

NOTE

NORWAY OR THE HIGHWAY: CLOSING THE PARTICIPATION GAP IN THE UNITED KINGDOM'S LABOR FORCE USING NORDIC MODELS OF SUCCESS

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INTRODUCTION

One month after the birth of her daughter, Alison returned to her consulting job, comforted because her newborn was in good hands with her husband Hans.¹ Hans embraced the time alone with his daughter and enjoyed spending his days in the park with the other “latte papas.”² Once their daughter was older, Hans and Alison would enroll her in whole-day public childcare and return to their full-time jobs without fearing the cost. At the same time, one month after giving birth to her son, Mary chose to leave her job in marketing because she could not find a suitable childcare provider for her newborn within her family’s budget. Mary’s husband David wanted to help, but could not afford to take the extra time away from his construction job, and neither had any nearby relatives. The portrait of these families could have been drastically different but for geography—Alison and Hans live in Sweden, while Mary and David live in the United Kingdom.

Sweden is one of four Nordic countries, along with Finland, Iceland, and Norway, that the World Economic Forum’s (WEF) annual *Global Gender Gap Report* consistently ranks among the top high-income countries for overall gender parity based on a range of social, political, and economic metrics.³ Finland, Iceland, Nor-

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1. The families in this example are hypothetical and are loosely based on the families described in Emma Jacobs’ article for the *Financial Times*. Emma Jacobs, *Shared Parental Leave: The Fathers Bringing Up Baby*, FIN. TIMES (Mar. 13, 2016), <https://www.ft.com/content/f3154b96-e0c5-11e5-8d9b-e88a2a889797> [<https://perma.cc/H56X-JCSG>].

2. “Latte papa” is a colloquial term for Swedish fathers “who juggle coffee and infants.” *Id.*

3. WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 2016 3–7, 24–25 (2016) (finding that the Nordic countries continue to rank among the top four most gender equal

way, and Sweden are all high-income, Organisation for Economic Co-operation and Development (OECD) countries,⁴ but their positions on gender equality reports consistently outrank those of other similarly situated countries, including the United Kingdom.⁵ The Nordic countries have long been leaders in gender equality, and much of their success can be attributed to their continued strength in various indicators of women's economic participation and opportunity, which is facilitated by their generous maternal leave and childcare policies.⁶ "Economic Participation and Opportunity" is one index of gender equality that the WEF tracks by measuring the gaps in men and women's labor force participation rates, in their earned income, and in their advancement across several high-level professions.⁷ A country's success in closing the participation gap often stems from a progressive parental leave policy⁸ and from parents' ability to find and afford childcare.⁹ An emerging trend in parental leave policies, inspired by the Nordic countries, encourages both parents to take time away from work by

societies in 2016 based on economic, education, health, and political metrics); *see also* PRICEWATERHOUSECOOPERS (PwC), INTERNATIONAL WOMEN'S DAY: PwC WOMEN IN WORK INDEX 4–5 (2016) (ranking Iceland, Norway, and Sweden as the top three Organisation for Economic Co-operation and Development (OECD) countries in 2013 and 2014 for "female participation in the labour market and equality in the workplace," and Finland as the seventh).

4. OECD member states include economies that meet certain benchmarks for admission and demonstrate a commitment to sustainable economic growth and development both nationally and internationally. *See* Convention on the Organisation for Economic Co-operation and Development art. 1, Dec. 14, 1960, 12 U.S.T. 1728, 888 U.N.T.S. 179; *The Accession Process*, OECD, <https://www.oecd.org/legal/accession-process.htm> (last visited Dec. 20, 2017) [<https://perma.cc/UHW8-Q2RH>]; *Members and Partners*, OECD, <https://www.oecd.org/about/membersandpartners/> (last visited Dec. 20, 2017) [<https://perma.cc/CWL7-NR5Z>].

5. *See* WORLD ECON. FORUM, *supra* note 3, at 10 (determining Iceland, Finland, Norway, and Sweden to be ranked the top four countries, respectively, and the United Kingdom to be number twenty).

6. *See* PwC, *supra* note 3, at 16 (citing shared parental leave and access to affordable childcare as the reason that "the Nordic countries have one of the highest female labour force participation rates in the OECD, and the smallest gaps in the employment rate between women who have children and those who don't.").

7. WORLD ECON. FORUM, *supra* note 3, at 5.

8. In this Note, references to "parental" benefits refer to benefits that apply to both parents "even if the distribution of benefits between the two parents is unequal," as contrasted with "maternity benefits" or "paternity benefits," which refer to benefits conferred only to the mother or father, respectively. WORLD BANK GRP., WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL 58 (2016).

9. In a 2016 report, PwC identified barriers to women returning to the workplace, including the high cost of childcare, and noted that female employment is positively impacted when men take up a greater share of leave benefits. PwC, *supra* note 3, at 17.

mandating that the father's¹⁰ allotted time may not be transferred to the mother.¹¹ Such policies (known as nontransferable leave) require that the father take a certain number of days allotted to him, and if he chooses not to use them, they are lost, rather than having the option to transfer the additional days to his spouse.¹² Parental leave policies have real economic impact because when the father chooses to take advantage of his allocated leave, the domestic labor burden is equalized,¹³ and accordingly, the mother is better able to participate in the labor force.¹⁴

According to data from the WEF, the United Kingdom's ratio of female-to-male labor force participation is 0.87 (seventy-one working-age females actively engage in the labor market for every eighty-two working-age males who do the same),¹⁵ ranking the country forty-eighth for labor force participation, behind eighteen other OECD countries.¹⁶ The United Kingdom's labor force participation ratio has improved since 2006, the second year of the WEF's report, when the country had a female-to-male ratio of

10. The parental leave policies discussed in this Note apply similarly to same-sex couples. However, this Note uses gendered language for the purpose of highlighting gender disparities. "Father" refers to the parent who did not give birth to the child. See, e.g., Ann-Zofie Duvander & Johanna Lammi-Taskula, *Parental Leave*, in NORDIC COUNCIL OF MINISTERS, PARENTAL LEAVE, CHILDCARE AND GENDER EQUALITY IN THE NORDIC COUNTRIES 41–42 (Ingólfur V. Gíslason & Guðný Björk Eydal eds., 2012) (surveying parental leave laws in Finland, Iceland, Norway, and Sweden as applied to same-sex couples and finding all countries to have similar or the same rights and obligations).

11. See, e.g., *Gender Equality in Sweden*, SWEDISH INST., <https://sweden.se/society/gender-equality-in-sweden/> (last updated Jan. 9, 2017) [<https://perma.cc/4LCX-BKBJ>].

12. See *id.* (discussing the portion of leave that is "allocated specifically to each parent, and cannot be transferred to the other").

13. When women reenter the labor force, they often retain "primary responsibility for unpaid work such as care-giving and household chores"; policies like nontransferable leave help counter gender stereotypes and balance the responsibility among partners, as exemplified by Sweden, which has the narrowest gap between men and women's unpaid work. Ceri Parker, *It's Official: Women Work Nearly an Hour Longer Than Men Every Day*, WORLD ECON. FORUM (June 1, 2017) (quoting WORLD ECON. FORUM, *supra* note 3, at 31), <https://www.weforum.org/agenda/2017/06/its-official-women-work-nearly-an-hour-longer-than-men-every-day> [<https://perma.cc/7QUZ-TE3Z>].

14. See WORLD ECON. FORUM, *supra* note 3, at 34 ("Parental benefits enabling mothers, fathers or both to take paid or unpaid time off to care for a child following birth can increase women's participation in the workforce and foster a more equitable division of childrearing.").

15. See WORLD ECON. FORUM, *supra* note 3, at 72, 354 (citing the International Labour Organization's (ILO) *Key Indicators of the Labour Market* database as the source for the calculation of the female, male labor force participation rate).

16. In order of labor force participation rank, the OECD countries ahead of the United Kingdom include Finland, Iceland, Sweden, Norway, Denmark, Latvia, Canada, Portugal, Slovenia, Estonia, Israel, France, Switzerland, Austria, New Zealand, Germany, Netherlands, and Belgium. WORLD ECON. FORUM, *supra* note 3, at 45.

0.80.¹⁷ Despite this marginal closing of the gap, the United Kingdom's ranking in the economic participation and opportunity index nevertheless has fallen from thirty-seventh in 2006 to fifty-third in 2016.¹⁸ This dip suggests that more could be done to equalize labor force participation rates, and ultimately improve gender parity in the country's labor force.¹⁹

Closing this gender gap in labor force participation is important for economic and human rights reasons. From an economic perspective, adopting measures to improve women's access to the labor force leads to overall increased participation in a country's labor force, which in turn can increase a country's total gross domestic product (GDP).²⁰ Ignoring the participation gap is not only a poor economic policy, but is also an injustice to half of the United Kingdom's population. Equal access to the labor market is a form of economic empowerment.²¹ Disparity in labor force participation rates among men and women suggests that there are certain barriers to equal access—one such barrier being lack of adequate child support.²² Lowering or eliminating these barriers by improving access to childcare and increasing the father's role in childrearing can result in greater female labor force participation rates, and ultimately inform deeper cultural attitudes about women in both workplace and domestic contexts.²³

In 2016, the United Kingdom voted to exit the European Union (E.U.)²⁴ by invoking Article 50 of the Treaty on European Union.²⁵ On March 29, 2017, Prime Minister Theresa May gave effect to the referendum by notifying the president of the European Council that the United Kingdom would formally begin the withdrawal process.²⁶ The United Kingdom is now at a uniquely important moment, one in which economic uncertainty underscores the

17. WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 2006 137 (2006).

18. WORLD ECON. FORUM, *supra* note 3, at 354.

19. See Parker, *supra* note 13.

20. See WORLD ECON. FORUM, *supra* note 3, at 26 (estimating that economic gender parity could add an additional U.S. \$240 billion to the United Kingdom's gross domestic product (GDP)).

