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SOC 133B: Sociology of Reproduction

10 December 2020

Racial and Class Inequalities of the Family & Medical Leave Act

In 2018, a Minneapolis marketing firm made headlines for offering “fur-ternity leave,” so employees could readily work from home to either take care of a sick pet or integrate a new pet into their home (Haag). The slew of media headlines covering this and similar policies represent “feel-good” news, with these accommodations rightfully in need of celebration. Simultaneously, however, these policies and subsequent coverage are ironic when considering the ongoing shortcomings of parental leave policies in the United States. The Family and Medical Leave Act of 1993 (FMLA) embodies this inadequacy as the United States’ central federal legislation governing family leave. In this paper, I will argue that the FMLA reinforces class and racial inequalities by exacerbating unequal access to parental leave for mothers and widening disparities in infant and maternal health outcomes. These systemic disparities convey the dire need for a universal paid leave policy to serve as a key component of advancing Reproductive Justice.

FMLA as an Act of Reproductive Governance

The 103rd Congress passed the FMLA in 1993, with President Bill Clinton officially signing it into law. While it passed that year, the piece of legislation was the result of an evolving

and progressive movement to enshrine parental leave as a federal right for all women and families in the country. For example, the Equal Pay Act of 1963 and the Civil Rights Act of 1964 challenged discriminatory employment practices, paving the way for the passage of the FMLA (Manuel & Zambrana 126). Shifting cultural norms and societal pressures shaped the emergence of these policies, as well. For instance, a growing number of women participated in the workforce during World War II, when women were needed to assume the jobs their drafted husbands had previously held (Scholar 32). On the heels of this, second wave feminist efforts spearheaded by the National Organization for Women (NOW) demanded maternity leave and equal employment opportunities, pressuring Washington to enact parental leave (Scholar 44). As this exemplifies, the FMLA stood on the shoulders of other policies and movements that lay fertile soil for more comprehensive anti-discrimination employment legislation for women.

The FMLA mandates at least twelve weeks of unpaid leave for employees in an event of a need to care for a new child, a sick family member, or oneself. This unpaid leave is protected for an employee, challenging pregnancy discrimination and, in theory, creating further opportunities for women to mediate maternity with employment (Scholar 29). The FMLA, however, has stringent restrictions. Firstly, the FMLA only guarantees twelve weeks of unpaid, job-protected leave, creating ongoing barriers for mothers or family members whose maternal or familial needs demand more protected time off. Secondly, FMLA coverage only applies to workers who have worked at their company for at least 1,250 hours in the previous year. Furthermore, only “public agencies or private companies” that have more than fifty employees are required to provide unpaid leave to their employees, enabling certain employers who fall outside of these provisions to exclude their employees from coverage (Scholar 63). Since its passage, many states have acted upon the inadequacies of the FMLA, with a few states

instituting their own statewide *paid* family leave legislation and more states simply expanding their FMLA eligibility requirements. For example, six states and the District of Columbia have extended FMLA coverage to companies with fewer than fifty employees (Sholar 106). Nonetheless, limited eligibility requirements in the FMLA remain, making the program inaccessible to many. Research shows that only about 60% of United States workers qualified for coverage in 2010. Lower-income workers who qualify for coverage especially face difficulty utilizing unpaid leave due to an imperative to continuously earn wages (Sholar 29).

By governing over the reproduction and maternity of individuals, the FMLA emerges as an act of reproductive governance. In “Reproductive Governance in Latin America,” Morgan and Roberts define reproductive governance as the ways in which institutions, such as the government, religious sectors, and NGOs, preside over and impact the reproduction, fertility, and maternity of individuals. This reproductive interference can be employed through various mechanisms, including policies, moral judgements, and economic incentives (Morgan and Roberts). As I will argue, the FMLA has dire implications on a woman’s ability to conceive and parent. On an individual level, the FMLA may affect a woman’s ability to parent and dictate the extent they work while mothering. On a structural level, the FMLA’s unpaid leave and strict eligibility benchmarks reinforce a stark chasm between women of different classes and races in their ability to safely conceive and parent with dignity. In this way, parental leave policies allow governments and employers to moderate one’s relationship with work and parenthood, consequently placing unequal value on certain individuals’ fertility and maternity.

