The Strange History of Employer-Sponsored Child Care: Interested Actors, Uncertainty, and the Transformation of Law in Organizational Fields[1]

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This article examines the development and diffusion of two "family-friendly" employment benefits: dependent care expense accounts and employer-sponsored child care centers. Using over-time analysis of the adoption of these programs in 389 U.S. organizations, historical research, and interviews with human resources managers, this study demonstrates that organizations added dependent care expense accounts in response to changes in tax law and, in particular, to the creative interpretation by benefits consultants of a seemingly concrete and clear law. Although the tax break included in the 1981 Economic Recovery Tax Act was intended to spur employers to create child care centers, these programs are still rare. This article extends institutional theories of law and organizations by arguing that interested actors create, as well as respond to, uncertainty in the law.

INTRODUCTION

Tax Breaks and American Child Care Policy

Despite the dramatic increases in mothers' employment over the last 40 years (Spain and Bianchi 1996; Cohen and Bianchi 1999), the United

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States lacks a coherent child care policy (Kamerman and Kahn 1987, 1997; Michel 1999). Existing child care policy is piecemeal, with federal and state funding for child care services provided to small numbers of poor parents and federal tax breaks available to much larger numbers of parents who use private-sector child care services.

Tax breaks represent the broadest and, until recently, the most expensive child care policy in the United States. These tax deductions come in two forms. The first is the Dependent Care Tax Credit (DCTC), which is available to all qualified parents who file tax returns.[2] The second is the Dependent Care Expense Account (DCEA),[3] which is available only to parents whose employers have established these accounts as part of their benefits plans. These employer-based expense accounts allow workers to set aside up to $5,000 of their income each year in a special account to pay for qualified child care expenses.[4] The funds set aside are not considered taxable income, which means parents pay less income tax and employers save on their Social Security and FICA contributions (Beam and McFadden 1996).

From the mid-1980s through the late 1990s, tax breaks were the primary source of federal "expenditures" on child care (Kamerman and Kahn 1987; Michel 1999; Nantell 1997).[5] In other words, the federal government lost more money through tax breaks than it spent funding public child care programs or subsidizing community programs. By 1997, the revenue lost through use of expense accounts was approximately $4.5 billion, while the dependent care tax credit taken by individuals on their own tax forms

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[2] To qualify for the Dependent Care Tax Credit, the taxpayer must incur child care expenses in order to find or keep a job. Married couples may not claim this credit if a parent is available—i.e., is not employed or in school—to care for the child or children.

[3] Dependent care expense accounts are also known as flexible spending accounts, tax-free spending accounts, pretax spending accounts, salary reduction programs, and section 125 plans (although this term properly refers to the cafeteria plans associated with dependent care expense accounts).

[4] Qualified child care expenses are those that are necessary for the employee to continue work, provided the parent is paying an unrelated child care provider who meets state regulations for that type of child care setting and allows the parent to report her/his taxpayer identification number. Dependent care expense accounts may also be used to fund care for elderly relatives under certain, fairly restrictive, conditions. The main condition is that the relative must be claimed as a dependent on the employee's taxes.

[5] In the late 1990s, federal funding of child care for poor families surpassed these tax expenditures when welfare reform increased the Child Care and Development Fund and allowed states to use Temporary Aid to Needy Families (TANF) funds for child care (Koppelman 2002; National Child Care Information Center 2002*b*).

was about $2.8 billion (U.S. House Committee on Ways and Means 1996, table 14-2).

Tax breaks are a characteristically American form of social policy. They represent a "hidden welfare state" in which the government uses tax policy to subsidize citizens' use of market services rather than developing and providing public services (Howard 1997). Supporters of tax breaks argue that they represent a "less intrusive, less bureaucratic alternative to government regulations or direct expenditures" and that they "work with the market rather than against it" (Howard 1997, p. 8). These expenditures are generally uncontroversial, perhaps because they are not characterized as "welfare" or "big government," or perhaps because they are passed as part of large, technical tax bills (Howard 1997). Tax expenditures can also continue indefinitely because they are not subject to periodic budget battles.

Despite their status as the largest tax break for child care and the most popular child care benefit provided by employers, there has been very little scholarly examination of dependent care expense accounts. Using historical research, a survey of 389 U.S. employers, and interviews with managers who make decisions about employee benefits, I reconstruct the history and diffusion of dependent care expense accounts. I contrast the spread of expense accounts with the limited diffusion of another response to the needs of working parents, child care centers that are sponsored by the employer and located at or near the workplace. In my sample of 389 U.S. establishments, 56% had set up dependent care expense accounts by 1997, whereas only 13% had set up child care centers.[6] A 1998 survey of 1,059 organizations reports very similar findings, with 50% of these organizations offering dependent care expense accounts and 9% providing a child care center (Galinsky and Bond 1998).

How and why did expense accounts spread rapidly, while child care centers remained rare? Expense accounts and child care centers differ in important ways, notably the costs involved for employers, but the historical record links them together. The 1981 tax law that eventually led to the establishment of dependent care expense accounts actually was intended by its congressional advocates to encourage employers to create new child care centers. Few employers established child care centers, but many organizations soon adopted dependent care expense accounts, which were not mentioned in the statute. Benefits consultants creatively linked dependent care expense accounts to another new program they were trying

[6] The sample overrepresents public sector and nonprofit organizations and larger establishments. When the sample is weighted to reflect the population of U.S. establishments, I estimate that 30% of employers with 50+ workers offer expense accounts, while only 5% provide an on-site or near-site child care center.

to market, "cafeteria plans" or flexible benefits programs. In response to these innovations, the Internal Revenue Service (IRS) clarified the legal standing of dependent care expense accounts. Benefits consultants then presented these accounts to their clients as a cheap and easy way to signal responsiveness to the needs of working parents. Employers responded by adopting dependent care expense accounts in large numbers.

Extending Existing Theory on Law and Organizations

I use the case of employer-sponsored child care to build on and revise the institutional theory of law and organizations developed by Edelman, Dobbin, Sutton, and their collaborators (Dobbin et al. 1988; Dobbin et al. 1993; Edelman 1990, 1992, 2001; Edelman and Petterson 1999; Edelman, Uggen, and Erlanger 1999; Edelman, Fuller, and Mara-Drita 2001; Sutton et al. 1994; Sutton and Dobbin 1996). These scholars claim that laws regulating organizations influence organizational structures and policies, but U.S. laws rarely provide clear guidance to organizations about exactly what they should or should not do. This ambiguity prompts a collective and iterative process of defining compliance with the law, with professionals and managers proposing certain responses to the new (or newly reinterpreted) law and courts and regulatory agencies commenting on these practices and policies. Those practices and policies that judges and regulators accept as signals of compliance diffuse widely, although managers often downplay their efficacy as legal signals and present these actions as rational responses to economic conditions. This process has been examined in the studies cited above; I call it the transformation of law in organizational fields.

I refine this theory in two ways. My primary contribution is to investigate the scope conditions for the transformation of law in organizational fields, arguing that this process occurs more often than previously theorized. Is ambiguous law the critical condition that leads to the collective construction of the law? Or is this collective construction explained by the structure of the American state, specifically the fragmentation of policy making into congressional decisions, court cases, and the regulatory process, as well as the fact that interested parties may offer new interpretations of the law at any of these junctures? The transformation of law in organizational fields may be prompted by ambiguous statutes that leave employers wondering what they must do, but this case demonstrates that interested actors can and do propose new interpretations of even seemingly concrete and clear laws. Organizations or their agents may attempt to stretch a law with one clear meaning in order to apply it to a different situation, thereby transforming the practical meaning of the law. By emphasizing the agency of employers and their agents (who *create*, as well as respond to, uncertainty about how a given law should be interpreted) and by suggesting that the design of our political institutions (not only the text of our laws) prompts the collective construction of the law, I offer a friendly but important revision of institutional theory on law and organizations. My revision also facilitates a conversation between scholars studying organizational mediation of employment law—which is often relatively ambiguous and vague—and scholars studying other types of regulation.

I also explore the role of a different actor who has clear financial interests in a particular interpretation of the law. Previous studies have argued that professionals and managers interpret the law in ways that affirm or expand their status within organizations (Edelman, Abraham, and Erlanger 1992; Dobbin and Sutton 1998). I, too, find evidence that specialist managers within organizations promote the adoption of new policies and programs, but this case also introduces a new player to the story: consultants. The hybrid identity of benefits consultants as both professionals with recognized independence and expertise and vendors selling their services to organizations makes obvious the self-interest that sometimes drives the interpretation and transformation of the law. As noted above and detailed below, benefits consultants shepherded their interpretations through the regulatory process and publicized the changes in tax law in order to increase interest in their services. The transformation of law occurred within organizational *fields* in this case, but organizational *actors* did not encounter the law directly and then develop their own interpretations of the appropriate organizational response. Instead, a third party used the new law to help create new services that they then sold to organizations.

