

**A PUBLIC CHOICE PERSPECTIVE
OF THE PAID PARENTAL LEAVE BILL:**

**THE USE AND ABUSE OF NEOCLASSICAL
ECONOMIC THEORY**

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I INTRODUCTION

The International Labour Office (ILO) notes that women's worldwide economic activity rates have increased from 54 per cent in 1950 to 66 per cent in 1990 and in developed regions they are expected to exceed 80 per cent by the year 2010. By 1990 the pattern of women's economic activity rate had also changed. The number of women spending their childbearing years in paid employment is escalating.¹ These trends are also evident in New Zealand. Between 1986 and 1996 the labour force participation of women whose youngest child was less than one year old increased by 7.9%, the increase for women with children aged between one and four years was 10.6%.² This trend highlights the need for adequate parental leave.³

Not only is maternity leave and appropriate medical care essential to enable a woman to retain or regain her health and to return to work, but income replacement during her leave period has become indispensable for the well-being of herself, her child and her family.

The notion of the 'male breadwinner' has become a myth of the past. Nowadays an increasing number of households throughout the world depend on two income earners in order to maintain a suitable standard of living. In many cases women's earned income is vital for the survival of the family.⁴ The ILO acknowledges maternity as a social function entitling women workers to special protection as a condition for non-discrimination in employment,⁵ and presents the following challenge for member states:⁶

... to ensure that in the 21st century maternity protection achieves the double goal of safeguarding health and ensuring employment rights in order to enable men and women to work together on the basis of equality.

Paid parental leave is widely regarded as an important means of advancing the double goal of safeguarding health and ensuring employment rights. There has been mounting pressure for New Zealand to adopt some form of paid parental leave for some time.

¹ International Labour Office (ILO) *Maternity Protection at Work: Revision of the Maternity Protection Convention* (Revised) 1952 (No 103) and Recommendation 1952 (No 95) ILO Conference 87th Session (ILO, Geneva, 1999) 5.

² Statistics New Zealand and Ministry of Women's Affairs *New Zealand Now: Women* (Government Publisher, Wellington, 1998) 86.

³ ILO, above n 1, 10.

⁴ ILO, above n 1, 9.

⁵ ILO, above n 1, 16.

⁶ ILO, above n 1, 16.

In February 1998 the ILO issued a report which showed that New Zealand is one of only six developed countries in the world which does not provide paid parental leave.⁷ women's magazines took the issue on board and a proliferation of parental leave articles resulted, informing women of the issues and garnering their support. There has been an intensely strong lobby by the 12 Weeks Campaign – a private interest group with diverse members. This campaign group has lobbied for 12 weeks' paid parental leave on the basis of its considerable benefits to children, women and families, and society in general.

One of the few other developed countries which does not provide paid parental leave is the United States. In this context Nancy Folbre claims that citizens of the United States are currently underinvesting in human capital as well as “flouting [their] collective moral obligation for children's welfare”.⁸ This paper makes the same argument in respect of citizens of New Zealand.

Section II of this paper outlines the current New Zealand situation with regard to paid parental leave, in particular the legislative and employment contract provisions will be detailed. Section III briefly considers how New Zealand's paid parental leave provisions measure up internationally. In Section IV the technical details of the Paid Parental Leave Bill will be outlined followed by a description of the political progress of the Bill. Section V uses neoclassical economic theory to make a case for the legislative provision of paid parental leave. Specifically, it is argued that the care of children can be regarded as a public good with positive externalities for society arising from secure attachments between parents and infants, increased breastfeeding and reduced daycare. In addition the care of children has negative externalities in the form of women's disadvantageous labour market position. Section VI describes how the National Government and business/employer groups used neoclassical economic theory to oppose the Bill and portray it as economically inefficient and too costly to implement, and shows why their arguments are wrong. Further it is argued that economic theory, ostensibly used in the public interest, was actually used to disguise the pursuit of self-interest in both cases. Section VII explores the explanatory power of public choice theory in the context of the Bill. The essential question posed is whether public choice theory can

⁷ Laila Harré, industrial relations spokesperson, Alliance (news release 2.3.98, Wellington).

⁸ Nancy Folbre “Children as Public Goods” (1994) 84 *American Economic Review* 86, 89.

account for the failure of the Bill to progress beyond the select committee stage. This entails consideration of the relative weights of interest group influence, the government's re-election motive, and the government's ideology or desire to make good public policy, in determining the fate of the Bill.

According to the Ministry of Women's Affairs,⁷ there have been four critical stages in the development of parental leave in New Zealand.

1. The initial introduction of parental leave in 1948 was limited to married women working in the public sector.⁸ It was aimed primarily at encouraging teachers in native schools to continue working. A cutting from *The Evening Post* (1 November 1947) described it in the following way. "Many of these schools are staffed by both husband and wife and if the wife continues teaching after the birth of a child, it will be an important factor in helping solve accommodation difficulties."⁹
2. In 1975 maternity leave was extended to 12 months and an ex-gratia payment on return to work was introduced as part of a package which aimed to "eliminate discrimination against women and to promote equal opportunity for men and women in the state services."¹⁰
3. The introduction of the Maternity Leave and Employment Protection Act 1980 brought legislated access to parental leave to private sector employees. From 1981 all women who met the employment criteria were entitled to six months' unpaid maternity leave.¹¹
4. Concerns expressed by the National Advisory Council on the Employment of Women (NACEW) about the need for parental rather than solely maternity leave provisions informed the debate which resulted in the current legislation. The Parental Leave and Employment Protection Act 1987 "provides for equal

⁷ Ministry of Women's Affairs *Parental Leave Policies, Women and the Labour Market Nga Kaupapa Here Wa Whakata mo nga Mama, nga Whakata mo te Ao Take Moko A Comparative Analysis of New Zealand, Sweden, United Kingdom, United States, Australia* (Wellington 1983) 22.

⁸ Public Service Regulations 14(14) 1948 cited in Ministry of Women's Affairs *Parental Leave Policies* above n 9.

⁹ Adrienne O'Sullivan *Maternity Leave in the New Zealand Public Service* (Policy Development Unit, SSC, Wellington, 1983) cited in Ministry of Women's Affairs *Parental Leave Policies* above n 7, 9.

¹⁰ O'Sullivan, above n 11.

¹¹ To be eligible for maternity leave required employment of at least 15 hours per week with the same employer for 18 months immediately preceding the birth or adoption.

II PARENTAL LEAVE IN NEW ZEALAND: THE CURRENT SITUATION

A Historical Context

According to the Ministry of Women's Affairs,⁹ there have been four critical stages in the development of parental leave in New Zealand.

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⁹ Ministry of Women's Affairs *Parental Leave Policies, Women and the Labour Market Nga Kaupapa Here Wa Whakata mo nga Matua, nga Wahine me te Ao Tuku Mahi A Comparative Analysis of New Zealand, Sweden, United Kingdom, United States, Australia* (Wellington 1995) 22.

¹⁰ Public Service Regulations 14(14) 1948 cited in Ministry of Women's Affairs *Parental Leave Policies* above n 9.

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¹² O'Sullivan, above n 11.

¹³ To be eligible for maternity leave required employment of at least 15 hours per week with the same employer for 18 months immediately preceding the birth or adoption.

opportunities for both parents to take leave from their employment to care for an infant in its first year".¹⁴

New Zealand's parental leave provisions were initially designed to maintain women's participation in paid work. Over time an interest in promoting gender equality in the labour market has developed and the most recent legislation indicates an interest in the issue of gender equality in childcare.

B The Parental Leave and Employment Protection Act 1987

The Parental Leave and Employment Protection Act repealed the Maternity Leave and Employment Act 1980, and extended the entitlement to parental leave to male employees, whether married or in de facto relationships.

1 Coverage and eligibility

Any woman (or her spouse if he intends to assume care of the newborn child) who has worked for the same employer for at least 10 hours per week for 12 months preceding the expected date of delivery is entitled to parental leave.¹⁵ Thus employees in temporary or seasonal work, independent contractors and those working few and irregular or casual hours are unlikely to qualify for leave. Parents who adopt a child under five years are entitled to leave on the same basis as parents giving birth to a child.¹⁶

2 Duration

Special leave of 10 days is available during a woman's pregnancy. Maternity leave is available for a continuous period of not more than four weeks.¹⁷ Paternity leave is available to spouses for a continuous period of not more than two weeks.¹⁸ Extended leave is available

¹⁴ Department of Labour *Report of the Working Party on Payment for Parental Leave* (Wellington, 1986) 2 cited in O'Sullivan, above n 11, 23.

¹⁵ Parental Leave and Employment Protection Act 1987, ss 7, 17, 23.

¹⁶ Parental Leave and Employment Protection Act 1987, ss 8, 18, 24.

¹⁷ Parental Leave and Employment Protection Act 1987, s 9.

¹⁸ Parental Leave and Employment Protection Act 1987, s 19.

to either parent for a continuous period of not more than 52 weeks¹⁹ less any maternity or paternity leave already taken.

3 *Payment*

There is no statutory provision for payment. Payment is a matter of negotiation between employers and employees. Consequently parental leave provisions may be found in individual or collective employment contracts. In addition, paid parental leave provisions feature in some company policies.

4 *Job protection*

Employees are protected from dismissal by reason of pregnancy or taking leave under the Act. Jobs must be held open for four weeks, then for any further period of leave except where it is proven to be a "key" position or where a redundancy occurs.

5 *Take-up rates*

Eighty-three per cent of parents in the employed labour force qualify for parental leave under the Parental Leave and Employment Protection Act 1987. In relation to take-up rates, 66 per cent of eligible mothers had used the parental leave provisions under the Act compared to 43 per cent of eligible fathers.

Birth figures for the year ended June 1997 amount to 57,310. Treasury estimates, based upon this number of births, are for 30,000 mothers seeking parental leave with around 20,000 meeting qualifying criteria.²⁰

C *Employment Contract Provisions*

As there is no legislative provision for paid parental leave in New Zealand, payment to date has largely been a matter of negotiation between employers and employees. Other than anecdotal information, there is little research available about the content of individual or informal employment contracts. However, a parental leave survey conducted by the Industrial

¹⁹ Parental Leave and Employment Protection Act 1987, s 26.

²⁰ Industrial Relations Service *Brief to the Social Services Select Committee on Paid Parental Leave Bill* (Department of Labour, 10.3.98) 3.

Relations Service in 1994 found that 32 per cent of females and 73 per cent of males received some payment for parental leave.²¹

The Department of Labour's current figures on parental leave provisions within collective employment contracts show that 16 per cent of these contracts, which cover 350,000 employees, make provision for some payment with respect to parental leave.²² A Victoria University analysis of collective employment contracts covering 390,100 employees showed that 43 per cent of such contracts provided some payment associated with parental leave.²³ The most common form of paid parental leave is an ex gratia payment equivalent to 30 days' pay after completion of a further six months' service upon return from leave or, where leave duration is short,²⁴ a continuation of pay.²⁵

Entitlement to payment varies significantly across industries. Very few employees in the manufacturing, retail, accommodation or café sectors are eligible for payment. Conversely, many employees in the government communications, administration, health, education and finance sectors are entitled to payment. With the exception of the finance sector, it is predominantly the public sector which provides paid parental leave. A standard entitlement in the finance sector provides three days' paid leave to the father either side of the birth or adoption of a child. Eighty-one per cent of employees in core government services were contractually entitled to paid parental leave. Almost the same proportion of private sector employees (79 per cent) had no contractual entitlement to any payment associated with parental leave.²⁶ The authors estimate that their survey sample represents approximately one-quarter of the New Zealand labour market.²⁷

²¹ Industrial Relations Service *Brief to the Social Services Select Committee*, above n 20.

²² Industrial Relations Service *Advice to the Social Services Select Committee* (Department of Labour, 10.3.99) 54.

²³ Raymond Harbridge and others *Employment Contracts: Bargaining Trends and Employment Law Update 1997/98* (Graduate School of Business and Government Management, Victoria University of Wellington, Wellington, 1998) 49.

²⁴ Less than 30 days.

²⁵ Harbridge, above n 23.

²⁶ Harbridge, above n 23.

²⁷ It is important to note that the surveys are done on a voluntary basis. Some employers and small unions have declined to supply their collective employment contracts for analysis. Consequently it is likely that those collective employment contracts which provide conditions exceeding the prescribed minimum such as paid parental leave, are over-represented in the sample. Furthermore the focus of this study is on collective bargaining; consequently individual employment contracts are not covered and may show quite different trends.

Table 1: Paid parental leave by sector

	Payments available (per cent)	No payment (per cent)	Employees covered (000s)
All contracts	43	57	390.1
Private sector	21	79	217.6
Government core services	81	19	141.1
Government – trading	64	36	10.5
Local government – core	2	98	13.5
Local government – trading	2	98	7.3

Anecdotal information suggests that the incidence of paid parental leave in the private sector is growing rapidly, particularly in highly skilled occupations. This position is supported by the EEO Trust which suggests that informal individual arrangements for paid leave may be common among women at senior levels in reasonably highly paid occupations.