21. See PwC, *supra* note 3, at 40–41.

22. See *id.* at 4.

23. See discussion *infra* Section II.B.

24. European Union Referendum Act 2015, c. 36 (U.K.); see also *E.U. Referendum*, Gov.UK, <https://www.gov.uk/government/topical-events/eu-referendum> (last visited Dec. 20, 2017) [<https://perma.cc/A4YJ-8XEL>].

25. Consolidated Version of the Treaty on European Union art. 50, Dec. 13, 2007, 2016 O.J. (C 202) 13 [hereinafter Treaty on European Union].

26. Letter from Theresa May, Prime Minister, U.K., to Donald Tusk, President, Eur. Council (Mar. 29, 2017), <https://www.gov.uk/government/uploads/system/uploads/at>

importance of maximizing economic gains.²⁷ Facing a regime without E.U. regulations, the United Kingdom has an opportunity to reshape its policies with a focus on improving labor force participation and retention outcomes for women, thereby realizing economic gains.²⁸

In consideration of this transitional moment in the United Kingdom, this Note makes recommendations for changes that the United Kingdom's government can implement to help close the participation gap between men and women in the United Kingdom. In doing so, the country could not only realize increased economic prosperity,²⁹ but could also improve its global gender parity ranking overall, thus moving closer to a more just and substantively equal society.³⁰ This Note proposes that the United Kingdom improve women's participation in the workforce in the following ways: (i) Parliament should amend the Shared Parental Leave Regulations 2014 to adopt a nontransferable leave provision of three weeks for fathers; and (ii) the Secretary of State should amend the standards in the Childcare Act 2006 by requiring expanded availability of out-of-school childcare, as well as coverage for children ages zero to two. This combination would give women not only the freedom to reenter the workforce, but also to remain in it.

Part I of this Note explains the global gender gap problem, in particular, the participation gap, which is an indicator of women's economic participation and opportunity. Part I then reviews the parental leave policies and childcare benefits available in the United Kingdom before turning to the parental leave policies and

tachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf [https://perma.cc/9HG5-X6EK].

27. Although short-term economic effects have been less drastic than anticipated, the British exit (Brexit) is expected to have long-term effects on the United Kingdom's economy, and as such, it remains important for the United Kingdom to "use all policy tools to support growth." Oscar Williams-Grut, *Europe Was Too Pessimistic About Brexit's Economic Impact on Britain*, BUS. INSIDER (Feb. 13, 2017, 6:49 AM), <http://www.businessinsider.com/brexit-european-commission-raises-uk-2017-growth-forecast-2017-2> [https://perma.cc/44FD-ER9S]; see also Rafal Kierzenkowski et al., *The Economic Consequences of Brexit: A Taxing Decision* 6–7, 25, OECD ECON. POLICY PAPER NO. 16 (2016), <http://dx.doi.org/10.1787/5jm0lsvdkf6k-en> (predicting that Brexit would make the United Kingdom less attractive to foreign investors, thus resulting in potential negative economic effects in the long term) [https://perma.cc/3Q3P-EJMM].

28. See WORLD ECON. FORUM, *supra* note 20, at 26.

29. See *id.*

30. See Alison M. Jaggard, *Transnational Cycles of Gendered Vulnerability: A Prologue to a Theory of Global Gender Justice*, in GENDER AND GLOBAL JUSTICE 18, 18–19 (Alison M. Jaggard ed., 2014).

childcare benefits available in Finland, Iceland, Norway, and Sweden for comparison and contrast. Part II applies certain aspects of the Nordic countries' parental leave and childcare policies to the United Kingdom by suggesting statutory changes to the Shared Parental Leave Regulations 2014 and Childcare Act 2006 that may improve women's labor force participation by decreasing the domestic burdens on women in the United Kingdom. Part III concludes by summarizing the suggestions made in this Note and reiterating the economic and cultural significance of closing the United Kingdom's participation gap.

I. BACKGROUND

This Part first explores the definition and scope of the global gender gap problem, particularly the participation gap as it affects women's rate of economic participation and opportunity, before examining why it is important for countries to focus on closing their participation gaps. Then, it explains the United Kingdom's efforts to increase female participation in the workforce, including the country's current parental leave laws, as well as its statutes providing childcare services for children ages zero to six. Next, this Part examines certain paid leave statutes and childcare provisions in the Nordic countries, including Finland, Iceland, Norway, and Sweden. This examination focuses on the similarities among the countries as part of the Nordic services-focused regime, and in doing so, seeks to identify the provisions that are integral to success in increasing women's participation in the workforce.

A. *What Do We Want? Equality. When Do We Want It? Whenever We Can Define It: The Difficulties of Evaluating Gender Parity*

This Section first defines the workforce participation gap by identifying the metric used to measure the gap and explaining how the gap would be "closed" under this particular definition. It then turns to the economic and human rights justifications for closing the gap, and concludes by explaining why the participation gap is an important metric of gender disparity for the United Kingdom to address.

1. Definition of the Participation Gap

This Note addresses one indicator of global gender inequality: the participation gap. Specifically, the changes recommended in this Note aim to close the United Kingdom's workforce participa-

tion gap, which is one aspect of women's economic participation and opportunity.³¹ This Note adopts the WEF's definition of the participation gap as "the difference between women and men in labour force participation rates," where closing the gap would mean reaching an equal rate of participation between men and women in the labor force.³² Choosing to evaluate gender parity based on women's participation in the workforce necessarily involves reducing "participation" to a simplified metric that accounts for neither the differences among women opting for part-time versus full-time employment, nor the differences among the number of women in managerial positions versus those in entry-level positions—this Note does not, for example, focus on measures employed to close the advancement gap, such as corporate or government quotas.³³ For consistency with the WEF's report,³⁴ this Note uses the International Labour Organization's metric for the labor force participation rate: "a measure of the proportion of a country's working-age population that engages actively in the labour market, either by working or looking for work."³⁵

2. Economic and Human Rights Arguments for Closing the Participation Gap

There are both economic and human rights reasons to address gender inequality by improving the ratio of female-to-male workforce participation in the United Kingdom. Studies from the World Bank, PricewaterhouseCoopers, and the WEF show that countries that improve their levels of gender equality demonstrate improved economic outcomes.³⁶ Women make up half of the population and constitute a significant portion of a nation's talent pool

31. WORLD ECON. FORUM, *supra* note 3, at 5.

32. *Id.*

33. Quotas have been proposed as a means to improving representation of women at high corporate and political levels with the goal of "more equitable representation of women's interests in decision making." WORLD BANK GRP., *supra* note 8, at 10.

34. WORLD ECON. FORUM, *supra* note 3, at 72 (citing the ILO as the source for the Report's definition of the "female, male labour force participation rate" used to evaluate the participation gap).

35. INT'L LABOUR ORG., KEY INDICATORS OF THE LABOUR MARKET: NINTH EDITION 14 (2016), http://www.ilo.org/wcmsp5/groups/public/—dgreports/—stat/documents/publication/wcms_498929.pdf [<https://perma.cc/VFL4-R9G6>].

36. See PwC, *supra* note 3, at 4 (estimating potential long-term gains near U.S. \$5 trillion across the OECD if "female employment rates rise to match those of Sweden's" in various countries); WORLD BANK GRP., *supra* note 8, at 29 ("[I]ncreasing women's labor force participation . . . would also contribute to higher GDP growth."); WORLD ECON. FORUM, *supra* note 3, at 24 (citing data that evidences a relationship between gender parity and gross national income).

both for entry- and management-level jobs, especially given that, on average across the globe, men and women are increasingly reaching equal levels of educational achievement.³⁷ Countries that can realize the full potential of their labor force may reap the reward in economic dividends, specifically in the form of increased GDP.³⁸

That women constitute half of the population goes beyond purely economic calculations however, also reaching considerations of justice. The concept of “justice” can implicate the notion that “claimants should give and receive whatever they are justly due,” including “the fair distribution of the benefits and burdens of participating in a co-operative enterprise.”³⁹ Society may formally purport to afford equal opportunities for men and women, but may lack a substantive component of equality by failing to facilitate “equal claim on the society’s economic resources.”⁴⁰ Adopting these understandings of “distributive justice” and equality, there is no reason that women should have to justify seeking equal access to the labor market, and countries should reexamine their policies that in theory may extoll equal opportunity for all, but in practice may not substantively protect and advance women to the same degree as their male counterparts within that market.⁴¹ Focusing on the participation rates of females in the labor force as compared to males is an appropriate and effective measure of economic and distributive justice, because “female economic participation is the cornerstone of economic empowerment, which is a factor of the level of skills and education of women and conducive workplace conditions, and broader cultural attitudes outside the workplace (e.g. towards shared childcare and distribution of labour at home).”⁴²

3. Why Focus on the Participation Gap?

This Note focuses on the workforce participation gap in particular because closing the gap plays an important role in equalizing

37. See WORLD ECON. FORUM, *supra* note 3, at 24 (noting that “on current trends, the education-specific gender gap could be reduced to parity within the next 10 years.”).

38. See WORLD ECON. FORUM, *supra* note 3, at 26.

39. Jaggar, *supra* note 30, at 1.

40. The idea that formal equality does not necessarily guarantee substantive equality was advanced by John Rawls and summarized by Jaggar in developing her theory of justice. Jaggar, *supra* note 30, at 4–5.

41. See WORLD BANK GRP., *supra* note 8, at 5 (concluding that “gender-equitable legislative base may coexist with high gender inequality resulting from poor implementation of the laws”).

