Equality-Promoting Parental Leave

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1. Introduction

Ideally, we would raise our families in a world in which we could easily respect three key values: the pursuit of individual plans and goals, the provision of parental care to meet dependents’ needs, and the achievement of gender fairness. But, in reality, liberal egalitarian feminists are confronted with difficult trade-offs between these values because existing social practices place them in conflict. In particular, such trade-offs seem necessary in the design of an ideal form of parental leave. Such a policy needs to respect the three key values in a manner that plausibly offers real power to significantly reduce unfair burdens that, due to the gendered nature of our societies, accrue to women who are also mothers.

It is widely assumed that the interests of newborns and infants are, in most cases, best served if they can be cared for by their parents in the first months, perhaps even the first few years, of their lives.1 Call this the good of parental care. Unfortunately, even when both parents are entitled to paid parental leave, it is much more likely to be taken up by mothers than by fathers. This is potentially harmful for several reasons: it is likely to lead to statistical discrimination2 against women in hiring and promotion decisions; it has a depressing effect on the lifetime earnings of women; it confirms the dominant gender ideologies that women’s priorities should be with their families whereas men’s should be at work; and it amounts to mothers continuing to do more caring work within the household not just for a short period but for many years. Liberal egalitarian feminists are also attached to an egalitarian ideal of gender fairness, which is very critical of the gendered division of labor whereby men do most of the paid work and women most of the unpaid work and family care. Call this the good of gender fairness. Yet, coercing people to split parental leave equally between mothers and fathers is not an appealing option since liberal egalitarian feminists also endorse the liberal value of allowing people to pursue their own ideas of a good life. Call this the good of individual choice. Is there a way to solve the tension between pursuing, in the field of parental leave policies, the three goods that are essential to liberal egalitarian feminists—that is, the goods of parental care, of gender fairness, and of individual choice?

The recognition of the tension between pursuing the good of parental care and the good of gender fairness in the design of parental leave in liberal societies has led policy-makers and scholars to search for a model that protects the interests of
children by supporting their parents to take care leave when children are very young and, at the same time, avoids all the leave being taken by mothers and none or very little by fathers. The hard question, with which both scholars and policy-makers have been struggling, is how to create incentives in the parental leave scheme that encourage fathers to take up more parental leave than they currently do.

In this paper, we provide a critical discussion of how the most progressive parental leave policies are doing with respect to the three goods that we identify as essential for liberal egalitarian feminism; we then offer our own model, which promotes the goods of parental care and gender justice by sacrificing as little as possible the good of individual choice. We proceed, in the next section, by briefly summarizing one of the most attractive models of parental leave, proposed by Janet Gornick and Marcia Meyers. While this model is attractive as far as the goods of parental care and of individual choice are concerned, the worry is that precisely because it allows parents a great deal of freedom, it is not sufficiently effective in advancing the good of gender fairness. In response to this problem, a new model of parental leave has recently been proposed by Harry Brighouse and Erik Olin Wright. We engage in a lengthy analysis of their proposal. Unlike the model proposed by Gornick and Meyers, the Brighouse–Wright proposal promises to effectively advance the good of gender fairness; however, it does this at the cost of sacrificing the good of individual freedom. We deem this sacrifice to be excessive. Moreover, in the third and fourth sections, we provide a detailed analysis of the likely micro- and macro-level consequences of the Brighouse–Wright proposal in order to show that, if it were implemented, it would often fail to advance the goods of parental care and of gender fairness at the same time. We conclude that our task should be to search for equality-enhancing parental leave policies that minimize the sacrifice of individual choice and do not backfire against either the good of parental care or the good of gender fairness. In the fifth section, we offer one such alternative proposal, which consists of a particular way of implementing the Gornick and Meyers policy by using the normative power of defaults when designing parental leave policies. We then evaluate the likely consequences of our “defaults proposal” at the micro level and, in the sixth section, at the macro level. We conclude that the defaults proposal is more desirable than the proposals by Gornick and Meyers and Brighouse and Wright.

2. Two Parental Leave Proposals

Janet Gornick and Marcia Meyers (2008, 324–25) have proposed that all employed mothers and fathers be granted the right to take 6 months of paid parental leave with job protection. Making each leave entitlement entirely individual and nontransferable increases the incentives for fathers to take up the leave; if they do not, they lose it. Parents should be entitled to take the leave part-time or full-time, and to spread it over several years. The Gornick–Meyers proposal (henceforth the G&M proposal) thus gives each child 12 months of parental care,
while providing a significant incentive for fathers to care. Thinking about how their proposal should be applied to single parents, Gornick and Meyers acknowledge that their proposal causes a dilemma: either single parents receive 6 months of paid leave—in which case the negative effects of leave taking for single mothers and partnered mothers would be the same, but the child of the single parent would receive less parental care—or single parents receive 12 months, with the reverse inequalities. They propose a compromise and suggest giving single parents 9 months of paid parental leave (2008, 347). While for an American audience the G&M proposal may perhaps sound utopian, this parental leave scheme is in fact very similar to, for example, the current Dutch parental leave policy, although single parents do not receive 1.5 times the leave, but exactly the same as every other employee who has a child.3

Harry Brighouse and Erik Olin Wright (2008) have recently joined the debate on the optimal design of parental leave schemes arguing for a rather radical parental leave proposal (henceforth the B&W proposal) which they hope will more strongly enhance gender fairness while also promoting the good of parental care. Their argument proceeds in three stages: first, they defend strong gender egalitarianism as the ideal of gender fairness; second, they show that parental leave policies can be classified according to whether they impede, enable, or enhance gender egalitarianism; and third, they formulate a specific parental leave scheme, which they believe will also enhance strong gender egalitarianism.