A number of private companies have recently introduced formal provisions for paid parental leave. Such companies include Westpac, BNZ, Bell Gully Buddle Weir, Price Waterhouse, Lion Nathan, Telecom, TVNZ, KPMG. These provisions most commonly include a return to work requirement and they are usually limited to senior employees and/or those with long service. Entitlement varies considerably from two days on full pay to six months at half pay.²⁸

Karen Feint, an employment law specialist at Buddle Findlay, says “Employers are increasingly regarding paid maternity leave as cost-effective”. Various studies estimate it can cost from \$20,000 to \$50,000 to replace experienced senior employees.²⁹ Westpac estimates the cost of replacing a worker with 10 years’ experience at \$37,000. The number of women resigning from Westpac in order to have children has halved since their introduction of paid maternity leave.³⁰ Accountancy firm Price Waterhouse offers 12 weeks’ maternity leave on full pay or six months on half pay to staff with seven years’ service and to managers with one year’s service. Bell Gully Buddle Weir offers maternity leave for senior associates on full pay for three months.³¹

²⁸ Industrial Relations Service, above n 20, 54.

²⁹ “Paid Maternity Leave: The Boss’s Burden?” *The Independent*, Auckland, New Zealand, 18 March 1998, 20.

³⁰ Above n 29, 20.

³¹ Above n 29, 20.

These trends suggest that the market will increasingly provide paid parental leave to women, or men, with bargaining power, that is, individuals with specialist knowledge, skills and experience in highly-paid occupations. The situation with regard to less skilled individuals in poorly paid occupations is very different. The market will not voluntarily provide paid parental leave for these workers, government intervention will be required to force its hand. As Karen Feint observes it is clear that companies are only going to provide paid parental leave if it benefits their bottom line.³² The bottom line is the company's profit margin. However profit margins are, by their very nature, only short-term measures. Many of the benefits to employers of paid parental leave can only be seen in the long term. Thus, as Karen Feint points out "[i]f you want [paid parental leave] across the board for social policy reasons, then it needs to be legislated".³³

D Other Assistance for Families

Although there is no legislative provision for paid parental leave in New Zealand, there are a number of state-provided measures which may ease the financial burden of having children, particularly for low-income families. These include free antenatal and under six health care services, Plunket assistance, income support in the form of Unemployment Benefit, Domestic Purposes and Widows Benefits and other family assistance such as Family Support and Guaranteed Minimum Family Income.³⁴

E Parental Tax Credit

The Parental Tax Credit policy introduced by the government in the 1999 Budget gives some "recognition to the additional financial pressures facing many families with newborn babies".³⁵ The Parental Tax Credit is a means-tested entitlement which will be available in respect of children born after 1 October 1999. The maximum entitlement will be up to \$1,200 for each newborn child. The credit will be paid to the primary caregiver at a rate up to a maximum of \$150 per week per child for up to eight weeks after the birth of a child. The Parental Tax Credit will be subject to the same abatement rules that apply to Family Support.

³² Above n 29, 20.

³³ Above n 29, 20.

³⁴ See Appendix 1 for details.

³⁵ Social Services Select Committee *Report on the Paid Parental Leave Bill* (25.6.99) 16.

III INTERNATIONAL COMPARISONS

An International Labour Organisation (ILO) report published in February 1998 reported that most of the countries surveyed in 1997 claimed to provide some payment for maternity leave (138 out of 145 countries surveyed). In 43 of these countries paid leave is fully funded by the employer and 71 countries provide leave funded by social security. Only 31 countries provide less than the two-thirds wage replacement recommended by the ILO.³⁶ Eighty-eight of the 145 countries surveyed reported that they provide 100 per cent wage replacement for a defined period of maternity leave and 119 countries meet the ILO standard of 12 weeks, with 62 of those countries providing for 14 weeks or more. Coverage of female employees varies between countries.³⁷

Many of these countries have very different social, economic and political arrangements to New Zealand, therefore meaningful international comparisons are somewhat difficult to make. Having said that, despite the other assistance provided for young families in New Zealand,³⁸ it would appear that New Zealand does not measure up well internationally. Positive elements of current New Zealand parental leave policy include the job protection component and the availability of gender neutral parental leave for up to 52 weeks; however the absence of any wage replacement component is disappointing. The Parental Tax Credit policy introduced in the 1999 Budget does not equate to a wage replacement leave policy; its ability to enable women, who otherwise could not afford leave, to take leave is highly questionable.

³⁶ ILO *World of Work* (1998) 24, 18-19.

³⁷ Social security may cover a small percentage of the economically active population in some countries, for example, Benin, Cote d'Ivoire and Cameroon. In some countries certain sectors of the economy, for example, agricultural or informal sectors are excluded from maternity leave coverage.

³⁸ Such as free antenatal care and free doctors' visits for under six-year-olds – see Appendix 1.

IV THE PAID PARENTAL LEAVE BILL

A Technical Details

The Parental Leave and Employment Protection Act 1987 (hereafter referred to as PLEP Act 1987) provides 14 weeks' unpaid maternity leave, two weeks' unpaid paternity leave, 10 days' special leave during pregnancy and up to 52 weeks' unpaid extended leave on the birth or adoption of a child. The eligibility criteria for parental leave can be found in section 7 of the PLEP Act 1987 which provides that:

"every female employee –

- (a) who becomes pregnant; and
- (b) who, at the expected date of delivery, will have been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week, –

– shall be entitled to maternity leave in accordance with this Act.

Section 8 provides the equivalent criteria in respect of an adoptive mother. The eligibility criteria for parental leave remains unchanged by the Paid Parental Leave Bill.³⁹ The Bill amends the current legislation by providing that the first 12 weeks of maternity leave are paid. The right to paid leave can be transferred by a female employee to her spouse in full or in part if he intends to assume care of the child.⁴⁰ The two weeks' paternity leave available to a male employee will be paid where his spouse is not entitled to paid leave, that is, where the spouse does not work or works less than 10 hours per week.⁴¹

The Bill provides for an employee to be paid at 80 per cent of his or her earnings out of a central fund with a proviso that no employee is to be paid more than the average male weekly wage.⁴² It also provides for the establishment of a central fund, called the Parental Leave Fund, which will consist of premium payments collected from all employers at a

³⁹ Hereafter referred to as the Bill. Te Puni Kokiri have estimated that based on the respective employment rates of Maori and all women, only 30 per cent of Maori women aged 15-44 years may be eligible for parental leave compared with approximately 40 per cent of all women in the same age group. A comparison of fertility rates shows a higher birth rate for Maori women (3.32 live births per 1000 compared with 1.97 for all women). Thus while Maori women are more likely to give birth, they are less likely to qualify for parental leave. Te Puni Kokiri *Paid Parental Leave Bill – Briefing Paper to the Social Services Select Committee* (10.3.99) 3.

⁴⁰ Paid Parental Leave Bill, cl 2.

⁴¹ Paid Parental Leave Bill, cl 3.

⁴² Paid Parental Leave Bill, cl 5.

prescribed rate based on the employer's total payroll. Employers will be entitled to claim from this fund for paid maternity or paternity leave taken by an employee under the Act.

The detailed administration of the Act will be governed by regulation, including the prescription of procedures for the rates and collection of premiums.

B Political Progress

The Paid Parental Leave Bill with which this paper deals is a rather unique happening in New Zealand politics. The Bill is a private member's bill. Laila Harré, the industrial relations spokesperson for the Alliance has, as she puts it, been honoured to carry "the 12 Weeks Campaign mantle" into Parliament and heralded paid parental leave as an issue whose time has come. How the Bill got to Parliament can be described as pure luck. It was picked out of a ballot and introduced to the House for its first reading. The Bill was subsequently referred for consideration by the Social Services Select Committee following its second reading in the House on 9 September 1998.

The select committee received submissions on the Paid Parental Leave Bill until 11 December 1998. In total 837 submissions were received; 719 of these were form submissions supporting the Bill. Of the 118 substantive submissions received by the committee, 84 submissions, mainly from individuals, community organisations, and employees organisations supported the Bill. Thirty-three submissions, mainly from employer organisations, individual employers and some community groups, opposed the Bill.

The select committee report was published on 25 June 1999 with their recommendation that the Bill should not proceed. National members (3) and Act (1) voted against the Paid Parental Leave Bill. Labour members (2) and Alliance voted for the Bill. The Mauri Pacific member abstained, acknowledging both the need for some form of paid parental leave and National's power of veto.

The select committee's report was tabled in the House on 1 September 1999. Laila Harré (Alliance) moved that it be referred back to the select committee for further consideration in light of the Parental Tax Credit Policy introduced by the government in the 1999 Budget. A majority of the House voted against referral back to the select committee. The vote was very close at 60 to 58. The Paid Parental Leave Bill was subsequently discharged.

V USING NEOCLASSICAL ECONOMIC THEORY TO MAKE A CASE FOR PAID PARENTAL LEAVE

A Brief Overview of Neoclassical Economic Theory

In neoclassical economic theory the perfectly competitive free market in which individuals actively pursue their own interests through the voluntary exchange of goods and/or services for value according to their preferences and their income is thought to achieve the optimal level of efficiency. In the jargon of economics this optimal level of efficiency is referred to as Pareto-efficiency, a situation in which, given the initial distribution of incomes and resources, it is not possible to reallocate income and resources between individuals so that one person is better off without making someone else worse off.⁴³ This Pareto-efficient situation is an ideal state rather than a realistic goal; it essentially requires that income and resources are distributed without any loss or waste as a result of the distribution activity.

In neoclassical economic theory the free market is regarded as the best guarantor of society's collective well-being. The key tenet of such theory is its behavioural postulate – that individuals are self-interested, rational utility maximisers. As Joseph Stiglitz describes it:⁴⁴

... self-interest is a much more persistent characteristic of human nature than a concern to do good and therefore provides a more reliable basis for the organization of society. Moreover, individuals are more likely to ascertain with some accuracy what is in their own self-interest than they are to determine what is in the public interest.

Thus, in neoclassical economic theory, there is a presumption in favour of free market provision of goods and services, including social services. However this presumption may be rebutted in the presence of market failure(s) – the traditional rationale for government intervention. Market failure refers to those situations in which the conditions such as perfect competition, co-operation and complete information, necessary to achieve Pareto efficiency do not exist or are impeded in some way. Market failures potentially present in the market for

⁴³ Rebecca Blank *When can Public Policy Riders Rely on Private Markets? The Effective Provision of Social Security* (NBER Working Paper 7699, 1999) 3-6.

⁴⁴ Brown and Jackson, above n 43, 28.

⁴⁵ Brown and Jackson, above n 43, 41. Non-excludable means it is not possible to prevent use of the service by those who do not pay for it, whereas non-rival in consumption means one person's use does not reduce the ability of others to use it.

⁴³ CV Brown and PM Jackson *Public Sector Economics* (4 ed, Basil Blackwell, Cambridge, 1990) 28.

⁴⁴ Joseph E Stiglitz *Economics of the Public Sector* (2 ed, WW Norton & Co, New York, 1988) 62.

paid parental leave may thus constitute an efficiency argument, or arguments, for government to make legislative provision for paid parental leave. Indeed some economists are of the view that the occurrence of three or more market failures in tandem necessitates government provision in the interests of efficiency.⁴⁵ Factors that bring about the failure of markets to achieve efficient outcomes include the existence of public goods and externalities.⁴⁶ This section of the paper will make a case for paid parental leave based on the argument that the care of children amounts to a public good with positive and negative externalities.

B Public Goods

1 What is a public good?

A pure public good is defined as a commodity with⁴⁷

certain characteristics such that its consumption by any one economic agent does not reduce the amount available for others. Thus, making the commodity available to any single individual makes it possible to provide it for everyone without additional cost. The benefits of a private good are consumed exclusively, whereas a public good may be consumed jointly or concurrently by many individuals, that is, public goods are non-excludable and non-rival in consumption.

Once consumers realise that they cannot be excluded from the use of the public good, there is no incentive for them to pay for it; they can take a 'free ride'.⁴⁸

Since Pareto's analysis of allocative efficiency does not confer moral principles or social constraints upon consumers, they will have no sense of guilt when 'free-riding'. Indeed it would be inconsistent for them to pay for a public good since they are assumed to maximise their welfare. Avoiding payment allows them to increase consumption of other goods and so increase their welfare.

Thus, if a public good is to be produced, payment must be made compulsory via taxation.

⁴⁵ Rebecca Blank *When can Public Policy Makers Rely on Private Markets? The Effective Provision of Social Security* (NBER Working Paper 7099, 1999) 5-6.