The remainder of the article proceeds as follows. First, I elaborate on organizations' responsiveness to and simultaneous manipulation of the legal and policy environment and detail my contributions to existing theory. Then I reconstruct the policy history of tax breaks for employer-sponsored child care, as well as employer-sponsored child care centers, and develop hypotheses about the diffusion of these programs. Next I briefly review explanations for employers' provision of child care benefits that have been offered by other scholars of corporate family policies; these studies emphasize internal organizational traits and labor market conditions rather than the legal environment. I then describe my survey of 389 U.S. organizations and present findings from my event history analysis of the adoption of these programs. I conclude by exploring the implications of this study and offering some suggestions for future research.

INSTITUTIONAL THEORY ON LAW AND ORGANIZATIONS

Previous Research and This Case

Institutional theory suggests that the state structures specific organizational practices and the form of the organization itself by issuing mandates about what organizations must do (DiMaggio and Powell 1983) and, more interestingly, by creating a complex, ambiguous, and uncertain legal environment that organizations must monitor and negotiate (Edelman 1990, 1992; Dobbin et al. 1993; Sutton et al. 1994). Scholars have argued that American employment law affects organizational practices and structures in many ways even though—and perhaps precisely because—the law rarely dictates organizational actions. Ambiguous laws leave employers uncertain of what they should do and fearful of both formal sanctions in the courts and informal sanctions in the media and public opinion. In the face of this uncertainty, professionals working within and with organizations—specifically human resources managers and lawyers—offer suggestions about how organizations should respond to the law. It is not surprising that their suggestions generally confirm the need for their professional expertise and services (Edelman et al. 1992; Dobbin and Sutton 1998). When the courts accept these policies and practices as evidence of organizational compliance, the new understanding of the law's requirements is codified and organizations that lack these policies or practices face greater risk of legal sanction (Edelman et al. 1999). Since the law regulates organizations but organizations shape the law, law is "endogenous" (Edelman et al. 1999; Edelman 2001).

This account was developed primarily through empirical analyses of the diffuse effects of the Civil Rights Act of 1964 on employment relations in U.S. organizations. Title VII of the Civil Rights Act is a notoriously ambiguous law (Edelman 1992, p. 1536; cf. Pedriana and Stryker [1997] on explicit language in Title VII). As organizations struggled to understand what the law required (and also to influence judicial interpretations of the law), they added statements of nondiscrimination (i.e., Equal Employment Opportunity [EEO] policies) and named specific officers to monitor organizational hiring and promotion decisions (i.e., EEO and Affirmative Action [AA] officers and departments; Edelman 1990, 1992). Organizations tried to discourage discrimination and simultaneously signal their attention to antidiscrimination law by formalizing hiring and promotion procedures. They began writing job descriptions, posting and publicizing job openings, and outlining job ladders for many occupations (Dobbin et al. 1993). Organizations also instituted new, quasi-legal grievance procedures to handle employees' complaints and avoid litigation (Sutton et al. 1994; Edelman et al. 1999). Antidiscrimination law eventually affected employers' family policies as well. Kelly and Dobbin (1999) argue that maternity leave policies diffused in the 1970s and early 1980s as organizations responded to new debates about whether or not sex discrimination law required employers to protect the jobs of women who were pregnant or recovering from childbirth.

This study asks whether and how the existing institutional theory applies to organizational innovations that differ from those studied previously. How do child care programs differ from the employment policies and practices examined in other studies? First, child care programs are not tied to civil rights law, even indirectly, but instead to a tax law with relatively concrete language affecting specific benefits (IRS, Title 26, sec. 129).[7] Second, the relevant tax laws do not require employer action, but instead create an incentive for child care programs. Although the federal government increasingly regulates through incentive (Eisner 2000), there is relatively little sociological research investigating how organizations respond to financial incentives created by the state (see Kemsley [1998] for a nonsociological look at this subject). I provide some evidence on which organizations take advantage of new tax breaks and how they came to do so.[8] Third, child care programs are social welfare benefits, rather than policies that refigure the employment relationship and legalize the workplace by creating protected categories of workers, discouraging discrimination, or bringing quasi-legal mechanisms for resolving disputes into the organization (Selznick 1969; Edelman 2001). Employer-sponsored child care is better understood as part of the private welfare state, the "extensive but generally overlooked welfare state that is anchored in the private sector but backed by government policy" (Gottschalk 2000, p. 1; Michel 1997, 1999; Stevens 1988). My analysis of the development and diffusion of these programs documents the construction of one part of this private welfare state. As noted above, existing institutional theory is useful for understanding this case, despite the differences summarized here. This leads me to revise some of the central tenets of the theory by suggesting that the transformation of law in organizational fields does not require ambiguous laws. Rather, this process may be found wherever law-

[7] Tax laws are collected in Title 26 of the U.S. Code. In addition to the traditional print source (available from the Government Printing Office), the entire U.S. Code—including Title 26—can be found on the Internet at http://law2.house.gov, a website sponsored by the U.S. House of Representatives, Office of the Law Revision Counsel.Throughout this article I will refer to various chapters and sections of Title 26 as they pertain to this discussion. These include sec. 21, "Expenses for Household and Dependent Care Services Necessary for Gainful Employment"; sec. 125, "Cafeteria Plans"; sec. 129, "Dependent Care Assistance Programs"; and sec. 162, "Trade or Business Expenses."

[8] The incentives examined here are relatively small, and future research should investigate employers' response to larger financial incentives.

making institutions, such as courts and regulatory agencies, as well as legislatures, are open to interested actors.

Ambiguity and Its Assessment

In Edelman's formulation of this theory, the ambiguity of the law prompts the process of the collective construction of compliance by professionals, managers, and legal actors such as judges (Edelman 1990, 1992, 2001; Edelman et al. 1999). She claims that "laws that regulate the employment relation tend to set forth broad and often ambiguous principles that give organizations wide latitude to construct the meaning of compliance . . . in a way that meets legal demands yet preserves managerial interests" (Edelman 1992, p. 1532). Edelman points out that Title VII of the Civil Rights Act prohibits discrimination without defining that term, leading managers and professionals to construct the practical meaning of the law themselves with regular input from the courts.

Yet how can we measure ambiguity of the law? This issue becomes more important as researchers look beyond antidiscrimination law to other domains of law. One might argue that a law is ambiguous if organizations are able to significantly affect the practical meaning of the law. But this post hoc assessment is inadequate for determining the role of ambiguity in this process since it assumes that whenever organizations influence the law, the law was ambiguous. Edelman suggests that law is ambiguous if the central terms in the text are not defined or if the language is otherwise "broad" (Edelman et al. 1999, p. 407), "vague," or "controversial" (Edelman 1992, p. 1532).[9] As I detail below, the language of the tax law in question seems narrow and concrete, and it was uncontroversial in the congressional debate. Yet interested actors, working with a regulatory agency, were able to reconstruct the practical meaning of the law. This case leads me to question the scope condition specified in Edelman's work, but it also implies that the central process described by Edelman—the collective reconstruction of the law's practical meaning in organizational fields—is more common than organizational scholars have claimed.

[9] It would be worthwhile to develop more specific measures of breadth, vagueness, and controversy in order to directly test this claim. Pedriana and Stryker (1997, pp. 657–77) propose that explicit legal language is present if trained legal professionals see "clear, precise, and specific" guidance on the "prohibitions, duties, rights, empowerments" described in the law. They suggest an innovative, but difficult, method of measuring the relative explicitness of various legal texts by asking several legal professionals to assess each law's clarity, precision, and specificity.

The Structure of the State and the Collective Construction of Law

Although Dobbin and Sutton initially agreed that the American tendency to issue "broad outcome-oriented guidelines for organizations" initiated the collective construction of law (Dobbin et al. 1993, p. 396; Sutton et al. 1994, p. 948), their argument shifted in subtle ways as they began to look beyond civil rights law to other types of employment law. Dobbin and Sutton (1998, p. 442) postulate that the structure of the American state, including limited administrative capacity, separation of powers, and fragmentation of the policy-making process, creates uncertainty for organizations. This uncertainty arises from ambiguous mandates (the focus of previous studies), but also from constantly changing interpretations of law as regulators and courts weigh in and from variability in enforcement (Dobbin and Sutton 1998, p. 442). They suggest that both ambiguity—in the sense of poorly defined terms—and the complexity of the law force organizations to monitor the legal environment carefully and decide what organizational policies and practices are called for. They see the Constitution of the United States as the ultimate source of this uncertainty, because it created the system of limited administrative capacity, the separation of powers, and a fairly narrow commerce clause as the primary vehicle for regulating employers' behavior.

Kelly and Dobbin (1999) build on this political-institutional argument. In their study of maternity leave policies, they claim that the separation of powers makes administrative regulations and, to a lesser extent, legislation susceptible to legal challenges by claims makers who argue that the administrative agencies are violating the intent of Congress or that Congress is violating the tenets of the Constitution. Court cases can bring increased attention to even minor changes in the law, such as new guidelines about the definition of sex discrimination, and may simultaneously prompt many organizations to adopt new policies or practices. Here I continue to investigate the implications of American policy making, but I argue that court cases are only one way that constituents can help transform the law after its initial passage. The regulatory process is also open to (at least some) constituents—such as the regulated parties and the professionals who serve them—and the transformation of law may occur in the regulatory process (e.g., Hawkins 1984; Mitnick 1980), as the history of employer-sponsored child care makes clear.

