

In Germany, parents can sue the government for failing to provide child care ^[1]

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EXCERPTS

You've had a baby—congratulations! Now, when will you be returning to work? For most parents, their answer depends on the arrangements they can find for child care—this is especially true for mothers, who, despite many changes to society over the past century, remain primarily responsible for childrearing across industrialized nations. The difficulty of securing daycare varies drastically country by country.

In 2013, Germany declared that every child over the age of 1 has the legal right to a space in a public daycare facility. This past fall, while America's election unfolded, Germany's highest court took this mandate one step further: It ruled that parents may sue for lost wages if they can't find a place for their child in a public daycare center. This decision came in response to three mothers who filed a lawsuit declaring that authorities neglected to create the necessary daycare slots required by the 2013 ruling. Because the mothers couldn't find a child-care center with any openings in their hometown of Leipzig, their lawyers argued that they were unable to return to work after giving birth, resulting in a loss of earnings. Chief Justice Ulrich Herrmann ruled in the mothers' favor on October 20. (Stay-at-home parents, by contrast, wouldn't have damages to recoup because a lack of child-care availability hasn't resulted in a loss of wages.)

This law may seem crazy to Americans, but it follows as a natural development from Germany's long history of offering governmental support for families, and its more recent history of encouraging mothers' paid employment. By contrast, the American system, which considers families a private matter, looks crazy in its own right when compared to much of the globe. The U.S. has some of the most overworked parents, the lowest public commitment to caregiving, and highest rates of maternal and child poverty of any western industrialized country.

The court's decision is part of a broader conversation taking place in Germany and around the world about who is responsible for the care of children in an age when two out of three mothers work outside the home in economically developed countries. In the case of Germany, the government's decision to offer high-quality, low-cost, universal daycare helps to spread the expense of childrearing across society, suggesting that it is not parents' job alone to either raise children themselves or contract it out and pay for that service themselves. (Germany's public child-care system is state-subsidized and its operation is decentralized, so parents' contributions are set by the regions and vary according to family size and income.) Germany's approach is not merely some charitable effort to help families; it also comes with real economic gain, as child-care availability is known to have a positive impact on women's employment decisions.

For Germany, the idea that the government has an obligation to provide childcare for young children is part of a recent shift. The cultural and legal assumption in Germany has long been that mothers' main commitment should be to their children, as evident in the outdated adage "Kinder, Küche, Kirche" ("Children, Kitchen, Church"), which intimates that women's place is with their children, tending to the cooking, and at church. Combining work and family for German women was explicitly discouraged for decades by policies that reinforced a traditional gender division of labor, including extremely generous maternity leave (up to three years), generous tax breaks to single-earner families, short school days, and public healthcare and pension systems that automatically granted insurance rights to an economically inactive wife of a working husband. In essence, these policies encouraged women to stay home and care for young children, and the government provided mothers with material supports to make this possible.

But since the mid-2000s, Germany has been forced to reconsider this breadwinner-homemaker model. The country confronts a low fertility rate, labor shortage, and gender-equality mandates from the European Union. How might a nation tackle these three related dilemmas? By supporting women who work. This means that mothers alone cannot be responsible for childrearing.

Along these lines, in 2007, Germany initiated a major shift toward a new "sustainable family policy" model that promotes mothers' continuous employment, invests heavily in early childhood education services rather than giving cash to families, and generally endorses a dual-earner family model—a striking break from the previous policy regime. Whether the intentions stem from pronatalist, economic, and/or feminist motives, the court decision in favor of the Leipzig mothers signals to German mothers that they can and should be able to

return to work after giving birth, and the government has a duty to facilitate their entry back into the labor market. By providing universal public child care, and giving parents the legal right to sue if they can't access this service, it sends the message that the answer to "who should care for children?" is, in part, the government.