⁴⁶ Brown and Jackson, above n 43, 29.

⁴⁷ Brown and Jackson, above n 43, 61. Non-excludable means it is not possible to prevent use of the service by those who do not pay for it (producers are therefore unable to recover costs). Non-rival in consumption means that one person's consumption of the commodity does not affect any other person's consumption of it.

⁴⁸ Stephen J Bailey *Public Sector Economics, Theory, Policy and Practice* (MacMillan Press, London, 1995) 30-31.

2 *The care of children as a public good*

Feminist economist Nancy Folbre argues that the care or nurturing of children is a public good and that markets alone will not adequately provide for it.⁴⁹ Folbre believes that nurturing or care is undervalued. Parents are unable to recoup the costs of their nurturing labour thus, according to traditional economic analysis, in the absence of government intervention, well-nurtured children will be underproduced.

Folbre expresses the non-excludability aspect of nurturing as follows: “[p]eople do not rear children and then charge everybody who comes into contact with them for the benefits that results from their having been well brought up”.⁵⁰

Regarding the care or nurturing of children as a public good with both positive and negative externalities has a number of far-reaching economic and social implications. To date there has been relatively little research into, or indeed attention paid to, economic analyses of the contributions of non-market labour to the development of human and social capital. Such contributions, while not impossible to measure, are extremely difficult to measure. This is primarily due to the fact that the benefits of nurturing are so diffuse, and that the benefits of nurturing are not contracted for by the people who consume the services, that is, children. In addition, the benefits of nurturing tend to be realised in the long term rather than the short term. Moreover, it is difficult to establish or rather isolate, distinct causal links between nurturing and any resultant benefits or disadvantages experienced by the child, let alone establish, or isolate, further causal links between those benefits and disadvantages and the actual contributions made to human and/or social capital. In the context of paid parental leave it becomes an even more difficult task since we need to narrow our focus to the benefits arising from nurturing in the early months of a child’s life only.

(a) **Human capital**

Non-cognitive development such as social and emotional development – the domain of nurturing – is increasingly being regarded as a pre-requisite for cognitive development.⁵¹

⁴⁹ Nancy Folbre “The Neglect of Care-giving” (1998) 41 (5) *Challenge* 45, 45.

⁵⁰ Folbre “The Neglect of Care-giving”, above n 49, 51.

⁵¹ Folbre “Children as Public Goods”, above n 8.

Studies show that the resilience and later success of some socially disadvantaged children is the result of early child-centred parenting, of which parental leave is one vital component.⁵²

There is some evidence⁵³ that paid parental leave can facilitate the development of these precursors to cognitive development, and indeed cognitive development itself, in the first few months of a child's life. Enabling working parents to spend time with their children in this early formative stage may be the most cost-effective way of providing children with the emotionally rich environment necessary for healthy social, emotional and cognitive development. This in turn will influence their levels of educational achievement, and then subsequently their labour market productivity and ability to contribute to society.

The latest research on brain development⁵⁴ has identified the critical window of opportunity, in terms of brain development, as being the first three years of life, particularly the first year, where the foundations are laid for future learning. The early experience of a stimulating environment which encourages exploration and language development may also influence nerve growth and boost a child's IQ.⁵⁵ Conversely, an understimulated child will lose this opportunity and may therefore never realise his or her full potential. Research has also shown that the active involvement of fathers with their children from an early age has a positive effect on achievement, particularly in cognitive development.⁵⁶ Thus, measures which increase the take-up rate of parental leave by fathers can be viewed as an investment in future human capital. One key element affecting fathers' take-up rates is wage replacement.⁵⁷

(b) Social capital

There is a growing interest in the notion of investing in social capital. This grew out of the chaotic situation in the former Soviet Union. The social climate in those countries is

⁵² A Osborne "Resilient Children: A Longitudinal Study of High Achieving Society Disadvantaged Children" (1990) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 53.

⁵³ Primarily relating to the outcomes of parental care versus daycare in terms of child development outcomes.

⁵⁴ See *Time* magazine article.

⁵⁵ J Brierley "The Growing Brain: Childhood's Crucial Years" (1976) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 53.

⁵⁶ M Lamb (1982) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 202.

⁵⁷ British surveys have also identified the workplace culture as an "invisible barrier" to leave-taking. Men often regard taking parental leave as career-inhibiting. Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 117.

impeding the establishment and functioning of markets, in particular massive organised crime and distrust of government. This has led economists to start paying attention to factors that can contribute to an environment of trust in which markets can function. Child-rearing and nurturing labour are important and under-analysed contributors to that social capital,⁵⁸ especially given that the initial, and critical, development of an individual's trust occurs in the early weeks or months of life when an infant is completely dependent on its primary caregiver.

The "Cambridge Study" which studied 400 London males up to the age of 32 found that "early parental engagement was vital in helping to prevent later offending and other anti-social activities in the future".⁵⁹ As David Farrington argues, millions of dollars are spent on the criminal justice system. Addressing the roots of crime would be more cost effective and "support for families in the difficult task of childrearing will be central to such a strategy".⁶⁰ The experience of parental warmth, consistency and particularly interest, has been shown to produce healthy, productive and responsible adults.⁶¹

Public good arguments form the backbone for many of the family policies of European countries. To date such arguments have been unsuccessful in New Zealand, as they have been in the United States, particularly when legislation imposes clearly defined costs on the business community or other identifiable groups.⁶² In analysing the evolution of the Family and Medical Leave Act 1993, Spalter-Roth and Hartmann contend that the "United States Chamber of Commerce and other business organizations were successful in discrediting the public goods argument and in *changing the debate* on family and medical leave from the benefits to the family and society as a whole"⁶³ to "the costs to business". The coalition supporting the legislation was unable to shift the argument back to concern for children and

⁵⁸ Folbre "Children as Public Goods", above n 8, 53.

⁵⁹ D Farrington "Teenage Anti-Social Behaviour" (1995) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 51.

⁶⁰ Farrington, above n 59.

⁶¹ G Pugh, E De'Ath and C Smith "Confident Parents, Confident Children" cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 52.

⁶² Eileen Trzcinski "The Use and Abuse of Neoclassical Theory in the Political Arena: The Example of Family and Medical Leave in the United States" in Edith Kuiper and Jolande Sap (eds) *Out of the Margin: Feminist Perspectives on Economics* (Routledge, London, 1995) 243.

⁶³ The call for family and medical leave originally arose out of the research of child psychologists and child development experts.

the future of society.⁶⁴ (It is instructive to remember that the Family and Medical Leave Act passed in 1993 provides only for unpaid leave.) This paper argues that public goods arguments have similarly been successfully discredited in New Zealand. Section VII outlines how this has been achieved.

In the United States Donna Lenhoff, one of the leaders of the American coalition, lamented that the only data available to the supporters of the legislation was regarding parent-child bonding. Surely, she suggested, there must be costs to women and their families of not having leave.⁶⁵ This argument is a negative externality argument.

C Externalities

1 What is an externality?

According to Dennis Mueller⁶⁶

an externality occurs when the consumption or production activity of one individual or firm has an unintended impact on the utility or production function of another individual or firm ... Given the existence of externalities, a non-Pareto optimal allocation of resources often results.

What is crucial to the issue of Pareto efficiency is not that one individual consumes the same good as another but that his consumption alters another's utility in a manner not accounted for through the price system.⁶⁷ There are positive externalities, which are essentially unintended benefits and negative externalities which are unintended costs "that are not included in the prices that rule in the market place. The price signals are therefore distorted and decisions made on the basis of these prices will not fully reflect the value of the resources used".⁶⁸

⁶⁴ Trzcinski, above n 62, 244.

⁶⁵ Donna Lenhoff.

⁶⁶ Dennis C Mueller *Public Choice II* (Cambridge University Press, USA, 1989) 25.

⁶⁷ Mueller, above n 66, 27.

⁶⁸ Brown and Jackson, above n 43, 40.

Government intervention offers the possibility of achieving Pareto optimality by effectively changing individuals' cost-benefit assessments to more adequately reflect the value of the resources used.⁶⁹

2 *Negative externalities*

In the case of negative externalities government intervention attempts to correct the allocative inefficiency by discouraging the production or consumption of those goods and services that are over-produced or over-consumed. This is most commonly achieved by the imposition of a tax on the activity concerned, for example, pollution is a negative externality – it has unaccounted for, detrimental effects on the environment. If a pollution tax is imposed on businesses who pollute then, in principle, those businesses' cost functions will be modified so as to include the social costs to the environment, of such pollution.⁷⁰

However, environmentalists may argue that it is not possible to assess the long-term impacts of pollution before they occur. Consequently there should be a presumption in favour of environmental protection.⁷¹ Stephen Bailey suggests that this risk averse strategy may be too restrictive of economic activity but that it raises profound moral and philosophical issues which can only be addressed by public debate.⁷² I would argue that, leaving aside the moral and philosophical issues, a risk averse strategy in relation to protection of the environment and, indeed, in relation to the protection of children and families, is likely to be an efficient strategy in the long term and only restrictive of economic activity in the immediate present. This appears to be a fundamental flaw in economic theory – its failure to account for and adequately value future costs and benefits. Certainly economic theory seems to lend itself to a short-term focus. Data of short-term costs and benefits can be more easily collected and therefore quantified. Long-term costs and benefits on the other hand require more extensive and more costly research.

⁶⁹ Conversely government intervention by its very nature may create allocative and distributional inefficiencies even worse than those it was designed to improve. Brown and Jackson, above n 43, 54.

⁷⁰ Brown and Jackson, above n 43, 40.

⁷¹ Bailey, above n 48, 34.

⁷² Bailey, above n 48, 34.

3 *Positive externalities*

Market provision of goods or services will be too low relative to their value, where they have spill-over benefits for third parties not involved in the transactions. Such benefits are external to the market and therefore not incorporated into price structures. It would be irrational for individuals to take into account the wider social benefits of their activities since that would mean paying for more output than they individually require.⁷³ In the case of positive externalities government intervention attempts to correct the allocative inefficiency by encouraging the production of those goods and services that are currently under-produced or under-consumed relative to their value. For example, government may offer subsidised health care or education to increase consumption of those 'goods'.

In fiscal terms well-nurtured children represent a positive externality. As Nancy Folbre argues:⁷⁴

[a]ll individuals enjoy significant claims upon the earnings of future working age adults through social security and public debt. But not all individuals contribute equally to the care of these future adults. Individuals who make little or no contribution to child-rearing are free-riding on parental labor.

4 *Externalities – application to paid parental leave*

This paper supports the argument that the care and nurturing of children is, at least partly, a public good with both positive and negative externalities. The externalities arising from the parental, usually maternal, care and nurturing of children will be examined in relation to the two principal objectives of paid parental leave: first, improving the health and welfare of children and mothers; second, addressing women's inequality in the labour market. The contributions paid parental leave can make in advancing each objective will be considered.

The European Commission (1994) notes that there have been no detailed and comprehensive cost-benefit studies of paid parental leave undertaken and there is little

⁷³ Bailey, above n 48, 34.

⁷⁴ Folbre "Children as Public Goods", above n 8, 86.

quantified work detailing to what extent leave arrangements contribute to specific objectives.⁷⁵ This represents a potentially fruitful area for future research.

D Improving the Health and Welfare of Children and Mothers

The benefits of parental leave to children are complex, involving physiological, psychological and developmental aspects. Three key issues in this regard are attachment, breastfeeding and physical health outcomes in daycare.

I Attachment

During the first year of life, the infant will accomplish more than physical growth and motor development. He or she will also learn basic patterns of human social communication and begin to develop a sense of self-worth and efficacy, the capacity to love other people and a belief that the world is an understandable and enjoyable place. This process begins at birth when the *consistent* and *appropriate responsiveness* of an adult to an infant's signal builds in the infant the beginnings of trust and delight in the world.⁷⁶

Several studies link caregiver, usually maternal, responsiveness to infant cues and a predictable routine to the development of a secure attachment relationship between an infant and its parent(s).⁷⁷ In turn this attachment is linked to cognitive development and further linked in several studies⁷⁸ to the possession of culturally valued qualities such as "a tendency towards exploration, autonomy and sociability".⁷⁹ In addition, child psychologists claim that good quality early bonding better equips individuals to deal with difficulties and loss in

⁷⁵ P Callister and VN Podmore *Striking a Balance: Families, Work and Early Childhood Education* (NZ Council for Educational Research, Palmerston North, 1995) 60.

⁷⁶ Robin Harwood "Parental Stress and the Young Infant's Needs" in Edward F Zigler and Meryl Frank (eds) *The Parental Leave Crisis: Toward a National Policy* (Yale University Press, New York, 1988) 55, 55.