Brighouse and Olin Wright (2008, 363) define “strong gender egalitarianism” as “a structure of social relations in which the division of labor around housework and caregiving within the family and occupational distributions within the public sphere are unaffected by gender.” This form of gender egalitarianism is more demanding than a view of gender equality that only focuses on equal rights and equal opportunities. Strong gender egalitarianism requires that gender play no role in determining the division of labor, and should not influence the evaluation of men’s and women’s work. In their support of strong gender egalitarianism, Brighouse and Olin Wright are joining an enduring tradition in feminist theory, to which we also subscribe, and where this demanding standard of gender fairness has long been advocated and defended (e.g., Mill 1869; de Beauvoir 1949; Okin 1989; Bubeck 1995; Nussbaum 1999; Phillips 2001; Robeyns 2007; Gheaus 2008). In this tradition, the gendered division of labor represents a form of unfairness because women and men are pressured into particular gender roles by gendered practices of socialization, and by implicit or explicit norms and expectations. Embracing this tradition more or less explicitly, feminists from different disciplines have advocated a more egalitarian division of household labor and/or in particular of childrearing (Benjamin 1988; Hochschild 1989; Ruddick 1989). Throughout this paper, we assume that the only relevant gender differences with respect to childrearing abilities consist of the asymmetry between women and men with respect to pregnancy, childbirth, and breastfeeding; parental leave ought to take these differences into account, but should not be limited by any other gender differences.4
How can parental leave schemes contribute to the advancement of strong gender egalitarianism? Brighouse and Olin Wright (2008, 361–62) helpfully distinguish between three types of parental leave policies with respect to their actual outcomes. First, there are *equality-impeding policies*, like unpaid caregiving leave, which in the gender unfair world we inhabit contribute to sustaining and often even to the deepening of inequalities in the gender division of labor in the family. When only mothers take care leave, the inequality in the gender division of labor increases during the care leave. This also contributes to a long-term, more unequal gender division of labor since mothers become more skilled in hands-on care than fathers and lose some of their market skills and human capital. When parents are discouraged from taking leave, mothers are likely to give up their job or switch to part-time employment in order to care for their children. Yet, all things considered, such policies might be better than no right to leave at all, since the latter is likely to affect children negatively while also impeding gender fairness. Second, there is *equality-enabling leave*, such as generously paid parental leave, which is allocated to families as a unit rather than to individuals. Such leave enables couples to adopt an egalitarian division of labor within the family, but entails no pressure or incentive to do so. Third, *equality-promoting leave* is a policy that makes it attractive, or even tries to put some pressure on families to adopt a more egalitarian distribution of care and labor within the family. Brighouse and Olin Wright distinguish between two versions of equality-promoting leave. The moderate version entails incentives for men to take more leave than they would normally take under equality-enabling leave. Brighouse and Olin Wright believe that this policy does not exist anywhere, but give as an example the G&M proposal that both parents get 6 months of individual and nontransferable parental leave. This individual leave has a “take it or leave it” character: each parent can decide whether or not to use her or his individual leave, but cannot transfer it to the other parent. The radical version of the equality-promoting leave, which Brighouse and Olin Wright defend (henceforth the B&W proposal), makes the right to parental leave *conditional* upon the other parent taking up leave. Mothers would get 1 month of paid maternity leave to recover from childbirth, but would only be entitled to additional paid parental leave to the extent that fathers take it too (and vice versa), and up to a maximum of another 6 months per person.

Brighouse and Olin Wright do not say how their proposal would apply to single parents, and it is clear from the design that extending it to single parents poses a serious problem. This represents a serious shortcoming of their proposal given the large number of single-parent households, and given that most single parents are women. Thus, the question of how to establish fairness between single parents and dual parents is empirically closely related to the gender fairness question. Under the B&W proposal, the conditional character of the leave cannot, by definition, be applied to households with only one parent. Does this imply that single parents would not be entitled to any leave since there is no partner who can meet the conditionality requirement? Surely to deprive single parents entirely of parental leave cannot be justified since children from single parents are already in
many ways disadvantaged compared to children who have both parents. Moreover, single parents themselves—especially single mothers—are already disadvantaged compared to parenting couples, at least in material terms (Bergmann 2005, 153–73). Hence, the only plausible option would be to give single parents the leave unconditionally. This would be much fairer to single parents and their children than a policy that de facto gives single parents no leave at all. We will, therefore, assume in this paper that this is how the B&W proposal would extend to single parents.

The B&W proposal is attractive because it pushes our imagination to consider one of the very difficult tensions with which we started this paper—how to support parents in providing parental care to their newborns without reinforcing the gender division of labor. We agree with Brighouse and Olin Wright that the gender division of labor is harmful and unjust, that strong gender egalitarianism is the right goal to pursue and, therefore, very much applaud their attempt to solve the tension between gender fairness and the gender-inegalitarian effects of equality-impeding and equality-enabling parental leave. Like Brighouse and Olin Wright, we believe that we must look for equality-promoting parental leave schemes that have stronger incentives for fathers to care than the G&M proposal.

Yet, we believe that the B&W proposal does not succeed. A major objection to the B&W proposal is that their envisaged policy makes the social entitlements of individuals dependent on the will—possibly, on the arbitrary will—of another individual, thus creating an objectionable kind of dependency, which curtails individual autonomy. This also marks the B&W proposal as illiberal since it sacrifices too much of the good of individual choice for the sake of advancing the goods of parental care and gender fairness. Moreover, even if warranted, it is unclear that such a sacrifice would be worthwhile, as we argue in the next sections in which we concentrate on the likely unwelcome consequences of the B&W proposal.