While these studies have emphasized the structure of the American state, as well as the ambiguity of most employment laws, they have not been able to separate the effects of ambiguous laws, such as the Civil Rights Act of 1964, from the effects of state structure. This case demonstrates that interested parties can and do use the policy-making process to transform even seemingly concrete and specific laws. Ambiguous laws may call for organizational mediation, but even concrete laws allow significant reinterpretation because the official interpreters of law (here, the regulators) respond to organizations and other interested parties.

Law as a Resource for Interested Actors

Previous work on the transformation of law in organizational fields suggests that organizations exercise agency and creativity in dealing with ambiguous law, but in these accounts, the character of the law sets up this process. Other sociolegal research suggests that law of all types is a resource that may be used in political, cultural, and explicitly legal struggles (Stryker 1994). Like cultural sociologists who view symbols and language as a "toolkit" that both facilitates and constrains actors' interpretation of the world (Swidler 1986), sociolegal scholars see "extant legal language and rules [as] both the basis for promoting and for criticizing current law" (Pedriana and Stryker 1997, p. 637). This tradition recognizes that actors can and do offer creative, self-interested interpretations of law, even when the law is explicit and seems to point unambiguously to particular interpretations.

Interested actors can *create* uncertainty when they offer alternative interpretations of laws—even a seemingly clear, concrete, and uncontroversial law—that may or may not be vetted by the official interpreters of the law.[10] Uncertainty about the meaning of a law arises when interested actors present a novel interpretation of the law and then wait to see whether officials accept it. Organizations may or may not wait for these questions to be resolved before changing their policies and practices. As I show below, benefits consulting companies used relatively concrete and explicit tax laws to develop and market a new service that was not specifically described in the law (cf. Jaffee and Freeman 2002). Some organizations responded to the benefits consultants' interpretation of the tax law early on, but the new program really spread once the regulatory agency officially accepted it. The important point is that the uncertainty does not necessarily arise from ambiguity in the text of the law itself.

[10] I use the term "interested actors" throughout, but the relevant parties may be "agents" who are expected to act on behalf of other actors, such as organizations (Jensen and Meckling 1976). Principal-agency theory suggests that agents also pursue their own interests and may not act in the best interests of the principals who employ them to advance the principal's interests. Benefits consultants, as well as the specialist managers and in-house attorneys in previous studies, can be conceptualized as agents (although consultants are actually agents of management, twice removed from the principal owners). The transformation of the law may be initiated by principals (i.e., owners), but it is more likely to be pursued by agents (e.g., managers, professionals) who have been given autonomy to find the means to pursue the principal's goals.

Instead, uncertainty is often a by-product of actors using the law as a resource to pursue their own interests.

TAX LAW, CONSULTANTS, AND CHILD CARE: THE HISTORICAL STORY

These theoretical arguments emerged from my historical research into the development of employer-sponsored child care and my attempts to make sense of that history using existing institutional theory. In this section, I tell the story of dependent care expense accounts in greater detail. I emphasize the clarity of the law as it was written by Congress, the creative stretching of the law's meaning by interested actors, and the role of official interpreters—here the IRS—in revising and eventually accepting the new meaning of the law.

This account draws on government documents (such as the *Congressional Record*, the text of the law, proposed regulations, and agency reports), contemporaneous press coverage of both employer-sponsored child care and tax policy, and the practitioner literature (including human resources and benefits journals and resources for work-family consultants and advocates). I rely, secondarily, on almost 60 semistructured interviews conducted with human resources managers in California, Minnesota, New Jersey, and New York in 1997 and in 2000–2001.[11] The interviews explore why organizations had adopted, rejected, or not considered various family policies and how managers implemented family policies and programs. Of particular interest here are the responses to questions about how managers learned about various options for child care benefits. At the end of this section, I use the historical narrative and institutional theory to develop hypotheses about employers' adoption of these programs.

The Political Context of Tax Expenditures for Child Care

The U.S. federal government does not directly fund child care for the general public. Instead, the federal government provides emergency and

[11] The 1997 respondents ($N = 18$) were sampled from *Hoover's Directory of Human Resources Executives* (1996); these interviews provided background for the preparation of the survey discussed below. The 2000–2001 respondents ($N = 41$) were working in organizations that were sampled from the Dun & Bradstreet Market Identifiers file but not contacted for the 1997 survey described below. I conducted the 1997 interviews and almost half of the 2000–2001 interviews; the remaining interviews were conducted by Alexandra Kalev, who is collaborating with me on a related project. The interviews averaged 1.5 hours and ranged from 50 minutes to four hours. Interviews were tape recorded, transcribed, and coded. For further information about the interviews, see Kelly and Kalev (2002).

targeted child care services, while subsidizing many more families through tax breaks. During national emergencies, such as the Great Depression and World War II, the federal government subsidized child care centers that were intended to employ unemployed teachers, nurses, and social workers, as well as encourage women's employment in defense industries (Auerbach 1988; Michel 1999). Since then, the federal government's direct subsidies for child care have targeted low-income families. The federal government's most sustained involvement with child care services has been the Head Start program, which developed as part of the War on Poverty (Zylan 2000). Currently, the federal government's largest expenditure related to child care is the subsidies provided to families who are receiving public assistance and leaving assistance programs. These subsidies have increased dramatically since the 1996 changes in welfare (National Child Care Information Center 2002*b*). However, states may not continue to use block grants for child care in tough economic times, and the federal government may not provide this level of funding for child care in the law reauthorizing the new welfare system (Koppelman 2002; Neuberger 2002).

In contrast to the recent increases in federal spending, public subsidies of child care were cut repeatedly in the late 1970s and 1980s—the key years for this study—even though the number of children needing child care was increasing steadily during this time (Kahn and Kamerman 1987; Michel 1999). Faced with a decrease in government funding and an increased demand for child care, child care advocates and policy makers turned to employers in the hopes that businesses and other organizations would begin to support child care. One of the central recommendations at the 1980 White House Conference on Families was the expansion of "family-oriented personnel policies" including employer-sponsored dependent care programs (Kamerman and Kahn 1987, p. 187). Reflecting their interest in privatization, the Reagan administration's White House Office of Private Sector Initiatives hosted forums for employers, supported research on employer-sponsored child care, and otherwise provided "publicity, a sense of activity, encouragement to act" (Kamerman and Kahn 1987, p. 8).

Given this political context of retrenchment and privatization, it is not surprising that the tax reform bill of 1981 included changes in the dependent care tax credit or incentives for employer-sponsored child care. What is surprising (and what inspired the theoretical arguments outlined above) is the subsequent transformation of incentives for child care centers into a new, employer-based tax break, the dependent care expense account. Congress hoped to encourage employers' investment in child care centers and other services with a 1981 change in tax law. Benefits consultants stretched the law, even though its primary meaning was clear and concrete, to cover newly invented expense accounts, and they eventually won support for these programs from the IRS.

Congress Amends Tax Law to Promote Employer-Sponsored Child Care

Tax breaks for child care expenses entered the Economic Recovery Tax Act (ERTA) during debate on the floor of the Senate (see *Congressional Record* [1981, pp. 17388–94] for the debate and IRS, Title 26, sec. 129, "Dependent Care Assistance Programs," for the law as enacted). Late one Friday evening, in the midst of the long discussion of the complex tax bill, the Senate considered an amendment making four substantive changes (detailed below) to tax law regarding child care expenses. The Senate debate—rather, the Senate discussion, since there was very little disagreement—reveals widespread support for helping working parents and for encouraging employers to provide child care for their employees (*Congressional Record* 1981, pp. 17385–94, 17788–89). All four changes were accepted in the Senate, with 94 senators voting in support of them, one voting against them, and no votes from five senators.[12]

Two parts of the amendment expanded the Dependent Care Tax Credit available to all qualified taxpayers, and these provisions received the most attention in the Senate debate. The first provision increased the credit level to $2,400 for one child and $4,800 for two or more children. This provision was enacted into law. The second provision made the credit refundable to assist low-income parents. This part of the amendment was passed by the Senate and described by Senator David Durenberger as "the key aspect of this amendment" (*Congressional Record* 1981, p. 17390), but it was removed from the bill by the conference committee. The sponsors of the amendment were concerned about low-income and single-parent families who might lose their access to publicly supported child care because of recent cuts in social services. There was a sense that public child care services were being demolished by budget cuts and so

[12] The legislative history of this new child care tax policy is consistent with the creation of other tax expenditure policies. In his analysis of several tax breaks, Howard (1997) found that it was common for tax credits and deductions to be tied to large tax reform bills, draw little debate in Congress, change significantly in conference committee (where the Treasury Department participates in deliberations and may argue against some provisions), and receive little attention from the press or public. See also Nelson and Warring (1982) for similar findings about the creation of the Dependent Care Tax Credit for individuals.

it was wise to include some financial cushions for needy parents in this bill.[13]

The other two provisions were designed to expand employer-sponsored child care services and subsidies. The first created a 50% tax credit on organizations' child care expenses (*Congressional Record* 1981, pp. 17387, 17389). This provision was also lost in conference committee.[14] The last part of the amendment declared that "dependent care provided by an employer is not taxed as income to the employee" if it meets certain conditions (quote from Senator Durenberger introducing this provision [*Congressional Record* 1981, p. 17390]). Dependent care offered under those conditions was labeled "Dependent Care Assistance Program" (DCAP). This provision is the key piece of the tax law for the eventual creation of dependent care expense accounts, even though expense accounts were never discussed in the debate or in the statute. Legislators hoped the DCAP provision would encourage on-site child care centers and direct subsidies of workers' child care costs. By changing the tax status of child care benefits, in the words of Senator Alan Cranston, the Senate was trying to inspire "employers to offer child care assistance as fringe benefits to their employees, just as employers currently offer other fringe benefits such as health care, vacation, and educational subsidies to their employees" (*Congressional Record* 127, p. 17394).

