

# Gender Equality through “Daddy Quotas”?

## Paternalism and the Limits of Parental Autonomy

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**Abstract** The policy of earmarked paternity leave aims to promote mothers’ position in the labor market and fathers’ relationship with their child. Critics argue that the policy prevents parents from pursuing their own ideas about what is best for them. This provides reason to consider whether the policy is paternalistic or, in other ways, disrespectful of parental autonomy. I argue that the state implicates itself in the gender inequalities that result from parents’ unequal parental leave agreements when the state financially facilitates such agreements. This argument for earmarked paternity leave is not disrespectful of parental autonomy.

**Keywords:** earmarked paternity leave; daddy quotas; gender equality; parental autonomy; paternalism; The 2019 EU Work-Life Balance Directive

### I. Introduction

A new EU directive has made leave arrangements for parents a highly debated political topic. Specifically, the 2019 EU Work-Life Balance Directive states that all EU member states must provide each parent at least four months of parental leave, out of which nine weeks are paid and non-transferable between the two parents. It is up to the parents whether they use their individual leave, but the non-transferable weeks are lost if the parent to whom they are earmarked does not

use them. In this way, the directive provides a strong incentive for both parents to take part of the parental leave. The stated aims of the directive are to promote gender equality in different ways. These include to encourage “a more equal sharing of caring responsibilities between men and women, and to allow for the early creation of a bond between fathers and children” (European Union 2019: §19). It is also intended to address the underrepresentation of women in the labor market and “to ensure the implementation of the principle of equality between men and women with regard to labor market opportunities and treatment at work” (European Union 2019: §52).

While these are valuable aims, another influential argument in the debate over the issue of earmarked paternity leave appeals to a concern for respecting parental autonomy. Politicians and debaters have argued that this concern is violated when some of the weeks are made non-transferable. On their view, parents should be allowed to organize their own leave arrangements. Instead of earmarking parts of the parental leave, it should be up to parents to decide by whom and for how long the leave will be used (see, e.g., Brandth and Kvande 2009: 197-198; de la Porte, Larsen and Szelewa 2020: 88-89, 94; de la Porte et al. 2022: 10; Salmi 2006: 148-149; Wentz 2018). This criticism is ambiguous between two possible interpretations. First, it might be understood as an objection from paternalism.<sup>1</sup> Typically, policies that are designed to advance people’s interests or well-being and do so in ways that bypass people’s own judgment on the matter raise concerns about paternalism. Alternatively, the objection is more broadly that the policy disrespects parental autonomy. On this interpretation, the problem is not that the policymakers are trying to promote the parents’ own interests or well-being in ways that the

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<sup>1</sup> For examples, where the term “paternalism” is used to describe the objection, see Wentz (2018) and Brandth and Kvande (2009: 197-198).

parents do not welcome. More broadly, the problem is that the policymakers substitute the parent's own judgment or agency in matters that lie within the parents' legitimate discretion.<sup>2</sup>

Whether earmarked paternity leave introduced with the aim of promoting gender equality is a paternalistic policy is interesting from a conceptual understanding of paternalism as well as relevant for the assessment of whether the policy is justified. From a conceptual perspective, the case of earmarked parental leave provides reason to consider whether interventions that are introduced to promote a person's local (but not global) interests are paternalistic. For example, the introduction of such leave can be seen as an attempt to promote the father's local interest in a close relationship with his child even though this may involve setbacks to the father's interests overall. Moreover, earmarked parental leave prompts us to examine whether it is paternalistic to prevent individuals from contributing to unequal gender structures that are not only disadvantageous to the individuals themselves, but also to others in society. I argue that earmarked parental leave, if motivated as the EU directive described above, can plausibly be described as paternalistic towards those mothers and fathers who do not welcome the initiative.

However, I also show that it is possible to defend the policy without embracing paternalism. One of the paper's main contributions is to present and defend an important and seemingly overlooked argument in favor of the view that parental leave programs with earmarked paternity leave need not be disrespectful of parental autonomy. Specifically, I argue that the state is justified in refusing to facilitate and compensate particularly unequal parental leave agreements reached within couples because such assistance would implicate the state in the gender

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<sup>2</sup> According to broad understandings (e.g., Shiffrin 2000: 118), this is also paternalism. But the standard view is that paternalism necessarily involves an intention to promote the target's interests, good, or well-being. I say more about this in Section III.

inequalities that the agreement generates.<sup>3</sup> If I am right, respect for parental autonomy does not require parental leave programs to avoid non-transferable weeks of leave (this applies even if parents have a claim to parental leave as such).<sup>4</sup>

This finding is relevant from a justificatory perspective for at least two reasons. First, the non-paternalistic argument is relevant because of the widespread view that paternalism towards competent adults is *pro tanto* wrong (see, e.g., Enoch 2016; Groll 2018; Hojlund 2021; Parry 2017).<sup>5</sup> Second, the argument appeals to a factor that other arguments for earmarked paternity leave have not highlighted, namely that when the state financially supports unequal agreements between mothers and fathers, the state implicates itself in the inequalities between men and women that result from the agreements. Even those who are not principally opposed to paternalism have reason to include this aspect when assessing the policy. Accordingly, both advocates and opponents of paternalism have reason to take the argument seriously.

For the sake of simplicity, I will discuss earmarked paternity leave with a focus on men and women as well as families consisting of a mother and a father. I do this even though I am aware that many will not identify with these terms and that people in alternative family constellations experience a wide range of disadvantages and injustices, not least in matters concerning children and parenthood.<sup>6</sup> For example, while the EU directive expresses acknowledgement of the fact that not all families consist of a father and a mother, its

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<sup>3</sup> For alternative arguments to the effect that equality-promoting interventions such as “daddy quotas” are consistent with liberal theories, see Barclay (2013).

<sup>4</sup> This argument is greatly inspired by Shiffrin’s (2000) argument for the unconscionability doctrine.

<sup>5</sup> Others reject this view, see e.g., Conly (2013) and Hanna (2018).

<sup>6</sup> However, since unequal distributions of parental leave between homosexual parents do not seem to cause gender inequalities, e.g. in the labor market, one might argue that homosexual couples should be exempted from the rule of non-transferability.

implementation relies on each member state's national laws regarding which persons are to be considered a parent or its equivalent (European Union 2019: see, e.g., Article 4, §1). Some worry that “people in these [non-heteronormative] family arrangements may face difficulties in being legally recognized as a ‘parent’ or a ‘relative,’ and could therefore be excluded from the possibility of accessing parental rights” (Chiericato 2020: 10; see also Wong et al. 2019). Although obviously relevant and important, such conditions for families other than the mother-father constellation are outside the scope of this article.

The rest of the paper is structured as follows. In Section II, I substantiate the relevance of parental leave policies for the issue of gender equality. In Section III, I present and qualify an objection that have been raised against policies of earmarking paternity leave. The objection is that when the state introduces earmarked paternity leave, it interferes in a matter – the distribution of leave between the father and the mother – which the parents should decide for themselves. I suggest that this objection either claims i) that earmarking paternity leave is paternalistic, or ii) more broadly, that such policies are disrespectful of parental autonomy. In Section IV, I present and defend an argument to the effect that respect for parental autonomy does not require parental leave that is fully transferable between the parents. Section V addresses objections to the argument. Section VI concludes.

## II. Gender Equality, Gender Contracts, and Parental Leave Policies

Women earn less than men do. Women are overrepresented in sectors that are relatively low paid. Women work more hours per week than men, but they spend more time on unpaid work (European Commission 2019). Women work part-time more often than men do (OECD Family Database, 2019). Women occupy less than 8% of the top EU companies' CEO positions. In the EU, the hourly earnings of female managers are 23% lower than for male managers (European

Commission 2019). Such disadvantages for women exist across the globe, but their extent varies from country to country (Rocha 2021: 36).