The B&W proposal is meant for societies, which are structured by various gender norms, stereotypes, (self)expectations, statistical discrimination against women in the workplace, and virtually everywhere inadequate support for care. In the next two sections, we argue that in these societies, it would be best not to implement the B&W proposal for two main reasons. First, the B&W proposal relies on a notion of couples as fairly harmoniously cooperative units. If this idealization is removed, it is easy to argue that the B&W proposal has harmful effects on children and parents and will, in many cases, not advance gender fairness. Moreover, if implemented in a context with strong anti-feminist or anti-statist sentiments, it is likely that the B&W proposal will backfire, not just against itself, but also against other gender equality-enhancing proposals.

3. Couples as Harmonious Cooperative Units

In Western countries, gender norms and expectations with respect to the division of labor have changed considerably over the past decades. An increasing
number of men now wish to participate as equals in the hands-on care of their children, and they would be well-served by the B&W proposal to do so. Many men, however, are gender-conservative and so uninterested in, or even opposed to, doing care work. Because the B&W proposal would give these men too much power over their partners, it would have unacceptably harmful results. In some cases, it is likely that the policy would have self-defeating consequences, thereby entrenching, instead of eliminating, gender unfairness. In other cases, the policy would entail serious harm to the relationship between parents and children, to children themselves, and possibly to the parents’ relationship.

In this section, the general criticism that we level against the B&W policy proposal is that it assumes that couples are fairly harmonious cooperative units. This is an unrealistic model, which would lead to harmful consequences.6 The policy proposes that a good that is instrumentally very important to parents of newborns, that is, parental leave, be available to each member of the couple only conditionally—that is, if and to the extent that the other member is willing to use her or his parental leave. Because the parental leave is such an important resource for parents, making access to it conditional upon one partner’s willingness to cooperate gives the couple significant additional power over each other. As it happens, many couples do fight a lot and regularly use the power that they have over each other in harmful ways; often, the ensuing harm cannot but negatively affect the children.

Under the conditions of this proposal, in order for gender fairness to be effectively advanced, both parents have to be willing to take their share of parental leave. In addition, fathers, like mothers, have to be willing to take the leave in order to effectively do their share of the childcare (rather than for other purposes) or, at least, a significantly higher share than is currently the case. If couples do not cooperate to take the leave under the conditions specified by the policy (or if they cooperate in waiving the rights to parental leave as offered by the B&W policy), they have a number of possibilities to act, each of which, we argue, involves serious costs in terms of sacrificing either the good of parental care or that of gender fairness. Below we examine these possibilities. Given that most people do not embrace gender egalitarianism—or, at least do not agree upon standards of gender egalitarianism in child raising—the B&W policy is likely to be met with strong opposition by at least one member of the couple. This gives reason to believe that the all-things-considered unhappy scenarios sketched below are not only theoretically possible, but also rather likely:

3.1 Gender Conservatism

Many people are still attached to the good-mothering-ideal. They believe that what children need are mothers who stay at home as long as possible and certainly for the first years of children’s lives, and/or that women are naturally better at caring and/or that a woman’s proper place is at home, raising children and being a homemaker (and should only hold a job if this is financially necessary).7
According to this ideology, fathers’ hands-on care is less needed by children, men are less able to care well, and the “natural” duty of a man is to work in order to support his wife and children. When these beliefs are fully endorsed by both members of the couple, women—or at least women with children—do not, presumably, join the labor market at all. For these couples, the B&W proposal would not be harmful, but neither would it reach its gender equality-promoting goal. But milder forms of gender conservatism are compatible with women working before they have children, and then assuming, as mothers, the entire organizational and most of the hands-on responsibilities with respect to children. Under existing policies of childcare leave, these women take the leave and then return to work, possibly with reduced hours. The radical gender-egalitarian B&W policy, however, would give financially better off couples the incentives to fall into the full domesticity-for-women model. If fathers who cannot imagine assuming the role of a hands-on carer refuse to take the leave, mothers cannot take it either and so have to give up paid employment, at least while children are growing up.8 In this scenario, gender fairness is fully sacrificed since the B&W policy leaves no room for the currently dominant parental leave model in which mothers take all leave and then resume a (possibly reduced hours) job. While the current model is far from satisfying on gender-egalitarian terms, it is, however, much better, in terms of gender fairness, than the full domesticity model. It is very important for women’s earning power that they do not leave their jobs for too long, since long leave erodes their human capital and has lifelong depressing effects on earning potential and actual earnings.

### 3.2 Sacrificing Parental Care

Other couples, however, either do not endorse or cannot afford the full domesticity-for-women model. This may be, for example, because they cannot survive on one wage, or because both members of the couple are committed to holding a job. Under the B&W policy, if the father cannot square hands-on care with his masculine identity, or does not want to sacrifice career advancement and therefore refuses to take the leave, the mother will not be able to take it in paid form either.9 Such couples might organize the care for their newly born child to be done by other family members such as grandparents,10 or hire nannies or use day care centers. In this scenario, children as well as both parents are deprived of the chance to create an early child–parent bond and, therefore, of very significant relationship goods11 including the good of parental care. Arguably, this scenario does realize gender fairness since mothers and fathers are symmetrically situated with respect to childcare, but in a leveling-down sort of manner, by sacrificing the good of parental care. The obvious criticism of this way of realizing gender fairness is that very young children need the care of at least one parent.12 Moreover, since taking care of one’s child is a source of flourishing for many people, this scenario is also unappealing because it deprives mothers of an important source of flourishing that they can enjoy under alternative policy arrangements.
This is a particularly pertinent criticism given the much stronger assumption that Brighouse and Olin Wright themselves endorse; that actual caring (and not merely having the real possibility to care) is in general an important source of flourishing (Brighouse and Olin Wright 2008, 364).