The law, as signed and enacted, made it easier to provide employer-sponsored child care. The DCAP provision removed a barrier to employer-sponsored child care by excluding these benefits from employees' taxable income. Before this change, employees who received child care services or subsidies from their employers would pay taxes on the fair-market value of those benefits. This meant there was no financial benefit to receiving child care benefits, as opposed to providing additional wages or salary, for employees. After this change, employees benefited from their employer's contributions to a child care center or their employer's subsidy

[13] Senators borrowed the refundable dependent care tax credit from the Economic Equity Act, a bill developed by feminist organizations and the Congressional Caucus for Women's Issues, reported on by the Associated Press in an April 8, 1981, *New York Times* article, entitled, "Bill to Improve Economic Rights of Women Proposed in Congress." The Economic Equity Act was not expected to pass or to be signed by President Reagan (Kirschten 1981). However, since Reagan was eagerly awaiting the ERTA and its large tax cuts for individuals and corporations (Martin 1991; Birnbaum and Murray 1987), the sponsors believed these dependent care tax breaks had an excellent chance of being signed into law.

[14] It was not until the Economic Growth and Tax Relief Act of 2001 that employers received a tax credit for the expenses incurred in providing child care services or referrals. Beginning in 2002, employers may claim a credit of 25% of their expenses for establishing and maintaining a child care center (with a maximum credit of $150,000 per year) and 10% of their expenses for providing child care referrals to employees.

of the employee's payments to an unaffiliated child care center, without paying taxes on the employer's contributions. ERTA in its final form did not include the large incentive for employers' investment in child care programs (the 50% tax credit) that the Senate passed. However, the law still benefited employers by reducing their contributions to Social Security, Medicare, and other payroll taxes.

The DCAP provision is clear and concrete. The text of the statute begins, "Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d)" (IRS, Title 26, sec. 129[a]). Later in the statute, dependent care assistance is defined as follows, "The term 'dependent care assistance' means the payment of, or provision of, those services which if paid by the employee would be considered employment-related expenses under section 21[b][2] [relating to expenses for household and dependent care services necessary for gainful employment]" (IRS, Title 26, sec. 129[e]). This clause limits qualified child care services to those that are necessary for the employee to maintain his or her employment (as outlined in IRS, Title 26, sec. 21, on the Dependent Care Tax Credit), but it also confirms that "assistance" was understood as employers' "payment of, or provision of, [child care] services."

Neither the statute nor the debate suggests that policy makers were trying to create a new employer-based tax break for *employees'* child care expenses.[15] The legislators expected employers to spend some money on child care services. When Senator Howard Metzenbaum introduced the DCAP provision, he explained that "the amendment addresses the problem of availability [of child care] by offering to employers new incentives to *provide* their employees with childcare *services*" (*Congressional Record* 127, p. 17387; emphasis added). These expectations are also conveyed in early guidance from the Women's Bureau (U.S. Department of Labor 1982) to employers interested in child care services.

Innovations by Benefits Consulting Companies

How did the dependent care expense account option develop, and how did these accounts become such a popular way for employers to address workers' child care needs? The legislative history suggests that legislators

[15] In 1986, the statute was amended to include a brief discussion of the "salary reduction agreements" (also called dependent care expense accounts) that soon emerged as an appealing way for employers to take advantage of the 1981 law. The addition of this clause provides further evidence that the law as written in 1981 was not designed to create or promote these accounts.

were hoping to increase the availability of child care *services* by increasing on-site child care centers. At the least, legislators seemed to think that employers would subsidize workers' child care expenses with outright contributions. The DCAP provision focused on making these services or contributions a tax-free fringe benefit, not on splitting the individual worker's tax break into the dependent care tax credit already on the books and an employer-sponsored tax shelter for income.

Dependent care expense accounts developed when several benefits consulting companies (notably Hewitt Associates and Towers, Perrin, Forster, and Crosby) helped organizations find ways to take advantage of the new tax provisions and respond to the growing public interest in employer-sponsored child care, all without spending much money on new child care benefits (Kamerman and Kahn 1987, pp. 276–77). The benefits consulting companies tied the new child care tax break to the cafeteria plans they were beginning to market. Cafeteria plans increased flexibility for workers by allowing them to choose the benefits that best served their families, but cafeteria plans also required more administration by employers or, more commonly, by the benefits brokers they hired to run them.

One of the easiest parts of a cafeteria plan was the "salary reduction plan," now called an expense account or flexible spending account. These accounts have the advantage of costing the employers almost nothing—only the fees to the benefits consulting companies for administering the plans. In fact, employers often save some money with these accounts because they do not pay Social Security and other federal taxes on the money set aside (Beam and McFadden 1996). By developing dependent care expense accounts as one type of salary reduction plan, benefits consulting companies were able to help organizations respond to employees' interest in employer-sponsored child care with an inexpensive program and, at the same time, solidify employers' interest in their cafeteria plans more generally.

The benefits consulting companies creatively paired the 1981 law, on dependent care assistance, with a 1978 law on cafeteria plans (IRS, Title 26, sec. 125) in order to market their new expense accounts and the related cafeteria plan system. In the process, they effectively transformed the practical meaning of the 1981 law from an enticement for employers to provide or subsidize child care for employees to a new tax shelter for employees and employers. The benefits consulting companies accomplished this by (1) presenting their interpretation of the law to the public and to their clients; (2) by developing test programs and revising them in response to regulators' concerns; and (3) by preparing both software and services that made it easy for organizations to administer expense accounts.

Publicizing new possibilities.—On September 13, 1981, just one month after the passage of the 1981 law, the first discussion of the new tax policy for employer-sponsored child care appeared in the popular press when an article by Deborah Rankin, entitled "Personal Finance: When Uncle Sam Is the Baby Sitter," was printed in section 3 of the *New York Times*. This article—like many others—relied on benefits consultants' interpretation of the new tax law. The benefits consultants gladly shared their information and always mentioned the possibility of creating a dependent care expense account (although the terminology was "salary reduction plan" at the time). The Rankin article on the subject introduced the DCAP as "a provision that could greatly aid many two-income households with children, but is still virtually unknown outside a tight coterie of tax experts." This article also quotes Richard W. Hutson, a partner at Hewitt Associates, declaring that the DCAP provision "may be one of the most significant items in the entire tax act." The article continues: "Mr. Hutson and other consultants are most interested in the impact that the provision may ultimately have on a new kind of compensation arrangement, called salary reduction, that is still in the drawing-board stage."

Another report, "Montgomery Weighs Day-Care Pay," which appeared in the May 26, 1982, *Washington Post*, described perhaps the first DCAP program and explained how cafeteria plans and expense accounts could be set up simultaneously. This article also quoted Hewitt Associates staff, as did other articles appearing in both management and popular sources (e.g., LeRoux 1981; *Business Week* 1981). Executives from Towers, Perrin, Forster, and Crosby were interviewed regularly as well (e.g., LeRoux 1981; *Employee Benefit Plan Review* 1982), and they also wrote articles for specialty journals (Alden 1983; Shultz and Klein 1982). These articles emphasized the "low-cost" or "no-cost" attributes of expense accounts and appealed to employers' interest in doing something to help working parents (e.g., Alden 1983; *Employee Benefit Plan Review* 1982).

Feedback from regulators.—But was this new strategy legitimate? With the 1981 change in tax law, the legislators intended that employers would either provide services or pay for them out of the organization's coffers. Somehow, a law stating that "gross income of an employee does not include amounts paid or incurred *by the employer* for dependent care assistance" needed to be understood as allowing *workers* to set aside part of their income for child care expenses and not be taxed on that amount (IRS, Title 26, sec. 129[a]; emphasis added). With the new programs, the benefits consulting companies were claiming that expense accounts that cost employers nothing were an acceptable form of dependent care assistance and could be folded into cafeteria plans regulated by a 1978 law. There was uncertainty about the legitimacy of the new expense accounts and whether this creative interpretation of these two relatively concrete and specific tax laws would be deemed legitimate or not. It is important to note, though, the uncertainty did not arise from ambiguity in these laws, in the sense of vague or contested language, but from the benefits consulting companies' development of a program not explicitly described in either law.