Significant parts of such gender inequalities in earnings have been attributed to childbearing and caring—the so-called “child penalty” (see, e.g., Kleven, Landais and Sjøgaard 2019; Angelov, Johansson and Lindahl 2016). In this context, several have pointed to “gender contracts” as one important component of this phenomenon (e.g., Angelov, Johansson and Lindahl 2016; Rocha 2021: 36; Mósesdóttir and Ellingsæter 2017). Gender contracts are, roughly, the agreements or compromises reached within the family regarding the gendered distribution of labor at work and at home (Rocha 2021: 36; Mósesdóttir and Ellingsæter 2017: 1021). When women more than men take care of the typically unpaid or low-paid work in the home (e.g., when women take more parental leave), this has several negative effects, not least for the position of women in the labor market. For example, an unequal distribution of parental leave may bring about statistical discrimination against women in decisions pertaining to employment and promotion (Barclay 2013: 169-170; Gheaus and Robeyns 2011: 173).

Various factors form and affect the content of the gender contract. One relevant factor is gendered norms and expectations (see, e.g., Kaufman 2017; Miller 2011). As Ellemers (2018: 280) puts it, “[a]cross different domains, gender stereotypes implicitly impact the expectations we have about the qualities, priorities, and needs of individual men and women, as well as the standards to which we hold them.” Research shows that women are associated with communality. Roughly, they care for others and prioritize the family. Men, on the other hand, are associated with agency; they are perceived to be performance-orientated and to prioritize work.<sup>7</sup> Such stereotypes not only create an

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<sup>7</sup> See, e.g., Ellemers’ (2018) review of the literature on gender stereotypes and their contribution to how men and women are perceived by others and think of themselves. See also Banaji and Greenwald (2016: 111-119).

external expectation from others of what tasks women and men undertake; they also shape individuals' views and expectations of themselves (Banaji and Greenwall 2016: 111).

A second factor affecting the gender contract is financial considerations. As we have seen, women generally earn less than men do. Accordingly, the income-maximizing solution in most heterosexual relationships is that the woman works part-time and takes most of the parental leave (Rocha 2021: 37). In other words, it is economically rational for families to distribute labor in a way such that women predominantly take care of the unpaid or low-paid work in the home. Studies substantiate that such economic incentives matter. For example, a study from Norway shows that men take more leave when the distribution of income between partners is equal compared to when the man's income is higher than the woman's income (Lappegard 2008; Naz 2010). Moreover, financial costs are highlighted as explanatory factors in qualitative studies of UK parents' leave decisions (Kaufman 2017).

This leads us to a third factor affecting the content of the gender contract. Institutional opportunities, such as the terms and conditions involved in different parental leave models, are examples of choice architecture that in different ways influence people's decisions. For example, the greater the compensation given to the leave-taking person, the smaller the economic incentive to let the woman take most of the leave. In this context, research suggests that a high level of income compensation combined with non-transferability are effective tools to get men to take a greater share of parental leave (O'Brien 2009: 199; Castro-Garcia and Pazos-Moran 2016). When the leave is transferable, women tend to take most of the leave available (*ibid.*).

There is still limited experience with legislation on parental leave for fathers. Results from a recent study conducted in Estonia suggest that direct exposure to legislation extending entitlements to fathers' leave "significantly increases attitudinal support for gender equality in the social and economic spheres" (Tavits et al. 2023: 4) – "this effect also applies to preferences about women in

politics” (ibid.). These effects were found among new and expecting parents who were *directly* affected by the reform. By contrast, “informational, indirect exposure to the reform among the general public produced no attitudinal change” (ibid.). Most of the existing evidence of the effects of earmarked paternity leave is based on data from Scandinavia (Andersen 2018: 1127). One study of the effects of reforms extending non-transferable leave for fathers in Norway shows no evidence that such an extension has an impact on earnings, working hours, or the gender wage gap (Abrahamsen 2018). Other studies point in the opposite direction. Based on data from Denmark, one study demonstrates that a larger share of the leave for the father (relative to that of the mother) reduces the within-household gender wage gap (Andersen 2018). Another study from Denmark shows that a modest extension of earmarked paternity leave from two to four weeks “increased the women’s intra-household share of labor income with around 1.2 percentage points in the years following childbirth” (Drue Dahl, Ejrnæs and Jørgensen 2019). Similarly, data from Sweden shows inequality-limiting effects of parental leave reforms on fathers’ and mothers’ earnings. While parental leave had a negative effect on the earnings of the parent taking the leave (irrespective of whether this was the mother or the father), the father’s leave had a positive effect on the mother’s earnings (Johansson 2010).

Although the evidence of the effects of parental leave reforms is scarce and mixed, I will assume that the politicians behind the EU directive are right in that earmarked paternity leave is promising in terms of reducing gender inequalities in the home and at work. This assumption is not essential in the next section. Opponents of the policy do not question its equality-promoting effects (at least, that is not the content of the criticism that this article addresses). However, the likelihood of such effects is relevant to the issue of justification addressed in Section IV.



### III. The paternalism objection to “Daddy Quotas”

When the EU directive was adopted in 2019, Denmark, the Netherlands and Slovenia voted against it; Austria and Poland abstained. In their examination of the implementation of the policy, de la Porte, Larsen and Szelewa (2020: 94) write: “The political parties and unions that oppose paid earmarked leave argue that earmarking parts of the parental leave intervenes with families’ rights to organize their leave arrangements according to their individual needs” (see also *ibid.*: 88-89). Elsewhere, it appears that “[o]pponents to father-specific leave argue that the WLBD [the 2019 EU Work-Life Balance Directive] abridges family autonomy in deciding on care arrangements” (de la Porte et al. 2022: 10). This objection to policies of earmarking parental leave is not new. For example, in discussions pertaining to the limited daddy leave involved in the previous parental leave scheme in Denmark, opponents “voiced [...] that it was not a task for the public sector to influence the division of labour by gender, and the daddy leave was interpreted as politicians invading people’s privacy” (Borchorst 2006: 115). The policy was framed as an example of “guardianship and a limitation of the individual’s freedom of choice” (Borchorst 2006: 115). By earmarking parts of the leave, the politicians are meddling in something that should be left to the parents to decide for themselves.

This criticism raised by opponents of earmarked paternity leave can be described along the lines of Shiffrin’s definition of paternalism:

[P]aternalism by A toward B may be characterized as behavior (whether through action or through omission)

- (a) aimed to have (or to avoid) an effect on B or her sphere of legitimate agency
- (b) that involves the substitution of A’s judgment or agency for B’s
- (c) directed at B’s own interests or matters that legitimately lie within B’s control

(d) undertaken on the grounds that compared to B's judgment or agency with respect to those interests or other matters, A regards her judgment or agency to be (or as likely to be), in some respect, superior to B's. (Shiffrin 2000: 118)

The opponents stress that the distribution of labor at work and at home is a matter within the family's legitimate discretion. When making parts of the leave non-transferable between the father and the mother with the aim of making the gender contract more equal, policymakers substitute their judgment regarding the preferable distribution of labor at home and at work, implying that the parents' own view of how this should be distributed is, in relevant respects, inferior.<sup>8</sup>

It might be argued that opponents, who think that the policy is directed at matters that legitimately lie within the parents' control, are wrong. Adopting daddy quotas is to put limitations on a benefit that the state provides. This makes the policy different from other typical examples of paternalistic policies, e.g., bans and mandates interfering with people's liberty, or welfare-enhancing nudges that are designed to circumvent people's autonomous deliberation (Hausman and Welch 2010: 128–129). While we might have an autonomy claim against the state adopting