⁷⁷ During the first six months of life, a period which constitutes the preattachment and attachment formation phases, predictable routine and responsive sensitive caretaking may be even more important than care-giver continuity in developing secure attachment relationships (that is, extreme unpredictability in the first few months of life may be more upsetting to the infant than moderate amounts of separation (Kagan (1983) cited in Harwood, above n 76, 58). In fact, there is some evidence that moderate amounts of separation involving regular contact with non-parental caregivers do not necessarily interfere with the development of a secure attachment relationship when high quality care arrangements are used (Brookhart and Hock (1976), Jacobson and Wille (1984), Ragozin (1980), Schwartz (1983) cited in Harwood, above n 76, 58) although studies have found relationships between out-of-home care and insecure parent-infant attachments among lower income families using care arrangements of varying quality.

⁷⁸ Arend, Gove and Sroufe (1979), Conderville and Main (1981), Matas, Arend and Sroufe (1978), Pastor (1981), Waters, Wippman and Sroufe (1979) cited in Harwood, above n 76, 58.

⁷⁹ Kagan (1983) cited in Harwood, above n 76, 58.

adulthood.⁸⁰ Attachment status also correlates with depression, relationship disharmony, divorce, attitudes to authority figures and achievement and motivation at work.⁸¹

The available literature suggests a relationship between high levels of perceived parental, particularly maternal, stress and/or dissatisfaction and decreased sensitivity to infant cues⁸² which in turn negatively affects the development of a secure attachment relationship. Financial stress, as a result of forgone income, has been linked to poor child development outcomes.⁸³ There are three groups of families that may be especially vulnerable to stress during the early months of an infant's life: single parent families, low income families, and families in which the mother is experiencing postnatal depression.⁸⁴ Hock (1980) suggests that the mother's *satisfaction* with her work or non-work situation affects the quality of the mother-infant relationship more so than her work status itself.⁸⁵

Research in the United States, Australia and the United Kingdom suggests that parents who can work flexibly and have greater senses of control and autonomy in their lives also operate more effectively as parents with more positive outcomes for their children.⁸⁶ Conversely they found that children of parents who felt conflict between their work and family roles were less contented and developed less well. Paid parental leave, combined with work flexibility, can reduce financial stress and help parents achieve a better balance between work and family at a formative stage in child development⁸⁷ thereby enhancing opportunities for secure attachment. This represents immediate and long-run benefits to society in terms of reduced mental health expenditure and long-term benefits in terms of educational attainment, sociability and productivity.

⁸⁰ TJ Gamble and E Zigler (1988) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 52.

⁸¹ James Ow "Britain on the Couch: Why we are Unhappier Compared with 1950, despite being Richer" cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 53.

⁸² See Gamble and Zigler (1986), Crockenburg (1981), Campbell (1979), Nover, Shore, Timberlake and Greenspan (1984) cited in Harwood, above n 76, 63.

⁸³ Joe F Pittman and Sally A Lloyd "Quality of Family Life, Social Support and Stress" (1988) 50(1) *Journal of Marriage and the Family* 53.

⁸⁴ Harwood, above n 76, 68.

⁸⁵ Harwood, above n 76, 67.

⁸⁶ Sidle Fuligui and others (1995) cited in Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 32.

⁸⁷ Helen Wilkinson *Time Out: The Costs and Benefits of Paid Parental Leave* (Demos, London, 1997) 33.

2 Breastfeeding

Breastfeeding is widely regarded as providing an infant with developmental and psychosocial benefits in addition to the well-documented physiological benefits.⁸⁸ However this paper will focus on the physiological benefits only.

The World Health Organization (WHO) recommends that infants be fed exclusively on breastmilk from birth up to the age of 4-6 months.⁸⁹ Exclusive breastfeeding has been shown to reduce the incidence, severity and duration of common illnesses among newborns, in particular, upper respiratory infection, gastrointestinal infection and otitis media (glue ear).⁹⁰ There is also evidence that breastfeeding has benefits for mothers including reduction in post-partum haemorrhage and in the long term, a lower lifetime risk of breast cancer, ovarian cancer⁹¹ and osteoporosis.⁹²

While these health benefits are important in themselves, they are matched by economic returns at the national and business levels as well as in the family budget.⁹³ At the national level the impact of breastfeeding can be seen in "reduced demand for curative health services for mothers and babies and the productivity gains derived from a healthy labour force".⁹⁴ In New Zealand studies have identified breastfeeding as a factor in lowering the incidence of sudden infant death syndrome (SIDs or cot death)⁹⁵ and glue ear and associated hearing failure. The Public Health Commission has noted that glue ear is consistently more common among Maori and Pacific Island children who have lower rates of breastfeeding than pakeha children.⁹⁶

The resulting conductive hearing loss in early childhood can be related to subsequent learning impairment, especially in relation to language development and reading skills, and

⁸⁸ Callister and Podmore, above n 75, 24.

⁸⁹ Breastmilk is a complete and balanced food which contains antibodies and antibiotic properties which provide immunological protection against infection.

⁹⁰ ILO, above n 1, 92.

⁹¹ P Van Esterik and L Menon *Being Mother-Friendly: A Practical Guide for Working Women and Breastfeeding* (1996) cited in ILO, above n 1, 92.

⁹² Blaauw and others (1994) cited in Callister and Podmore, above n 75, 25.

⁹³ ILO, above n 1, 92.

⁹⁴ ILO, above n 1, 92.

⁹⁵ Ford and others (1993) cited in Callister and Podmore, above n 75, 25.

⁹⁶ Callister and Podmore, above n 75, 25.

reduced levels of educational attainment.⁹⁷ There is also evidence to suggest that breastmilk enhances the growth and development of the brain and central nervous system.⁹⁸

The Royal NZ Plunket Society and the NZ Paediatric Society stress the importance of exclusive 'on-demand' breastfeeding until six months of age.⁹⁹ Moreover in its policy advice to the Ministry of Health, the Public Health Commission advocates the following increases in breastfeeding rates by the year 2000:¹⁰⁰

exclusive breastfeeding at three months from 60 per cent (1991) to 75 per cent

exclusive or partial breastfeeding at six months from 55 per cent (1991) to 75 per cent.

As Callister and Podmore suggest, "[t]hese targets of significantly increased breastfeeding rates need to be viewed against a long historical, and potentially conflicting, trend of increasing participation in paid work by New Zealand mothers with a child under one year of age".¹⁰¹

The link between parental, or more specifically maternity, leave and support of breastfeeding is a key element in the design of most European parental leave policies. However the extent to which paid parental leave promotes breastfeeding is unclear. What is clear is that many factors affect a mother's decision to breastfeed. Some studies have found "a significantly positive correlation ... between the time for maternal return to work and the duration of breastfeeding".¹⁰² In New Zealand, Pacific Island mothers most commonly cited "going back to work" as the reason for ceasing breastfeeding between three and nine months of age. This is instructive given the importance traditionally placed on breastfeeding in Pacific Island communities.¹⁰³ Other studies have shown that breastfeeding rates do not increase with more generous maternity leave provisions.¹⁰⁴

Greiner argues that although access to paid parental leave represents the 'major determinant' of whether mothers face *material* constraints to breastfeeding, paid parental

⁹⁷ Public Health Commission (1995) cited in Callister and Podmore, above n 75, 25.

⁹⁸ Bauer and others (1991), Lucas and others (1992) cited in Callister and Podmore, above n 75, 25.

⁹⁹ Public Health Commission (1995) cited in Callister and Podmore, above n 75, 27.

¹⁰⁰ Callister and Podmore, above n 75, 27.

¹⁰¹ Callister and Podmore, above n 75, 27.

¹⁰² Hansen and others (1993) in a study of 360 Danish mothers, cited in Callister and Podmore, above n 75, 28.

¹⁰³ Callister and Podmore, above n 75, 36.

¹⁰⁴ See Callister and Podmore, above n 75, 28-36.

leave alone will not guarantee a corresponding increase in breastfeeding rates.¹⁰⁵ Thus Greiner concludes that it is "unrealistic to expect either that employed women will be able to maintain exclusive breastfeeding any longer than the maternity leave they receive" or, conversely, that women will "necessarily breastfeed optimally, even with optimal maternity benefits, unless they are motivated to do so, have the necessary skills, and receive adequate support from their families, their employers and the health sector".¹⁰⁶

However, for low income women, particularly Maori and Pacific Island women in New Zealand, it is likely that without payment during parental leave, an early return to work will be an economic necessity and that is likely to reduce the duration of breastfeeding. This is supported by literature which indicates that, unlike professional Pakeha women, these women are less likely to have employment conditions and facilities which allow or support breastfeeding in the workplace.¹⁰⁷

In conclusion it would appear that paid parental leave may be a material precondition of breastfeeding for some, particularly low income, mothers but not a guarantor of exclusive breastfeeding for the duration of the leave. Other complementary strategies will need to be employed to achieve the Public Health Commission's breastfeeding targets. Both the short and long-term benefits of breastfeeding need to be given greater recognition. As Waring (1988) argues, "An inadequately fed infant is a cost to the health system ..., to the education system (because of brain development), and to society generally".¹⁰⁸ Thus, to the extent that payment during leave allows some mothers, who otherwise would not, to take leave, it increases the likelihood and duration of breastfeeding in respect of some infants.

3 *Physical health outcomes in daycare*

Several studies have indicated that children in out-of-home childcare are more likely to contract minor diseases, although these may have few long-term consequences.¹⁰⁹ However research in the United States indicates that children attending daycare under the age of three years may be up to eight times more likely to contact *Haemophilus influenzae* type b (Hib)

¹⁰⁵ Cited in Callister and Podmore, above n 75, 31.

¹⁰⁶ Callister and Podmore, above n 75, 31.

¹⁰⁷ See Callister and Podmore, above n 75, 34-36.

¹⁰⁸ Cited in Callister and Podmore, above n 75, 26.

¹⁰⁹ Callister and Podmore, above n 75, 57.

than other children, with the risk increasing with the number of hours spent in daycare. In turn, children infected by Hib are more likely to contract the serious illnesses of pneumonia and meningitis.¹¹⁰ Conversely, in some circumstances, for example where the parent is a heavy smoker, or is violent, being at home with a parent may present a greater health risk for a child than daycare. Generally, the evidence suggests that at home care by parents in the early months of life has benefits for the physical health of infants as well as for their social and emotional health. Thus, to the extent that payment during parental leave will increase the proportion of infants cared for at home, who otherwise would be in daycare, there will be reduced costs to society in terms of both preventative and curative health care.

4 *Recovery of mother*

A mother needs time to recover from pregnancy and childbirth and to establish breastfeeding routines. Both parents, but especially the primary caregiver who is usually the mother, need time to adapt to their new, all-consuming role as parent.

Lack of payment on leave means many mothers return to work too early, take on shift or night work and make do with unsatisfactory childcare arrangements.¹¹¹ Stress may lead to increased expenditure on mental health and specialist health services and poor child development outcomes.

5 *Other benefits*

The European Commission (1994) also identified the following societal benefits of paid parental leave:¹¹²

- a) generally, giving children the right to more of their parents' time
- b) giving parents the opportunity to spend more time with their children
- c) enhancing choice in the organisation of employment and family life
- d) reducing conflict between work and family life and reducing the 'double burden' on women by promoting more equal sharing of family responsibilities
- e) recognising the social importance of motherhood and fatherhood
- f) promoting the well-being of families through contributing to better family functioning and relationships.

¹¹⁰ Public Health Commission (1994) cited in Callister and Podmore, above n 75, 57.

¹¹¹ The 12 Weeks Paid Parental Leave Campaign *Information Kit* (Wellington, 1994).

¹¹² Callister and Podmore, above n 75, 60.

E Addressing Women's Inequality in the Labour Market

Women's childbearing role, combined with the practicalities of breastfeeding and societal expectations usually result in women assuming the role of primary caregiver and bearing the labour market costs of having children.¹¹³

A longitudinal survey during the period 1968 to 1988 found that, even after controlling for actual labour market experience, part-time job status and other explanatory variables, an unexplained gap persisted in the wages of mothers compared with non-mothers.¹¹⁴ The Ministry of Women's Affairs, in its briefing to the incoming government in October 1996, noted that overseas research has identified three broad areas which contribute to the gender pay gap – productivity differences, occupational segregation and discrimination.¹¹⁵ This is supported by occupational segregation and industry studies which have found that women's skills are undervalued, that women are concentrated in the lowest paid jobs despite having relevant skills and experience and that larger wage differentials occur in firms where managers have a high degree of discretion to hire and promote.¹¹⁶

1 Costs to women

The labour market costs that women may bear, as a result of rearing children, include:

1. Where women negotiate for paid parental leave in their employment contracts this may be at the expense of other terms and conditions;¹¹⁷
2. Immediate loss of wages during unpaid leave;
3. Loss of on-the-job training and career development opportunities;

¹¹³ Ministry of Women's Affairs *Additional Advice to the Social Services Select Committee on the Paid Parental Leave Bill* (10.3.99) 2.