The IRS had the power to accept or challenge the legality of these accounts.[16] The agency first challenged the legality of the accounts and then accepted certain versions of expense accounts as a legitimate interpretation of the laws on cafeteria plans and dependent care assistance programs. In early 1984, the IRS issued a news release (IRS 1984*a*) and an announcement declaring that "so-called 'reimbursement,' 'flexible spending,' and similar arrangements which purport to allow employees to pay their out-of-pocket medical, legal, dependent care, or other personal expenses with 'pre-tax dollars' are without substance and do not reduce employees' taxable income" (IRS 1984*b*).[17] The IRS announcement reads as a clear denouncement of expense accounts as they were first developed, and it "sent benefit consultants scrambling to salvage the flexible spending account concept" (Geisel 1984, p. 80). The IRS objected to the early expense accounts, called "zero-balance reimbursement accounts" or ZEBRAs, because employees did not have to establish an account at the beginning of the year and there was no limit on the amount of reimbursements allowed (U.S. Bureau of National Affairs 1984, p. 15). The assistant secretary for tax policy of the U.S. Treasury Department stated "ZEBRAs are dead" (U.S. Bureau of National Affairs 1984, p. 15). Yet the IRS announcement left an opening for legitimate expense accounts, and benefits consultants jumped on it.

Consultants took the critique of ZEBRAs and used it to construct acceptable expense accounts. Some benefits experts worried the IRS regulations were "crippling" the new program, but the benefits companies encouraged their clients to modify their plans in light of the new regulations rather than abandoning them (Geisel 1984). Benefits consultants

[16] The Internal Revenue Service is a division of the Treasury Department, which is "charged with administering the tax laws of the United States" (Raabe et al. 2000, p. 95). The IRS provides the authoritative interpretations for the IRS code in its Rules and Regulations and also issues Revenue Rulings, Letter Rulings, Announcements, and more, to guide taxpayers in their application of the code (Raabe et al. 2000).

[17] It is not clear whether this Announcement was prompted by consultants' explicit requests for guidance on expense accounts, or whether the agency learned about the new programs on its own. Taxpayers (and their agents) regularly request guidance of this type (Raabe et al. 2000), but there are no published Letter Rulings or Revenue Rulings to determine what the IRS was responding to with this Announcement. I filed a Freedom of Information Act (FOIA) request for background materials related to the IRS News Release and Announcement, but that request is still pending as of May 2003 (IRS 2003). Even if the benefits consulting companies did not directly ask the IRS for clarification, it was their innovations that prompted the IRS Announcement.

like Linda McFarland of Hewitt Associates emphasized the upside of the regulatory developments:

> "One of the things they have done is to make it clear that salary reduction is a legitimate form of funding dependent care. They have introduced some additional complexities for dependent care, in that there has to be a separate account and a determination of how much will be in that account. . . . They chose to attack the strategy of the reimbursement account rather than salary reduction [of any type]. To me that means salary reduction is on a much stronger footing. They're blessing salary reduction." (U.S. Bureau of National Affairs 1984, p. 16)

Consultants and employers received further guidance on the proper way to set up expense accounts in May 1984, with the publication of proposed regulations for the IRS code (Title 26, sec. 125) the Tax Treatment of Cafeteria Plans (49 Federal Register 19321). The IRS incorporated its guidance on section 129, the specific Dependent Care Assistance Program, into its regulations on section 125's cafeteria plans. In other words, by the time the first regulations on tax-free child care benefits were issued, the benefits consulting companies had succeeded in defining dependent care benefits as part of the cafeteria plan system. Separate regulations for Dependent Care Assistance Plans have never been issued.[18]

My interviews with human resources managers confirm that dependent care expense accounts and cafeteria plans were linked in the minds of many managers. Several managers responded to my question about dependent care expense accounts with answers like "Yes, we have a 125 plan" or "No, we don't have that because we don't believe in cafeteria plans." Dependent care expense accounts are now closely tied to cafeteria plans, and both programs have been promoted by benefits consultants and brokers.

Making expense accounts easy for employers.—In addition to educating management about the new tax law and proposing a new use for the law,

[18] The regulations were proposed in 1984 and publicized then. The IRS faced a huge "regulatory lag" in the mid-1980s in response to major and repeated changes in the tax code, as reported by Stephen Labaton in a May 29, 1985, *Washington Post* article, entitled "IRS Lagging on Regulations to Implement Past Tax Legislation; Reagan's Plan Expected to Encounter Same Problem if Enacted." Temporary Regulations were issued in 1997 (62 Federal Register 60165, 60196) and Final Regulations were (finally) issued in 2000 (65 Federal Register 15548) and modified slightly in 2001 (66 Federal Register 1837). The main questions about dependent care expense accounts and their relation to dependent care assistance programs regulated by Title 26, sec. 129 were settled in 1984. The regulations for other aspects of the Dependent Care Assistance Programs (IRS, Title 26, sec. 129) were in the "Pre-Rule Stage" through 1994 (59 Federal Register 58000) and then disappear from the queue of regulations that need to be issued.

benefits consulting companies also developed and sold services that helped organizations set up dependent care expense accounts and the related cafeteria plans. For example, Hewitt Associates claims to have "administered [the] first flexible spending accounts" and "developed [the] first computer system for flexible benefit and compensation plan administration, FlexSystem" (Hewitt Associates 2001).

Managers interviewed more recently also recognize the role of benefits consultants and insurance brokers in the diffusion of dependent care expense accounts. For example, a 1997 interview with a human resources manager at a pharmaceuticals company highlighted the importance of both internal benefits departments and benefits consultants. The manager responded in this way to my question about how this organization set up dependent care expense accounts: "We have an incredible benefits department, they're really very good. . . . They work with a consultant group to, you know, [set up] flex benefits. . . . So, the benefits department got us a consultant group. And they designed it, in surveying the employees as to what kinds of things we wanted to have in there. And we developed it. So, they took care of that."

A human resources manager for a midsized manufacturing firm responded in this way to the same question about the development of expense accounts: "I have a broker that takes care of all my benefits, who stays current on the latest programs. And we meet every other month with the broker." A human resources manager for a fairly small advertising agency also pointed to the importance of benefits and insurance brokers for educating employers about dependent care expense accounts. I asked whether the firm offered a dependent care expense account and she replied, "That's one of the things I'm looking into right now. As a matter of fact that's what this is [holding up some papers on her desk], section 125 [the regulations covering cafeteria plans]. So, I mean, it's something that we are looking into. And I met with our insurance broker yesterday. And you know, it's something we're going to start talking about. But, you know, I'm just getting educated on that."

The interviews suggest that consultants and also benefits departments within firms are important advocates of dependent care expense accounts. In contrast, managers did not discuss benefits brokers, benefits consulting companies, or benefits departments when I asked about child care centers (or other family policies).

To summarize, federal legislation tried to encourage employers' investment in child care programs, but benefits consultants transformed the practical meaning of the law when they developed new programs not discussed in the law, interacted with the IRS to see whether the new programs were legal, and marketed these programs to employers through articles in the business press and through their consulting services, software, and administrative services. In these ways, the benefits consulting companies influenced both the government's and employers' understanding of the new law.

Other Tax Breaks

There are other tax breaks for employer-sponsored child care programs, but these tax breaks have not been championed by benefits consultants, nor have they received the same attention in the business press. Title 26, section 162[a], of the IRS code allows employers to deduct "ordinary and necessary" business expenses. In 1973, the IRS declared that if an employer provides child care services to employees in order to reduce absenteeism, increase productivity, or, help recruit and retain workers, the employer's expenses are classified as "ordinary and necessary" business expenses (IRS 1973; U.S. Department of Labor 1982; National Child Care Information Center 2002*a*). The IRS published a Revenue Ruling in response to an employer's request for clarification on this matter (IRS 1973). Revenue Rulings are issued "chiefly for the purpose of guiding taxpayers" (Raabe et al. 2000, p. 99). Other employers may have taken this guidance and established child care centers or provided subsidies to local centers, making sure to note the ways the business benefited from the program, and availed themselves of these tax deductions. However, these regulations did not receive attention in the business press or mainstream newspapers, unlike the legal changes that facilitated dependent care expense accounts.[19]

Related Hypotheses

Building on both the institutional theory of law and organizations and the historical account I have presented here, I offer the following hypotheses about employers' adoption of child care programs. First, I draw on the general institutional precept that organizations are responsive to their institutional environments to hypothesize that *organizations were more likely to adopt child care programs in the wake of changes in tax law*. The relevant changes in tax law are the 1973 IRS ruling on title 26, section 162, which allowed employers to deduct their contributions to child care centers as business expenses; the provisions in the 1981 Economic Recovery Tax Act that made employer-sponsored child care a non-

[19] I first learned about this tax break in a scholarly history of child care policy (Michel 1999, pp. 266, 383), which cites a 1978 article in *Ms.* Magazine as its primary source of information. Neither the business press coverage of the 1981 law nor previous empirical studies of employer-sponsored child care discuss this tax break.

taxable benefit for employees; and the IRS regulations, proposed in 1984, that approved certain forms of dependent care expense accounts.

I offer one caveat about the impact of changes in tax law. Previous institutional theory on law and organizations argues that the practical meaning of the law is socially constructed by organizations, allied professionals, state actors, and the media, and it is this collectively constructed understanding of the law that influences an organization's adoption of new policies and practices. A new law or new interpretation of a law by the courts or regulators may garner media attention, and it is often professionals or specialist managers, such as benefits consultants and benefits managers, who bring these developments to the attention of the media. However, some changes in the law receive little attention from the media or professionals, and these changes therefore may have little impact on organizational policies or practices. The historical evidence above suggests that, because the 1973 IRS ruling on child care centers was not championed by consultants or specialist managers and because it received little media attention, this change in the law may have had minimal effects on employers' provision of child care benefits.