42. PwC, *supra* note 3, at 41.

women's overall economic participation and opportunity, as well as gender disparity more broadly.⁴³ The WEF measures "economic participation and opportunity" as follows:

[Economic Participation and Opportunity] contains three concepts: the participation gap, the remuneration gap and the advancement gap. The participation gap is captured using the difference between women and men in labor force participation rates. The remuneration gap is captured through a hard data indicator (ratio of estimated female-to-male earned income) and a qualitative indicator gathered through the World Economic Forum's Executive Opinion Survey (wage equality for similar work). Finally, the gap between the advancement of women and men is captured through two hard data statistics (the ratio of women to men among legislators, senior officials and managers, and the ratio of women to men among technical and professional workers).⁴⁴

Globally, economic participation and opportunity remains the least gender-equal subcategory measured in *Global Gender Gap Report*—aside from political empowerment—with only fifty-nine percent of the gap between men and women's economic participation and opportunity closed.⁴⁵ In contrast to other categories, the economic participation and opportunity gap shows "a continued reversal on several years of progress and the lowest value measured by the Index since 2008."⁴⁶ In fact, although significantly smaller than the political gap, "[a]t the current rate of change, and given the widening economic gender gap since last year, [the economic participation gap] will not be closed for another 170 years," compared to eighty-two years for the political gap.⁴⁷ Decreasing the participation gap thus targets one persistent area of inequality with the goal of improving not only economic participation and opportunity for women in the United Kingdom, but also positively influ-

43. WORLD ECON. FORUM, *supra* note 3, at 6 (weighting female labor force participation as the third most important metric—behind wage equality and female estimated earned income—in calculating gender parity for the economic participation and opportunity subindex).

44. *Id.* at 5 (footnote omitted).

45. The economic participation and opportunity gap captures the percentage difference between men and women's access to economic variables in countries across the globe regardless of levels of economic development; thus, if 100% of this gap were closed, men and women would be equal in economic variables, including labor force participation, wage equality, and representation in advanced positions. *See id.* at 4–7.

46. *Id.* at 7.

47. *Id.* at 24.

encing other factors that contribute to the country's overall gender parity level.⁴⁸

At the threshold, "gender parity"⁴⁹ is a multifaceted and, in many respects, complicated measurement. There are many indicators used to evaluate gender parity, including economic opportunities, equal access to education, improved outcomes for the health and safety of women and girls, and women's political representation and empowerment.⁵⁰ Different institutions may measure these indicators differently or introduce alternative indices.⁵¹ The difficulty in measuring gender equality is compounded by the existence of intangible variables, such as women's personal and professional satisfaction, which are difficult to quantify, and which this Note does not attempt to capture in its definition of equality.⁵² Further, women are not a homogenous group—gender disparities plague women differently at all intersections.⁵³ Despite the positive effect that this Note's proposed legislation may have, many women will remain disproportionately disadvantaged by their economic, racial, marital, or disability status; this is because developing equality strategies necessarily involves focusing on a particular type of woman being disadvantaged, and consequently, the women who benefit most from the resulting strategy are those that most closely

48. See *id.* at 5–7 (measuring gender parity through an overall Global Gender Gap Index score calculated by taking "[a]n un-weighted average of each subindex score"); see also *infra* note 59 and accompanying text.

49. For purposes of this Note, the phrase "gender parity" is used interchangeably with "gender equality." Definitions are taken from the WEF report, in which progress is measured by "proximity to gender equality rather than to women's empowerment," such that more highly ranked countries have similar outcome levels for men and women, without accounting for any instances of women outperforming men. WORLD ECON. FORUM, *supra* note 3, at 5.

50. See *id.*

51. For instance, the World Bank Group evaluates gender disparities by looking at legal restrictions and differences between the treatment of men and women in their *Women, Business and the Law* project. WORLD BANK GRP., *supra* note 8, at 1–3. Unlike WEF, the World Bank Group does not examine social and policy indicators based on subjective data in their project, such as survey responses. WORLD ECON. FORUM, *supra* note 3, at 75.

52. See Fiona Beveridge et al., *Setting the Scene: The Why, What and How of Promoting Equality Between the Sexes*, in MAKING WOMEN COUNT: INTEGRATING GENDER INTO LAW AND POLICY-MAKING 1, 4 (Fiona Beveridge et al. eds., 2000) (noting the threshold difficulty of proposing equality-focused legislation since "'equality' can mean different things to different bodies or individuals in different contexts").

53. In her survey of the impacts of legislation on women in various countries, Beveridge acknowledges that evaluating policies with respect to their effect on "women" risks assuming that women are "a group of individuals with exactly the same needs and aspirations" when "[t]his is patently not the case." *Id.* at 16.

align with the type of woman who served as the focus of concern.⁵⁴ This Note attacks the participation gap by proposing the adoption of nontransferable parental leave provisions to encourage greater take-up of leave by fathers, in turn freeing women to return to the workforce.⁵⁵ This proposal benefits women who are advantaged by shared parental leave—namely, women with spouses or partners—and does not positively impact single mothers.⁵⁶ Further, while expanding access to affordable childcare may allow a woman who would otherwise remain at home to reenter the workforce, the proposal assumes that the woman had a choice.⁵⁷ It therefore benefits a specific subset of middle-class women whose potential earnings do not outweigh the cost of childcare, but who have the means to subsist on their spouse or partner's income alone.⁵⁸

Addressing the participation gap is nevertheless an important endeavor because improvements in one indicator of gender inequality can positively affect other indicators, and changing the law to equalize one such area of disparity may therefore improve other areas as well.⁵⁹ This Note focuses on the participation gap as its means to an end—with the end being improved gender parity in the United Kingdom overall. Although narrowly defined, the participation gap is worthy of attention because, at a minimum, women cannot advance if they cannot get in the door at all.

B. *Parental Leave Regulations and Childcare Benefits in the United Kingdom*

The United Kingdom is a high-income OECD country that has closed nearly 100% of its educational attainment and health and

54. *Id.* (conceding that a degree of “essentialism” is often necessary when legislating equality, despite the fact that “the needs of black women or poor women may be very different from those of white, middle class professional women”).

55. *See* discussion *infra* Section II.A.

56. The definitions provided in Part 1 of The Shared Parental Leave Regulations 2014 indicate that the benefits discussed apply to mothers, fathers, civil partners, or partners—those in certain “enduring family relationship[s].” The Shared Parental Leave Regulations 2014, SI 2014/3050, art. 3 (UK).

57. *See* PwC, *supra* note 3, at 17 (“[M]any women who wish to return to work face difficulties in reconciling paid employment and family responsibilities.”).

58. *See id.* (framing the high cost of childcare as a factor in a woman’s decision not to return to work).

59. Consider the World Bank Group’s assessment of the interplay among various factors of gender disparity: “Equalizing the ability to work might not result in more women entering the workforce if they are still expected to be the primary caregivers for their children and access to childcare is limited.” WORLD BANK GRP., *supra* note 8, at 29.

survival gaps,⁶⁰ yet the country is globally ranked fifty-third on the WEF's economic participation and opportunity sub-index.⁶¹ The United Kingdom has only closed approximately seventy percent of its gap between men and women's economic participation and opportunity, which contributes to bringing the country's overall global rank down to twentieth out of the 144 countries reviewed.⁶² There are clear economic incentives at stake for increasing women's participation in the labor force, as studies have suggested that increasing full-time and part-time employment rates for women to levels equal to that of Sweden could result in an estimated \$240 billion (£170 billion) of additional GDP.⁶³ An increase of this magnitude would be an especially valuable cushion for the United Kingdom's economy as it faces potential post-Brexit shocks.⁶⁴

Beyond rankings and potential GDP boosts, however, the United Kingdom's gap between women and men with respect to economic outcomes reflects a legal regime that does not facilitate equal access of opportunity for women, and thus violates the spirit of certain internationally recognized human rights obligations.⁶⁵ Data show that family obligations, including childcare, are a large part of the reason that women in the United Kingdom are unable to participate in the labor force in equal proportion to men.⁶⁶ Women in the workforce across the globe who choose to have children remain disproportionately burdened by their choice because, in most countries, cultural gender expectations contribute to the inequitable division of domestic labor, often resulting in women

60. The United Kingdom has achieved gender parity (a score of 1.0) on nearly every metric of educational attainment and health and survival subindices. WORLD ECON. FORUM, *supra* note 3, at 354.

61. *Id.* at 10.

62. *See id.* at 354.

63. Estimates are based on OECD data and GDP-per-worker assumptions that \$100 million (£70 million) is contributed by every one thousand full-time workers and \$50 million (£35 million) per one thousand part-time workers. PwC, *supra* note 3, at 11.

64. *See* Williams-Grut, *supra* note 27 and accompanying text; Kierzenkowski et al., *supra* note 27, at 6–7.

65. Basic universal human rights principles related to economic self-determination, including the right to work, have been recognized in international law by various conventions and declarations to which the United Kingdom is a party. *See, e.g.*, International Covenant on Economic, Social and Cultural Rights arts. 1, 6, Dec. 19, 1966, 993 U.N.T.S. 14531; G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 23 (Dec. 10, 1948).

66. *See* PwC, *supra* note 3, at 17 (citing a study in which two-thirds of respondents indicated that the high cost of childcare constituted a barrier to their returning to work).

shouldering the brunt of this additional labor.⁶⁷ Because choice in the context of family planning is widely considered a private matter, governments “[rely] on women’s personal sense of responsibility to their roles as mothers to provide where [maternity and parental leave] programs are inadequate.”⁶⁸ This often results in women deciding not to return to their careers or to work fewer hours than they would desire where they have the option to do so.⁶⁹ Legislation that allows women to maximize their choices is, therefore, a worthy economic and human rights endeavor.

Section 1 of Part I.B provides a survey of the United Kingdom’s parental leave policies beginning with the history of U.K. maternity and paternity leave before turning to current statutes. This Section notes the length of leave provided for each spouse, allocation of costs as among employers and the government, and the amount of wages paid to parents as provided by the legislation. Section 2 examines reasons that the amount of shared parental leave taken by British fathers has been so low despite government expectations. Section 3 of this Part turns to statutory provisions for childcare services in the United Kingdom, focusing particularly on the Children Act 1989 and the Childcare Act 2006. The Section identifies the benefits provided, the rights and duties of government actors, and the resulting consequences for individual families.