¹¹⁴ Jane Waldfogel "The Effect of Children on Women's Wages" (1997) 62(2) *American Sociological Review* 209, 216.

¹¹⁵ Ministry of Women's Affairs *Briefing to the Incoming Government 1996* (Wellington, 1996) 66.

¹¹⁶ Ministry of Women's Affairs *Briefing* above n 115, 67.

¹¹⁷ Ministry of Women's Affairs *Additional Advice*, above n 113, 3.

4. Depreciation of skills and experience, and sometimes, loss of confidence about participation in paid work;¹¹⁸
5. Temporary, casualised employment;
6. Occupational downgrading;
7. Lower wages and life-time earnings. In the United States mothers at age 30 earn on average 70 per cent of men's pay while non-mothers earn 90 per cent. In Britain, mothers at age 33 earn 64 per cent of men's pay while non-mothers earn 84 per cent;¹¹⁹
8. Additional costs of job search, and possible unintended unemployment when wishing to re-enter the paid workforce;
9. Loss of work-related benefits, such as subsidised health care, superannuation, and length of service-related benefits;
10. In two-parent families, if it is the mother who leaves paid work, and the father who becomes the main breadwinner, traditional roles are reinforced and may be difficult to change at a later time.¹²⁰ Having these traditional roles reinforced can represent a cost for both parents, particularly if the relationship eventually dissolves.¹²¹ But the long-term costs in terms of lifetime earnings, and provision for retirement and old age, are particularly evident for women who have assumed the role of primary caregiver.¹²²

Better educated women are more likely to consider the trade-offs between work and family than in the past. And as younger women's relative pay continues to increase, the costs of having a child in terms of wages forgone will similarly increase. Over a decade the opportunity cost of having children is estimated to have increased from between 22 and 27 per cent of potential family income to between 30 and 37 per cent.¹²³

¹¹⁸ Callister and Podmore, above n 75, 51.

¹¹⁹ Jane Waldfogel "The Family Gap for Young Women in the US and Britain: Can Maternity Leave Make a Difference?" (1998) 16(3) *Jnl of Labor Economics* 505, 532.

¹²⁰ Habgood (1992b) cited in Callister and Podmore, above n 75, 51.

¹²¹ Blau and Ferber (1986) cited in Callister and Podmore, above n 75, 51.

¹²² Horsfield (1988), Spalter-Roth and Hartmann (1990), Ministry of Women's Affairs (1995) cited in Callister and Podmore, above n 75, 51.

¹²³ S Ringen *Citizens, Families and Reform* (Clarendon Press, Oxford, 1997) cited in Wilkinson, above n 87, 47.

Without a cultural shift in attitudes to the care of children and to men's and women's joint responsibilities, many women will come to regard parenting as an unattractive prospect – costly, hard work and undervalued.¹²⁴

2 *Research on the effects of paid parental leave*

According to human capital theory, tenure in paid work has considerable impact on productivity and earnings. Research undertaken in the United States by Shapiro and Mott (1994) confirms this theory, showing that women most attached to the labour market (that is, women who were in paid work six months before, and within six months after the birth of a child) experienced relatively few changes in their paid work patterns over the subsequent 14 years. In 1987, 14 to 19 years after their first birth, these women received a substantial wage premium over women less attached to the labour market.¹²⁵

Longitudinal research in the United States and Britain found that maternity leave had a substantial positive wage effect for mothers in both countries. The study found that¹²⁶

Women who have access to leave are, all else being equal, more likely to return to their previous employers after childbirth and women who are covered by and use maternity leave receive a significant wage premium. In both countries, this maternity leave premium was large enough to offset some of the negative wage effects of children.

The Ministry of Women's Affairs suggests that factors that limit the take-up of leave have significant implications. "Women who do not take leave are less likely to return to paid employment, more likely to become unemployed or to take a lower paying, lower status job when they do return to paid work."¹²⁷

One major factor limiting the take-up of leave is the absence of payment, specifically wage replacement, which effectively denies some parents the possibility of exercising their right to parental leave. In the New Zealand context this is most likely to be an issue for low

¹²⁴ Ringen, above n 123.

¹²⁵ Callister and Podmore, above n 75, 51.

¹²⁶ Waldfogel "The Family Gap", above n 119, 505.

¹²⁷ Ministry of Women's Affairs *Parental Leave Policies*, above n 9, 73.

income families, particularly Maori and Pacific Island families, and female sole parents under 18 years who are not eligible for the DPB. Another factor limiting take-up is the perceived career costs, especially for professional women.

3 Conclusion

Ruhm and Teague's 1995 study of changes in leave legislation in 17 nations over the 1968–1988 period found that short to moderate durations of leave are positively related to per capita incomes and employment. Conversely lengthier entitlements had negative impacts.¹²⁸

Ruhm estimates that parental leave increases the employment-to-population (EP) ratio of all women by 3–4 per cent and of women of childbearing age by approximately 9 per cent.¹²⁹ However in a later study the author considered this result might overstate the impact of parental leave because of the difficulty in isolating the effect of paid parental leave from other family policies such as subsidised childcare.¹³⁰

Ruhm concluded that women's employment appears to increase with short (less than six months) periods of paid leave, whereas their relative wage may fall with more extended entitlements. This suggests that leave currently taken in many countries may be so lengthy as to reduce women's earnings and labour market position.¹³¹ This is supported by the Swedish experience where generous paid parental leave is assumed to have increased Swedish mothers' labour force participation but it "has actually served to depress the time they spend in employment when their children are young".¹³² Evans and Pupo claim that Swedish parental leave policies "contribute to continuing high levels of occupational segregation ... and to an employer preference for temporary, rather than permanent employment of women".¹³³ Thus, they conclude that while paid parental leave may relieve some of the pressures faced by working mothers, it may not serve the long-term interests of women.¹³⁴ In a study of Swedish women in four female-dominated workplaces, Karin Widerberg found that

¹²⁸ However the authors warn that the direction of causation was not clearly identified, that is, countries might extend leave durations when the economy improves, possibly leading to an overestimate of the benefits of leave. Cited in Christopher J Ruhm, *The Economic Consequences of Parental Leave Mandates: Lessons from Europe* (NBER Working Paper 5688, Greenboro, 1996) 9.

¹²⁹ Ruhm, above n 128, 30.

¹³⁰ Ruhm, above n 128, 7.

¹³¹ Ruhm, above n 128, 30.

¹³² Patricia Evans and Norene Pupo "Parental Leave: Assessing Women's Interests" (1993) 6 CJWL 402, 413.

¹³³ Evans and Pupo, above n 132, 413.

¹³⁴ Evans and Pupo, above n 132, 414.

the option to work shortened hours was hard for working class women to exercise because it does not fit in with the schedule of the workplace.¹³⁵

3 Conclusion

As a result of the conflicting nature of the objectives of parental leave, parental leave policy must tread a fine line in relation to the duration of leave it encourages. While lengthy leave may further enhance the health and wellbeing of infants, it may do so at the expense of women's long-term labour market position and life-time earnings. Short paid periods of leave are associated with gains in this regard. Moreover there is no direct evidence of the distortionary or inefficiency costs that economic models tell us will ultimately be passed on to women in the form of lower wages and reduced employment. The limited evidence that is available suggests that such distortions have not materialised.

The position of mothers in the labour market represents the negative externalities of their childrearing role – the unacknowledged and undervalued costs to mothers of nurturing and raising society's future workers. The benefits to society (in terms of reduced mental and specialist health and welfare expenditure, increased educational achievement and future labour market productivity and so on) of well-nurtured children represent positive externalities – also similarly unacknowledged and undervalued. Mothers are not externally compensated for the wider benefits that accrue from their caregiving labour.

In economic terms paid parental leave merely represents a redistribution of income to parents, primarily mothers, which compensates them, in part, for the disproportionate costs they face; and adequately reflects the wider value of their nurturing labour in the early months of a child's life. Such a redistribution of income would appear to be efficient particularly in the long term. Thus, the conflict over paid parental leave is less about economic efficiency and more about redistributive and political struggle. However, as can be seen in the public debate on the Paid Parental Leave Bill, economic theory and efficiency arguments have been used to disguise this struggle. The following section outlines the key economic ideas used to frame the debate and oppose the Bill.

¹³⁵ Evans and Pupo, above n 132, 415.

VI *ABUSING NEOCLASSICAL ECONOMIC THEORY*

A *The National Government: Using Neoclassical Economic Theory to Frame the Debate*

Laila Harré (the Alliance) moved that the Paid Parental Leave Bill be read a second time and gave notice of her intention to have the Bill referred to the Social Services Select Committee on 9 September 1998.¹³⁶ Prime Minister Jenny Shipley supported the Bill going to the select committee. However she ringfenced her support for the Bill and essentially set the parameters of the debate and of the officials' advice from there on.¹³⁷

I want to lay out some of the things that I will be looking for in considering whether this legislation should advance beyond that point. I make it clear – [interruption] – one of the issues that the Government will be looking at is the affordability of such a proposal at this time.

Among others, the Prime Minister laid out two themes which are grounded in neoclassical economic theory and which were to become the key opposing arguments in the public debate and select committee submissions on the Paid Parental Leave Bill. First, the concept of individual choice to bear and rear a child and subsequent individual need for women to have leave. Second, the costs to business which would affect the economy and ultimately be passed on to low income families and women in particular in the form of reduced wages and/or employment.

These concepts can be seen in the following passages from the Prime Minister's speech in the House.¹³⁸

Everyone in New Zealand needs to weigh up the question of whether the individual needs of women to have parental leave while their children are young are justified against the risk that it may exclude some women from an employment opportunity.

¹³⁶ New Zealand Parliamentary Debates (9 September 1998) 11867.

¹³⁷ New Zealand Parliamentary Debates, above n 136, 11868.

¹³⁸ New Zealand Parliamentary Debates, above n 136, 11868.

And:¹³⁹

I personally am not convinced that small employers should be required to pay a levy to a contributory fund for families, particularly two-income families, that have significant gross income, when that may put at risk the workplaces of low-income people.

As the Labour member for Dunedin North, Pete Hodgson, noted, the Prime Minister provided "a series of caveats" to her, and the National Party's, support of the Bill.¹⁴⁰

B Business/Employer Groups: Using Neoclassical Economic Theory to Oppose the Bill

Standard neoclassical economic analysis forms the cornerstone of ideological and theoretical opposition to the Paid Parental Leave Bill. The primary opponents of the Paid Parental Leave Bill are businesses/employers and the organisations that represent them, most notably the New Zealand Business Round Table (NZBRT) and the New Zealand Employers Federation (NZEf). These organisations unilaterally reject any type of mandated benefits ostensibly because it raises the costs of doing business.

Two of the specific arguments raised by the NZBRT and the NZEF in their submissions to the Social Services Select Committee were those emphasised by the Prime Minister on the second reading. These were to become the key opposing arguments in public policy debate on the Paid Parental Leave Bill.

- (a) Having a baby is a personal lifestyle choice, and as such individuals should bear the cost of that choice.
- (b) Paid parental leave will impose costs on business which will distort employment arrangements thereby inhibiting economic growth, thus ultimately the cost of paid parental leave will be passed on to women by lowering their wages, restricting their job opportunities and increasing their unemployment.

¹³⁹ New Zealand Parliamentary Debates, above n 136, 11869.

¹⁴⁰ New Zealand Parliamentary Debates, above n 136, 11870.

1 *Individual choice*

(a) **The ideology of individuality**

Having a baby is an individual choice, therefore the cost of paid parental leave is a matter of individual responsibility.

Eileen Trzcinski claims that in the United States the ideology of individuality and the ideology that a woman's place is in the home are so strong that interest groups, such as the US Chamber of Commerce, and private citizens can sometimes block legislation on the grounds that children are the individual and exclusive responsibility of their parents. Thus the public goods argument for the care of children is rejected by employer groups, particularly if they are asked to share part of the societal costs for the investment.¹⁴¹ As we have seen, the public goods argument has also been substantively rejected by the government in New Zealand.

The ideology of individuality has become increasingly popular in all aspects of New Zealand life in the last 15-20 years. New Zealand employer organisations, most notably the NZBRT and the NZEF, have successfully employed this ideology in the New Zealand paid parental leave debate. The NZEF quite unequivocally expressed this view in their submission to the select committee considering the Paid Parental Leave Bill. They stated that "[T]he decision to have a child is essentially a personal one for which, in the ordinary course of events, the parents can expect to take direct responsibility".¹⁴²

The NZBRT was more circumscribe stating:¹⁴³

[This] raises the basic issue of why people who choose not to have children, or are unable to do so, those who opt not to take such leave and the self-employed should be obliged to pay for the choices made by others.

¹⁴¹ Trzcinski, above n 62, 243.

