shift in German family policy in several respects: length—or rather shortness—of the leave, the income-dependent replacement rate, and the incentive for fathers to take leave. The given time frame of 12 or 14 months, respectively, suggests that it is acceptable for parents to return to the workplace more quickly after the birth of a child. Thus women's labor market participation—before and after a child is born—is increasingly recognized. The income-dependent replacement rate is an incentive especially for parents with two incomes since they do not have to limit themselves to a single income after the birth of a child. Nevertheless the *Elterngeld* regulation still contains elements that are influenced by the aftermath of the prevalent one-income, male breadwinner model, for example the basic allowance for non-employed or low income spouses. When first introduced, the original idea was to share 12 months be-

tween both parents, including the two so-called partner months in the ration 10 + 2. Conservative representatives, however, were adamant that a mother needed the right to take care of her child for the first twelve months herself and therefore extended the total time span (and consequently the expenses) to fourteen month (12 + 2).

Other measures, such as taxation law and public child care, also contribute to the preservation of the traditional family model. The joint taxation of married couples means that the household income is divided by two and all incomes are taxed at the same marginal tax rate, which always leads to negative work incentives for secondary workers, usually women. Critics of this system argue that the relatively low labor force participation rate of married women in Germany is closely related to the negative labor supply incentives for secondary earners implied by the tax system.⁹ Also, there is repeated criticism that child care facilities are inadequately developed. There are not nearly enough places for children under three; many kindergartens have very short opening hours; and schools generally close at 1 p.m. Consequently, parents without support of their families or the budget for a nanny have not much choice but to stay at home. At least the current government has promised that in 2013 there will be a legal claim for sufficient child care facilities for children over one year old to meet the demands of the parents. Again conservative circles have imposed a condition: They agreed only on the condition that parents who do not make use of public child care facilities have to be granted cash compensation, so-called home care money, for taking care of their children themselves.

Conclusion: Real Wahlfreiheit is Impossible

Despite recent changes and ideological realignments one cannot yet speak of a general shift in German family policy. While some adjustments have been made, other core policies affecting gender equality and the gendered division of labor in society have not yet come under serious consideration. Paid labor and care work is still unevenly split between the sexes with predominantly men remaining responsible for the economic maintenance of the family and women remaining responsible for care taking while increasingly eking out the family income with part time work. However, there are external pressures that force the government to revise current family policy and its appropriateness. The most critical factors are certainly the continued decline in the birthrate and the ongoing debate about the difficulties of combining work and family responsibilities that remain major obstacles for women's integration in the labor market on an equal footing with men.

In this context it is necessary to closely examine the term *Wahlfreiheit* per se and ask whether the freedom of lifestyle for families with children in all respects is a realistic goal that can be reached through political action. Empirical data¹⁰ show that in spite of all the efforts there is still a wide gap between ideal and reality. The state so far has not been successful in creating structures that fulfill the actual demands of German families. Many mothers and fathers still practice a lifestyle that is contrary to their own wishes. While on the one hand a single income is becoming less and less sufficient to rule out the risk of poverty, on the other hand women are often unable to combine family and work in accordance with their own preferences. Although the generous leave and part-time policies enable them to spend sufficient time with their children, this entails also great disadvantages for women in the labor market. Not only is there a wider gender pay gap in Germany than the European average,¹¹ but women also lack career opportunities and are discriminated against regarding investments in their further training and promotion prospects¹² as employers refrain from investing in employees that have the opportunity to stay away from their work place over longstanding periods of time. At the same time, expectations should not be raised that in the future the state can sufficiently compensate for the lost wages of parents that decide to stay at home in order to care for their families. Hence, real *Wahlfreiheit* is impossible to establish and politicians should be more careful not to raise expectations that cannot be met.

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NOTES

- 1 OECD Family Database, available at <www.oecd.org/els/social/family/database> (24 August 2010). OECD countries spend on average 2.3% of their GDP on family benefits.
- 2 In 2008 Germany had 1.38 births per woman and the U.S. had 2.1 births per woman. See <<http://www.destatis.de/jet-speed/portal/cms/Sites/destatis/Internet/DE/Content/Statistiken/Bevoelkerung/AktuellGeburtenentwicklung,templateId=renderPrint.phtml>> and <http://www.indexmundi.com/united_states/total_fertility_rate.html> (24 August 2010).
- 3 Natalie Nitsche, "Explaining the Recent Change in Parental Leave Policy in Germany: A German-Austrian Comparison," *Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, MA, 31 July 2008.*
- 4 Ibid.
- 5 Constanza Ranci and Emmanuele Pavolini, "Transformation in Family-Work Models in Western Europe: Beyond the Male Breadwinner Model," *Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, MA, 31 July 2008.*
- 6 Robert G. Moeller, *Protecting Motherhood. Women and the Family in the Politics of Postwar West Germany* (Berkeley and Los Angeles: University of California Press, 1993).
- 7 Natalie Nitsche, "Explaining the Recent Change in Parental Leave Policy in Germany: A German-Austrian Comparison," *Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, MA, 31 July 2008.*
- 8 Bundesministerium für Familie, Senioren, Frauen und Jugend, *Gender Datenreport. Kommentierter Datenreport zur Gleichstellung von Männern und Frauen in der Bundesrepublik Deutschland* (2005), available at <<http://www.bmfsfj.de/Publikationen/genderreport/root.html>> (24 August 2010); Viktor Steiner and Katharina Wrohlich, "Familiensplitting begünstigt einkommensstarke Familien, geringe Auswirkungen auf das Arbeitsangebot," *DIW Wochenbericht*, No. 31 (2 August 2006).
- 9 Bertelsmann Stiftung, ed., *Vereinbarkeit von Familie und Beruf: Benchmarking Deutschland* (2002) and ifb-Familienreport, *Bayern 2009: Schwerpunkt Familie in Europa* (2009).
- 10 From the new Eurostat estimates (based on Structure of Earnings survey), it appears that there are considerable differences between the member states in this regard, with the pay gap ranging from less than 10% in Italy, Malta, Poland, Slovenia, and Belgium to more than 20% in Slovakia, the Netherlands, Czech Republic, Cyprus, Germany, United Kingdom, and Greece and more than 25% in Estonia and Austria. See <<http://ec.europa.eu/social/main.jsp?catId=685&langId=en>> (24 August 2010).
- 11 Patrick Puhani and Katja Sonderhof, "The Effects of Maternity Leave Extension on Training for Young Women," *IZA Discussion Paper No. 3820* (2008).

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