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<sup>8</sup> As one anonymous reviewer helpfully points out, another possible interpretation of the objection to the policy is that it violates an anti-perfectionist principle of state neutrality. In response to this objection, Barclay (2013) argues that non-transferable leave can help reduce gender discrimination, prejudices and sexist norms that hamper men's and women's capacity to pursue plans and projects (some of which are available to the opposite gender). In her view, even liberal neutralists have reasons to think that the state should pursue measures that counteract discrimination impeding some people's capacities to pursue reasonable conceptions of the good. In contrast to Barclay, I focus on the paternalism objection to earmarked paternity leave. The relationship between paternalism and perfectionism is not straightforward (and investigating it is beyond the scope of this article). E.g., Quong (2010: 73-74) argues that perfectionist policies imply paternalistic judgments, whereas Wall (2018: 172) argues that "perfectionism can support antipaternalism" and that "antiperfectionism can support paternalism".

paternalistic measures restricting our freedom or exploiting our biases, we might not be entitled to the state providing parental leave benefits that are non-transferable (see also Mackay 2019: 425). In other words, the view that it is within parents' legitimate discretion whether the state includes a trading option in its parental leave provisions might be questioned. It is not clear that parents are entitled to parental leave without quotas.<sup>9</sup>

One response to this challenge is that, according to many authors (e.g., Cholbi 2017: 127; Groll 2012: 718; Le Grand and New 2015: 8-16; Mackay 2019: 425-426; Shiffrin 2000: 220; Tsai 2014: 86-87; Quong 2010: 8), paternalism is not limited to cases that involve measures interfering with people's liberty or autonomy rights. Instead, to identify paternalistic behavior, we should be concerned with the *motive* behind the measure in question. For example, Shiffrin (2000: 220) writes:

The motive, I think, is what is central to accounting for why paternalism delivers a special sort of insult to competent, autonomous agents. Even when paternalist behavior does not violate a distinct, independent autonomy right, it still manifests an attitude of disrespect toward highly salient qualities of the autonomous agent.

According to Shiffrin, the insult consists in evincing "a failure to respect either the capacity of the agent to judge, the capacity of the agent to act, or the propriety of the agent's exerting control over a sphere that is legitimately her domain" (Shiffrin 2000: 220). Her view is that a paternalist motive

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<sup>9</sup> I.e., those who think that paternalism requires restricting freedom or violating an independent autonomy right would not consider the policy paternalistic. I'm grateful to an anonymous reviewer for raising this challenge. In my response, I draw on MacKay (2019: 425-427) who addresses a similar challenge to his view that welfare programs placing conditions on the receipt of cash transfers or in-kind benefits are often paternalistic.

shows “significant disrespect for those core capacities or powers of the agent that underwrite and characterize his autonomous agency” (ibid.).

Such insult can occur even when people are not entitled to the option from which they are written off. For example, MacKay (2019: 425-426) asks us to imagine a hypothetical case where a family member comes to visit him for a week, and he removes soda from the fridge because he thinks it would be bad for her to drink as much soda as he expects her to otherwise do. While it is not within the family member’s legitimate discretion whether he has sodas in his fridge (i.e., his behavior does not “violate a distinct, independent autonomy right” of hers), his decision to remove the sodas to protect her health involves him substituting his judgment for hers about what *she* should aim for (see also Shiffrin 2000: 213). In parallel, even if parents do not have a distinct autonomy claim to a trading option in the parental leave program, the state’s *motive* behind not including such an option can still turn the policy into paternalistic behavior if the state is substituting its judgment about how mothers and fathers divide their own labor at work and at home between them (and the content of their gender contract *is* a matter within the parents’ own legitimate discretion).

There is a second challenge to the view that the policy is paternalistic. Shiffrin proposes a broad definition of paternalism to capture all the situations in which her objection to paternalism applies. However, in contrast to Shiffrin’s proposal, most of the definitions of paternalism include a requirement that the actions in question must be aimed at promoting the targets’ own interests, good or well-being, and it is not clear that the EU directive is introduced with such a benevolent motive. The stated aim of the directive is to promote gender equality. If one subscribes to a more common definition of paternalism, it is perhaps not accurate to say that a policy, which is motivated in this

way, is paternalistic.<sup>10</sup> However, in the rest of this section, I will argue that the policy can plausibly be seen to satisfy the conditions of the following definition of paternalism (henceforth, when I use the term “paternalism” I refer to this definition):

A acts paternalistically towards B if and only if

- i) A interferes with B,
- ii) A bypasses the agency or judgment of B, and
- iii) A does so in order to promote the interests, good, or well-being of B.

There are three essential components in this definition. First, to specify the first condition, I understand “interference” broadly as a form of influence or involvement with B through “means other than rational persuasion” (Scoccia 2008: 352; see also Hausman and Welch 2010: 128–129; Midtgaard 2016). In this context, it is possible to interfere with a person through omissions (see, e.g., Shiffrin 2000: 218). For example, if I refuse my son’s request for help with his homework because I think it will be better for him to do it himself, this omission is paternalistic.

Second, a common feature characterizing paternalistic actions is that they involve a disregard for or bypassing of the agency or judgment of the person interfered with. The person is not treated as an authority on the relevant matter (see, e.g., Groll 2012). Actions that are unwelcome or undertaken without the consent of the person interfered with satisfy this condition (Grill 2018).

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<sup>10</sup> It is possible that the understanding of paternalism that characterizes the use of the term in the broader public more closely tracks Shiffrin's definition than the more common definitions requiring a benevolent motive. At least, the objections to earmarked paternity leave in the political and public debate do not explicitly emphasize that the state is acting with a benevolent motive. Rather, they emphasize that the state meddles in affairs in which it should not.

According to the third condition, there must be a benevolent rationale behind the act. This benevolent rationale may either take the form of a motive or a justification. For example, A acts paternalistically towards B if A hides B's cigarettes with the motive of promoting B's own interests, even if A justifies this act towards B with reference to the interests of others in avoiding passive smoking. A would also have acted paternalistically if the opposite were the case; that is, if A justified the act with appeal to B's own good but was motivated by preventing passive smoking. Here, I follow Grill, who explains that the relevant understanding of "justification" is either "what the paternalist *takes to be* the normative reasons for her action, perhaps mistakenly, which may differ from her motive" or "the normative reasons that agents officially cite, perhaps only rhetorically" (Grill 2018: 47-48). What essentially matters is whether promotion of B's interests, good, or well-being in some way "plays the role of a reason" in favor of the interfering act (see Grill 2015).

Instead of considering whether earmarked paternity leave is paternalistic towards the family as a group, it seems apt to assess under what conditions the policy is paternalistic towards mothers and fathers, respectively. This focus seems appropriate because parent couples consist of different individual stakeholders, and the nature of the rationales behind the policy varies with the gender of the parent. Moreover, earmarked paternity leave involves different forms of influence on women and men. In the discussion below, I focus on policies that are motivated like the EU directive with the aim of promoting gender equality. One could, however, imagine alternative rationales. For example, some might argue that a more equal distribution of parental leave between the mother and the father promotes the interests of the child.<sup>11</sup> Since I focus on the stated aim of promoting gender equality, I exclude this child-focused rationale from the discussion.

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<sup>11</sup> For a skeptical take on this rationale, see Barclay (2013: 171).