1. Parental Leave Laws in the United Kingdom

The United Kingdom introduced statutory maternity leave in 1999 with amendments to the Employment Rights Act 1996, initially securing a maternity leave period of “no . . . less than [eighteen] weeks” and allowing for “at least three months” of parental leave.⁷⁰ In 2002, the United Kingdom introduced paid paternity leave, granting an employee the option of “either one week’s leave

67. Data from various countries, including the United Kingdom, suggest that even women who do return to the labor force also “[retain] primary responsibility for unpaid work such as caregiving and household chores,” ultimately resulting in a clear “imbalance between paid and unpaid work for both women and men.” WORLD ECON. FORUM, *supra* note 3, at 31–32.

68. Gillian Calder, *The Personal Is Economic: Unearthing The Rhetoric of Choice in the Canadian Maternity and Parental Leave Benefit Debates*, in CHOICE AND CONSENT: FEMINIST ENGAGEMENTS WITH LAW AND SUBJECTIVITY 131 (Rosemary Hunter & Sharon Cowan eds., 2007).

69. Research suggests “40% of British women in senior positions who take career breaks to have children never return to work.” PwC, *supra* note 3, at 20.

70. Employment Relations Act 1999, c. 26, § 71(1)(3)(a), § 76(3), sch. 4 (UK); see also Alice-Azania Jarvis, *The Timeline: Maternity Leave*, INDEPENDENT (Oct. 21, 2010), <http://www.independent.co.uk/life-style/health-and-families/features/the-timeline-maternity-leave-2113236.html> [<https://perma.cc/Q7LJ-8E57>].

or two consecutive weeks' leave" to be taken within fifty-six days of the child's birth or adoption,⁷¹ during which time he was "entitled . . . to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent."⁷² Despite the introduction of a paid paternity leave statute, it is estimated that forty percent of fathers in the United Kingdom choose not to take their allotted paternity leave,⁷³ as compared to an average of eighty-five to ninety percent of Icelandic, Norwegian, and Swedish fathers who take "some form of parental leave, on at least 60% of their pay."⁷⁴

Current parental leave⁷⁵ policies in the United Kingdom are detailed in a number of acts and implemented by various statutory instruments.⁷⁶ Legislation covers the length of leave that parents are allowed,⁷⁷ the allocation of payment between the government and employers,⁷⁸ and the percentage of wages to which parents are entitled during leave.⁷⁹ Women in the United Kingdom are entitled to fifty-two weeks of maternity leave total, broken down by twenty-six weeks of "Ordinary Maternity Leave" and twenty-six weeks of "Additional Maternity Leave," of which two weeks are compulsory.⁸⁰ The government shares the costs of parental leave policies by allowing employers to reclaim a percentage of Statutory Maternity, Paternity, Adoption, and Shared Parental Pay benefits paid to employees.⁸¹ If a woman is entitled to statutory maternity

71. The Paternity and Adoption Leave Regulations 2002, SI 2002/2788, arts. 4–8 (UK).

72. *Id.* art. 12.

73. Martin Williams, *40% of Fathers Do Not Take Paternity Leave*, *GUARDIAN* (Jan. 6, 2013), <https://www.theguardian.com/careers/fathers-choose-not-to-take-paternity-leave> [<https://perma.cc/D49M-9F3Y>].

74. Jacobs, *supra* note 1.

75. For simplicity, "parental leave" encompasses leave for the purposes of the birth of a biological child, as well as for the adoption of a child, unless specifically stated otherwise.

76. Acts of Parliament create new laws or change existing laws, while statutory instruments are a form of secondary legislation that give effect to an enabling Act. *Acts*, U.K. PARLIAMENT, <http://www.parliament.uk/about/how/laws/acts/> (last visited Dec. 28, 2017) [<https://perma.cc/HW43-UGXF>]; *Statutory Instruments*, U.K. PARLIAMENT, <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/statutory-instruments/> (last visited Dec. 28, 2017) [<https://perma.cc/5A9D-7C86>].

77. Employment Rights Act 1996, c. 18, §§ 71–74 (UK).

78. Social Security Contributions and Benefits Act 1992, c. 4, § 167 (UK); Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994, SI 1994/1882, art. 3–4 (UK).

79. Social Security Contributions and Benefits Act 1992, c. 4, § 166 (UK); Statutory Maternity Pay (General) Regulations 1986, SI 1986/1960, arts. 3–6 (UK).

80. Employment Rights Act 1996, c. 18, §§ 71–73 (UK).

81. Social Security Contributions and Benefits Act 1992, c. 4, § 167 (UK); *see also Get Financial Help with Statutory Pay*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/recover-statu->

pay during her maternity leave,⁸² the period is thirty-nine consecutive weeks with the first six weeks paid at ninety percent of a woman's average weekly earnings (AWE) before tax, and the remaining thirty-three weeks paid at £140.98 or ninety percent of her AWE, whichever is lower.⁸³ Men are paid at similar rates.⁸⁴

In 2014, the liberal coalition government introduced, and Parliament passed, The Shared Parental Leave Regulations 2014, in exercise of powers conferred on Parliament by the Employment Rights Act 1996.⁸⁵ The regulations introduced new entitlements, granting to eligible parents shared parental leave consisting of "52 weeks minus any weeks of maternity or adoption leave," which may be taken after the mother ends her maternity or adoption leave, but not before the mother ends her two weeks of compulsory maternity leave.⁸⁶ With respect to "periods when shared parental leave may be taken," the statute states the following:

- (1) Shared parental leave may be taken at any time within the period which begins on the date C is born (or, where more than one child is born as the result of the same pregnancy, the date on which the first child is born) and ends the day before C's first birthday.
- (2) Shared parental leave must be taken in complete weeks.

tory-payments (last visited Dec. 28, 2017) (explaining that employers "can usually reclaim 92% of employees' Statutory Maternity (SMP), Paternity, Adoption and Shared Parental Pay," and may "reclaim 103% if your business qualifies for Small Employers' Relief") [<https://perma.cc/QM7J-AH5S>].

82. Eligibility for Statutory Maternity Pay requires that a woman (1) earn on average at least £113 per week; (2) give her employer at least twenty-eight days of notice; and (3) provide proof of her pregnancy. See *Maternity Pay and Leave: Eligibility*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/maternity-pay-leave/eligibility> (last visited Dec. 28, 2017) [<https://perma.cc/F3Z6-6CUV>]. If a woman is not entitled to maternity pay, she may qualify for a state maternity allowance. Social Security Contributions and Benefits Act 1992, c. 4, § 35 (UK).

83. Social Security Contributions and Benefits Act 1992, c. 4, § 166 (UK); see also *Maternity Pay and Leave: Pay*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/maternity-pay-leave/pay> (last visited Jan. 4, 2018) [<https://perma.cc/4SKQ-JY4F>].

84. "The statutory weekly rate of Paternity Pay is £140.98, or 90% of [an employee's] average weekly earnings (whichever is lower)." *Paternity Pay and Leave: Pay*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/paternity-pay-leave/pay> (last visited Dec. 28, 2017) [<https://perma.cc/R45T-HYAD>].

85. The Shared Parental Leave Regulations 2014, SI 2014/3050 (UK); *Shared Parental Leave Law Comes into Effect*, BBC NEWS (Apr. 5, 2015), <http://www.bbc.com/news/business-32183784> [<https://perma.cc/4WHR-PRSD>]; see generally *How Laws Are Made*, U.K. PARLIAMENT, <http://www.parliament.uk/education/about-your-parliament/how-laws-are-made/> (last visited Dec. 28, 2017) (providing a general overview of the typical lawmaking process in the United Kingdom) [<https://perma.cc/MD6G-JYV8>].

86. *Shared Parental Leave and Pay*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/shared-parental-leave-and-pay/overview> (last visited Dec. 28, 2017) [<https://perma.cc/83DL-K3QZ>]; Employment Rights Act 1996, c. 18, §§ 71–73 (UK).

(3) Shared parental leave may be taken as one continuous period or in discontinuous periods.

(4) The minimum period of shared parental leave which may be taken is one week.⁸⁷

Notably, the statute contains no requirements for how the shared parental leave must be allocated between parents.⁸⁸ The regulations entitle parents who take shared parental leave to a similar rate of compensation, providing shared parental pay for up to “39 weeks minus any weeks of maternity pay, maternity allowance or adoption pay,” paid at the lower of £140.98 per week or ninety percent of an employee’s AWE.⁸⁹

2. Why Are Fathers in the United Kingdom Choosing Not to Take Shared Parental Leave?

Shared parental leave is a progressive policy aimed at equalizing domestic responsibilities and increasing female reentry to the workforce.⁹⁰ Six months after the policy’s adoption, however, only between “0.5 and 2 per cent of eligible fathers had made use of the provision,” despite estimates from the government that the take-up would be two to eight percent in the first year.⁹¹ The poor rate of take-up by British fathers is attributable both to economic realities and cultural perceptions about men and women’s family roles.⁹² Studies suggest that the rate at which men are compensated can factor into their decisions about whether to take paternity leave.⁹³

87. The Shared Parental Leave Regulations 2014, SI 2014/3050, art. 7 (UK). Per Regulation Three, “C” refers to “the child in relation to whom an entitlement to shared parental leave arises.” *Id.* art. 3.

88. See The Shared Parental Leave Regulations 2014, SI 2014/3050, art. 7 (UK).

89. Benefits of shared parental leave and shared parental pay are explained on the United Kingdom’s website. *Shared Parental Leave and Pay: Overview*, U.K. GOV’T DIG. SERV., <https://www.gov.uk/shared-parental-leave-and-pay/what-youll-get> (last visited Dec. 28, 2017) [<https://perma.cc/AB2J-63E8>]; *Shared Parental Leave and Pay: What You’ll Get*, U.K. GOV’T DIG. SERV., <https://www.gov.uk/shared-parental-leave-and-pay/what-youll-get> (last visited Dec. 28, 2017) [<https://perma.cc/H84V-74PN>]; see also The Shared Parental Leave Regulations 2014, SI 2014/3050, art. 6 (UK) (detailing regulatory rules for calculating total amount of shared parental leave available).

