

The right of women to child care in the United States ^[1]

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Excerpts from abstract and introduction

Abstract

This essay argues that international law binds the United States to adopt comprehensive policy providing accessible and affordable child care as a right of women. Women disproportionately assume the responsibility of unpaid and undervalued child care and therefore are impeded from full participation in public life. These discriminatory effects compound for minority women. Despite its wealth, the United States is outside the mainstream of international morality and out of bounds of its obligations under the American Declaration, ICCPR, ICERD, and customary international law. This essay employs intersectionality analysis and the due diligence principle to add missing texture to the significance of this debate for the United States. The plan proposed by Senator Elizabeth Warren in her 2020 bid for president meets the United States' affirmative obligations. In adopting this plan, the United States would also align with its allies and advance its own economic, political, and security interests.

Introduction

COVID-19 has laid bare the underinvestment in child care in the United States. Individual parents and the labor market are now having to reckon with the absence of accessible and affordable child care. Some daycares are closed and many are in distress. This crisis has devastating implications for women's ability to participate in public life on an equal footing with men. Women disproportionately shoulder the responsibility of child care. Minority women, who are more likely to have low-paying jobs, lack access to child care, and be single heads of households, are hit particularly hard by the child care crisis. Against the backdrop of these challenges, Senator Elizabeth Warren, during her bid for the Democratic Party's nomination for president, put forward a comprehensive plan providing a right to accessible and affordable child care. This essay locates the right to child care as a right of women under international law. The United States is a party to the American Declaration, the International Covenant on Civil and Political Rights (ICCPR),⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). These treaties prohibit discrimination and require the United States to take steps to achieve effective equality for women, while addressing impacts on minority women. Child care policy is necessary to these goals. Despite being an outlier for not ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on Economic, Social and Cultural Rights (ESCR), the United States must comply with the customary international law obligations embodied in these treaties, including the right to child care. The first Part of this essay examines the lack of adequate child care, its effect on women's equality, and Senator Warren's proposal. The second Part of this essay argues that international law creates a right of women to affordable and accessible child care and examines countervailing concerns, including perpetuating the stereotype of vulnerability, de-emphasizing quality of care, and resource allocation. This essay does not offer an in-depth policy analysis of Senator Warren's proposal, nor does it map the practical pathway to accomplishing this legislative agenda. This essay contributes to scholarship in this area by arguing that the United States has an international law obligation to women to adopt adequate child care policy and that Senator Warren's proposal meets this obligation. Where a right creates an affirmative obligation, states must act with due diligence. The United States should adopt comprehensive child care policy because doing so is both the right thing to do under international law and advances the United States' own societal interests.

Region: United States ^[4]

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