### *A. Unwelcome Interference?*

Does earmarked paternity leave interfere with mothers? Parental leave programs can be seen as an offer of support for raising children, and the policy of earmarked paternity leave places conditions on the receipt of such support from the state. These conditions have implications for what options people have. For example, if I am a new mother living in Denmark, the status quo is that I have forty-six weeks that I can potentially use (thirty-two of the forty-six weeks can be shared between the two parents). A new rule that earmarks eleven of these forty-six weeks for the father would withdraw an option from my status quo choice-set. Second, even when the policy does not remove any options, it still withholds an option from being added to a status quo choice-set, which does not yet include that option (Schmidt 2016: 4). If I am a new mother living in Cyprus, the status quo is that I have eighteen weeks that I can potentially use (Department of Labour Relations 2021). Even if a new policy of earmarked paternity leave does not touch these weeks but adds several non-transferable weeks for the father, the policy still withholds the option of having weeks of leave transferred from the father. As suggested above, while people might not be entitled to these options, earmarking parts of the leave for each parent is a measure of a kind that is *potentially* paternalistic (depending on how it is motivated and whether it bypasses the parents' judgment or agency).

Of course, some mothers may welcome or consent to the initiative. For example, it is likely that parents generally welcome the policy if they live in countries where the status quo is such that the EU directive increases families' options. But even in countries where the policy reduces the choice-set of parents, mothers can have reason to support it. For example, some mothers may want to share the leave more equally and find it easier to get their partners to take on part of the

parental leave when there is a clearer incentive to do so. In this way, the policy may strengthen the mother's negotiation position in relation to the gender contract.

Others do not welcome the initiative. For example, recent public opinion surveys from Denmark show a general resistance to earmarked paternity leave. In one of the studies, which was conducted by Gallup in 2021, 1.088 representatively selected respondents were asked: "To what extent do you agree or disagree that the distribution of parental leave is not a matter for legislation?" In response, 72% indicate that they "agree" or "mostly agree" (Reinwald and Rask 2021). While I do not have access to information pertaining to the distribution of these responses between men and women, a second study from Denmark finds that the opposition to the policy is most pronounced among women (Richter 2020), whereas a third study finds no significant difference in the responses of men and women (Ritzau 2021).

If we look at the policy from the fathers' perspective, it can similarly be argued that, even when the policy does not withdraw any options from fathers' status quo choice-set, it interferes with fathers in the sense that it withholds the option of transferring weeks of leave to the mother. However, as was the case with mothers, some fathers may welcome the policy. For example, some fathers might experience a pressure from their employer and find it easier to ask for paternity leave if there is a clearer incentive to do so (i.e., if the leave would otherwise be lost). Just as earmarked paternity leave can strengthen the bargaining position of the mother who wants to return to the labor market more quickly, it can also strengthen the bargaining position of the father who wants to take a greater share of the parental leave. These are just to name a few examples of reasons why some fathers may prefer non-transferable leave.<sup>12</sup>

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<sup>12</sup> Interestingly in this context, some mothers and fathers might welcome earmarked parental leave, not out of self-interest, but for the sake of their partner, or other fathers and mothers, whom they believe will benefit from the policy. In other words, people may welcome the policy for paternalistic reasons (Grill 2018: 55-56).



Based on the above, earmarked paternity leave is *potentially* paternalistic towards mothers and fathers who do not welcome or otherwise consent to the initiative. However, governments often withdraw or withhold options from people's choice-set without facing charges of paternalism. What makes a policy paternalistic is the combination of unwelcome interference with a benevolent rationale. Accordingly, the next relevant question is to what extent the rationale behind the policy is to promote the interests or well-being of mothers and fathers, respectively.

### ***B. Benevolent Rationale?***

Let's assume that the two first conditions are met (i.e., that the policy involves unwelcome interference). On a standard definition of paternalism, the policy still won't be paternalistic if the rationale behind it doesn't appeal to the parents' own interests, good or well-being. However, I will suggest that it *is* natural to interpret the rationale behind the EU directive as benevolent. For example, one explicit and central aim is to promote the mother's opportunities and position in the labor market. In this way, the aim of promoting gender equality involves an underlying aim of promoting the interests of the party who is currently in a comparatively worse position on the relevant dimension.

The motive of promoting gender equality may be part of a motive to promote justice. For example, Barclay (2013) argues that earmarked paternity leave can be defended with appeal to the liberal commitment to promote equality of opportunity. Some might suggest that aiming at promoting justice is different from a benevolent motive of promoting people's interests, even if achieving justice involves promoting the interests of disadvantaged groups, e.g., women. For example, one way of interpreting the gender equality rationale behind the directive is to focus on how the parental leave agreements between individual fathers and mothers contribute to structural inequalities

between men and women (e.g., by reproducing stereotypes and norms that are disadvantageous to women’s opportunities at work and men’s in family life). If the concern is that the agreement within the family contributes to upholding gender inequality in society, and the focus is on combatting this structural inequality, then it might be argued that the rationale is not paternalistic. It is, however, not clear why such a motive of promoting justice should not be considered benevolent. For example, a state may raise the price on cigarettes with the aim of promoting justice (by reducing ill health – “a core threat to opportunity” (Barclay 2013: 171) – among the disadvantaged). Given that the disadvantaged (the intended beneficiaries) do not welcome the policy, it is hard to see why this policy should not be considered to paternalize them (Bengtson and Pedersen 2024: 427).<sup>13</sup> As some authors suggest, it seems that justice (e.g., equality of opportunity) can be promoted through paternalistic means (Arneson 2005: 275; Bengtson and Pedersen 2024: 427; Voigt 2010).<sup>14</sup>

One challenge when we consider paternalism towards groups is that it is often not feasible to assess the potential effects of the policy at the individual level. When we consider the expected effects of earmarked paternity leave, it is likely that some women will benefit from the policy, e.g., by having their position on the labor market improved, whereas others will not. Thus, it is

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<sup>13</sup> Barclay (2013) argues that defenders of “daddy quotas” can appeal to an apparently liberal equality of opportunity argument and thus avoid controversial appeals to outcome equality. However, she does not address the concern that a policy aimed at promoting equality of opportunity can be paternalistic if the intended beneficiaries (those whose opportunities will be advanced) prefer their situation without the policy. Yet the equality of opportunity argument that she presents (ibid.: esp. 170) can be interpreted in a way that avoids the paternalism objection (i.e., her argument is compatible with the non-paternalistic justification that I suggest in Section IV).

<sup>14</sup> To be clear, my point is not that policies pursued to promote equality of opportunity are *necessarily* paternalistic (for example, in the next section I propose a non-paternalistic argument for earmarked paternity leave that also involves equality of opportunity considerations).

likely that the aim is not to benefit *all* women. As Walker (2016: 48) puts it, it is likely “not to be the case that there is any individual of whom it is true that in introducing the policy the policy maker aims to benefit them.” Even if a randomly selected woman does not benefit, the policy may still achieve its aim of improving women’s position at the labor market (ibid.). Does this mean that the policy is not paternalistic? Some suggest that policymakers act paternalistically in a group-sense when they interfere in unwelcome ways with the intention of benefiting a group even though they know that *some* members of the group will not benefit from the policy (Jansen, Wall and Miller 2019; Walker 2016). Such paternalism towards groups involves an acceptance that the policy will have “false negatives”, that is, it implies that there are individuals who are prevented from doing as they prefer, even though doing so would have benefited them more.<sup>15</sup> According to this view, simply recognizing that some women will not benefit from the policy does not imply that the policy is not paternalistic.<sup>16</sup>

If improving women’s position at work were its sole purpose, the directive would seem to be paternalistic only towards mothers, not towards fathers. However, as we have seen, another objective is to encourage an early bond between father and child (European Union 2019: §20). While this aim can be interpreted as one that caters to the interests of the child rather than the

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<sup>15</sup> On the other hand, a more permissible approach involves “false positives,” where individuals who would benefit from the unwelcome interference are not protected (Jansen, Wall and Miller 2019: 95). Jansen, Wall and Miller (2019: 195) argue that fairness-based considerations tell in favor of such group-centered paternalism, when people who would incur the costs of “false positives” without the policy have much more at stake than those who incur the costs of “false negatives” when the policy is in place.