3.3 Splitting Up

The above scenarios are likely in cases in which both members of the couple agree that men should not take parental leave and hence that mothers should either quit their jobs or waive their right to paid parental leave. These scenarios can also happen when partners have different initial preferences, refuse to cooperate under the conditions stipulated by B&W policy, and eventually agree to waive their rights to parental leave. But many couples, of course, do not manage to successfully negotiate common solutions; many end up separating or divorcing. The birth of a child often puts significant strain on a couple. Some couples do not do much advance thinking or discussion about how to parent. Disagreements about parenting, including disagreements about gendered norms, can precipitate separation. A policy as radical as the B&W proposal, which restricts the range of actual choice with respect to the family-work balance that couples face, can give the couple an additional reason to break up. Moreover, the B&W policy provides an incentive for divorce, since based on its only plausible interpretation, single parents get the leave unconditionally. While it might be better for people with deeply diverging ethical commitments to separate, and while it may be better for them to break up earlier rather than later, conflict and separation are not, as such, desirable goals—especially when they can easily have harmful consequences for innocent parties such as children. Exacerbating conflict by restricting the range of options available to the members of the couple when they do not easily agree on a common solution, and increasing the attractiveness of divorce are harmful unintended consequences of the B&W policy.

Another relevant question is how the leave will apply to parents who are in the process of separation. Separation and divorce are usually lengthy processes—often much lengthier than parental leave itself. In some cases, they can take many years before final (legal) arrangements are settled. During the course of this process, couples are anything but harmoniously cooperating units, and the power that they have over each other can be used for retaliation and revenge. People are not beyond using this power destructively even if children end up bearing much of the brunt. Any policy that gives additional power over each other to people who are already in a conflictual situation is problematic—especially if the conflict can have harmful consequences for innocent third parties.

Moreover, the B&W proposal, as we think it would apply to single parents, has additional problems. Recall that we argued that either the B&W would have to give single parents no paid leave at all, which would be outrageously unacceptable, or it would give single parents the paid leave unconditionally, which would definitely be fairer for single parents and their children. Yet, this second possibility
is also problematic for two reasons. First, it treats single mothers and partnered mothers unequally in an unjustifiable way. Single mothers get the paid leave without any negotiating or dependency on the cooperation of the fathers (this applies equally to the very small number of men who are single parents of newborns and infants). Second, it provides a significant incentive for women to either conceive a child without a father, or to separate or divorce before or very soon after birth in case the father is not keen on taking parental leave. Clearly, this cannot be a desirable effect. Most importantly, by providing incentives for separation and single parenthood, the B&W proposal is likely to compromise, rather than advance, the goods of parental care and gender fairness. Single parents typically have less time to spend with their children than partnered parents, and single motherhood puts women at higher risk of poverty.

Note that it is enough for only one member of the couple to be a gender conservative, ready to sacrifice parental care or be willing to split up, for one of these three scenarios to happen. Therefore, the above scenarios pose a real worry, and would only become much less likely if couples were fully harmoniously cooperating units, which we believe to be a romanticized view of reality.

To conclude, we object to the B&W proposal because it fails to advance its goal of concomitantly enhancing gender fairness and promoting the good of parental care, independently of the degree of gender conservatism of given families. Moreover, it presupposes that parents are successfully cooperating units and leaves the actually existing couples—which in reality are engaged in continuous negotiation—with too few, and too radical, choices. In other words, the policy proposal advanced by Brighouse and Olin Wright is too much of a black-and-white offer to parenting couples. Some couples might indeed choose to go for the solution of a gender-egalitarian arrangement of childcare. But under the added pressure of radical choices imposed by the B&W policy, many other couples would either settle for solutions that waive their right to paid parental leave, or comply only with the letter of the policy but not with its intent, or entirely collapse as a couple.

In this section, we looked at the likely micro-effects of a B&W policy that would apply to a society transitioning from less to more gender egalitarianism. Given the gender fairness-promoting aim of the B&W policy, it is equally important to consider its effects at the macro level; that is, at the level of the general social ethos. Would the B&W policy advance gender egalitarianism, because it encodes it in the law and thus legitimizes it, as its authors hope? Would it, by contrast, delegitimize gender egalitarianism by antagonizing many people and fueling anti-feminist feelings? As we will see in the next section, answering these questions raises further concerns with the B&W policy proposal.

4. Fueling Anti-Feminism

Not only is the B&W proposal undesirable, but the attempt to implement it will likely have unwelcome consequences. Apart from its failure to advance the
goods of parental care and gender fairness in many cases, the B&W proposal will also have self-defeating effects at the macro level in society. These effects derive from the illiberal way in which the B&W proposal attempts to advance a strongly gender-egalitarian agenda. In present-day societies, the strong gender-egalitarian agenda is (correctly) strongly associated with the feminist movement, and thus the B&W proposal will (correctly) be perceived as a feminist policy.

Nevertheless, Brighouse and Olin Wright (2008, 370) themselves point out that feminists will be very reluctant to support the B&W proposal since it makes women’s options dependent on men’s choices. Yet, the real opposition is to be expected from individuals, feminist or not, who are strongly committed to the value of individual freedom and to the ideal of protecting citizens from state interference. Among those groups, which in most western societies may well comprise the majority of the population, there is a serious danger that the illiberal character of the B&W proposal will backfire. Citizens may become outraged with the governments’ attempt to interfere in their family and gender arrangements; this will discredit not only the policy itself but also the intentions behind it. If implemented despite sufficient societal support, the B&W proposal could discredit the goal of equal parenting that it embodies, which would jeopardize the chances for success of any equality-promoting parental leave policy.