90. See WORLD ECON. FORUM, *supra* note 3, at 34.

91. Jacobs, *supra* note 1 (citing research from U.K. charity, Working Families).

92. Because British fathers remain predominantly the family breadwinners, it is difficult to justify taking time away from work, and thus the economic fact of the gender pay gap reinforces the cultural role of women remaining in the home. See *Shared Parental Leave Is Suffering Teething Problems*, GUARDIAN (Apr. 4, 2016), <https://www.theguardian.com/money/blog/2016/apr/05/shared-parental-leave-is-suffering-teething-problems> [<https://perma.cc/G5G3-73BZ>].

93. Fathers are more likely to take up paternity leave when there is a high rate of compensation (greater than sixty-six percent of normal salary). See BRAD HARRINGTON ET AL., THE NEW DAD: TAKE YOUR LEAVE: PERSPECTIVES ON PATERNITY LEAVE FROM FATHERS,

The compensation offered to parents taking shared parental leave is less than half of AWE in the United Kingdom.⁹⁴ Many British fathers therefore feel unable to justify taking advantage of parental leave because of the potential harm to their career advancement and earning ability,⁹⁵ which is on average higher than that of women.⁹⁶

Generational differences may also factor into the number of fathers taking up paternity leave.⁹⁷ Younger generations of fathers are more likely to take longer paternity leaves⁹⁸ and increasingly have “an expectation of equality at home.”⁹⁹ The generational divide suggests that the rate of shared parental leave taken by fathers could increase over time as younger generations enter the workforce. Decreasing the stigma associated with paternity leave, for instance by normalizing generous paternity leave policies, is an important factor in encouraging fathers to take advantage of their available leave time.¹⁰⁰ Data show that the number of weeks of paternity leave actually taken correlates positively both with the

LEADING ORGANIZATIONS, AND GLOBAL POLICIES 9, 22 (2014), http://www.thenewdad.org/yahoo_site_admin/assets/docs/BCCWF_The_New_Dad_2014_FINAL.157170735.pdf [<https://perma.cc/JBA9-Z95X>]; see also Hilary Osborne, *Tiny Proportion of Men Are Opting for Shared Parental Leave*, GUARDIAN (Apr. 4, 2016), <https://www.theguardian.com/money/2016/apr/05/shared-parental-leave-slow-take-up-fathers-paternity> (citing a survey wherein “80% of employees surveyed said a decision to share leave would depend on finances and whether their employer paid more than obliged to”) [<https://perma.cc/2872-2DF3>].

94. According to 2017 data from the Office for National Statistics, average weekly earnings for full-time and part-time U.K. employees is £507, as contrasted with the statutory minimum of £140.98 offered by the Shared Parental Leave Regulations 2014. *Earnings and Working Hours*, OFFICE FOR NAT’L STATISTICS, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours#methodology> (last visited Dec. 28, 2017) [<https://perma.cc/6NKJ-MSXM>].

95. As research suggests, “[f]ears about job security are behind the low take up of additional statutory paternity leave in 2012/13.” *Job Insecurity ‘Deters’ New Fathers from Taking More Paternity Leave*, PEOPLE MGMT. (Mar. 11, 2014), <http://www2.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2014/03/11/job-insecurity-deters-new-fathers-from-taking-more-paternity-leave.aspx> [<https://perma.cc/7MC5-UUYW>]; see also Jacobs, *supra* note 1 (quoting Maria Miller, Conservative chair of the women and equalities select committee, that men feel unable to take parental leave “because of the impact on their careers and earning ability”).

96. See PwC, *supra* note 3, at 18 (noting that women are more likely than men to be low earners).

97. When U.S. fathers were surveyed about their attitudes toward employers providing paternity leave, “[f]athers from the Millennial generation felt most strongly about this (93% said it was extremely, very or somewhat important), Gen X fathers somewhat less (88%) and Boomers least strongly (77%).” HARRINGTON ET AL., *supra* note 93, at 6.

98. See *id.* at 7.

99. Jacobs, *supra* note 1.

100. See Virginia Marsh, *We Need to Make Paternity Leave ‘Trendy’*, FIN. TIMES (Sept. 17, 2014), <https://www.ft.com/content/f4d4f33e-3912-11e4-9526-00144feabd0> [<https://perma.cc/TWB4-RMYG>].

number of weeks of paternity leave offered, and with the supportiveness of a father's workplace culture.¹⁰¹

3. Childcare Services in the United Kingdom

Because the burden of childcare often falls disproportionately on women, access to “[a]ffordable, good-quality childcare is a key enabling factor [that allows] women to reconcile professional and family obligations.”¹⁰² For children not old enough to attend primary school in the United Kingdom, the Children Act 1989 requires that “[e]very local authority shall provide such day care for children in need within their area who are— (a) aged five or under; and (b) not yet attending schools, as is appropriate.”¹⁰³ The Childcare Act 2006 further develops the role of local authorities with respect to the provision of childcare, in particular establishing the duty of local authorities to “secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them— (a) to take up, or remain in, work, or (b) to undertake education or training which could reasonably be expected to assist them to obtain work.”¹⁰⁴ The childcare provided must meet “the needs of parents in their area,” and in so providing, a local authority “may have regard to any childcare which they expect to be available outside their area.”¹⁰⁵ Local authorities are required to regard any guidance provided by the Secretary of State, who has the power to amend by order the standards for which local authorities must have regard in determining the adequacy of the childcare provided.¹⁰⁶

For children between the ages of three and four, the United Kingdom provides free early education and childcare through approved childcare providers.¹⁰⁷ For children aged two and under,

101. HARRINGTON ET AL., *supra* note 93, at 7.

102. WORLD ECON. FORUM, *supra* note 3, at 34.

103. Children Act 1989, c. 41, § 18(1) (UK). The Act aims to promote the welfare of children by prescribing duties local authorities and courts. *Id.*

104. Childcare Act 2006, c. 21, § 6(1) (UK).

105. *Id.* § 6(2).

106. *Id.* § 6(3)–(4).

107. All three to four-year-olds in England can get 570 hours of free early education or childcare per year, although the time is “usually taken as 15 hours a week for 38 weeks of the year,” and eligible families may be able to receive up to thirty hours of free childcare. *Help Paying for Childcare*, U.K. GOV'T DIG. SERV., <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds> (last visited Dec. 28, 2017) [<https://perma.cc/NB8G-5HSP>].

however, there is no free childcare, except in special circumstances.¹⁰⁸ There is no statutory provision of childcare services for after-school hours once children are enrolled in school, and the lack of flexibility in the hours that childcare is provided can strain parents who work nonstandard hours.¹⁰⁹ To fill the gaps in state-subsidized care, more than one third of U.K. families are forced to seek out “informal childcare, e.g. relying on non-official care from relatives or friends.”¹¹⁰ Childcare costs are often prohibitively expensive for families in the United Kingdom—families unable to rely on friends and relatives may spend around twenty-seven percent of their household income on childcare.¹¹¹ The additional childcare expenses incurred to fill the gaps in state-sponsored care are particularly detrimental for women because women are typically the family’s primary caregivers.¹¹² The mother is thus often the spouse forced by economic and societal pressures to make sacrifices in her professional life to fill domestic gaps.¹¹³

Although the United Kingdom spends a significant amount of money on family benefits,¹¹⁴ “[i]n terms of better outcomes - such as the ability to lift children out of poverty and to increase female employment - Britain lags behind countries that spend less, such as Sweden and Finland,” in large part because of how those countries spend money on benefits.¹¹⁵ Unlike Nordic countries, the United Kingdom spends more on cash benefits rather than on childcare services, which leaves the effort and cost of finding childcare to

108. The special circumstances largely pertain to low-income, special-needs, or disabled individuals. *See id.*; *see also Help Paying for Childcare*, U.K. GOV’T DIG. SERV., <https://www.childcarechoices.gov.uk/> (explaining the implementation of new regulations that provide fifteen hours of “free childcare or early education a week” for two-year-old children of families “receiving some forms of support”) [<https://perma.cc/NB8G-5HSP>].

109. *See, e.g.*, PwC, *supra* note 3, at 17 (noting the lack of cover “before 8am and after 6pm”); Lucy Rock, *What Britain Could Learn from Denmark’s Childcare Model*, GUARDIAN (Feb. 18, 2012), <https://www.theguardian.com/society/2012/feb/18/britain-learn-denmark-childcare-model> (contrasting the United Kingdom’s lack of low-cost, flexible-hours day care with the services provided by Nordic countries) [<https://perma.cc/2C7X-FYKU>].

110. PwC, *supra* note 3, at 17.

111. *Id.*

112. Data show that the proportion of unpaid work (such as housework and caring for children) per day for women as compared to men is fifty-seven to thirty-two. WORLD ECON. FORUM, *supra* note 3, at 32, 355.

113. *See id.*; *see also* Rock, *supra* note 109 (citing the “eye-watering cost of childcare in the U.K.” as a barrier for many women to returning to work).

114. U.K. Public Spending data indicate that in 2016, the United Kingdom spent £15.69 billion on welfare spending for family and children, which is 0.8% of the United Kingdom’s 2016 GDP. Christopher Chantrill, *Time Series Chart of Public Spending*, http://www.ukpublicspending.co.uk/spending_chart_2004_2020UKb_16c1li111mcn_44t#tabbed (last visited Dec. 28, 2017) [<https://perma.cc/Z89C-N2KA>].