<sup>16</sup> One can take a parallel group-centered view of the unwelcome interference requirement, which will not be met for *everyone* who might benefit (because some mothers and fathers welcome the policy). On this view, policymakers act paternalistically when they interfere to benefit a group even though *some* members of the group welcome the policy.

interests of the father, it is likely that encouraging such a bond also includes considerations of the interests of the father in establishing a close relation to his child. In this context, certain advocates of earmarked paternity leave have argued that a longer leave will improve fathers' positions in, for example, potential future visitation and custody cases. Given that considerations for the father's own welfare and interests are included in the rationale behind the policy, earmarked paternity leave is also paternalistic towards the father.

However, this conclusion may rely on an interesting question about whether paternalism must aim at promoting the paternalized person's interests overall or simply in some respect. In my view, A can be considered to act paternalistically towards B even if A's interference is directed at promoting only a local good or interest.<sup>17</sup> Imagine, for example, that a teacher interferes with a student, against the student's will, to promote the student's intellectual good. E.g., the teacher imposes deadlines that will not promote the student's interests overall, but the teacher is only concerned about the intellectual good of the student. Intuitively, this seems to be a case of paternalism even though the interference in question is not directed at promoting the student's global interests.<sup>18</sup> Similarly, if part of the motive behind earmarked paternity leave is to promote the father's interest in attaching himself to the child while perhaps expecting this to be at the expense of his interests in other areas, this reason still seems to be of a paternalistic kind.

Moreover, even if one does not follow my intuition pertaining to the above teacher-student case, in the specific context of encouraging a close relation to the child, it seems possible that

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<sup>17</sup> In fact, I even think there is a relevant sense in which A acts paternalistically towards B if A aims to promote B's local interest (e.g., in a father-child bond), but also aims to impede B's global interest (including his status at work).

<sup>18</sup> I owe this example to an anonymous reviewer for *Journal of Applied Philosophy*.

although the act is directed at promoting a local interest, the interest in question can plausibly be considered what Dworkin describes as a “critical interest” (Dworkin 2000: 216-217). Dworkin draws a distinction between “volitional interests” and “critical interests.” The former includes all the things we “happen to want,” whereas the latter includes the things we “should want” (ibid.). For example, as he writes, “I do not think that having a close relationship with my children is important just because I happen to want it; on the contrary, I want it because I believe a life without such relationships is impoverished” (Dworkin 2000: 216). According to Dworkin, such critical interests can be understood both subjectively and objectively:

People can fail to recognize their own critical interests. It makes sense to say that someone who has no regard for friendship ... for example, leads a poorer life for that reason, whether he agrees or not. We also make critical judgments about ourselves; people all too often come to think, toward the end, that they have ignored what they only then realize is really important to their lives. (ibid.)

Indeed, wishing that one had worked less and spent more time with one’s partner and children is one of the most common regrets of the dying, especially of men who have been breadwinners of their family (Ware 2011). In this way, one might argue that an agent who is motivated by catering to the specific local interest of the father in having a close relationship with his child may ultimately seek to promote the father’s interests overall.<sup>19</sup>

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<sup>19</sup> Of course, it is logically possible to argue that earmarked paternity leave introduced to promote equality between fathers and mothers need not involve an underlying aim of promoting the interests, good, or well-being of anyone. If this interpretation best describes the rationale behind the policy, which is very questionable, the policy is in fact not paternalistic.

The above analysis shows that whether the EU directive is paternalistic depends especially on how we interpret the aim of promoting gender equality. Since this aim is highly compatible with (and plausibly interpreted as) a benevolent rationale of preventing mothers and fathers from making agreements that are bad for themselves, the charge of paternalism is not misplaced. Still, in the next section, I propose an alternative and seemingly overlooked way in which the state can defend parental leave programs with non-transferable leave without a benevolent rationale and, more broadly, without disrespecting parental autonomy.

#### IV. Avoiding Complicity

In this section, I will argue that it is not disrespectful of the autonomy of parents to deny them parental leave programs without “daddy quotas.” This applies even if parents have a right to support in child rearing as such. I defend this view by appealing to Shiffrin’s argument for the unconscionability doctrine, which “enables a court to decline to enforce a contract whose terms are seriously one-sided, overreaching, exploitative, or otherwise manifestly unfair” (Shiffrin 2000: 205). Critics have described the unconscionability doctrine as paternalistic as it deprives people of the opportunity to enter into a voluntary and binding agreement because the terms of the contract are disadvantageous to one of the contracting parties (Shiffrin 2000: 206-207).

However, according to Shiffrin, it is possible to defend the unconscionability doctrine without a paternalistic rationale. In defense of the doctrine, Shiffrin argues that “a state’s refusal to enforce an unconscionable contract could reflect an unwillingness to lend *its* support and its force to assist an exploitative contract because it is an unworthy endeavor to support” (Shiffrin 2000: 227-228). This argument appeals to the state’s own interest in not being implicated in unconscionable agreements

(i.e., it does not appeal to the interests of the contracting parties).<sup>20</sup> If a state declines to enforce unconscionable agreements for this non-paternalistic reason, the state avoids wronging the contracting party by imposing its judgment in a sphere where the person's own judgment or agency should be decisive. In defense of her argument, Shiffrin asks us to consider the following analogy:

[I]t would be paternalist for me to hide your cigarettes to protect your health. Nonetheless, it would not be paternalist (and may be morally required) for me to refuse to buy you cigarettes or to refuse to retrieve them from a pilfering acquaintance if my motive for refusal is that I think that *I* should not perform substantial actions that contribute to your addiction or illness. (Shiffrin 2000: 224)

According to Shiffrin, it is similarly not paternalistic for the state to refuse to assist unconscionable agreements by appealing to its own interest in not doing so, and people do not have a claim to such assistance. As she puts it, “there are some agreements you have a right to form but no right to assistance in carrying them out and about which others may reasonably feel that they may or even must not assist” (Shiffrin 2000: 224).

In my view, a similar line of argument applies to the policy of earmarked paternity leave. Specifically, I will argue that there is a relevant sense in which the state is implicated in the unequal gender contracts that parents agree on, because their decision is largely influenced by the conditions in the parental leave program offered by the state. Authors have defended the view that liberal states should offer support to families raising children, including via publicly funded parental leave programs (Olsaretti 2013; Lloyd 1998; Baehr 2004). The question pertaining to the legitimacy of

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<sup>20</sup> In this context, the state may be understood as the individuals in the community acting together (see, e.g., Shiffrin 2000: 221).

earmarked paternity leave is a question of what form such assistance should take. Different parental leave programs support or lead to different agreements between couples. In other words, the choice of legislation affects the content of the gender contract. As Rocha (2021) puts it, “[i]t is vital to notice that regulation is not neutral and plays an essential role in building the setting upon which gender relations will unfold. [...] Parental leave constitutes a good example of how the state can hold back or promote gender equality, depending on how it regulates and legislates on the matter” (Rocha 2021: 36-37). If it is true that any parental leave program affects the content of the agreements reached within couples, then it seems that the state is relevantly implicated in generating and maintaining the derived gender inequalities via its facilitation of the parental leave program.