Moreover, the B&W proposal risks starting a backlash against gender-egalitarian policies more widely. Many gender-egalitarian and feminist policies are explicitly promoting the good of individual choice and, therefore, respect that key liberal value, in contrast to the B&W proposal. If the B&W proposal is perceived as an exemplar of feminist or gender-egalitarian policies, it will make citizens more reluctant to be part of a movement that they consider disrespectful to people’s legitimate views of the good life. The B&W proposal, perceived as an exemplar of feminist or gender-egalitarian policies, will fuel anti-feminist sentiments, which will make it more difficult for other feminist policy proposals to succeed. The unfortunate equation of the illiberal element of the B&W proposal with a wider range of feminist proposals is not unlikely, given that in public debates different proposals and policies are all lumped together. If the B&W proposal wants to be a credible proposal for the real world, then it also needs to take into account these strategic considerations. Our contention is that the B&W proposal is likely to fuel anti-feminism in a very unproductive manner, thereby also alienating people with whom feminists and egalitarians should form partnerships and alliances in their quest for a gender-just world.

5. The “Defaults Proposal”: The Micro Level

Fortunately, gender egalitarians need not despair. We criticized the B&W proposal for equality-enhancing parental leave and concluded that this would be a harmful and strategically unwise proposal. Yet, we do share the normative goals of the B&W proposal: promoting the goods of parental care and gender
fairness. As we have defended in our own previous work, we are committed to a notion of gender fairness that is virtually similar to the notion of strong gender egalitarianism (Robeyns 2007; Gheaus 2008). We also agree with Brighouse and Olin Wright on the importance of devising equality-promoting parental leave policies. Yet we believe that it is possible to create equality-promoting parental leave policies that are more consistent with respecting the value of individual choice, without incurring unacceptably harmful unintended consequences, and without discrediting the ideal of equal parenting or other feminist ideals. What would an equality-promoting parental leave policy that meets these conditions look like?

We have already introduced Gornick and Meyer’s individual, nontransferable, paid parental leave for 6 months. The question is whether the “use it or lose it” G&M proposal is the best that we can do to create incentives for fathers to take up leave. We know from current practices that fathers are much less likely to take the same amount of leave as mothers; even in countries like the Netherlands or Sweden where the leave is individual and nontransferable, and where it is (partly) paid, fathers take much less leave than mothers do. Is there something more that we can do to motivate fathers to take the leave than only making it paid rather than unpaid, and making it entirely nontransferable? This is one of the difficult questions that strong gender egalitarians need to answer.

We believe that there is at least one way in which we can strengthen the incentives for fathers to take up the leave, and that is by making use of the behavioral and normative power of defaults (Robeyns 2009). A number of so-called “natural experiments” have shown that when it comes to public policy, it matters a great deal what the default option is; that is, what will happen if a person does not actively choose another option (Thaler and Sunstein 2008). For example, in the case of organ donation schemes, it makes a big difference whether the default is that everyone is an organ donor, or whether the default is that no one is an organ donor. In the first case, the opt-out system, everyone is assumed to be an organ donor except if one actively chooses the alternative option, which is not to be a donor. In the latter case, the opt-in system, everyone is assumed not to be a donor, except if one actively chooses to be a donor. Natural experiments have shown that in both cases, many more people choose the default position than the non-default position. In the opt-out system, the majority of people are donors, whereas in the opt-in system, the majority of people are not donors. The differences are large: in countries with an opt-out system, the donor rates are between 85.9 and 99.9 percent; whereas in countries with an opt-in system, the donor rates are between 4.2 and 27.5 percent (Johnson and Goldstein 2003, 338). Similar effects on the choices that people make have been registered for pension saving systems. If employees can freely choose whether or not they join a pension scheme, and yet being part of a pension scheme is the default option, then many more people will be part of such a pension scheme. For example, an American study showed that by changing the default for participation in a 401(k) scheme to automatic enrollment, implying that one would need to actively opt out if one did...
not want to participate, has led to a drastic increase in the number of people participating in this pension saving system (Madrian and Shea 2001).

Why do defaults have such a strong effect on the choices that people end up making? The first reason is that choosing an option other than the default has costs. These may be the time and financial costs of gathering the information needed to make the decision, but also, and possibly more importantly, the psychological costs of having to make a decision in a situation in which there is already a choice being made as the default. Second, the default has normative importance: it may be understood as the option that society or the government holds to be morally or prudently most worthwhile, or (in the case of pension savings) it may be understood as good investment advice. Johnson and Goldstein (2003) also point out that the power of defaults can only be understood when preferences are not conceptualized as given, but as being, at least to some extent, socially constructed. The first view assumes that people have *a priori* formed preferences regarding what they want; whereas on the latter view, people only form their preferences when being asked or being put in the situation to make a choice.