The German example serves as quite the counterpoint to America's current approach to this question. Securing daycare in the U.S. is, to be blunt, a nightmare. The U.S. has no universal child care prior to the start of elementary school, which begins around age five. Even then, there is no universal program once school lets out. Without a public option the vast majority of families have to find private solutions. (The limited federal child-care and early education provisions like the Head Start program are largely means-tested for the poorest citizens.)

Families that must turn to the market find vast differences in the cost, quality, and availability of care. These disparities are chronicled in The New America Care Report, which finds that full-time center-based daycare runs an average of \$9,589 a year for children ages 0 to 4 in the U.S.—higher than the average cost of in-state college tuition—and costs much more in dense urban areas. Until as recently as 2013, there were no national regulations governing quality of service, staffing, or health codes for daycare facilities, and, as a result, the options were all over the map, both in terms of standards and outcomes. The sociologists Julia Wrigley at the City University of New York Graduate Center and Joanna Dreby at The University at Albany SUNY found that the death rate for infants was seven times higher in home-care settings than in daycare centers. The lack of regulations for child-care standards means that wealthier families are able to provide safer, higher quality environments for their children than lower-income families.

The U.S.'s laissez-faire approach to child care also creates dramatic disparities across the socioeconomic spectrum with regard to mothers' labor-force participation. Both wealthy and poor women often face child-care difficulties and inflexible workplaces in the United States. But their options to resolve these problems couldn't be more different. Higher-income mothers can more easily leverage their resources to pay for (safer, better, more reliable) child-care solutions, while poor mothers cannot. Higher-income mothers are also more likely to be employed in occupations that offer job security and policies like paid maternity leave or employer-sponsored child care. Given the prohibitively high cost of daycare, lower-income mothers may leave the labor force in order to care for their children themselves. Sociologists have documented how detrimental these job turnovers following childbirth can be for mothers because they tend to spur a "downward spiral" in occupational achievement and lifetime earnings. Limited access to child care hampers economic growth more broadly because it inhibits parents' ability to participate in the paid labor force.

The U.S. economy relies on mothers to work outside the home and to raise the country's next generation of citizens. Mothers do so with with no reliable child-care system and few other federal family policy benefits. The lack of public support for mothers' caring labor introduces what Nancy Folbre, a professor of economics at the University of Massachusetts, Amherst, and Paula England, a professor of sociology at New York University, call the "free rider" problem. The benefits of mothers' childrearing spread widely across society (to employers, colleagues, neighbors, friends, spouses, their future children), yet mothers bear a disproportionate share of the costs. England, along with the sociologist Michelle Budig at the University of Massachusetts, Amherst, found that mothers literally pay a price for childrearing: Women experience a seven percent wage penalty for each child they have. The size of this "motherhood penalty" varies for women depending on factors such as race, age, marital status, and number of children. The penalty also exists cross-nationally, and is smaller in countries where cultural attitudes are more favorable towards maternal employment.

Universal child care helps resolve the free rider problem. Countries like Germany socialize the cost of childrearing so that mothers alone don't bear the brunt of the responsibility, and therefore the penalties. The recent court ruling indicates that, at least in Germany, this support is a right, not a privilege.

Child care was on the national agenda in the 2016 U.S. Presidential election. Secretary Hillary Clinton and President-elect Donald Trump both outlined tax-relief plans to reduce child-care costs for American families. Clinton, who made supporting working families a cornerstone of her platform, proposed to cap the cost of child care, guarantee paid family leave, and institute universal Pre-K for four-year-olds, among other measures. Trump proposed far less in the way of universal supports to families: primarily, a new income-tax deduction for child-care expenses (something that won't help the neediest families) and paid leave for mothers but not fathers.

Whether these policies come to be or not, women in the U.S. are nevertheless a long way from having the legal right to sue for lost wages like their German counterparts. But should Germany's efforts pay off in the form of a healthier economy, Americans may want to look to its example and see what can be replicated. What they'll find is not just good wages and a strong education system, but also a cultural belief that when women work, it can't also be solely their job to raise the country's children.

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