¹⁴² New Zealand Employers Federation *Submission to the Social Services Select Committee on the Paid Parental Leave Bill* (1998) 5.

¹⁴³ New Zealand Business Round Table *Submission to the Social Services Select Committee on the Paid Parental Leave Bill* (1998) 3.

According to the behavioural postulate of economic theory as women act rationally to maximise their utility, the inequality of their labour market position can be explained in terms of individual choice. Women gain more utility from raising children than from participating in the labour market, consequently they invest less time and money in developing their human capital, and they choose lower status jobs, with lower wages and so on. However, this theoretical explanation does not account for the reality of women's lives. It denies the existence of exogenous constraints on the choices of women and it rejects any wider societal responsibility for such constraints. To this end it is an incomplete and inadequate explanation.

(b) Why individual responsibility arguments are wrong: why society should contribute to the cost of paid parental leave

The bearing and rearing of children can not be abstracted and simplified to an individual lifestyle choice – it is *not* that simple. As one working mother lamented in her individual submission to the select committee, “In a competitive world it seems now that you’ve drawn the short straw if you get pregnant. It is an illogical and insane lifestyle choice”.¹⁴⁴ The 12 Weeks Paid Parental Leave campaign notes that “[a]lthough children are the immediate responsibility of their parents, the value of good child-rearing has benefits for society as a whole”.¹⁴⁵ Conversely poor child-rearing imposes costs on society as a whole. “The importance of the rights and status of children in our society needs to be recognized as a wider responsibility than just the immediate family”.¹⁴⁶

The care of children is no longer, if it ever was, a private matter. There is a public interest in good parenting which should be reflected in public policy. Policies that are in children's interests are also in the interests of society as a whole.¹⁴⁷

As outlined in the previous section parental care in the very early formative years (up to age three) is generally believed to provide the optimal outcomes for children. Parents, usually mothers, who provide an emotionally rich and stimulating environment for infants in their early formative years have been found to produce children with positive developmental

¹⁴⁴ Rachel Searby *Submission to the Social Services Select Committee on the Paid Parental Leave Bill* (1998) 1.

¹⁴⁵ The 12 Weeks Paid Parental Leave Campaign, above n 111.

¹⁴⁶ The 12 Weeks Paid Parental Leave Campaign, above n 111.

¹⁴⁷ Wilkinson, above n 87, 165.

outcomes, increased sociability, responsibility, educational achievement, and productivity which benefit society as a whole. Societal expectations and business structures are partly, if not largely, responsible for the disadvantageous labour market position of mothers. To say that the care of children is, or should be, a matter of individual choice and responsibility is ludicrous and short-sighted in light of the benefits that accrue to society and the costs that society imposes on mothers who rear their children.

2 *Increased costs to business and the passing on of those costs*

(a) *The ideology of the market*

Economic analyses of paid parental leave and organised opposition to the Paid Parental Leave Bill in New Zealand centre on the costs of paid parental leave to business and the passing on of those costs to the economy and, in particular, to the people it is meant to help. Lawrence Summers explains the economic analysis of paid parental leave as follows:¹⁴⁸

a type of wage rigidity arises where there is a requirement that firms pay different workers the same wage even though the cost of providing benefits differs. For example ... the expected cost of parental leave is greater for women than for men. If wages could freely adjust, these differences in expected benefit costs would be offset by differences in wages. If such differences are precluded [for example, by minimum wages], however, there will be efficiency consequences as employers seek to hire workers with lower benefit costs. It is possible that mandated benefit programs can work against the interests of those who most require the benefit being offered.

This line of thinking can be seen in the NZBRT's submission which stated "the provision¹⁴⁹ that the [paid parental leave] levy is not to be charged to employers is delusional. In the medium term the cost will primarily come from the wage bill or fall on consumers".¹⁵⁰ This assumption is explicitly expressed in the NZBRT's submission to the select committee: "Companies will take the cost into account when calculating their employment costs for future years and the money will come either from reduced wages, reduced wage increases or reduced employment"¹⁵¹ and "Income will not be shuffled between employers and employees but largely between one employee and another, *within* the same employee's remuneration package, or *at the expense of* the unemployed".¹⁵²

¹⁴⁸ Lawrence H Summers "Some Simple Economics of Mandated Beliefs" (1989) 79 (2) American Economic Review 177.

¹⁴⁹ Clause 7 of the Paid Parental Leave Bill prohibits offsetting wages by the amount of paid parental leave.

¹⁵⁰ New Zealand Business Round Table, above n 143, 3.

¹⁵¹ New Zealand Business Round Table, above n 143, 3.

¹⁵² New Zealand Business Round Table, above n 143, 4.

And the NZEF had this to say: "... costs ... must be recouped somehow – either as increased prices, lower wage and salaries, or reduced employment opportunities".¹⁵³

(b) Why the "costs to business" argument is wrong: why employers should contribute to the cost of paid parental leave

There are a number of responses to the "costs to business" argument. First, as Trzcinski states, the question of costs is an empirical one that will be affected by:

- (a) the level of managerial efficiency in covering for the absent parent's work;¹⁵⁴
- (b) the increased return to work rates of employees given such leave;
- (c) the increased productivity of these employees as a result of reduced stress, particularly financial stress, increased loyalty and improved morale, that is, costs which relate to employers' ability to recoup their investment in human capital.

Based on international economic models, the Ministry of Women's Affairs has estimated that the costs to business in the form of an employer levy of 0.21-0.28 per cent of total payroll as required by the Bill, may result in a loss of 700-950 jobs across the labour market, with 600-800 of those jobs being concentrated among women.¹⁵⁵ However in the main body of the report it was also stated that given over 90 per cent of employers would, on average, be expected to face annual costs of less than \$750 in levies, this *cost alone* would be unlikely to have a significant impact on decisions to employ more staff (or reduce staff) for many of those firms". It is important to keep in mind that these figures are *estimates* based on economic modelling. They are not the result of empirical research. Many variables remain unaccounted for in this, as in any, abstract modelling exercise.

Does international research show that the business costs are passed on in this way and to the extent claimed? The evidence suggests not, wages and employment effects appear to be positive where there is a short period (less than six months) of paid leave. Negative impacts

¹⁵³ New Zealand Employment Federation, above n 142, 2.

¹⁵⁴ Trzcinski, above n 62, 243.

¹⁵⁵ Ministry of Women's Affairs *Additional Advice*, above n 113, 4.

can be seen where leave durations are lengthy. However the methodology of the available research is somewhat problematic, clear causal relationships cannot be accurately identified. Nevertheless, at the very least we can say that claims of negative wage and employment effects and of inhibited economic growth are greatly exaggerated. The available, albeit flawed, evidence points to slightly positive or neutral effects on wages, employment and economic growth.

Trzcinski argues that even from a neoclassical economics viewpoint, parental leave could be viewed as a technological innovation. As such it will be found that "some firms adopt cost-saving innovations quickly, other firms learn more slowly and can continue to operate in the short term using less efficient and outmoded managerial and technological practices".¹⁵⁶

Second, this argument is based on an ideological assumption not only that mandated leave inevitably lowers profits but that it is wrong to ask or expect businesses to shoulder some of the costs associated with meeting the needs of families.¹⁵⁷ Trzcinski and Finn-Stevenson argue that there is a case for government intervention to mandate paid parental leave in order to challenge and compel businesses to face up to their social responsibilities. "Mandated paid parental leave may be necessary to ensure that some firm are unable to prosper from their disregard for the needs of children and their families."¹⁵⁸

It is at least arguable that employers, because they choose to rely on and profit from human production, must acknowledge and bear some responsibility for the natural and inevitable fact that humans procreate. Thus as an absence from work is required when a child is born, employers should make some contribution.

Third, when employer organisations claim that paid parental leave will interfere with economic growth and productivity, they "deny any link between today's children and

¹⁵⁶ Trzcinski, above n 62, 243.

¹⁵⁷ Eileen Trzcinski and Matia Finn-Stevenson "A Response to Arguments against Mandated Parental Leave: Findings from the Connecticut Survey of Parental Leave Policies" (1991) 53 *Journal of Marriage and the Family* 445, 448.

¹⁵⁸ Trzcinski and Finn-Stevenson "A Response to Arguments", above n 157, 447.

tomorrow's society".¹⁵⁹ If employers benefit from well-nurtured children in the long term, then employers should bear some responsibility for sharing at least part of the cost – an investment in future productivity. Otherwise employers can be seen as free-riders. Individual parents bear the costs while future businesses share the benefits of well-adjusted productive employees.¹⁶⁰

Fourth, as employers are at least partly responsible for the negative externalities faced by women in the form of labour market barriers, because they discriminate against women, then they should be responsible for contributing to the costs of measures which can reduce those barriers. This could be regarded as analogous to a discrimination tax and may be highly efficient. If employers contribute to reducing barriers, if barriers are reduced and women's labour market position improves, the contribution required from employers would fall. Thus it may act as an incentive for employers to reduce discrimination and it may encourage additional innovative measures which assist women to combine their caregiving and paid work roles.

Similarly, Helen Wilkinson argues that the fact that work difficulties impact on families at a rate three times higher than family problems on work, bringing with it stress and ill-health¹⁶¹ whose costs are borne by individuals and taxpayers, also strengthens the argument for some degree of employer responsibility.¹⁶²

Fifth, there is considerable research indicating that the costs of introducing paid parental leave, and other family-friendly policies, are often outweighed by the long-term benefits to employers in terms of higher staff morale and increased productivity. These benefits may include:

1. Reduced staff turnover which reduces the employer's cost of recruiting and training new employees (estimated at between 25 and 125 per cent of a year's

¹⁵⁹ Trzcinski and Finn-Stevenson "A Response to Arguments", above n 157, 448.

¹⁶⁰ Trzcinski and Finn-Stevenson "A Response to Arguments", above n 157, 448.

¹⁶¹ Children's Trust Foundation (Seattle, 1995) cited in Wilkinson, above n 87, 97.

¹⁶² Wilkinson, above n 87, 97.

salary)¹⁶³ and retains the firm-specific human capital (training, development and experience) invested in women employees;

2. Reduced employee stress, improved employee health as a result of returning to work at an appropriate time and having a better balance of work and family commitments. A British research study has found that employees who are less worried about what is going on at home are free to be more creative at work.¹⁶⁴
3. Improved employee motivation and loyalty. A US study found that workers show more initiative and were more supportive of their employer as a direct consequence of what they saw as a recognition of their family responsibilities.¹⁶⁵ In addition workers are more likely to demonstrate reverse flexibility including increased willingness to do unpaid overtime.¹⁶⁶
4. Better time-management skills. Some American companies that have instituted paid parental leave and family friendly policies have discovered that women returning from paid parental leave are more productive than before childbirth. Productivity in this context was measured in relation to achievements and tasks accomplished rather than the traditional measures of hours worked and rates of absenteeism. This would be a fruitful area for future research.

Leaving aside the issue of payment, the European Commission (1994) claims that, in general, there is little evidence from European research to indicate that parental leave, or any other *predictable* leave causes problems or costs to employers. This is, at least partly, due to the fact that parental leave affects only a small segment of the workforce at any one time.¹⁶⁷

To conclude, in considering the actual costs of mandated paid parental leave, we must consider the full consequences of the status quo – on children, families and society as a whole. The debate has been narrowed to consideration of the costs faced by one group in society – business, and it has been narrowed to the short-term costs. What of the long-term

¹⁶³ 12 Weeks Paid Parental Leave Campaign, above n 111.

¹⁶⁴ Cited in Wilkinson, above n 87, 149.

¹⁶⁵ Wilkinson, above n 87, 146.

¹⁶⁶ Wilkinson, above n 87, 148.

¹⁶⁷ Callister and Podmore, above n 75, 59.

costs and benefits? What of our future wellbeing and that of today's children and their children?

If we accept that employers and society as a whole should contribute towards the costs of raising children, then we need to move the debate on to considering how this might best be achieved.

Neither government nor business has adapted to the new reality of family life – that women's labour force participation has greatly increased and will continue to do so and that most families rely on two incomes to maintain a suitable standard of living. Government provides little economic support for parenting and employers take little account of the family lives of their employees. Working time is organised in ways that ignore the needs of modern families. Paid Parental Leave represents the first, critical step towards achieving a sustainable balance between the needs of the family and the needs of the economy¹⁶⁸ – a first critical step that New Zealand has not yet made. Why should this be so?