Benefits consulting companies helped create dependent care expense accounts, helped publicize these accounts, developed software that made administering these accounts easy, and offered to administer the accounts for their clients. For these reasons, organizations with existing relationships with benefits consulting companies may have been more likely to learn about and adopt these programs. As noted below, unfortunately I do not have information on organizations' relationships with benefits consulting companies and so I hypothesize that *organizations with existing relationships with human resources consultants were more likely to adopt dependent care expense accounts*. While benefits consulting companies might have assisted employers interested in child care centers, there is no historical evidence or interview evidence that they promoted centers. Therefore, I do not expect there to be a positive relationship between the use of these consultants and the adoption of child care centers.

Benefits managers within organizations interact with the benefits consulting companies and brokerages that administer cafeteria plans and expense accounts, read the specialist literature on tax developments and new benefit options, and monitor the legal environment regarding employee benefits. Benefits managers are responsible for both creating adequate programs and containing costs. Dependent care expense accounts may have been an especially attractive program to them because the accounts allowed organizations to keep costs low while they claimed to help workers with their child care needs. A study of the adoption of maternity leave policies during the 1970s and early 1980s found that organizations with benefits departments were more likely to adopt leave policies (Kelly and Dobbin 1999). For these reasons, I expect that *organizations with a distinct benefits department—and hence specialized benefits staff—were more likely to adopt child care programs, especially dependent care expense accounts*.

PREVIOUS RESEARCH ON EMPLOYERS' FAMILY POLICIES

Although there is little historical research on employer-sponsored child care (see Auerbach 1988; Michel 1999), there is a body of literature examining which organizations provide "family-friendly" policies, including child care benefits, and why these organizations do so. These cross-sectional studies emphasize the internal needs and traits of organizations, particularly size, sector, and the characteristics of the workforce, rather than the institutional environment.[20] I use this research to develop hypotheses to complement my central hypotheses about the effects of changing tax policies on employers' provision of child care programs. These hypotheses are summarized in table 1.

Organizational Capacity: Size, Age, and Sector

Organizational scholars recognize that the capacity to develop and provide new benefits depends on an organization's size, age, and sector, among other factors. Larger establishments probably find it easier to fill the slots in a child care center and to justify new programs because they will benefit a large number of workers. Larger organizations have economies of scale that make it easier and more reasonable to investigate and offer child care programs, even at their smaller workplaces. Therefore, I expect that *larger establishments and establishments that are part of larger organizations are more likely to adopt child care programs*. Organization size is consistently associated with better benefits (Knoke 1996; Kalleberg and Van Buren 1996), including corporate family policies (Deitch and Huffman

[20] Researchers studying employers' family policies have not ignored the institutional environment, but they have generally lacked good measures of institutional pressures and any measures of the evolving policy or legal environment. Some studies use proxy measures of responsiveness to the institutional environment, such as size, sector, and the presence of a human resources department (Deitch and Huffman 2001; Glass and Fujimoto 1995; Osterman 1995). Other studies rely on direct questions about management's attentiveness to the institutional environment (Knoke 1996) or measures of the prevalence of practices within certain organizational fields (Goodstein 1994; Ingram and Simmons 1995). There is some creative comparison of organizational behavior in different legal environments (Guthrie and Roth 1999) and policy environments (Dulk and Lewis 2000), but even these studies do not trace the emergence of public policies or the evolution of the law to see how these affected employers' decisions about what programs to provide.

TABLE 1
Descriptive Statistics, 1997 Values

Variable	Hypothesized Effect	Mean	SD	Min	Max
Child care programs:					
Dependent care expense account	NA	.561	.497	0	1
Child care center	NA	.134	.341	0	1
Organizational capacity:					
Size of establishment (ln)	+	6.156	1.327	3.912	10.820
Size of organization (ln)	+	7.227	1.892	3.912	11.736
Age	−	49.131	48.851	1	350
Government or nonprofit social services	+	.391	.489	0	1
Manufacturing	NS	.239	.427	0	1
Services	reference	.370	.483	0	1
Workers' demands and leverage:					
% parents (industry)	+	57.534	3.303	52.462	62.008
% women (establishment)	+	52.410	22.783	3.000	98.000
Professional/technical/managerial core job	+	.370	.483	0	1
Regional unemployment rate	−	5.396	.864	4.000	7.000
Unionized establishment	+ centers, − DCEA	.334	.472	0	1
Institutional environment:					
IRS ruling on S. 162 deductions (1974–80)	? centers				
ERTA in place (1981–97)	+ centers				
ERTA in place, no regulations (1981–84)	+ DCEA				
IRS regulations in place (1985–97)	+ DCEA				
HR/benefits consultants used	+	.573	.495	0	1
Benefits department	+	.267	.443	0	1

Note.—$N = 389$.

2001; Goodstein 1994; Ingram and Simmons 1995; Knoke 1996; Osterman 1995) and child care programs in particular (Witowski 1999).

Organizational theory, guided by Stinchcombe's work (1965), claims that older organizations have more difficulty changing their structures and practices. This suggests that *younger organizations are more likely to adopt the new child care programs*, particularly the more complex child care centers. However, age is not a significant predictor in previous research on employers' family benefits (e.g., Osterman 1995; Witowski 1999).

Private sector organizations must justify their benefits expenditures, both internally and to investors and the corporate community. Because child care programs are relatively new, and have not been shown to be crucial for meeting financial goals, private sector organizations may find it difficult to justify these programs. Other sectors do not face the same financial constraints, although they may have tighter budgets overall. Also, government agencies and nonprofit social service organizations may be more likely to provide child care programs because peer organizations, the public, and funding agencies see a connection between their core mission and child care services. I hypothesize that *government agencies and nonprofit organizations are more likely to provide child care programs*. Whether due to financial slack or normative expectations, previous studies have found that public and nonprofit-sector organizations are more likely to provide family policies (Ingram and Simmons 1995) and child care programs specifically (Deitch and Huffman 2001; Dulk and Lewis 2000).

The Workforce and Workers' Leverage

Workers' interest in corporate family policies depends on the family responsibilities those workers face. Child care programs are, by definition, more important to parents than to other workers. Therefore, I expect that *organizations with a higher percentage of parents are more likely to adopt child care benefits*. Goodstein (1994, p. 372) finds evidence of a positive relationship between the percentage of employees who are parents and employers' family policies (although he did not examine child care programs separately). However, Glass and Fujimoto (1995, pp. 399–400) did not find evidence that organizations with more mothers in the focal job category are more likely to provide child care benefits.

Women are more likely to be the primary caregivers for young children, and this may make them more likely to seek out employers with generous family policies or advocate for the adoption of new family benefits by their current employer. This suggests that *organizations with a higher percentage of women workers are more likely to adopt child care benefits*. Some studies of corporate family policies (Goodstein 1994; Osterman 1995) and child care programs (Auerbach 1988; Seyler, Monroe, and Garand 1995) find a positive relationship between the percentage of female employees in an organization and the organizations' provision of these programs. The only other study modeling the *adoption* of child care programs finds a positive effect of feminization on the spread of dependent care expense accounts (Witowski 1999).

Workers also vary in the amount of leverage they have with their employers. In general, workers are more likely to win desired benefits when the labor market is tight, when the workers are members of a high-status occupation, and when they are organized in unions.

Organizations should be more concerned about recruiting and retaining workers when they face tight labor markets. I expect that *organizations are more likely to adopt child care programs when unemployment rates* *are lower*. Witowski (1999) finds that organizations are more likely to add child care programs when they are located in a growing industry and presumably trying to hire more workers. Goodstein (1994) finds that organizations facing low female unemployment rates are more likely to have family programs in place. However, other studies do not find strong evidence that demand for labor or worries about turnover affect the probability that an organization will offer child care benefits (Glass and Fujimoto 1995; Osterman 1995).

High-status workers may be able to win the child care programs they desire. Professionals, managers, and technical workers may be in higher demand in the labor market (regardless of the overall unemployment rate), and thus they have more power to negotiate for desired family benefits (Glass and Fujimoto 1995; Michel 1999). Based on this, I hypothesize that *organizations that rely on professionals, managers, or technical workers to complete the core tasks of the organization are more likely to provide child care programs*. Deitch and Huffman (2001) find that organizations that rely on professionals and managers are more likely to offer child care subsidies, but they do not find significant effects of workers' status on child care centers or expense accounts.