115. Rock, *supra* note 109.

British families when services are not provided by the state.¹¹⁶ In the United Kingdom, there is a high demand for childcare services outside the full-day school hours because a number of parents are employed part-time.¹¹⁷ Although one in eight schools provide “extended out-of-school services,” this is often on a part-time basis, “e.g. only on some school days or for part of the holidays.”¹¹⁸

C. *Parental Leave Regulations and Childcare Benefits in the Nordic Countries*

Finland, Iceland, Norway, and Sweden remain leaders in many aspects of gender equality, including women’s participation rate in the labor force.¹¹⁹ At around eighty-three percent, Sweden has one of the highest maternal employment rates in the OECD—significantly higher than the OECD average of sixty-six percent, and in excess of the United Kingdom’s rate of around seventy percent.¹²⁰ The availability of paternity leave does not necessarily mean that men feel able or encouraged to take the time offered, but at the outset, such legislation plays an important role in changing perceptions of gender stereotypes.¹²¹ The Nordic countries’ approach to parental leave and childcare policies has been effective at breaking down structural inequalities by legislating incentives that reduce gender difference and stereotypes.¹²²

Section 1 of this Part reviews parental leave statutes in Finland, Iceland, Norway, and Sweden. For each country, discussion focuses on the length of leave for each spouse, whether such leave is transferable, and the percentage of wages paid. Section 2 ana-

116. *See id.*

117. A survey of U.K. parents showed that “67 per cent worked atypical hours and struggled to find childcare to meet their needs while 66 per cent were unable to find childcare after 6pm.” Janneke Plantenga & Chantal Remery, *Childcare Services for School Age Children*, at 41 (2013), http://ec.europa.eu/justice/gender-equality/files/documents/130910_egge_out_of_school_en.pdf [<https://perma.cc/6VZ7-TNTD>].

118. *Id.* at 36.

119. *See* WORLD ECON. FORUM, *supra* note 3, at 8, 12 (noting that Iceland, Norway, and Sweden have closed more than eighty percent of their respective gaps in the economic participation and opportunity subindex).

120. The OECD calculates employment rate percentages for women ranging in age from fifteen to sixty-four with at least one child under the age of fourteen for 2014 or the latest available year. OECD, LMF1.2: MATERNAL EMPLOYMENT RATES 2 (2016), http://www.oecd.org/social/family/LMF_1_2_Maternal_Employment.pdf [<https://perma.cc/25WU-V39L>].

121. *See* discussion *infra* Section I.C.2.

122. *See* PwC, *supra* note 3, at 17 (concluding that Sweden’s “use-it-or-lose-it” approach has encouraged fathers to take advantage and can “drive changes in cultural perceptions of gender roles within the household”).

lyzes which provisions have proven effective in encouraging fathers to take up available parental leave, thus helping to close the participation gaps across their respective countries of implementation. Section 3 examines, as a whole, statutes that provide childcare services for Nordic children before and during primary education, in particular identifying the extent of care provided, the rights and duties of the government in the provision of such care, and the effects on Nordic families.

1. Shared Parental Leave Statutes in Finland, Iceland, Norway, and Sweden

Parental leave statutes vary by length of leave time allotted and percentage of wages paid.¹²³ Unlike the United Kingdom, in Finland, Iceland, Norway, and Sweden, the government pays for parental leave policies entirely, funded by high taxes levied on citizens.¹²⁴ Finland provides maternity, paternity, and parental leave to parents, during which time, the country's social security agency (Kela) pays an allowance based on a family's earned income, or if an individual has no working income, at a minimum rate of $_23.73$ per working day.¹²⁵ Maternity allowance in Finland is paid for 105 working days of maternity leave,¹²⁶ and the government offers an increased rate of payment ("up to 90% of earnings for the first 56 days of payment").¹²⁷ Paternity leave is fifty-four nontransferable working days, eighteen of which may be used simultaneously with the mother while the remaining must be used by the father alone; leave must be taken before the child reaches age two and is paid beginning at seventy-five percent of the employee's income.¹²⁸ Finland's parental leave is 158 working days and does not include any nontransferable time—as such, either the mother or father may

123. See WORLD BANK GRP., *supra* note 8, at 15.

124. See Health Insurance Act, c. 18, § 2, c. 9, §§ 1–17 (2004) (Fin.); Act on Maternity/Paternity and Parental Leave, No. 95/2000, arts. 4, 13 (Ice.); National Insurance Act, c. 14, § 9 (1997) (Nor.); 2 chs. 3–4 §§ Socialförsäkringsbalk (Svensk författningssamling [SFS] 2010:110) (Swed.); see also Kyle Pomerleau, *How Scandinavian Countries Pay for Their Government Spending*, TAX FOUND. (Jun. 10, 2015), <https://taxfoundation.org/how-scandinavian-countries-pay-their-government-spending/> [<https://perma.cc/R4BJ-VLWJ>].

125. *Amount and Payment of Parental Allowances*, SOC. INS. INST. FIN., <http://www.kela.fi/web/en/parental-allowances-amount-and-payment> (last updated July 25, 2017) [<https://perma.cc/SP3D-BK4T>].

126. *Maternity Allowance*, SOC. INS. INST. FIN., <http://www.kela.fi/web/en/maternity-allowance> (last updated Sept. 14, 2017) [<https://perma.cc/G5JW-7YLM>].

127. *Amount and Payment of Parental Allowances*, *supra* note 125.

128. *Paternity Allowance*, SOC. INS. INST. FIN., <http://www.kela.fi/web/en/paternity-allowance> (last updated Sept. 14, 2017); Health Insurance Act, c. 11, § 1 (2004) (Fin.) [<https://perma.cc/K86H-NNNX>].

take parental leave after ending their respective maternity or paternity leave.¹²⁹ Approximately eighty-two percent of men use their statutory paternity leave, but despite this high take-up rate, Finnish fathers typically take only three out of the nine weeks of paternity leave and six weeks of the shared leave available.¹³⁰

In 2000, Iceland expanded its nontransferable parental leave policy, extending leave from six months to nine months, which included three months of independent maternity leave, three months of independent paternity leave, and joint right of three additional months, which either can be in whole or parents (can divide) between them.¹³¹ Parental leave in Iceland is paid at eighty percent of an employee's wages with a maximum ceiling.¹³² Iceland's policy was successful when introduced, and by 2009, "96% of fathers in Iceland took leave, for an average of 99 days."¹³³

Norway introduced gender-neutral parental leave policies in 1978, shortly after Sweden.¹³⁴ In 2014, Norway introduced changes to its National Insurance Act, reducing each of the maternity and paternity quotas by four weeks and reallocating the eight weeks to the common period of parental leave, but leaving the total benefit period unchanged in order to facilitate flexibility between parents in leave sharing.¹³⁵ Norway's parental leave benefits are contingent on employment.¹³⁶ Norway's "use-it-or-lose it" policy is similar to those implemented in Iceland and Sweden, whereby the parental

129. *Maternity, Paternity, and Parental Allowances*, SOC. INS. INST. FIN. (last updated July 21, 2017), <http://www.kela.fi/web/en/parental-allowances> [https://perma.cc/LRT9-WN4C]; MINISTRY OF SOC. AFFAIRS AND HEALTH, CHILD AND FAMILY POLICY IN FINLAND 16–18 (2013).

130. See HARRINGTON ET AL., *supra* note 93, at 23; see also Johanna Lammi-Taskula, *Doing Fatherhood: Understanding the Gendered Use of Parental Leave in Finland*, 6 FATHERING 133, 145 (2008) (noting that "[e]ven if more [Finnish] fathers are taking parental leave than before, they are still a minority group" and their "leave periods are usually quite short and the share of all leave days taken is low").

131. Act on Maternity and Parental Leave, 95/2000, art. 8 (2000) (Ice.).

132. *Id.* art. 13.

133. See HARRINGTON ET AL., *supra* note 93, at 12.

134. Margunn Bjørnholt, *The Family in Norwegian Society*, Presentation at the University of Oslo, <http://www.uio.no/studier/emner/hf/iln/NORINT0500/h10/The%20family%20in%20Norwegian%20Society%20by%20Bjoernholt.pdf> [https://perma.cc/C37N-TGQ6]; Anders Chronholm, *Fathers' Experience of Shared Parental Leave in Sweden*, 38 RECHERCHES SOCIOLOGIQUES ET ANTHROPOLOGIQUES 9 (2007), <http://rsa.revues.org/456> [https://perma.cc/Z7KN-SWAD].

135. See Prop. 40 L: Endringer i folketrygdloven (reduksjon av mødrekvoten og fedrekvoten) [Amendment to the National Insurance Act (Reduction of Maternal Quota and Paternal Quota)] (2013–2014) (Nor.); National Insurance Act, c. 14, §§ 9, 12 (1997) (Nor.).

136. National Insurance Act, c. 14, § 6 (1997) (Nor.).

leave period may be divided among parents except for ten weeks of “paternity quota” reserved for the father and ten weeks of “maternity quota” reserved for the mother.¹³⁷ Fathers in Norway have high rate of take-up with approximately ninety percent of eligible fathers choosing to take leave.¹³⁸

In 1974, Sweden became the first country in the world to adopt a parental leave statute that granted mothers and fathers the same opportunity to stay home with their children after childbirth, rather than providing the policy only to new mothers.¹³⁹ The policy has since been expanded from 180 to 480 days, and a nontransferable leave provision was first introduced in 1995, which began as one month, but now reserves ninety of the available 480 paid parental leave days for the father.¹⁴⁰ Swedish parents are compensated for the first 390 days up to nearly eighty percent of their salary, pursuant to a per-day maximum; the remaining days are paid at a flat rate.¹⁴¹ Unemployed parents are also entitled to paid parental leave.¹⁴² When Sweden’s statute was first introduced, Swedish fathers took only 0.5% of all paid parental leave available in the first year of the policy’s implementation.¹⁴³ In 2014, Swedish fathers took twenty-five percent of the total parental leave,¹⁴⁴ and similar to Norway, approximately ninety percent of eligible Swedish fathers chose to take paternity leave.¹⁴⁵

2. Which Policies Are Most Effective at Encouraging Fathers to Take Their Available Leave?

Generous parental leave policies involving nontransferable provisions are associated with greater take-up of paternity leave.¹⁴⁶ At a threshold level, the length of parental leave is not necessarily correlated with improved outcomes in women’s workforce participa-

137. *See id.* § 12.