Introducing Reproductive Justice as a Theoretical Framework:

I will be centering Reproductive Justice as a theoretical framework for my essay, positioning Reproductive Justice's "right to conceive" and "right to parent" agenda items when analyzing the eugenic implications of the FMLA. Women of color created Reproductive Justice in 1994 in resistance against the white-centric, abortion-centering reproductive rights movement. Contrary to mainstream reproductive rights, Reproductive Justice considers the role of race, class, and other structures in converging with one's gender to affect a woman's reproductive safety, likelihood of reproductive violence, and reproductive capabilities. With this intersectional focus, Reproductive Justice weighs one's right to have a child as importantly as one's freedom to not have one (Luna and Luker).

Race and class drastically affect an individual's ability to access unpaid *and* paid leave. As previously explored, the FMLA only affords unpaid leave to certain employees who meet strict eligibility criteria. Many low-income workers may fall outside of the FMLA's "1,250 hours in the past year" eligibility requirement due to how lower-income mothers are structurally more likely to work part-time or be intermittent workers (Manuel and Zambrana 130). However, even for those who qualify for unpaid leave, a stark proportion of lower-income workers do not access leave due to an inability to take prolonged time off work without pay. In fact, low-income mothers are more likely to serve as the sole wage earners for their families, facing a heightened imperative to work (Manuel and Zambrana 130). Furthermore, even if lower-income women access some unpaid leave, they are more likely to return to work earlier than their upper-class counterparts due to their dependence on pay (Manuel and Zambrana 128). All of these components make it less likely that lower-income mothers access unpaid leave. As this exemplifies, one's class heavily determines their relationship to and use of the FMLA.

Moreover, in only allocating unpaid leave, the FMLA allows employers to go beyond unpaid leave and grant their workers paid leave. This has led to an uneven distribution of paid leave coverage across different workplaces and among certain employees. Data from the 2011 National Compensation Survey (NCS) of wage and salary workers show that only 40% of United States workers are protected by employer-sponsored paid parental leave (Bartel et al. 6). Within this 40%, lower-income workers are less likely to have paid leave than workers with higher pay (Bartel et al. 1). Furthermore, the NCS finds that Hispanic and Black non-Hispanics are less likely to qualify for paid parental leave than White non-Hispanic workers are. Specifically, Hispanic women were 5.5% less likely to report taking paid leave (Bartel et al. 7). As this exemplifies, paid leave is not equally accessible for women across different racial and class backgrounds. This is especially troubling given the aforementioned dependence of women of lower income on consistent pay.

In addition to strict eligibility requirements, the differential affordance of paid leave that stems from the FMLA allows the state and federal government and employers to privilege or discourage the reproduction and maternity of certain workers by either granting or denying paid leave. Arbitrarily afforded paid leave encourages the reproduction and maternity of White and upper class women, while infringing upon lower income women and women of color's "right to conceive" and "right to parent." This exacerbates a chasm in reproductive outcomes between women of different classes and races. Consequently, Reproductive Justice is an essential lens to analyze this policy and its consequences, as well as future reform.

Parental Leave and "The Right to Conceive"

Racial and class disparities in access to unpaid and paid leave bear a significant impact on infant and maternal outcomes. Numerous studies have demonstrated that one's utilization of unpaid leave or access to paid leave can improve infant and maternal outcomes in various ways. For example, Maya Rossin's "The Effects of Maternity Leave on Children's Birth and Infant Health Outcomes" explores how the FMLA and the utilization of unpaid leave are associated with narrowly improved infant outcomes. A study conducted by Rossin found that mothers who utilized parental leave had a .02% increase in birth rate, a .04% increase in the gestation length, a 3% decrease in low birth weights, and a 3% decline in the likelihood of premature birth. Furthermore, for Rossin's sample, the FMLA reduced the infant mortality rate by six deaths per 10,000 births. These positive outcomes were even greater for mothers who were highly educated and married, both of whom Rossin identifies as more likely to access and afford unpaid leave under the FMLA (Rossin 11).

Rossin's data represent the positive effects of unpaid leave on the health of an infant and their mother. The FMLA affords mothers more time with their children, granting them more opportunities to breastfeed, decreasing levels of maternal stress, and allowing mothers to acutely respond to arising infant and maternal health concerns (Rossin 13). Hence, when accessed, parental leave has positive eugenic outcomes for an infant. However, systemic lower rates of access among lower-income mothers and women of color further predispose their babies to worsened health outcomes by exacerbating high rates of maternal stress, reducing mother-child time, and preoccupying mothers with the imperative to work and earn wages. This undoubtedly impedes on the equal right to safely conceive.