The National Government and business/employer groups used neoclassical economic theory to oppose the Paid Parental Leave Bill and present it as economically inefficient and too costly to implement. However as outlined in Section V of this paper, neoclassical economic theory, specifically the concepts of public goods and externalities, can and does support a case for the legislative provision of paid parental leave. The two key arguments used to oppose the Bill do not withstand closer scrutiny. In particular the arguments regarding the detrimental effects of imposing the cost of paid parental leave on business are theoretically made out but not empirically substantiated. Thus, the conflict over the Bill appears to be less concerned with economic efficiency than with political and redistributive struggle. More specifically I would suggest that economic theory, ostensibly used in the public interest by both the National Government and business/employer groups, was actually used to disguise the pursuit of self-interest in both cases. The short-term economic interests of business/employers would be served by preventing the imposition of an additional cost on production as advocated in the Paid Parental Leave Bill. The way in which the National Government's interests would be served by the failure of the Bill is the subject of the next section.

¹⁶⁸ Wilkinson, above n 87, 166.

VII PUBLIC CHOICE THEORY

A Brief Overview of Public Choice Theory

"Public choice [is] the economic study of non-market decision making, or simply the application of economics to political science."¹⁶⁹ According to Dennis Mueller, the contribution of public choice theory derives from the insights deduced from abstract models which are based on a few simplified assumptions. Mueller describes the subject matter of public choice theory as¹⁷⁰

the same as that of political science, the theory of the state, voting rules, voter behavior, party politics, the bureaucracy, and so on. The methodology of public choice is that of economics, however. The basic behavioral postulate of public choice, as for economics, is that man is an egoistic, rational utility maximizer.

In public law the fundamental issue we face is whether Parliament can claim legitimacy in the formulation of its public policy. Some of the public choice literature suggests that legislatures cannot and do not speak for the general public, but for well-organised interest groups, or that legislatures are incapable of making good public policy because they cannot exercise their deliberative role.¹⁷¹

Public choice models often treat the legislative process as a microeconomic system in which "actual political choices are determined by the efforts of individuals and groups to further their own interests".¹⁷²

B The Economic Theory of Legislation

David Mayhew argues that the actions of legislators can be explained by "the simple abstract assumption that representatives are single-minded seekers of re-election".¹⁷³ The

¹⁶⁹ Dennis Mueller "Public Choice I" (1979) cited in Daniel A Farber and Philip P Frickey "The Jurisprudence of Public Choice" (1987) 65 (5) Texas LR 873, 878.

¹⁷⁰ Mueller, above n 169.

¹⁷¹ Daniel A Farber and Philip P Frickey "The Jurisprudence of Public Choice" (1987) 65 (5) Texas L Rev 873, 874.

¹⁷² Gary Becker "A Theory of Competition among Pressure Groups for Political Influence (1983) 98 Quarterly Journal of Economics, 371.

¹⁷³ D Mayhew "Congress: The Electoral Connection" (1974) cited in Daniel A Farber and Philip P Frickey "The Jurisprudence of Public Choice" (1987) 65 Texas LR 873, in Maxwell L Stearn's *Public Choice and Public Law: Readings and Commentary* (Anderson Publishing Co, Cincinnati, 1997) 5, 9.

assumption that legislators¹⁷⁴ are motivated solely by self-interest, particularly that they must maximise their prospects of re-election, lies at the core of the economic theory of legislation. Economic models of legislative behaviour can be categorised into two groups.

1 Constituent interest

This economic model assumes that MPs maximise their appeal to voters who vote, in turn, according to their own economic self-interest. Thus, MPs' votes should be predictable according to their constituents' economic interests.¹⁷⁵ I would further suggest that votes should be predictable according to constituents' short-term economic interests.

2 Interest group influence

The second model emphasises the role of interest groups in obtaining or blocking legislation which furthers their economic interests, in exchange for campaign contributions, votes and implicit promises of future favours. "In short, legislation is 'sold' by the legislature and 'bought' by the beneficiaries of the legislation."¹⁷⁶

The models assume that "self-interest is the exclusive causal agent in politics"¹⁷⁷ and rejects the role of ideology¹⁷⁸ as a significant influence on the motivations of voters and of MPs.

The foundational assumption of economic theory – that individuals act rationally to maximise their self-interest – has been widely criticised in political science and legal scholarship¹⁷⁹ for its naivety and its failure to perform empirically. The disciplines of psychology and sociology, and everything we instinctively know, tell us that individuals – that people – are *not* motivated solely by self-interest but by a range of often conflicting emotions, wants and needs which vary in intensity with time and circumstance. Furthermore, we know that people do *not* always act rationally; rather they often *react* emotionally. Thus,

¹⁷⁴ Hereafter referred to as MPs.

¹⁷⁵ Farber and Frickey, above n 171.

¹⁷⁶ Landes and Posner "The Independent Judiciary in an Interest Group Perspective" (1975) 18 *Jnl of Law and Econ* 875, 877 cited in Farber and Frickey, above n 171, 9.

¹⁷⁷ Farber and Frickey, above n 171, 16.

¹⁷⁸ Defined as the individual's beliefs about what serves the public interest.

¹⁷⁹ See P Green and I Shapiro "The Pathology of Rational Choice Theory" cited in Farber and Frickey, above n 171, and Edward L Rubin "Public Choice in Practice and Theory" (1993) 81 *Cal L Rev* 1657.

the foundational assumption of economic theory and therefore of public choice theory also, is inadequate and incomplete. Nevertheless, a theory that makes simplified, even unrealistic assumptions may yet have some predictive or explanatory power¹⁸⁰ and that is an empirical, rather than a theoretical question.

Farber and Frickey claim that the economic theory of legislation does not withstand empirical scrutiny.¹⁸¹ Farber and Frickey propose a mixed model, a weak version of the economic theory, which accords with the political science literature. In the mixed model the economic interests of voters, interest groups and ideology all influence legislative conduct to varying degrees depending on the nature of the legislation.

The question to consider is whether the economic theory of legislation adequately accounts for the failure of the Paid Parental Leave Bill, as predicted by public choice theory, or whether ideology, or other factors played a part, as has been empirically demonstrated in other contexts.¹⁸²

The economic theory of legislation can be briefly summarised as follows: MPs, as single-minded seekers of re-election, will act to maximise their appeal to constituents' economic interests in order to obtain their votes. In addition, interest groups seeking to maximise their own economic interests will have a disproportionately strong influence on legislative outcomes depending on the extent to which they can further MPs' interests, particularly MPs' re-election prospects.

C Interest Group Influence

In 1986 Kay Schlozman and John Tierney published a systematic study of interest group politics. They concluded that "representation through interest group politics is skewed dramatically to upper class and upper middle class interests".¹⁸³ The study also found that

¹⁸⁰ Farber and Frickey, above n 171, 19.

¹⁸¹ See Farber and Frickey's discussion of this point, above n 171, 18-19.

¹⁸² See Farber and Frickey, above n 171, 18-19.

¹⁸³ Farber and Frickey, above n 171, 873, 878.

today many interest groups are well-resourced and engage in sophisticated political strategies, including active involvement in electoral politics.¹⁸⁴

Schlozman and Tierney suggest that interest group influence is likely to be strongest in the following circumstances:¹⁸⁵

1. "When the interest group is attempting to block rather than obtain legislation."
2. "When the group's goals are narrow and involve low visibility issues."
3. "When the group has substantial support from other groups and public officials (who are themselves important figures and not merely referees of the group struggle)" and
4. "When the group is able to move the issue to a favorable forum, eg. a Sympathetic Congressional Committee".

In the context of the New Zealand paid parental leave debate, the interest groups opposing the Bill, most notably the NZEF and the NZBRT, fit the Schlozman and Tierney profile – they are well resourced, and they are actively engaged in politics at many levels. They make frequent submissions to select committees on social and economic policies.¹⁸⁶

The question to consider is whether the circumstances surrounding the Paid Parental Leave Bill were of the kind Schlozman and Tierney identify as indicative of strong interest group influence. The answer has to be a resounding 'yes'.

First, the NZBRT and the NZEF were attempting to block the Paid Parental Leave Bill.

Second, the groups' goals were narrow – to prevent employer funding of paid parental leave. However this is not a low-visibility issue. Paid parental leave and its funding are of widespread and popular concern to New Zealanders. There has been considerable public debate about the issues.

¹⁸⁴ Farber and Frickey, above n 171, 878.

¹⁸⁵ Farber and Frickey, above n 171, 886.

¹⁸⁶ Farber and Frickey, above n 171, 14.

Third, the NZBRT and the NZEF do have substantial support from other groups, particularly small businesses, and specifically from public officials and legislators who are supporters of neoclassical economic theory and well-versed in its arguments and applications to social policy, particularly the Treasury who developed the Parental Tax Credit policy to replace the Paid Parental Leave Bill, and the Department of Labour who costed the Paid Parental Leave Bill but made no attempt to cost the status quo or the long-term benefits of paid parental leave.

Fourth, the Paid Parental Leave Bill was considered in, and the NZBRT and the NZEF presented submissions to, a favourable forum – the Social Services Select Committee, a committee with a majority of government MPs and members well-acquainted with the key tenets of neoclassical economic theory as employed by successive New Zealand governments since 1984 in a bid to reduce public debt and increase economic efficiency.

The circumstances surrounding the Paid Parental Leave Bill are of the kind Schlozman and Tierney identify as indicative of strong interest group influence. In addition the business/employer vote is a substantial one with influence far beyond the individual votes concerned. Small businesses have regular contact with members of the public and potential for disseminating information and ideas. The NZBRT is an extremely well-resourced, influential group which makes substantial investments in the public promulgation of its free market ideas; ideas which are claimed to be in the public interest and yet it is the NZBRT, as the owners of business, who stand to gain most profitably from such ideas. But whether the influence of the NZBRT and the NZEF provides a sufficient explanation for the demise of the Paid Parental Leave Bill is not entirely clear. Their influence needs to be considered in light of the wider political circumstances.

The next section will consider the extent to which the National Government's conduct in relation to the Paid Parental Leave Bill can be seen as maximising their chances of re-election as opposed to reflecting their ideological position or their desire to make good public policy.

¹⁰⁷ A National Business Review opinion poll showed 60% support for the Paid Parental Leave Bill; 33% of respondents favoured 12 weeks, 40% preferred employer funding and 30% preferred funding via taxation, 47% favoured an income-related payment. "Public Demands Changes to Fund Paid Parental Leave" *National Business Review*, 23 April 1995, 16.

D The National Government: Maximising their Re-election Prospects or Making Good Policy?

1 The referral of the Bill to the select committee

Given the extent of popular support for paid parental leave,¹⁸⁷ it would have been politically unwise for the government to stop the Bill going to the select committee at that time. The government was unsteady around the time of the Coalition break-up and there was uncertainty as to whether it would have sufficient numbers to defeat the Bill so it voted its support. The Prime Minister's framing of the debate in terms of individual choice, of affordability, particularly costs to business and its resultant effects would maximise her and the National Party's appeal to voters' short-term economic interests and go some way towards placating the protests of business.

2 Official advice

If making good public policy could be regarded as a motivating force on the part of the National Government, one would expect that the advice to the select committee from key departmental officials, principally from the Department of Labour and the Ministry of Women's Affairs, would present the short and long-term costs and benefits of paid parental leave in order to help the government decide whether, on balance, the introduction of paid parental leave in the form proposed would be in the overall public interest – whether it would be good public policy.

Relatively little support was given to paid parental leave in the advice from officials. This was predictable given the way the debate was framed by the Prime Minister during the second reading. There is a proliferation of literature from many academic disciplines which supports paid parental leave, citing many benefits to children, women, families, employers and society generally. The advice from officials is largely limited to an assessment of the short and medium-term costs and risks involved in implementing the Paid Parental Leave Bill. While that might be expected in the ordinary course of a government bill, it appears

¹⁸⁷ A National Business Review opinion poll showed 60% support for the Paid Parental Leave Bill, 53% of respondents favoured 12 weeks, 40% preferred employer funding and 36% preferred funding via taxation, 47% favoured an income-related payment. "Public Demands Others to Fund Paid Parental Leave" *National Business Review*, 23 April 1999, 16.

incongruous in the context of an opposition bill on which the government has declared itself undecided.

The briefing papers from departmental officials do not attempt to estimate the economic value of the many, often long-term, benefits of paid parental leave, nor do they attempt to estimate the costs of the status quo, costs borne predominantly by women and children.

Section V of this paper shows how neoclassical economic theory can support a case for paid parental leave and there have been attempts elsewhere, to quantify the costs and benefits to society of having and not having parental leave. This is particularly so in the context of the Family and Medical Leave Act 1993 in the United States. Considerable research was carried out on the costs of not having parental leave, costs borne predominantly by women in terms of immediate and long-term wage losses, reduced labour market position, physical and psychological health, and children in terms of physical health, social, emotional, and cognitive development. This research demonstrates that the costs of not having parental leave far outweigh the costs of providing it.¹⁸⁸ If ideology was an important motivator and if the government was genuinely concerned about economic efficiency and making good public policy, one would expect that their officials would have been given a wider brief. The fact that they were, and often are, not raises the issue of whether Parliament is capable of exercising its deliberative role. Select committees were designed for this purpose, as well as to increase participation in the democratic process.