Unions often help workers win the benefits and wages they want. During the 1970s, unions focused on lobbying for federal support for child care services (U.S. Bureau of National Affairs 1984; Cornfield 1990). By the early 1980s, though, union leaders decided that the prospects for "a national solution" were "dim" and the AFL-CIO called for more collective bargaining for child care programs (1983 AFL-CIO resolution, quoted in Cornfield [1990, p. 47]; Cornfield and Kane 1998). Because unions bargained for child care programs, I hypothesize that *unionized organizations are more likely to set up child care centers*. On the other hand, unions have specifically opposed flexible benefits plans—which are associated with dependent care expense accounts—because this type of benefit structure "is management-arranged and demands constant interaction with company counselors or administrative staff" (Kamerman and Kahn 1987, p. 271; see also Barringer and Milkovich 1998). Unions prefer to negotiate a standard set of benefits for all covered workers so workers can see the benefits of the union contract. Also, the 1981 law on employer-sponsored dependent care specifically states that unionized workers can be excluded from these programs if such programs are the subject of collective bargaining negotiations (IRS, Title 26, sec. 129). This suggests that *unionized organizations are less likely to adopt dependent care expense accounts*. The positive and negative effects of unionization for different programs may cancel each other out in analyses of employers' child care benefits (Auerbach 1988, pp. 150–54). In support of this possibility, other studies do not find a significant relationship between unionization and the number of child care benefits or family policies provided by employers (Deitch and Huffman 2001; Glass and Fujimoto 1995; Osterman 1995).

DATA AND METHODS

The Survey

To investigate the diffusion of dependent care expense accounts and employer-sponsored child care centers in the recent past, I analyze a 1997 survey of 389 U.S. work establishments with 50 or more employees.[21] Establishments were sampled from the Dun & Bradstreet Market Identifier database and stratified by size and industry, with industries chosen to represent the manufacturing, service, public, and nonprofit sectors and to vary in unionization, feminization of the workforce, and average age. The following industries were sampled: food manufacturing, chemicals manufacturing, transportation equipment manufacturing, computer equipment manufacturing, trucking and transport services, wholesale trade, banking, business services, nonprofit social services, and local government agencies.

Frank Dobbin and I designed the survey, which was conducted by telephone interviewers at the University of Maryland Survey Research Center and funded by the Alfred P. Sloan Foundation and the National Science Foundation. The respondents were 389 managers—human resources managers where possible, general managers otherwise—from these establishments. The cooperation rate (i.e., percentage of contacted managers that completed interviews) for the survey is 74%. The response rate (i.e., percentage of sampled organizations that completed interviews) is 56%. The completion and response rates are similar to or exceed other organizational surveys on employment policies and benefits (e.g., Dobbin

[21] Establishments are the unit of analysis, although I use the term *organizations* when developing hypotheses and reporting findings for ease. There are 23 establishments that are linked to at least one other responding establishment, i.e., that are different locations of the same larger organization. This situation may affect my analysis, increasing the risk of adoption in a given year, if related establishments adopt a program simultaneously. This is a plausible occurrence for the adoption of dependent care expense accounts, but it is common for organizations to establish a child care center at one site at a time (or only at one site). To be sure that these related establishments are not affecting the results reported below, I replicated all models relaxing the assumption of independence between observations. The "cluster" option in the Stata estimation of complementary log-log models described below assumes that observations are independent across groups (here, multiple-establishment organizations) but not necessarily within groups. The results of this analysis are virtually identical to the results reported here and are available from the author upon request. This robustness is not surprising given the small proportion of multiple-establishment respondents.

et al. 1993; Edelman 1992; Guthrie and Roth 1999; Osterman 1995; Witowski 1999).

The survey allows me to analyze the adoption of child care programs because it asks for the year these benefits were first adopted and also asks for retrospective, over-time data on key independent variables. The respondents were asked about "programs to help employees care for children or elderly relatives," including "tax-free spending accounts for dependent care expenses" and "on-site or near-site child care centers." For each outcome, respondents were asked if the establishment had ever provided or offered that program. They were then asked when the program was initiated and when, if ever, it was discontinued. These responses were used to create dependent variables for adoption of expense accounts and adoption of child care centers. These variables have a value of "0" for all years when the establishment did not have the program (but was at risk of adopting it, by nature of the establishment's existence at that time) and a value of "1" for the year when the organization adopted the program.[22]

The survey provides most of the measures of organizational capacity and the characteristics of the workforce, and I supplement the survey with Bureau of Labor Statistics sources. Annual values for the size of the establishment and the size of the organization were interpolated from responses about the number of employees in 1997, 1995, 1985, 1975, 1965, and at founding. These values are logged in the models presented below. Age is based on a survey question asking when the establishment opened. Sector is based on the establishment's primary Standard Industrial Classification (SIC) code, which was included in the sampling frame. The survey did not ask for the percentage of workers who were parents, because preliminary interviews had suggested that human resources managers have only a vague sense of the family status of their workers. This type of demographic data is rarely collected by organizations, unlike data on the percentage female or minority, which is collected for federal reports. Therefore, I use annual Current Population Survey data aggregated to the two-digit industry level and lagged by one year to measure the representation of parents in the establishment's industry. The survey did ask

[22] There were eight establishments that had a child care center in place at the time of the interview in 1997 but could not give the date it was opened; these organizations represent 2% of the sample and 15% of those with a child care center. There were also 23 establishments that had a dependent care expense account, but did not know the date it was adopted; this represents 6% of the sample and 11% of those with a dependent care expense account. In the models presented below, establishments that did not know the date of adoption are dropped. To check the models' (and my conclusions') sensitivity to missing data, I also estimated models where these cases were included and assigned the median adoption date for that child care program. The findings are very robust, and none of my conclusions are challenged by the alternate specifications of the models (results available upon request).

respondents to report on the percentage of workers who were female in 1997, 1995, 1985, 1975, 1965, and at founding. Annual values were interpolated from these responses and lagged one year. The few organizations that refused to answer the question on the sex composition of the workforce were given the appropriate industry values (from Bureau of Labor Statistics measures). To code the occupational status of the key workers, I began with responses to an open-ended question about the most common job title at that location. Using that title and the industry, I matched each title to the appropriate job code in the *Dictionary of Occupational Titles* (*DOT*). The first digit of the *DOT* job code indicates whether the Bureau of Labor Statistics considers this job to be a "professional, technical, or managerial" occupation. I used that assessment to create a dummy variable indicating establishments where the core job is one of these occupations. This indicator and the sector variables are the only measures that do not vary over time. To measure tight labor markets, I used annual data on regional unemployment rates from the Bureau of Labor Statistics.[23] These variables are lagged by one year. The unionization measure comes from a survey question asking whether any workers at that site are covered by a collective bargaining agreement and, if so, when workers were first represented by a union. I use this information to create an annual indicator of whether the establishment was unionized in each year.

Now I turn to the measures for my central hypotheses about the effects of changing tax laws and contact with the interested actors who creatively interpreted those laws. The survey included questions about whether the establishment uses human resources consultants and, if so, when they began to do so and about whether the establishment has a distinct benefits department and, if so, when it was created.[24] I created annual indicators of a relationship with human resources consultants and the presence of a separate benefits department from this information.[25] The effects of

[23] I use regional unemployment rates because state unemployment rates were not published until 1978.

[24] I would prefer to have measures of whether the organization used benefits consultants at that time, whether the organization had an insurance broker, and which consulting and insurance companies were employed. Unfortunately, the survey includes only the more general question about whether the organization used human resources consultants.

[25] Some respondents knew they had a practice in place in 1997 but could not tell us when they had first adopted that practice: 1% of the respondents are missing a date for the establishment of a separate benefits department, 3% are missing a date of first unionization, and 9% are missing a date of first use of human resources consultants. In the models below, I assigned these establishments the median date of adoption for the relevant practice and created annual indicators on that basis. I compared these models to models using only the establishments with complete survey data, and results

changing laws are measured by period variables marking the different legal environments at different times. In the dependent care expense account models, I include a variable indicating the period after the passage of the ERTA tax but before the first regulations (1981–84) and a variable indicating the period after the IRS regulations had affirmed the legitimacy of dependent care expense accounts (1985–97). In the child care center models, I include a variable indicating the years after the IRS ruling on deducting child care expenses (1973–80) and a variable indicating whether the ERTA tax breaks are in place (1981–97).

Table 1 presents descriptive statistics for the 389 establishments as they looked in 1997 and a summary of the hypotheses discussed above.

Analysis

I use discrete-time event history methods to model the adoption of these child care programs. Event history methods, also known as survival analysis and duration analysis, are "a class of statistical methods for studying the occurrence and timing of events" (Allison 1995, p. 1). Continuous-time event history methods, which were introduced to the social sciences first (e.g., Tuma and Hannan 1978), assume that time is measured continuously. However, social scientists often measure the timing of events more crudely, recording only the month or the year in which an event occurred (Allison 1982, 1984). For example, it is possible for an organization to adopt a new policy or program at any moment in time (i.e., the underlying risk of the event occurring is continuous), but this survey asks only for the year in which the policy or program was adopted. Data of this type are known as interval-sensored survival time data, and they are appropriately analyzed with discrete-time event history methods (Allison 1982, 1984). In particular, the complementary log-log model I employ here is "the uniquely appropriate" model for interval-sensored data (Kalbfleisch and Prentice 1980, p. 37; see also Allison 1995, pp. 216–19). A second discrete-time event history method, using the logistic model, assumes that events *can* only occur at discrete points in time (Allison 1982). The logistic version of discrete-time event history methods is increasingly used by sociologists (e.g., Harris 1996; Schneiberg and Bartley 2001; South 2001; Sweeney 2002), but it is best suited to the relatively rare occasions when events can only occur at specified times rather than the interval-sensored data I have here.