Paid leave, while not guaranteed under the FMLA, cannot be separated from infant and maternal outcomes either. Research has found that paid parental leave coverage is associated

with improved infant outcomes. For example, a study by Brandy Snyder compared the rates of infant mortality among women who access unpaid leave under the FMLA with women who access California's Paid Family Leave (PFL) policy and women who access the federal Temporary Disability Insurance program (TDI). PFL and TDI afford eligible mothers in select states comprehensive paid leave or cash benefits in the event of pregnancy (Snyder 146). California's comprehensive paid family leave policy had the most significant effect in reducing rates of infant mortality and in bridging disparities in infant mortality rates across women of different racial, class, and educational backgrounds. Specifically, Snyder found that infant mortality declined by 6.5 deaths per 10,000 births under California's PFL, even reducing the number of infant deaths among less educated mothers. Furthermore, Snyder's study found that unpaid leave under the FMLA has less significant effects on the infants of single women and less educated women (Snyder 148). Similar to Rossin's study, Snyder helps cement that paid leave is more holistic in reducing infant mortality rates than unpaid leave. This illustrates that the stark disparity in access to paid leave across women of different racial and class backgrounds reinforces inequities in infant outcomes. When put in conversation with Rossin's findings, this also emphasizes the inadequacy of unpaid leave (even when utilized) for lower-income women, as opposed to more comprehensive paid parental leave.

Parental Leave and "The Right to Parent"

In addition to affecting birth outcomes, the FMLA leads to different work and parenting outcomes. This is central to Reproductive Justice's "right to parent" agenda in two ways; the FMLA creates barriers to lower-income and women of color's decision to parent and, secondly, infringes on their ability to earn wages post-pregnancy. The former is exemplified through the aforementioned barriers to accessing unpaid leave mentioned by Manuel and Zambrana; lower-

income women do not just contend with individual, family, or organizational systems when considering maternity leave, but are additionally limited by financial considerations and imperatives (Manuel and Zambrana 124). For this reason, lower-income women also have to resolve deeper conflicts between work and family, often needing to maximize paid work to survive. This contributes to lower rates of use of unpaid leave by lower-income women or fewer weeks accessed under unpaid leave. Another consequence is an impact on one's decision to conceive and parent in general. With these systemic barriers and a lack of meaningful support afforded to lower-income women by the FMLA, these women may find it harder to mediate their imperative to work with parenthood, deciding not to parent all together. As a result, one's class and the barriers upheld through the FMLA can complicate one's decision to parent.

Even for individuals who choose to raise children, the FMLA does little to extend Reproductive Justice's "right to parent," making it significantly harder for lower-income women to parent with dignity and earn adequate wages. Studies have shown an association between parental leave policies, leave-taking, and return-to-work decisions for mothers. The National Longitudinal Survey of Youth (NLSY) reveals that parental leave legislation slightly increases the incidence of leave taking (and is proportional to one's income), increases the incidence of returning to work, and decreases the likelihood of starting a new job post-birth (Baum 772-773). These findings demonstrate how parental leave, when accessed, can aid a mother's ability to earn consistent wages and re-enter the workforce post-pregnancy. However, because of unequal access to and utilization of parental leave, these findings pose unique barriers for lower-income women. Thus, those who do not access parental leave, which disproportionately encompasses lower-income women and women of color, have lower rates of job retention and work re-entry post-pregnancy.

The association between accessing parental leave and levels of work-reentry are central to Reproductive Justice's "right to parent" agenda, as the ability to earn wages and re-enter the work industry can enable a mother to better financially support her child. Wages undoubtedly affect one's susceptibility to poverty, food insecurity, malnourishment, and more. This is essential to the "right to parent" given all of these epidemics' dire consequences on individual, familial, and generational health. For example, a study from Pascoe et al. found that children who experience poverty are predisposed to higher rates of chronic stress. Among other health outcomes, chronic stress can lead to nonadoptive tendencies, such as overeating and substance abuse, which may escalate to death or lower life expectancies (Pascoe et al. 3). This reveals a pipeline between lack of parental leave, lower rates of work re-entry, poverty, and worsened health outcomes. Reproductive and maternal accommodations, such as parental leave, have implications for both a child's current and future health.

Similarly, equitable and widespread access to parental leave policies are integral to a woman's sustained ability to financially support a child and their own self. Beyond their role as mothers, equitable access also ensures that all women are able to work and earn wages while having children if they so choose, helping challenge patriarchal structures that confine women to motherhood over professional fulfillment. These dimensions are essential to Reproductive Justice. Caring for a child without adequate paid leave policies often creates a predicament for mothers who must choose between parenting and working. This may affect one's parenting decisions and abilities, consequently constraining the parenthood of those who are predominantly denied or unable to access comprehensive paid leave.