138. *See* HARRINGTON ET AL., *supra* note 93, at 23.

139. Chronholm, *supra* note 134, paras. 1, 3, 4.

140. *See id.* paras. 3, 4; SWEDISH INST., *supra* note 11.

141. SWEDISH INST., *supra* note 11.

142. *Id.*

143. *Why Swedish Men Take So Much Paternity Leave*, ECONOMIST (July 23, 2014), <http://www.economist.com/blogs/economist-explains/2014/07/economist-explains-15> [<https://perma.cc/SBC4-5X5V>].

144. *See id.*

145. *See* Osborne, *supra* note 93.

146. Evidence of this phenomenon can be seen in non-Nordic countries as well, including Germany, which modeled new parental leave provisions after Sweden and “within two years the share of fathers who took paid leave jumped from 3% to over 20%.” ECONOMIST, *supra* note 143.

tion.¹⁴⁷ In fact, according to the World Bank, “too much leave may undermine women’s labor force participation if it makes women less competitive in the labor market and discourages employers from hiring women of child-bearing age.”¹⁴⁸ Further, the increased availability of paternity leave does not automatically translate into an increased take-up of leave time.¹⁴⁹ Countries with inadequate leave policies, however, suffer from depressed levels of female participation in the workforce because women’s choices about the tradeoffs of returning to work are necessarily more constrained.¹⁵⁰ An ungenerous or inflexible parental leave policy can exacerbate the structural inequalities already present in domestic relationships and contribute to women declining to return to the workforce.¹⁵¹

In countries where parental leave is transferable, even where fathers take paternity leave, they may be more hesitant to take the full leave for themselves,¹⁵² opting, instead, to transfer all or some of it to the mother who is typically already at home with the child.¹⁵³ As in the United Kingdom, there are economic reasons that Finnish fathers may not take up their paternity leave, namely that women are more likely to be low earners than their male coun-

147. For example, Denmark’s system offers fifty-two weeks total of paid parental leave, greater than Iceland’s offering of thirty-six weeks total, but Denmark’s ratio of female-to-male participation in the labor force is seventy-five to eighty-one, which is lower than Iceland’s ratio of eighty-three to eighty-seven. *Parental Leave When Working in Denmark*, ØRESUNDDIREKT, <http://www.oresunddirekt.se/in-english/in-english/family-parenting-in-denmark/parental-leave-when-you-work-in-denmark> (last visited Dec. 28, 2017) [<https://perma.cc/9VWC-JU39>]; see Act on Maternity and Parental Leave, 95/2000, art. 8 (Ice.); WORLD ECON. FORUM, *supra* note 3, at 158, 194.

148. WORLD BANK GRP., *supra* note 8, at 15.

149. A review of paternity legislation across thirty-four countries suggests that “the average amount of paternity leave time that fathers actually take off is fairly similar to the U.S., 2.2 weeks” despite the considerably less generous paternity statutes in the United States. See HARRINGTON ET AL., *supra* note 93, at 21, 26.

150. For an example, consider the United States, which has no federal paid leave statute, and allows only twelve workweeks of parental leave, which the government does not require to be paid. 29 U.S.C. § 2612 (2012). The United States ranks fifty-sixth in the WEF’s labor force participation rankings, with sixty-six females to seventy-seven males, a ratio lower than that of the United Kingdom. WORLD ECON. FORUM, *supra* note 3, at 354, 356. Further, a recent study suggested that “family-friendly policies,” including parental leave implemented by other OECD countries could explain twenty-nine percent of the decrease in U.S. women’s labor force participation rate. Francine D. Blau & Lawrence M. Kahn, *Female Labor Supply: Why Is the US Falling Behind?*, 103 AM. ECON. REV. 251, 254 (2013).

151. See *supra* note 67 and accompanying text.

152. See HARRINGTON ET AL., *supra* note 93, at 23; Lammi-Taskula, *supra* note 130, at 145.

153. See MINISTRY OF SOC. AFFAIRS AND HEALTH, *supra* note 129, at 16 (“The opportunity to take parental leave is still rarely used by fathers.”).

terparts, and as such, paternity leave costs these families more money.¹⁵⁴ Consequently, paternity leave policies that compensate individuals at rates closer to their normal wages are more likely to encourage take-up, as is the case in Sweden.¹⁵⁵

Economic considerations are not, however, the sole force driving inequitable take-up of parental leave policies, as shown by the following:

Prevailing gender differences in income are often reflected in families: fathers have higher income levels than mothers. Parents expect to lose economically if the father takes parental leave even if his income-related benefit would be higher than the mother's, and even if they do not actually make calculations to verify their expectations.¹⁵⁶

Parents' willingness to make choices without calculation suggests that a degree of gender bias is at work, and as such the level of wages paid during leave cannot be the primary focus of a parental leave policy that encourages equal use. Nontransferable parental leave policies are effective at encouraging take-up by fathers because they remove the element of choice inherent in transferable policies—fathers may, quite simply, “use it or lose it.”¹⁵⁷ The policies shape cultural perceptions of the roles of mothers and fathers by normalizing the concept of fathers assuming an increased domestic role.¹⁵⁸ Although such shifts take time, non-transferable leave can ultimately have “a dramatic effect on the social construction of fatherhood,”¹⁵⁹ as in Sweden where over forty years of paternal leave policies and over twenty years of non-transferable leave policies have helped gender equality permeate other aspects of the country's culture.¹⁶⁰

D. *Current Childcare Provisions in Finland, Iceland, Norway, and Sweden*

Unlike the benefits-focused regime of childcare in the United Kingdom, Nordic countries focus on providing childcare ser-

154. PwC, *supra* note 96, at 18.

155. See discussion *supra* Section I.C.1; HARRINGTON ET AL., *supra* note 93, at 9–10.

156. Surveys have revealed the extent to which gender biases color perceptions of how leave should be distributed between mothers and fathers, such that “gender ideology seems to be a more crucial aspect in relation to sharing parental leave than economic rationality.” Lammi-Taskula, *supra* note 152, at 139, 145.

157. See PwC, *supra* note 122, at 17.

158. Shifting conceptions of fatherhood are evident in the culture of “latte papas” in Sweden. See Jacobs, *supra* note 1.

159. HARRINGTON ET AL., *supra* note 93, at 33.

160. *Id.*

vices.¹⁶¹ Unifying aspects of the Nordic regimes include: “integration of care and education . . . emphasis on service provision over cash benefits . . . being funded from tax revenues; and . . . the universal approach in coverage.”¹⁶² The Nordic countries have long been lauded for the flexibility and affordability of their day care services, which cover children through primary school education as well as before, at ages zero to two.¹⁶³ In stark contrast to the costs incurred by families in the United Kingdom, families in Sweden pay only approximately five percent of their household income on childcare due to higher levels of state funding.¹⁶⁴ Sweden’s expansively state-subsidized childcare can be seen mirrored in other Nordic countries:

Parents typically cover 11% of the cost of a place in pre-school which means that the cost of childcare is also heavily subsidized by the state. Similarly, other Nordic countries also have comparatively high rates of use of childcare services: 97% and 57% of Icelandic and Finnish children respectively are enrolled in childcare for 30 or more hours per week, compared to an EU average of 15%.¹⁶⁵

The necessarily high cost of taxes to fund childcare policies in Nordic countries is, in part, offset by improved economic benefits from women’s increased participation in the labor force.¹⁶⁶ The Nordic childcare services are uniquely effective at closing the participation gap because one primary focus of the spending is on the provision of services for the youngest children, which encourages women to return to the workforce at an earlier stage, often before they have experienced the detrimental effects of remaining out of the workforce for an extended period.¹⁶⁷

II. ANALYSIS

To improve women’s participation rates in the labor force, (i) the U.K. Parliament should amend the Shared Parental Leave Regulations 2014 to include a provision mandating three weeks of non-

161. Guðný Björk Eydal & Tine Rostgaard, *Day-Care Schemes and Cash-For-Care at Home*, in NORDIC COUNCIL OF MINISTERS, PARENTAL LEAVE, CHILDCARE AND GENDER EQUALITY IN THE NORDIC COUNTRIES, *supra* note 10, at 65.

162. *Id.*

163. *Id.* at 67–68; see PwC, *supra* note 3, at 17.

164. See PwC, *supra* note 3, at 17.

165. *Id.* at 16.

166. *Id.*

167. Eydal & Rostgaard, *supra* note 10, at 74; see also WORLD BANK GRP., *supra* note 8, at 15 (“[T]oo much leave may undermine women’s labor force participation if it makes women less competitive in the labor market and discourages employers from hiring women of child-bearing age.”).

transferable leave for fathers; and (ii) the Secretary of State should amend the standards of childcare required by the Childcare Act 2006 to require that local authorities expand the available hours of out-of-school childcare, as well as increase the age range covered by childcare. Such amendments would serve two purposes: to encourage fathers to take more parental leave and lower the cost of additional childcare. This ultimately would lessen the domestic burden on women and facilitate their return to the labor force. Section A of this Part explains why nontransferable leave is effective not only for encouraging women's return to the labor force, but also for changing cultural perceptions of the role that men play in a domestic context. The Section then suggests statutory language that could be added to the United Kingdom's shared parental leave regulations. Section B of this Part proposes amendments to the Childcare Act 2006 with an eye to the feasibility of their implementation.