How could these insights be applied to the case of parental leave? In countries with paid maternity leave, mothers are currently being forced to take the leave necessary to recover from childbirth, but are also given by default some additional weeks that are not needed for physical recovery. In the case of the Netherlands, which is similar to many other European countries, women are entitled to a total of 16 weeks of fully paid leave. They can choose to take 4–6 weeks of leave before the due date, and are entitled to the remainder, hence 10–12 weeks after the due date. Yet, there is a consensus in the medical literature that mothers who just gave birth need 6–8 weeks to recover physically from childbirth. Suppose a mother needs 4 weeks before childbirth (pregnancy leave) and 8 weeks after childbirth (labor recovery leave), this implies that another 4 weeks of what we could call birth leave are automatically granted to her, without giving her the possibility to opt out of this leave. Fathers and co-mothers (i.e., partners of lesbian mothers) are given 2 days of paid leave at birth. We have argued, on the same premises endorsed by Brighouse and Olin Wright, that this is an unjust arrangement, and that the best way of rectifying the injustice is by also granting fathers and co-mothers 4 weeks of optional paid leave *by default* (Robeyns 2009). In other words, just as the pregnant women are now allocated 16 weeks of leave when they inform their employers of their due date of birth, their partners should be allocated 4 weeks of birth leave when they inform their employers of the due date of the birth. Both mothers and fathers would be able to opt out of this default, but would need to actively take steps to do so. The leave for fathers is allocated immediately upon the birth of the baby, so that the father is able to take care of the mother and child, and will not lose the crucial experience of being with the baby in the very first weeks of her or his live. This will strongly encourage him to learn the necessary hands-on caring skills for newborns which, in turn, may have long-term egalitarian effects on the gender division of labor within the family. This particular way of shaping a default model of parental leave will promote both the goal of
parental care and the goal of gender fairness without violating the goal of individual choice since people can opt out of the default.

The use of defaults in this proposal to reform maternity and birth leave can be extended to longer-term parental leave. Imagine an online care leave registration system that allocates women both the maternity and the birth leave weeks, and an additional number of parental leave months, for example, 5 months for each parent. We propose that by default women get their 5 months of parental leave immediately following the 4 weeks of birth leave. They can, therefore, be with the baby during her or his first 6 months, making it easier to breastfeed, should they decide to do so. Fathers would get their 5 months of parental leave by default at the end of the mother’s default overall leave, that is, 6 months after the baby is born. This arrangement would allow parents some common leave time, during the first 4 weeks after the baby is born, but also significant leave for fathers on their own, which is important if men are to develop the same levels of parental competence and skills as mothers, and if mothers are to learn how to share childrearing with fathers.

Currently, women are required to inform their employers of their due date. In our proposal, a woman who gives her employer this information should fill out a standard Parental Leave Agency form, which will also contain information on the father. Both the prospective mother and the prospective father will receive a letter granting them access to the online Parental Leave Registry. The dates, as defined above, will be found there as the default. Both parents can change the default parental leave as long as they do not take more than 4 weeks simultaneously. The reason is that having both parents on leave for extended periods of time carries a high risk of reproducing the traditional gendered division of labor within the household. Parents can also each take part-time leave, thus, for example, each taking 10 months half-time leave and half-time working, after the maternity leave is finished. Through its limitation of parents’ choice, this model sacrifices some of the good of individual choice in order to advance the other two goods to which liberal egalitarian feminists are committed: the good of parental care and the good of gender fairness. The sacrifices of the good of individual choice are much less significant than in the case of the B&W proposal.

Some readers will worry that our proposal downplays, and thus unfairly fails to reflect, the differential burdens of babies’ mothers and fathers. Are a few weeks always enough to recover from birth? What about the additional burden of breastfeeding? It is true that sometimes women need longer to fully recover after birth and be able to work again, especially if they breastfeed. Since there is much variation among women’s post-partum health and legitimate choices over breastfeeding, we cannot address it at the level of generality of our defaults proposal. In cases when women need significantly more time to recover from birth before they can work again, medical leave should be available; institutional regulations should be able to address the specific needs of mothers who continue to breastfeed after resuming work outside the home.
The proposal that we defend here is immune to most, if not to all, the criticism leveled against the B&W proposal. It does not make the parents’ entitlement to leave dependent on the arbitrary will of another. At the micro level, a woman whose partner does not want to take the leave would not be entirely pushed out of either the workforce or early childcare, and it would not provide perverse incentives for divorce. Because it proposes a significant amount of parental leave to be taken by fathers on their own, it does not make the use of parental leave for non–child-related activities more likely than it already is (while, of course, it cannot preclude it either). Like the B&W policy, the defaults policy would be unable to guarantee that everybody’s parenting becomes gender-egalitarian. Prospective fathers could still choose to give up their leave at a very small cost. But it is this very feature—the relatively trivial cost of giving up the leave—that makes the defaults proposal sit more comfortably with the liberal value of personal choice than the B&W proposal. Moreover, as we argue in the next section, the default proposal also avoids the negative effects at the macro level that plague the B&W proposal.

6. The “Defaults Proposal”: Macro-Level Effects

The defaults proposal is likely to have at least three desirable macro-level effects. First, the defaults policy would shift the costs from fathers who want to take the leave to fathers who do not want to, which is in itself a contribution toward dismantling the gendered division of labor and hence toward gender fairness. Second, it would give greater flexibility to couples in deciding on their care-work arrangements than the B&W proposal does, which is an attractive way of advancing the good of individual choice. Third, it would hopefully change the social ethos toward a general expectation that parents share childcare in an egalitarian way. The first and third effects would recommend the defaults policy over the original G&M policy. The second and third effects would render it comparatively better than the B&W policy.