In response to this argument, it might be objected that it is not generally true that if X provides Y and Z a certain good and leaves the distribution between them up to Y and Z, then X is implicated in the distribution Y and Z settle upon. However, even in that case, I find it plausible to maintain that if X has performed this act many times for many different heterosexual couples, and a certain unequal pattern emerges in the distribution between Ys and Zs, which X is aware of, then X *is* in a relevant sense implicated in the resulting inequality if X continues with this practice. In such situations, not laying out a rule when you could easily do so is to be implicated in what follows from lack of a rule. In this case, the relevant rule is non-transferability – and as described in section II, the experience is that when parental leave is transferable the mother takes by far most of the leave available. For these reasons, it does not seem erroneous to claim that the state contributes to and facilitates unequal gender contracts when offering parental leave that is fully transferable between the father and the mother.

Therefore, even if parent couples plausibly have a right to make their own paternity leave agreements, the state can refuse to assist or compensate agreements that it considers problematic from a gender equality perspective. Non-transferable weeks of leave for each parent (nine weeks in the EU directive case) can plausibly be seen as a way of making sure that the agreements that are facilitated



or compensated through the parental leave program are not too unequal. If couples want a more unequal distribution of labor at work and at home, they still have the right to make such agreements outside the parental leave program.

In fact, it may be warranted to make the even stronger claim that the state *should* not assist or compensate agreements that it considers problematic from a gender equality perspective. When the state offers parental leave that is fully transferable between the father and the mother with the unequal distribution of labor at work and at home this apparently leads to, it may be argued that the state facilitates gender contracts that give inadequate weight to the strong interests of mothers and fathers in the labor market and in family life. Given that the agreements in question exacerbate existing injustices (that is, inequalities in opportunities between men and women), it is perhaps reasonable to claim that not only *can* the state refuse to compensate such agreements without embracing paternalism, but it *should* also refrain from doing so.

How does the above argument inform discussions of earmarked paternity leave? One response is that it provides a possible non-paternalistic defense of a seemingly paternalistic policy. The argument shows that even anti-paternalists, who reject that it is a valid reason in favor of interfering with a person's self-regarding decisions that these decisions will promote the person's own interests, good or well-being, *can* defend the policy (de Marneffe 2006: 77). To illustrate the difference between a paternalistic rationale and a non-paternalistic rationale of the kind suggested here, consider the following reasons for refusing to assist unequal gender contracts through the parental leave program:

*Paternalistic motive:* A and B decide how the work of caring for their newborn baby should be divided between them. They want A to be home with the child throughout the whole parental leave period while B goes to work. The state refuses to contribute as much as it would have done if B had taken part of the leave because the state thinks this agreement is bad for both A and B.

*Non-paternalistic motive:* Similar agreement between A and B, but in this case the state refuses to contribute as much as it would have done if B had taken part of the leave because such a contribution would implicate the state in the inequalities the agreement generates.

According to opponents of paternalism, we have reasons to prefer non-paternalistically motivated earmarked paternity leave to its paternalistically motivated alternative. For example, Shiffrin's view is that "a paternalist motive can make an otherwise permissible action wrong because this motive is inconsistent with respect for autonomy" (Shiffrin 2000: 226). Moreover, through Quong's (2010: 79-80) example of a person who refuses to lend his friend money for paternalistic reasons, Enoch suggests that it involves violations of the friend's autonomy to act on a paternalistic motive:

When your friend claims, for instance, that whether or not he's going to misuse the money is none of your business, what he is in effect saying is that this is not a consideration you should be acting for, or even deliberating on. [...] The value of his autonomy gives you a reason—an exclusionary reason—not to refrain from giving him the money for the reason that he is likely to misuse it. If you do refrain from giving him the money for that reason, you are in violation of his autonomy (Enoch 2016: 45).<sup>21</sup>

The same argument applies in the parallel case where the state refuses to provide fully transferable paternity leave *for paternalistic reasons*. Like the friend in Enoch's example, A and B might object that it is none of the state's business whether the agreement would be bad for them and that this is a

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<sup>21</sup> For other authors appealing to exclusionary reasons when arguing for the pro tanto wrongness of paternalism, see, e.g., Groll (2012) and Parry (2017). While these authors propose different accounts of the wrongness of paternalism, they share the view that it is wrong to act on paternalistic reasons. For recent criticism of the views presented by Enoch, Groll and Parry, see van Oosterum (2024).

consideration the state should not be acting for. In other words, to avoid substituting the parent's own judgment or agency in an area where the parent's own judgment should be decisive, the policymakers must exclude any direct appeals to the parents own interests or well-being from their deliberation behind the policy. No such appeals are involved in *Non-paternalistic motive*, which shows that parental leave programs involving non-transferable weeks of leave avoids the paternalism objection if motivated in this way.<sup>22</sup>

However, the project of reconciling seemingly paternalistic policies with anti-paternalism by identifying non-paternalistic arguments in favor of the policies (henceforth, the project of reconciliation) has met resistance.<sup>23</sup> One objection is that the possibility of adopting the policy without a paternalistic motive does not show that the policy is not paternalistic when we consider the *actual* motives of policymakers (see, e.g., de Marneffe 2006: 77). I agree that the argument presented above does not show that introducing earmarked paternity leave is in fact not a paternalistic policy. Whether it is paternalistic depends on an empirical examination of the policymakers' rationale. Moreover, it depends on a specification of when mixed cases (where part of the rationale is paternalistic and part of the rationale is non-paternalistic) are paternalistic. For example, as Wilson (2010: 271) puts it, two "extreme views might be to say that (i) a policy is paternalistic if any of the motivations or justifications which explain its shape are paternalistic, or (ii) a policy is paternalistic only if all the motivations or justifications which explain its shape are paternalistic." I'm leaning

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<sup>22</sup> When the state refuses to contribute because it does not want to be implicated in agreements that are bad for (one of) the parents, this is a non-paternalistic rationale involving "indirect" appeals to the parent's interests. In Section V, I address an objection according to which the non-paternalistic rationale is disrespectful of the parents' autonomy in a similar way as the paternalistic rationale is seen as disrespectful.

<sup>23</sup> I'm grateful to an anonymous reviewer for encouraging me to address this criticism.

towards (i),<sup>24</sup> but defending a particular view on this definitional matter is outside the scope of this article.<sup>25</sup> But without such specification and insight into the *actual* rationales of policymakers (apart from an aim to promote gender equality) it is impossible to tell whether the policy is in fact paternalistic.<sup>26</sup>

One might ask why we should then care about the availability of the above non-paternalistic argument for earmarked paternity leave? We should, because identifying and defending possible arguments for a policy gives us insight into the justificatory dimension of the policy. If I am right that the state becomes complicit in the gender inequality that results from parents entering unequal gender contracts when the state facilitates such contracts, then this is an important aspect of the justification of earmarked maternity that should be elucidated.<sup>27</sup>

In this context, some of the criticism of the project of reconciliation has focused on the attempts to *avoid* paternalistic reasons that characterize this project. For example, as Pedersen (2019) argues, one problem with seeking to exclude paternalistic reasons, e.g., in favor of the unconscionability doctrine, is that paternalistic concerns for the well-being or interests of the disadvantaged party in the unconscionable contract seem to be salient in our underlying considerations pertaining to the doctrine. However, this criticism of the project of reconciliation does not give us reason to exclude non-paternalistic reasons from the assessment of policies. Quite the opposite. The problem with the project of reconciliation is not its identification of non-paternalistic reasons in favor of policies. These might

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<sup>24</sup> Because (i) seems to reflect the “exclusionary strategy” defended by Enoch, Groll, Parry and others (see footnote 21).