Reproductive Justice: The Case for Universal Paid Parental Leave and Wage Reform

Currently, the FMLA reinforces significant racial and class divides in infant and maternal health outcomes and decisions, infringing on the universal right to conceive safely and parent with dignity. A Reproductive Justice solution to these systemic failures includes the immediate passage of universal paid leave to allocate paid time off to all mothers, regardless of how much they earn or where and how long they have worked. Universal paid leave, while an act of reproductive governance within itself, would diminish the current disparities in access to paid leave. A universal paid parental leave policy would soften the stranglehold of employers to govern over and assign value to the reproduction of their employees. Furthermore, paid leave would also allow lower-income women to access time off without fear of losing wages, alleviating many of the systemic barriers explored by Manuel and Zambrana. Universal paid leave, therefore, would help bridge stark class and racial divides in infant health outcomes and maternal experiences.

Paid parental leave policies instituted by legislative bodies are not an entirely new concept. California was the first state to pass and then implement state paid family leave (PFL) legislation in 2002 and 2004, respectively. New Jersey, Rhode Island, New York, and Connecticut joined California soon after in 2009, 2013, 2016, and 2019 respectively (Ybarra 367). All of these policies afford different durations of protected paid leave; New York's program, for example, started at eight weeks, increased to ten weeks in 2020, and will increase further to twelve weeks in 2021 (Sholar 125). Furthermore, a few states have temporary disability insurance (TDI) programs, which provide resources (including cash benefits) rather than time off in an event of a "disability," including pregnancy (Ybarra 368). These programs represent the emergence of more comprehensive parental leave and resources. Specifically, California's PFL addresses some of the classist and racist inadequacies of the FMLA by having

minimal eligibility requirements. Almost all part-time workers qualify for California's PFL due to how the program does not require workers to be with their employers for a certain duration to qualify for coverage or to have earned a certain amount of wages (Milkman and Appelbaum 306).

Regardless, universal paid leave must not neglect the pervasiveness of class and racial barriers even within more comprehensive policies. Mirroring trends from the FMLA, lower-income workers in California are still less likely to utilize statewide paid family leave due to how the program's paid coverage payments (which are 60%-70% of one's usual wage) are still below what these working mothers need to stay afloat and to care for themselves and their children. In fact, workers with less than \$20,000 of annual wages only made up 16% of California workers who utilized paid family leave in 2018. (Schumacher).

These statistics do not serve as an argument against universal paid family leave, but rather as an acknowledgement that paid parental leave should not be viewed as a flawless solution. Paid family leave only centers Reproductive Justice if it is cognizant of and challenges the role of class, race, and other identities in access to leave and in maternal employment conditions. As the FMLA and California's PFL program indicate, lower-income employees utilize parental leave at lower rates due to systemic imperatives to work extensive hours to earn livable wages. Reform around parental leave must also advocate for a greater, livable minimum wage so that lower-income workers can more readily mediate parental leave with survival. This is a self-perpetuating cycle for lower-income mothers; not only do unlivable minimum wages lead to higher rates of poverty, but such conditions of poverty are predictors of malnourishment, food insecurity, and higher rates of chronic stress – each of which are detrimental to infant and maternal health (Pollin) (Ivers & Cullen). Thus, an inability to utilize parental leave is only the

tip of the iceberg in terms of racial and class disparities in infant and maternal health. As a result, a Reproductive Justice approach to the inequities explored in this essay must advocate for universal paid family leave, but not view such a program as exempt from larger structures of inequalities. Rather, this much-needed universal program must coexist with other efforts to increase minimum wage and address the challenging living and working conditions of lower-income mothers.

Conclusion

In this essay, I have argued that the FMLA reinforces inequitable access, irrespective of whether an individual consequently qualifies for unpaid leave, employer-sponsored paid leave, or paid parental leave legislation. I subsequently exposed the drastic repercussions of disparities in access due to associations between parental leave, improved infant outcomes, and a greater re-entry into the workforce post-pregnancy. As this demonstrates, parental leave, when accessed, has positive eugenic outcomes, though a lack of access makes these policies negatively eugenic for lower-income women and women of color. This conveys the dire importance of re-integrating Reproductive Justice when challenging the inadequacies of the FMLA and considering reform. Nonetheless, further research is still needed. For example, my essay has focused predominantly on how parental leave affects women and mothers, while further research is still needed to explore how parental leave is accessed and utilized by fathers and men, and how these levels of access aid infant, maternal, and parental outcomes. In addition, greater research and political efforts are needed to understand how the federal government can fully fund universal paid parental leave, as well as ensure equitable access to paid leave among all Americans.

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