The first advantage of the defaults proposal is the shift of costs from fathers who want to take the leave to fathers who do not want to. If parental leave is an entitlement which has to be actively claimed by parents, the costs of taking the leave is being paid by those fathers who want to make use of the leave and who thus risk being perceived as less committed employees. The default proposal would shift these costs from the men who wish to take the leave but are currently discouraged from asking for it, to the men who do not wish to take the leave and, therefore, would have to undertake active steps to opt out of the leave, which is allocated to them by default. Given that men’s take-up of parental leave is highly desirable as promoting both the good of parental care and gender fairness, shifting costs from the former to the latter is a welcome consequence. Moreover, the overall costs of taking the leave are most likely to be lower under our proposed policy than under the current default. Some men are arguably discouraged from taking leave since they fear, realistically or not, that using leave might jeopardize
their career. Under our proposed policy, all that men who do not want to take the leave would need to do in order to waive the right to leave, would be to go through the procedure of de-registering from the system. This is a lower cost than that of being perceived as a non-committed worker, and risking the ensuing career damage.\textsuperscript{24} (One should note, however, that the lower the cost of opting out, the lesser the incentives to go on parental leave in our proposed policy.) The men who opt out of the default will also have to directly face the loss of the opportunity to spend crucial months with their children at home and will, therefore, have to be more reflective about their parenting choices.\textsuperscript{25}

Incidentally, the default proposal would also shift costs from employees who in the original G&M and the B&W proposals have to explicitly ask for parental leave, to employers who will either have to bear the costs of persuading their male employees not to take the leave, or else will bear the inevitable costs of employees taking parental leave.

The second advantage of our defaults proposal is the greater flexibility that it gives to parents to choose and organize their care/paid work arrangement. Under our proposed policy, the model of dividing early childcare between the members of the couple is only a default, that is, a \textit{proposed} model. This carries the advantage of allowing a high level of flexibility for couples to organize leave around their individual needs and conceptions of a desirable work-family balance. Thus, it would accommodate couples that prefer to intercalate periods of leave and working time, or who want to have both parents on continuous part-time work after the birth leave is over. An important minus of the B&W proposal is that it \textit{requires} people to intercalate paid work and paid parental leave in order for the conditionality to work. Under the B&W, a couple cannot divide the leave into 5 continuous months for the mother followed by 5 for the father, since the father might just bail out once the mother’s leave is over and the whole arrangement would thus collapse into the “use it or lose it” type of policy. However, intercalating short periods of paid work and leave can be extremely impractical for many people, both because many jobs require continuity, and because there are transition costs to switching between paid work and parental leave.

Like the B&W proposal, the default proposal is likely to be met with opposition. We estimate, however, that opposition to the defaults policy would be much weaker since, unlike the B&W proposal, it cannot be perceived as taking away an existing entitlement (i.e., mothers’ right to have paid leave independent of other people’s choices). Since it does not give additional power to men over their partners, it is not likely to antagonize feminists; and since it allows for more individual choice, it need not antagonize liberals either.

Finally, the defaults policy will hopefully change the perception of fathers on leave from deviating and uncommitted workers to an expected and fairly widespread reality.\textsuperscript{26} Defaults often work by signaling what is socially or morally understood to be good or beneficial. Giving both parents 6 months of paid parental leave by default signals that this is what is good for parents, children, and society. It also signals that the government takes parenting, and parental care of infants in
particular, seriously. With a bit of luck, we may thereby move one step closer to a society in which care is at the same time valued as it should be and distributed more justly. The defaults proposal is more likely to contribute to this cultural transformation than either the original G&M proposal, which does not offer sufficient incentives for promoting gender fairness, or the B&W proposal, which provides objectionable incentives for gender fairness. There is some anecdotal evidence that policies that give stronger incentives to fathers to take parental leave make some headway against traditional attitudes toward men, childcare, and employment.27

Yet in the end we agree with Gornick and Meyers that our predictive powers are limited, and thus we cannot know for sure what macro-effects the defaults position would have. In line with Gornick and Meyers’ (2008, 345) suggestion to implement their blueprint for reform and return to the drawing board if it does not deliver what they predict, we would like to suggest the following: why not implement the default proposal and see what happens? If our analysis has been correct, we may observe some long-awaited changes in the gender-care-employment constellation.

Previous drafts of this paper have been presented at the University of Wisconsin at Madison, and at the Centre de Recherche en Éthique at the University of Montreal. We thank our audiences for helpful discussions and comments. In particular, we are grateful to Harry Brighouse, Daniel Engster, Erik Olin Wright, Anders Schinkel, Jurgen de Wispelaere, and two anonymous reviewers of the Journal of Social Philosophy for comments. The financial support of the Netherlands Organization for Scientific Research (NWO) is gratefully acknowledged.

Notes

1 In this paper, we will simply assume that parental leave can be justified. We cannot engage here with the difficult question of whether infants should get care exclusively from their parents.

2 Statistical discrimination is discrimination of a person on the basis of the perceived or real characteristics of groups to which they belong, rather than on individual information (which may not be available). For example, if women are more likely than men to drop out of the labor force when becoming a parent, or if women are perceived as being less loyal employees than men, then employers will discriminate against all women including those whose behavior does not correspond to this statistical mean or median behavior.

3 In the Netherlands, each employed parent is individually entitled to 26 weeks of parental leave, either on a full-time or part-time basis. The first 13 weeks may or may not be paid, depending on what the social partners (employers’ organization and labor unions) have decided in the sector-level collective labor agreements. In many sectors, the first 13 weeks are paid, including for all civil servants (being the largest group of employees in the Netherlands). The additional 13 weeks, which were only introduced in 2009, are unpaid. In Sweden and Norway, all fathers are entitled to 7 weeks (Sweden) or 6 weeks (Norway) of “take it or leave it” paid leave while other countries offer a more modest 2 days to 4 weeks of such leave (Ray, Gornick, and Schmitt 2009, 12).