<sup>25</sup> For an overview of possible views, see Grill (2018: 49-50) who also considers several “in-between accounts.”

<sup>26</sup> In the next section, I will consider an expressive account of paternalism (see Cornell 2015), which is skeptical of the view that it is impossible to identify a policy as paternalistic without knowing the rationale behind it.

<sup>27</sup> And other arguments for policies that incentivize fathers to take paternity leave (e.g., Gheaus and Robeyns 2011; Barclay 2013) do not point to this aspect.

point to important aspects of the policies under consideration. The problem with the project of reconciliation is its *exclusion* of paternalistic reasons (that might also be good and relevant) (Pedersen 2019: 35-36). According to this objection, a thorough assessment of policies that affect people's lives in ways that many do not welcome includes *both* paternalistic and non-paternalistic considerations.

Whether paternalistic reasons may justifiably be included in the motivation and justification of policies depends on a fundamental disagreement between paternalists and anti-paternalists. Fortunately, I need not resolve this disagreement here because both paternalists and anti-paternalists recognize the justificatory relevance of *non*-paternalist reasons. This, of course, does not preclude that the non-paternalistic argument for earmarked paternity leave can be criticized in other ways. Therefore, in the next section, I will address some potential objections to the argument.

## V. Objections

Some might question that the non-paternalistic argument for earmarked paternity leave avoids disrespecting parental autonomy. For example, Stone (2014: 32-33) challenges that Shiffrin's non-paternalistic defense of the unconscionability doctrine is in fact not paternalistic. She argues that the non-paternalistic argument for the unconscionability doctrine is based on a "negative judgment about the ability of the weaker party to take care of himself" (Stone 2014: 32). When the state refuses to facilitate the stronger party's exploitation of the weaker party, this implies a lack of confidence in the weaker party's prudential abilities. And, according to Stone (2014: 32-33),

since it is the acting on this negative judgment that makes paternalism a distinctive kind of wrong, it seems irrelevant whether the state is ultimately motivated by a self-regarding desire to avoid participating in the wrong rather than a purely other-regarding desire to protect the weaker party from himself.

In Stone's view, this means that Shiffrin's argument for the unconscionability doctrine fails to escape charges of paternalism (ibid.: 33n14).<sup>28</sup>

A similar objection might be raised against the non-paternalistic argument for the policy of earmarked paternity leave. According to this argument, the state can refuse to contribute as much as it would have done if the father had taken a greater part of the parental leave because such a contribution implicates the state in the inequalities the agreement generates. This reasoning assumes that most parents will not make parental leave agreements that promote the mother's position on the labor market and the father's relationship with his child when the leave is fully transferable. In other words, the non-paternalistic argument for earmarking some of the leave might also be premised on a distrust in the parents' prudential abilities. Therefore, it is not clear that the argument avoids being insulting in ways similar to the insult of paternalism.

One possible response to this objection questions that the argument necessarily involves a distrust or a negative assessment of the parents' prudential abilities. It seems possible to think that mothers and fathers will agree to gender contracts that do not advance some of their own interests without assuming that they are not able to promote these interests. Specifically, one might think that mothers are fully capable of making agreements that will advance their equal opportunities in the labor market – or that fathers are fully capable of making agreements that advance their critical

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<sup>28</sup> For a similar point, see Hanna (2018: 66-67). To be clear, Hanna does not question that Shiffrin's argument is non-paternalistic, but he suggests that it involves "the supposedly objectionable attitude of distrust" that Shiffrin and others think makes paternalism insulting. See also de Marneffe (2006: 77f) who argues that paternalistically motivated legislation and legislation introduced with the non-paternalistic motive of preventing harm to others *both* involve substitution of judgment. Moreover, he argues that paternalistic substitution in judgment is not more insulting than the judgment substitution involved in non-paternalistic legislation.

interest in a strong attachment to their child, but that fathers and mothers often choose to set aside these interests due to other considerations (e.g., for the sake of minimizing the drop in salary during parental leave). I.e., the parents' *abilities* to take care of themselves are not necessarily evaluated negatively (cf. Stone 2014: 32), when the state assumes that most parents will not make gender contracts that promote their equal opportunities in the labor market and at home.

A second response challenges the view that it is wrong to evaluate other people's prudential abilities negatively. As Enoch (2016) argues, *having* the belief that other people lack certain prudential abilities does not itself seem wrong when this belief is supported by evidence. Still, Enoch argues that one is sometimes not justified in *acting* on such (well-supported) distrust in the prudential abilities of others – not because it is wrong to distrust another person's prudential abilities, but because when we act on such distrust, we risk violating the person's autonomy (Enoch 2016: 46). Enoch's "way of thinking about paternalism and what grounds its pro tanto wrongness fits very well the intuitive thought that the paternalizer engages in what is not his or her business" (ibid.). As mentioned in the previous section, when the state introduces earmarked paternity leave with a paternalistic motive, the parents can respond that whether they make decisions that protect their own welfare or interests is none of the state's business. They can point out that such decisions pertaining to their own good are exclusively theirs to make (see also Fox 2019: 323). This response is less apt when the interest sought to be promoted is the state's interest in not contributing to unequal gender contracts. Or consider the parallel case where I refuse to buy cigarettes for my friend, because *I* do not want to be implicated in my friend's smoking. Here, it seems strange if my friend replies that it is "none of my business" whether I want to be implicated. This challenges Stone's idea that the difference between a self-regarding and an other-regarding motive is irrelevant.

This leads me to a second objection to the non-paternalistic argument for earmarked paternity leave. This objection also draws on a criticism raised by Stone (2014) who argues that Shiffrin's non-

paternalistic argument for the unconscionability doctrine invites charges of hypocrisy. In fact, Stone grants that Shiffrin's argument works when unconscionable agreements are shaped by injustices in society. In such cases, she argues that the state has good prima facie reason not to enforce the agreements (ibid.: 35). However, according to Stone, we should remember that "the state is often directly implicated in creating and sustaining the conditions that cause such deals to be made in the first place" (ibid.: 36). Therefore, when the state condemns unconscionable contracts and refuses to facilitate them on this basis, the state is "subjecting the actions of contracting parties to a form of critical scrutiny from which it regards itself as exempt" (ibid.: 38). In this way, the state is inconsistent in the way it judges its own and others' actions; it is hypocritical. Similarly, unequal gender contracts may often be shaped by sexist structures in society. If the state is implicated in creating (or does not work ambitiously to counteract) these injustices, then it follows from Stone's argument that the state is vulnerable to charges of hypocrisy when it refuses to support unequal gender contracts via the parental leave program.<sup>29</sup>

However, this objection is avoided if the state critically scrutinizes its own actions in the same way as it is critical of parents' agreements (Stone 2014: 39). If the state commits to reducing sexism, and the pace of this is not too slow, then the state can refuse to support unequal gender contracts without being hypocritical. In fact, based on some views on the relation between complicity, hypocrisy, and standing, it may be argued that if the state financially supports equality-inhibiting agreements between mothers and fathers (despite its commitment to reducing gender-related injustices), the state loses standing to blame others, e.g., private companies, who fail to make efforts

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<sup>29</sup> Interestingly, this hypocrisy objection also seems to apply if the state is responsible for the underlying injustices that shape the content of the gender contracts but introduces earmarked paternity leave with a paternalistic motive.



to promote gender equality.<sup>30</sup> Here, a concern to avoid hypocrisy speaks *against* supporting unequal gender contracts.