A. *Adopting a Nontransferable Leave Policy in the United Kingdom to Encourage Paternal Take-Up of Available Parental Leave*

Although the United Kingdom's shared parental leave regulations are a step in the right direction, they do not go far enough to close the workforce participation gap. The U.K. Parliament should amend the statutory language of The Shared Parental Leave Regulations 2014 to incorporate a period of nontransferable leave, similar to those implemented in the Nordic countries.¹⁶⁸ The current language of the Shared Parental Leave Regulations 2014 should be amended similarly to the changes implemented by Norway,¹⁶⁹ whereby a certain number of weeks is taken from the currently available shared parental leave time (fifty-two weeks) and reasigned to be used by fathers only. An appropriate amount of nontransferable paternity leave would be two to three weeks, which tracks with the amount of paternity leave that fathers in different countries actually take, regardless of the amount of paternity leave granted to them.¹⁷⁰ The U.K. Parliament could amend The Shared Parental Leave Regulations 2014 by adding the following to Regulation 7 following Paragraph 4: "Of the shared parental leave

168. See discussion *supra* Section I.C.1.

169. See Prop. 40 L: Endringer i folketrygdloven (reduksjon av mødrekvoten og fedrekvoten) [Amendment to the National Insurance Act (Reduction of Maternal Quota and Paternal Quota)] (2013–2014) (Nor.); National Insurance Act, c. 14, §§ 9, 12 (1997) (Nor.).

170. See HARRINGTON ET AL., *supra* note 93, at 26.

taken, a minimum period of no less than three weeks is reserved for exclusive use by P or is otherwise forfeited and such period may not be transferred for use by M.”

A nontransferable parental leave policy helps equalize the disparity between men and women's participation in the labor force by encouraging the shift of domestic burdens to fathers, thus removing barriers to entry and retention for women returning to the workforce.¹⁷¹ Although it has been undoubtedly successful, the United Kingdom should not adopt the Swedish parental leave scheme in its totality, as it is likely to be cost prohibitive because it grants parental benefits to all insured parents,¹⁷² rather than only to employed parents as in Norway.¹⁷³ The United Kingdom should continue to condition paid parental benefits on employment; thus the increased costs incurred by the increased take-up of parental leave would be mitigated by the ultimate intended effect of increased participation by women in the workforce and realized economic gains.¹⁷⁴ Further, implementing a nontransferable leave policy through the above amendment is unlikely to incur excessive administrative costs, or excessive costs in government reimbursements to employers because the amendment involves only a reallocation of already available time, rather than the implementation of an entirely new statute and does not force the father to take up the available time.¹⁷⁵

The rankings of Nordic countries in economic participation and opportunity subindices suggest that nontransferable leave provisions have at least been nominally effective at encouraging paternal take-up of available leave.¹⁷⁶ Although increasing the levels of wages paid would encourage fathers to take up paternity leave, the level of increase necessary to see significant change is likely to be cost-prohibitive at present given that fathers more commonly outearn mothers.¹⁷⁷ This Note suggests, however, that as gains are realized through closing the participation gap, the wages paid to employees should be increased to levels closer to that of Sweden, thereby encouraging further take-up of parental leave.¹⁷⁸ Such

171. See PwC, *supra* note 3, at 17.

172. See SWEDISH INST., *supra* note 11.

173. National Insurance Act, c. 14, § 6 (1997) (Nor.).

174. See PwC, *supra* note 3, at 4; WORLD BANK GRP., *supra* note 8, at 29; WORLD ECON. FORUM, *supra* note 3, at 24.

175. See discussion *supra* Section I.C.1.

176. See WORLD ECON. FORUM, *supra* note 3, at 8, 12.

177. See PwC, *supra* note 3, at 18.

178. See discussion *supra* Section I.C.1; HARRINGTON ET AL., *supra* note 93, at 9–10.

changes may be increasingly well received as younger generations enter the labor force with stronger conceptions of gender equality.¹⁷⁹ Cultural attitudes are nebulous and difficult to objectively assess, but the successes of Iceland, Norway, and Sweden suggest that the implementation of nontransferable parental leave has correlated positively with increased take-up of paternity leave and fathers' assumption of domestic responsibility.¹⁸⁰ These countries exemplify the concept that legislation can be an effective tool for reshaping underlying cultural perceptions.¹⁸¹

B. *Adopting Improved Childcare Statutes*

Countries with nontransferable leave policies that lack sufficient affordable childcare options still rank lower on the WEF's Economic Participation and Opportunity subindex due to decreased participation by women in the workforce.¹⁸² The Secretary of State should therefore amend the standards for care provided in the Childcare Act 2006 by (i) requiring local authorities to expand existing out-of-school services for primary school-age children by increasing the hours of availability, and (ii) lowering the minimum age of enrollment to include children from ages zero to two who are currently left out of the United Kingdom's childcare coverage. In doing so, the Secretary of State could allow discretion for the local authorities to provide childcare based on "the needs of parents in their area," as required by the statute.¹⁸³ Implementation at a local level curbs certain administrative costs by avoiding sweeping

179. See HARRINGTON ET AL., *supra* note 93, at 6–7; Jacobs, *supra* note 1.

180. Sweden was the first to introduce a paid leave policy giving parents the power to divide up leave days without respect to gender, but in the first year of its introduction, Swedish men took only 0.5% of available paid parental leave. Over forty years later, Swedish men take twenty-five percent of available leave in part because the policy has been "tweaked to encourage a more equal sharing of the allowance." ECONOMIST, *supra* note 143.

181. Although women still average more time working than men, data shows that Sweden has one of the lowest gaps in distribution between men and women with respect to minutes per day spent on paid and unpaid work, with unpaid work largely consisting of housework and childcare. See WORLD ECON. FORUM, *supra* note 3, at 31–32.

182. Discussions from the International Monetary Fund have emphasized the significant impact that tax policies can have on women's decisions to engage or not engage in the labor market because they "weaken the link between labor supply and income." KATRIN ELBORGH-WOYTEK ET AL., INT'L MONETARY FUND, WOMEN, WORK, AND THE ECONOMY: MACROECONOMIC GAINS FROM GENDER EQUITY 12–13 (2013) (noting the importance of "appropriate design of benefits" to "avoid disincentives to work").

183. Childcare Act 2006, c. 21, § 6(2)(a) (UK).

national regulations that may not be tailored to the specific community needs.¹⁸⁴

The additional cost of expanding childcare services in the United Kingdom by the above amendment will ultimately be offset by improved economic outcomes from increased labor force participation, even if offsetting the government's upfront expenses will take time.¹⁸⁵ As noted by the WEF, increased costs from investment in childcare can be justified as follows:

Investment in the care economy also produces sizeable spillover effects. The International Trade Union Confederation, for example, recently estimated that if 2% of GDP was invested in a country's care industry, there would be corresponding increases in overall employment ranging from 2.4% to 6.1%, depending on the country. This equates to nearly . . . 1.5 million [new jobs] in the United Kingdom.¹⁸⁶

In evaluating the possibility of the success of these proposals, this Note acknowledges that there are many real cultural and economic differences among the nations compared in this study that have tangible effects on the effectiveness of various legislative imperatives.¹⁸⁷ Proposing legislation based on international models of success is thus challenging because the success of legislation in any given country is contextual and depends on other factors, including, for example, cultural expectations, and diverse "institutional, legal and political landscapes."¹⁸⁸ For instance, the Nordic childcare system is expansive and has been in place for years, to the point that it is well ingrained in Nordic culture. Because of their expansive welfare regimes, citizens of Nordic countries have adjusted to paying high income tax rates that would likely cause U.K. citizens to balk.¹⁸⁹ It is therefore not practical to copy the childcare provisions of the Nordic countries exactly into the

184. See U.K. DEP'T FOR BUS. INNOVATION & SKILLS, 2010 TO 2015 GOVERNMENT POLICY: BUSINESS REGULATION (2015) (citing the high cost of nationwide government regulation as problematic for compliance); Childcare Act 2006, c. 21, § 1 (UK) (qualifying the general duties of local authorities by requiring reference to the needs of children "in their area").

185. See PwC, *supra* note 3, at 4; WORLD BANK GRP., *supra* note 8, at 29; WORLD ECON. FORUM, *supra* note 3, at 24.

186. WORLD ECON. FORUM, *supra* note 3, at 34 (footnote omitted).

187. Beveridge et al., *supra* note 52, at 3 (suggesting that "equality strategies" cannot be effectively evaluated "in isolation from the context in which they operate").

188. *Id.*

189. See Eydal & Rostgaard, *supra* note 161, at 99 ("Compared with the EU-27 average, the Nordic countries spend much more as a percentage of GDP on childcare for [children aged zero to two], while there is no difference in public spending on the older age group [from three years to school age]."); see also Rock, *supra* note 109.

United Kingdom's statutes.¹⁹⁰ Given the human rights issues at stake, however, economic concerns cannot be the only driving factor in shaping policy.¹⁹¹

CONCLUSION

This Part concludes by summarizing the proposals set forth in this Note and explaining how these proposals will ultimately improve gender parity in the United Kingdom, and in doing so, vindicate women's human rights.

To close the participation gap by encouraging greater sharing of domestic burdens and alleviating the cost of additional childcare, (i) Parliament should amend the statutory language of its Shared Parental Leave Regulations 2014 to include a period of two to three weeks of nontransferable leave for fathers; and (ii) the Secretary of State should amend the Childcare Act 2006 to expand the hours required for out-of-school services, as well as including zero- to two-year-olds in the age range covered by state-provided childcare. By making these changes, women will have increased opportunities to return to the workforce after having children and remain in the workforce due to the decreased financial burden of seeking out childcare. Ultimately, this will move the United Kingdom toward gender parity in economic participation and opportunity—a result that is warranted not only by economic gains, but also by women's human rights. The project of closing the global gender gap is ongoing, but the magnitude of the project should not deter policymakers from attempting to legislate change in manageable increments, nor should it deter academics from encouraging their efforts. This Note represents one such effort to impose manageable legislative changes with the hope that these changes will impact gender parity on a larger scale.

190. See Rock, *supra* note 109.

191. See discussion *supra* Section I.A.2.