3 *The introduction of the Parental Tax Credit*

The Parental Tax Credit policy was quite clearly introduced by the National Government in the 1999 Budget in order to scuttle the Paid Parental Leave Bill and replace it with a cheaper government measure. It was not a principled decision and it was a decision antithetical to making good public policy. It was not a decision recognising the merit of any public good, or other arguments to redistribute income to families, particularly mothers, with young children. Otherwise it would have been designed so as to make some progress towards

¹⁸⁸ See R Marra and Lindner "The True Cost of Parental leave: The Parental Leave Cost Model" in D Friedman and others *Parental Leave and Productivity* (Families and Work Institute, New York, 1992) and RM Spalter-Roth and HI Hartmann "Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave" (Institute for Women's Policy Research, Washington DC, 1990) cited in E Trzcinski "The Use and Abuse of Neoclassical Theory in the Political Arena" in Edith Kuiper and Jolande Sap *Out of the Margin: Feminist Perspectives on Economics* (Routledge, London, 1995) 231-246.

the objectives of parental leave – to improve the health and welfare of children and mothers and to address women’s labour market inequality. It is important that in this context we do not mistake this policy as efficient. The Parental Tax Credit is cheap, not efficient. It cuts costs; it does not adequately reflect the value of caring for children. It was a decision in the short-term interests of the National Government. It was a decision aimed at maximising their chances of re-election. The government could not be seen to support or allow the passage of a non-government Bill, whatever its merits. However such is the widespread popular support for paid parental leave that quashing the bill in an election year may have had serious electoral repercussions for the government. They needed to give families something, but not much, in order to maximise the public vote and the business vote.

4 *The select committee report*

Making good public policy was clearly not on the agenda, or even near the agenda. In the select committee report the majority (National) gave no ideological or other opposition to the Bill itself; they simply presented the Parental Tax Credit Policy. As the Alliance member observed in the select committee report,¹⁸⁹

it is noteworthy that no individual who makes up [the] majority has proposed any amendment to the Bill or recorded their conclusions as to either:

- why the objectives of the Bill are not met by it; or
- why those objectives are not worthy; or
- while worthy, those objectives are not objectives which their parties consider worth pursuing at this time.

This quite clearly suggests that the government was more interested in pursuing a tactical strategy than in the ideological merits or otherwise of the Bill.

In recommending that the Paid Parental Leave Bill not proceed, the majority of the Social Services Select Committee stated their belief that “the Parental Tax Credit policy is a fair and equitable way of providing assistance to families with newborn children who are most in need”.¹⁹⁰ I disagree.

¹⁸⁹ Social Services Select Committee, above n 35, 1.

¹⁹⁰ Social Services Select Committee, above n 35, 16.

ideol If we take the two fundamental objectives of parental leave, the Parental Tax Credit fails to satisfy even the less controversial objective – improving mother and infant health and welfare and it does not even acknowledge the more controversial objective – to address women's unequal position in the labour market and the ongoing discrimination of women resulting from their childbearing role. In fact the Parental Tax Credit may serve to heighten the problems already faced by women. The Parental Tax Credit policy targets family income which is inherently discriminatory as it treats women as part of a household rather than as individual workers. The family that will gain most from this policy is the traditional patriarchal family with a male breadwinner (earning less than \$37,000 per annum) and a female caregiver who remains at home. There will be no income loss when a baby is born so the tax credit equates to a \$1200 income top-up for those families. Families reliant solely on a mother's income – the families shown to be the poorest of all families – will not be assisted by the tax credit. Mothers of such families will be entitled to a welfare benefit but not to the tax credit as well.¹⁹¹ The family tax credit will provide refundable credits for low income taxpayers which will help such taxpayers. However the reality is that tax credits are of little use to people who are barely making ends meet on a day to day basis. It will not enable them to take the parental leave to which they are entitled under the Parental Leave and Employment Protection Act 1987, it will provide a lump sum after the fact and too late. The Parental Tax Credit is better than nothing, but not much.

If ideology does play a part in the National Government's treatment of the Paid Parental Leave Bill, I would suggest that the ideology concerned is a typically conservative belief in the importance of the traditional role of women as stay-at-home mothers. This belief is likely to be particularly prevalent among the older members of the National Party. It is a belief at odds with the reality of family living as we approach the millennium. Without paid parental leave, many women cannot afford to be stay-at-home mothers for 12 weeks, let alone any longer.

The Parental Tax Credit reflects the ideology of individual or private choice because it provides financial assistance for whatever arrangements parents prefer for their children. If one accepts any arguments for public responsibility for children, if one acknowledges any public good element in the care of children, tailoring the policy choice response to the

¹⁹¹ Alliance member *Social Services Select Committee Report on the Paid Parental Leave Bill* (25.6.99) 3.

ideology of private market and private or individual choice becomes incoherent. As Lucinda Finley observes, "[T]he tax relief route essentially reinforces the status quo, and therein may lie its strongest appeal to conservatives."¹⁹²

The introduction of the Parental Tax Credit in the circumstances was a supremely clever short-term political move. Whether it will be so clever for National in the long term remains to be seen. Sadly the introduction of the Parental Tax Credit may only serve to further delay the time when working families with young children, particularly mothers, will receive effective compensation for some of the costs they face and some of the benefits they provide in raising our future labour force and our future society.

To summarise, the importance of ideology or making good public policy as a motive for government action has been demonstrated in other contexts, however ideology does not appear to have played a large part in the political progress of the Paid Parental Leave Bill, despite appearances to the contrary. The economic theory of legislation appears to offer a more substantial account of the failure of the Paid Parental Leave Bill to progress beyond the select committee stage. The circumstances surrounding the Paid Parental Leave Bill indicate strong interest group influence. The business/employer vote is a substantial one, which the government would be loathe to lose, and the NZBRT and the NZEF mounted a powerful, extensive and very public opposition campaign. In addition, it appears that officials were given a narrow brief with respect to the Bill given that it was a non-government Bill on which the government had declared itself undecided. This suggests that the government never had any intention of supporting the Bill beyond the select committee stage. Moreover the government's introduction of the Parental Tax Credit Policy under budget urgency during select committee deliberations on the Bill can only be regarded as a cynical self-serving strategy aimed at maximising the government's prospects of re-election, especially given that the majority opinion in the select committee report did not raise any ideological or other opposition to the Bill itself.

¹⁹² Lucinda M Finley "Legal Aspects of Child Care: The Policy Debate over the Appropriate Amount of Public Responsibility" in Janet Shibley Hyde and Marilyn J Essex (eds) *Parental Leave and Childcare: Setting a Research Policy Agenda* (Temple University Press, Philadelphia, 1991) 125, 154.

How were the government's chances of re-election maximised? First, and most importantly, the government had not alienated the business/employer vote by supporting a Bill they strongly opposed. Second, the Parental Tax Credit gives something, albeit not much, to the public who have voiced strong support for paid parental leave, thus the government minimised the alienation of the public vote. Third, the government avoided lending potentially vote-winning credibility to the Alliance, through support of the Bill close to an election.

not adapted to the reality of working family life as we approach the millennium. Paid parental leave represents the first, critical step¹⁹³ towards achieving a sustainable balance between the needs of the family and the needs of the economy. Laila Harré put paid parental leave on New Zealand's political agenda with the introduction of the Paid Parental Leave Bill.

The National Government and business groups, the NZBRT and the NZEF, have used arguments grounded in neoclassical economic theory to oppose the Bill and portray it as economically inefficient and too costly to implement. However, empirical evidence fails to support their claims. Moreover, neoclassical economic theory can, and does, support a case for paid parental leave, as shown in Section V, particularly if a long-term view is taken.

Thus, I have argued that the National Government and business groups "abused" neoclassical economic theory by using it, ostensibly in the public interest, to disguise the pursuit of their own self-interested ends. To this end, public choice theory offers a substantial explanation for the failure of the Paid Parental Leave Bill to progress beyond the select committee stage. Much of the political progress of the Bill can be explained in terms of strong interest group influence from the NZBRT and NZEF, and in terms of the National Government acting rationally to maximise its prospects of re-election. The role of ideology¹⁹⁴ in determining the fate of the Bill is barely discernible.

¹⁹³ It is important to acknowledge that paid parental leave cannot achieve its objectives alone. In order to further improve the health and welfare of children and mothers and address women's inequality in the labour market, it must be part of a comprehensive "family" approach to social and economic policy. Paid parental leave must be supported by other measures. The way we work and the structures within which we work need to be reconsidered. High quality affordable childcare must be easily accessible. There must be a shift in cultural attitudes towards the role of fathers as caregivers. There must be an increase in the value we as a society place on caring work in all its forms.

¹⁹⁴ Demonstrated as an important motivator for legislators generally.

VIII CONCLUSION

Family life has changed. The traditional family with a stay-at-home mother and a breadwinning father is becoming increasingly rare as more and more women participate in paid work, particularly when their children are young. It would appear that, unlike most countries in the world which provide paid parental leave, government and business in New Zealand have not adapted to the reality of working family life as we approach the millennium. Paid parental leave represents the first, critical step¹⁹³ towards achieving a sustainable balance between the needs of the family and the needs of the economy. Laila Harré put paid parental leave on New Zealand's political agenda with the introduction of the Paid Parental Leave Bill.

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What does this mean for the legitimacy of public policy making in New Zealand? Quite possibly nothing. The demise of the Paid Parental Leave Bill in New Zealand was inevitable given its political circumstances. We did not need public choice theory to tell us that. It was a non-government Bill introduced to the House by chance not long before an election. Thus, public choice theory appears to have lived up to one of the major criticisms of it, that its explanations are often tautological. There is not a whole lot to learn from here. Public choice theory looks good, it looks objective and it looks complicated. It is complicated. But it is not good nor is it objective. In the final analysis the very simplifications (primarily the behavioural assumption that all individuals act rationally to maximise their self-interest) that give public choice theory its theoretical structure, predictive and explanatory powers rob it of meaning.

The Government of New Zealand reserves the right to postpone, in the economic circumstances foreseeable at the present time, the implementation of Article 11(2) as it relates to paid maternity leave or leave with(out) adequate social security benefits.

B United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

This covenant was ratified by New Zealand in 1984. Article 11(2) provides:

in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective rights to work, State Parties shall take appropriate measures ...

(b) to introduce maternity leave with pay or comparable social benefits without loss of former employment, seniority or social advantages.

New Zealand also entered a reservation in relation to Article 11(2) of CEDAW that is still in force.

C ILO Convention No 103

New Zealand has not ratified Convention No 103. Only 53 of the ILO member states have ratified either Convention No 103 or its predecessor, a 1919 convention concerning the employment of women before and after childbirth.

This convention provides for the availability of a minimum entitlement of 12 weeks' maternity leave. There is a requirement for a mandatory leave period of six weeks after confinement, and for payment of cash and medical benefits in accordance with national laws,

APPENDIX 1: INTERNATIONAL OBLIGATIONS RELEVANT TO PARENTAL LEAVE

A *The International Covenant on Economic, Social, and Cultural Rights*

Article 10(2) provides

Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

At the time of ratification in 1978, New Zealand made the following reservation which is still in effect:

The Government of New Zealand reserves the right to postpone, in the economic circumstances foreseeable at the present time, the implementation of Article (10) 2 as it relates to paid maternity leave or leave with[out] adequate social security benefits.

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and under conditions prescribed by countries. The convention also provides for nursing breaks in accordance with national legislation or regulation, and that it should be unlawful for a person's employment to be terminated for reasons associated with maternity leave. Most of the countries that provide paid parental leave under this convention do so through the use of contributory social insurance schemes.¹⁹⁵

D *ILO Convention No 156*

This convention requires member states to declare and pursue national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice. This convention has not been ratified by New Zealand.

E *ILO Part-time Work Convention 1994 No 175*

This convention requires that part-time workers enjoy the same conditions as full-time workers in a comparable situation. This convention has not been ratified by New Zealand. The New Zealand requirement that an employee must have been employed for more than 10 hours per week over a period of one year contravenes this convention.

F *Universal Declaration of Human Rights (UDHR)*

Article 26(2) provides: "motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection".

¹⁹⁵ Revision of Convention 103. As a part of the process of revising Convention 103, the ILO has prepared a questionnaire seeking the views of member countries' governments as to what the content of a revised convention should be. The tenor of the questionnaire is towards the universal provision of payments, whether this is by the employer, the employee, or the government. The questionnaire suggests that any convention would allow member countries to choose their own eligibility criteria for coverage, with ineligible women being presumed to be eligible for benefits from the state. A government response to the questionnaire is currently being prepared.

G *Convention on the Rights of the Child*

Article 3(1) provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". In addition Article 26 of the International Covenant of Civil and Political Rights (ICCPR) prohibits discrimination on the grounds of sex.

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