A critical reader might respond that few states really do work ambitiously to prevent the sexism from which many unequal gender contracts presumably derive. If so, many states do have a hypocrisy-related reason for *not* refusing to support unequal gender contracts. I agree that those states that do not commit to combating sexism can be accused of hypocrisy if they refuse to facilitate unequal gender contracts via the parental leave program. Clearly, the non-paternalistic argument for earmarked paternity leave is strongest in situations where such hypocrisy is not present. But it is not clear that, *all things considered*, these states should compensate parents' unequal parental leave agreements to avoid hypocrisy (cf. Stone 2014: 44). Avoiding hypocrisy may not be a decisive argument against avoiding further contributions to gender inequality.

A third objection to the non-paternalistic defence of earmarked paternity leave stresses that there is more to autonomy than not being subjected to paternalism. I have argued that earmarked paternity leave defended with appeal to an interest in not facilitating unequal gender contracts does not involve that the state substitutes its judgment for that of the parents in an area of judgment that should properly be left to them. However, even if I am right about this, a concern for autonomy might still give us reason to think that the state should nevertheless accommodate and subsidize the distribution of parental leave that the parents prefer. As Shiffrin (2000: 246) puts it, "some level of mutual subsidization [...] seems necessary to preserve a climate of both meaningful autonomy and community." However, as she also notes, defending a complete theory of when the state should accommodate citizens' projects is extremely complex (Shiffrin 2000: 245-250). There are

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<sup>30</sup> For example, Cornell and Sepinwall (2020: 154) argue that "[o]ne's lived moral convictions determine when and with what force one can hold others to account. Acting against one's convictions can undermine one's standing to blame others who act in similar ways".

undoubtedly projects that the state must support. For example, autonomy concerns support the state assisting citizens' ability to receive treatment when they are ill – and citizens can expect the state to protect their basic freedoms. But it is implausible to claim that the state must assist or support any project that will somehow promote the citizens' autonomy. Barclay (2013: 171) mentions cosmetic surgery as an example.

When we evaluate earmarked paternity leave, we should, on the one hand, consider the importance of transferability of parental leave for the parents' ability to pursue their own life plans and perception of the good. On the other hand, we should include a concern for the state's interest in not contributing and thus becoming complicit in the inequalities that arise between men and women when they become parents.<sup>31</sup> In this article, I have emphasized the latter consideration, which I regard as weighty. While it seems true that liberal states should offer support to families raising children, including via publicly funded parental leave programs, there is a principled reason for the state to place conditions on its assistance. Supporting highly skewed gender contracts involves a tension that the state should avoid if it simultaneously seeks to fulfill a commitment to promote equality of opportunity between men and women. The concern to avoid exacerbating existing inequalities in opportunities between men and women is far from trivial. As suggested in the previous section, avoiding contributions to such inequalities may even be morally required. Therefore, it is not inconceivable that the concern to avoid complicity outweighs an autonomy-based consideration of accommodating the parents' preference for full transferability. Remember, in this context, that the policy being discussed only earmarks a limited part of the parental leave for each parent (nine weeks according to the EU directive).

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<sup>31</sup> Third, if we should accept the inclusion of paternalistic reasons, these reasons should be included in the evaluation as well (cf. the discussion at the bottom of Section IV).

Finally, one may reject the entire premise behind my argumentation, namely that the motive or justification behind an action or policy determines whether the action or policy is paternalistic. Part of this challenge goes back to section III where I presented a benevolent motive or justification as a necessary condition of paternalism. For example, Cornell (2015: 1311–312) asks us to consider the following case:

[A] park ranger puts up a sign that says, “Climbing on rocks prohibited” because she thinks it will protect certain delicate lichens. The policy ends up preventing rock climbers from using one of the area’s more challenging ledges, which has seen some recent accidents. The park ranger, however, did not even think about the rock climbers as she created the policy. Nevertheless, a rock climber might plausibly criticize the policy as paternalistic.

According to Cornell (2015: 1316), the reason why the park ranger’s action is plausibly characterized as paternalistic is that it *expresses* that she knows better than the rock climbers what will benefit them. This expression is independent of the motive or justification behind the action. I do not share Cornell’s verdict about this case and am therefore very hesitant to change the definition of paternalism so that it captures this type of actions (thickly described).<sup>32</sup>

However, I concede that some actions send a disrespectful message regardless of their actual motivation or justification. A paradigmatic example is the South Carolina Governor who flies the Confederate flag over the State House with the aim of building loyalty towards the state and strengthening social cohesion (Hellman 2003: 101). As Hellman puts it, “[g]iven the history of

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<sup>32</sup> For a critical scrutiny of Cornell’s expressive account of paternalism, see Turner (2023).

slavery and discrimination in the South, as well as the historical association of the Confederate flag with that history, flying the flag has a meaning that is beyond the control of the Governor's intent" (Hellman 2003: 101). Such examples illustrates that the social meaning expressed by an action does not depend (only)<sup>33</sup> on the rationale behind the action.

So, even if the non-paternalistic rationale for earmarked paternity leave provides a justification that avoids substituting the parent's judgment in a sphere where the parents' judgment should be decisive, it might still be argued that the policy *expresses* that such disrespectful judgment substitution is taking place. I.e., even if the state is in fact not acting paternalistically, the policy may still express a form of paternalistic disrespect for parents.

I cannot here give this possible objection the space it deserves, but I will briefly outline three possible responses. The first response questions the strength of the rationale-independent expressive concern in the context of earmarked paternity leave. For example, there are obviously important differences in the message conveyed by making certain parental leave weeks non-transferable and flying the Confederate flag (see also Turner 2023: 18). Only the latter has deep roots in racism and slavery. Expressing paternalism by earmarking parental leave benefits do not have similar, or equally serious, connotations. Second, the expressive content of (seemingly) paternalistic acts and policies points in two directions. On the one hand, many believe that paternalism expresses disrespect for the agency or autonomy of the people interfered with. On the other hand, it has been argued that *not* catering to the strong interests of others is also expressively objectionable. In other words, even if the policy of earmarked paternity leave expresses paternalism, this does not show that the policy is expressively objectionable all things considered, since paternalism conveys a

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<sup>33</sup> For at least some expressive theories, the rationale has great significance for what is expressed by an action or policy. See, for example, Anderson (1999: 330-331), where she argues that a non-paternalistically motivated mandatory health insurance scheme is more expressively respectful than its paternalistically motivated equivalent.

variety of attitudes (Hojlund 2021). Third, while interpreting what actions and policies express is notoriously difficult, I propose that when the state provides support to fully transferable parental leave knowing that this will complicate the path to gender equality, there is a sense in which this expresses a lack of commitment to the aim of achieving gender justice.

## VI. Conclusion

In this paper, I have discussed an objection to policies of earmarked paternity leave, such as the 2019 EU Work-Life Balance Directive. The objection gives reason to consider whether the policy is paternalistic or, in other ways, disrespects the autonomy of parents. First, I have argued that earmarked paternity leave is paternalistic towards those women who prefer their situation without the policy if part of its purpose is to promote women's interests on the labor market. Moreover, the initiative is paternalistic towards fathers who do not welcome "daddy quotas" if part of the motive behind the initiative is to promote the father's interest in achieving an early bond with the child.

Second, I have proposed an argument in favor of earmarked paternity leave that both proponents and opponents of paternalism have reason to include in their evaluation of the policy. According to this argument, the state can decline to offer support for particularly unequal parental leave agreements through the parental leave program because such support would implicate the state in the gender inequalities that the agreement generates. Even if parents have a right to make paternity leave agreements (and even if they have a right to publicly funded parental leave), respect for parental autonomy does not require state compensation regardless of the specific gender contract the parents agree upon. The state can (and perhaps should) refuse to compensate agreements that lead to gender inequalities without infringing any of these rights and without disrespecting parental autonomy.

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