4 This is certainly a controversial issue since many believe that gendered differences are various, entrenched, and perhaps unavoidable. In this paper, we cannot engage with the complex questions of how real gender differences are, whether they are due to socialization or biological makeup, and
the normative implications of such differences. Some scientists have argued that gendered differences are "hard-wired," but other scientists have contested both their results and their methodologies. For a recent critical account, see Fine (2010).

5 As was noted in footnote 3, this policy does in fact already exist in several European countries, though none of these existing policies extends it to the 6 months that the G&M proposal envisions. Both in Sweden and in Germany, for instance, 2 months of the parental leave cannot be transferred to the other parent and is, therefore, "use it or lose it" leave (since 2002 and 2007, respectively).

6 How harmful the consequences would be would of course depend on the preexisting leave policy. Given the current situation in the United States and the UK, the B&W proposal would not make people worse off with respect to financial entitlements. Since the B&W proposal refers to paid leave only, it would still allow mothers to take unpaid leave should they fail to convince their partners to take leave as well.

7 For general perceptions of mothering as a natural woman’s occupation, see Ruddick (1989); for the ideology as well as the misgivings of domesticity, see Williams (2000).

8 We are aware that we are writing this paper as if we identify “family” with the “normal” heterosexual couple, and dispel this impression by saying that it is the model of the heterosexual couples that gives sense to the B&W policy proposal in the first place.

9 Brighouse and Olin Wright themselves acknowledge that, under conditions of hegemonic gender conservatism, their proposed policy would not be beneficial.

10 In some societies, like Romania, care by grandparents is still a widespread practice.

11 See the work of Brighouse and Swift (2006) on the importance of relationship goods for both children and parents.

12 According to many child development psychologists, it is better for children if they are in parental care during the first year of their life. See, for example, Waldfogel (2006, chap. 2).

13 The current divorce rate in the United States is about fifty percent, according to http://www.divorcerate.org/ (last accessed November 24, 2009). For qualitative research on how the inability to successfully negotiate a division of domestic labor is a significant cause of separation, see Hochschild (1989).

14 A revised version of the B&W proposal might decrease the leave given to single parents to the level where the B&W does not represent an incentive for divorce. However, assuming that single parents and their children already suffer from relative disadvantage, this measure would be unfair according to most, perhaps even all, accounts of social justice. If single parents got shorter leave than parents who form a couple, then the gender egalitarianism embodied in the B&W proposal would be realized at the cost of other forms of social injustice.

15 Bergmann (2008, 352) reports that in Sweden forty percent of fathers take no leave at all, and almost two-thirds take less than the 2 months’ nontransferable paid leave to which Swedish fathers are entitled.

16 Sweden has recently introduced an equality-enabling parental leave policy in the form of a tax bonus for more equal sharing of care work (Ferrarini and Duvander 2009). (We are grateful to Daniel Engster for this reference.) The defaults policy that we propose in this paper can be seen as a different and possibly complementary one to the Swedish equality tax bonus policy.

17 Natural experiments are studies in which differences in the real world are used to derive conclusions, which cannot be derived through controlled studies. In the field of social policy research, this often amounts to comparing the differences in effects between policies that differ across communities, cities, states, or regions (e.g., Waldfogel 2006, 7–8).

18 The success of the organ donation policies has sometimes been compromised by post-mortem opposition from the donators’ families. Of course, it is a separate question whether such opposition is legitimate. The limited success of the organ donation policies due to families’ opposition does not undermine the fact that default policies have, as such, the ability to nudge individuals toward certain behavior.

19 Strictly speaking, these additional weeks are not compulsory since there are ways to opt out of them, but these options are not (or they are very badly) communicated to mothers. Moreover, there is a
silent assumption among all healthcare workers involved with the pregnancy that the mother will take the full leave.

20 In the Netherlands, mothers are forced by law to take 42 days, that is, 6 weeks, of leave after the day of birth.

21 The choice to breastfeed introduces a bias in having the mother do the hands-on care for the child in the early months, and hence requires a sacrifice in terms of advancing the good of gender fairness. We assume that breastfeeding brings sufficient benefit in terms of the baby’s health to warrant this sacrifice.

22 Recent empirical research suggests that taking parental leave soon after the birth of a child helps fathers to bond with their children and acquire caring skills (Coltrane and Adams 2008).

23 According to the report by the Equality and Human Rights Commission (EHRC 2009), forty-five percent of men fail to take 2 weeks’ paternity leave after the birth of their child, mostly because they think they cannot afford it. Two in five British fathers feel that asking for flexible working arrangements would result in them being seen as non-committed workers or that it would negatively affect their chances of promotion.

24 See the study by Albrecht et al. (1999) who have shown that in Sweden men who take parental leave are disadvantaged in their subsequent career path in terms of earnings and promotions. See footnote 26 for some evidence that additional policy incentives for fathers to take leave may be changing this situation.

25 We are grateful to an anonymous reviewer of the Journal of Social Philosophy for noticing this welcome effect of the defaults proposal.

26 The more this effect will obtain, however, the higher the costs of opting out of the system will be for fathers who do not want to take the leave. Thus, the first and the third macro-effects are mutually limiting.

27 According to a recent newspaper article (Sachs 2010), Sweden introduced additional financial incentives for fathers who take parental leave. The general message that fathers’ care is valuable expressed by this policy, together with the increased number of men who take the leave, is slowly shifting both employees’ and employers’ expectations. We believe that paying bonuses to men who decide to make use of parental leave is a suboptimal solution, and that a default like the one suggested in this paper offers a fairer and more stable type of incentive.

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