In the discrete-time specification, "the hazard rate is the probability that an event will occur at a particular time to a particular individual,

were very similar. This indicates that the findings are not sensitive to the treatment of missing data.

given that the individual is at risk at that time" (Allison 1984, pp. 16, 72). The complementary log-log model estimates this conditional probability (P_{it}) as a function of the baseline hazard at a given time (α_t) and a matrix of covariates ($X'_{it}\beta$):

$$\log[-\log(1 - P_{it})] = \alpha_{\mathrm{t}} + X'_{it}\beta$$

(Allison 1995; Rodriguez 2003). The exponentiated coefficients from this model have a relative risk interpretation similar to an odds ratio in logistic regression.

As with continuous-time proportional hazards models, varying the shape of the baseline hazard (α_t) allows the researcher to explore how the risk of an event occurring changes over time. For each child care program, I present a model (model 1) where the hazard is constant over time and a model (model 2) where the hazard is constant within the periods specified above but varies across periods. These models correspond to the exponential model and the piecewise constant exponential model, respectively, in the continuous-time framework (Allison 1995; Sueyoshi 1995; Jenkins 2003).[26] Comparing model 2, with periods determined by the legal changes discussed above, to model 1 tests the importance of my institutional account for explaining the diffusion of these child care programs.

To use discrete-time event history methods, the data must be transformed into organization-years (or person-years, person-months, etc.). My data includes 9,844 establishment-years, one for each year between 1965 and 1997 that the establishment existed, from the 389 responding establishments. The analyses below utilize those records when the establishment was at risk of adopting that program, that is, years when the establishment existed but did not have the program in place at the beginning of that year. The dependent care expense account models reported below include 7,696 establishment-years and 181 adoption events. The child care center models reported below include 8,918 establishment-years and 41 adoption events. Using the transformed data, I estimate the models with the "cloglog" command in Stata using the Huber/White robust estimator of variance.

[26] I estimated a third model with a linear time trend that corresponds to a Gompertz model in the continuous-time framework (results available upon request). I also estimated continuous-time exponential and piecewise constant exponential models to compare with the discrete-time analyses. Results (available upon request) were very similar in both substantive conclusions and significance levels to the discrete-time models reported here.

FINDINGS

These analyses provide strong evidence that organizations responded to changes in tax law, but only when the law was transformed by benefits consultants to allow inexpensive programs. Neither the 1973 ruling on tax deductions for employers' contributions to child care centers nor the 1981 tax law making child care services a nontaxable benefit prompted employers to increase their adoption of child care centers. However, the changing interpretations of the 1981 tax law offered by benefits consulting companies dramatically affected the adoption rates of dependent care expense accounts. Organizations were also more likely to add expense accounts when they had contact with the benefits specialists who developed and promoted them. While the institutional environment is essential for understanding the diffusion of dependent care expense accounts, organizations seem to establish child care centers based on their internal characteristics, specifically, size, sector, and the traits of the workforce.

Figure 1 depicts the percentage of responding organizations that had the two programs in each year. The figure suggests that the changes in tax law during the early 1980s dramatically increased the risk of adopting dependent care expense accounts, but had a much more moderate effect—if any effect—on the spread of child care centers. Dependent care expense accounts first appeared in the early 1980s, and they diffused rapidly beginning about 1985. This pattern points to the importance of the IRS regulations issued in mid-1984. Child care centers seem to spread slowly and steadily, with no dramatic changes in 1973 or 1981 when new tax breaks were passed.

The event history analyses confirm the importance of changing tax policies and contact with benefits specialists for understanding the adoption of dependent care expense accounts. Before turning to evidence for the impact of the institutional environment, though, I report on the hypotheses suggested by previous studies of employers' family policies. Model 1 in table 2 confirms that larger establishments and organizations, organizations with a higher percentage of parents, and organizations facing tight labor markets were significantly more likely to adopt dependent care expense accounts. Also, unionized organizations were about half as likely as other organizations to provide these expense accounts.[27] The negative effect of unionization is not surprising because expense accounts have been tied to cafeteria plans, which unions generally oppose. There is also a marginally significant effect of organizational age (which becomes statistically significant at the $P < .05$ in model 2), with younger organizations more likely to add these new programs.

[27] Exponentiating the coefficients in these models yields a risk ratio similar to an odds ratio for logistic models. For example, the unionization effect is $\exp(-.644) = .525$.

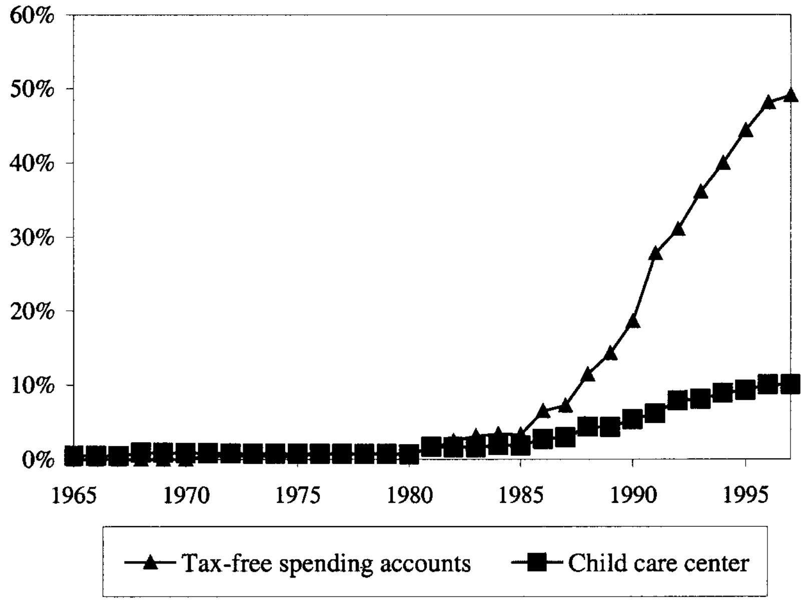

FIG. 1.—Prevalence of child care programs, 1965–97. $N = 389$ organizations; percentages are based on the number of date adoptions divided by the number of organizations that either did not adopt the practice or that adopted and knew date of adoption. Adopters who did not know date are excluded.

While organizational capacity and the characteristics of the workforce are important predictors of the provision of dependent care expense accounts, it is also important to consider the policy history and advocacy work of benefits specialists. The institutional variables added in model 2 significantly improve the fit of the model.[28] Organizations were over four times as likely to adopt dependent care expense accounts in the period between the 1981 law and the 1984 regulations, as compared to the period before the 1981 law. Once the IRS regulations were issued in 1984, adoptions increased dramatically. Organizations were over 25 times as likely to add expense accounts in the period 1985–97, as compared to the reference period, 1965–80; furthermore, the coefficient for the 1985–97 period is significantly larger than the 1981–84 effect. There is also strong evidence

[28] A third model substituted a linear time trend for the periods in model 2. Although the coefficient for "year" is positive and significant, this model does not fit the data as well as model 2 (according to the BIC statistic used to compare nonnested models). This indicates that the risk of adopting dependent care expense accounts changed periodically, with changes in tax law, rather than increasing in a linear fashion over time.

TABLE 2
COMPLEMENTARY LOG-LOG ANALYSIS OF THE ADOPTION OF DEPENDENT CARE EXPENSE ACCOUNTS

	MODEL 1		MODEL 2	
	Coef.	SE	Coef.	SE
Organizational capacity:				
Size of establishment (ln)	.235***	.054	.203**	.064
Size of organization (ln)	.173***	.034	.157***	.033
Age	−.003+	.002	−.004*	.002
Government or nonprofit social services	−.329+	.194	−.112	.186
Manufacturing	.564*	.225	.207	.243
Workers' demands and leverage:				
% parents (industry)	.191***	.015	.073**	.024
% women (establishment)	.004	.003	.002	.003
Professional/technical/managerial core job	.308+	.174	.286	.181
Regional unemployment rate	−.222***	.052	−.211**	.066
Unionized establishment	−.644**	.196	−.735***	.181
Institutional environment:				
ERTA in place, no regulations (1981–84)			1.501**	.717
IRS regulations in place (1985–97)			3.231***	.595
HR/benefits consultants used			.336*	.161
Benefits department			.443*	.178
Constant	−15.299***	.999	−11.263***	1.374
Log likelihood	−716.433		−669.167	
BIC′	−192.844		−251.582	
N establishment-years	7,696		7,696	
N events	181		181	

+ $P < .10$.
* $P < .05$.
** $P < .01$.
*** $P < .001$.

of the role of benefits consultants and internal benefits specialists in the diffusion of these innovative programs. Organizations that reported using human resources consultants are about 40% more likely to adopt expense accounts. Additionally, organizations with their own benefits departments are about 56% more likely to adopt this new program.

Table 3 presents models for the adoption of child care centers. The size of the establishment and of the organization as a whole are both significant predictors of adopting child care centers. In interviews with managers, the size of the establishment was often described as a barrier to establishing an on-site child care center, even though employees at smaller sites sometimes expressed interest in a center. For example, a manager at a high-tech manufacturing site of a company that provides child care at its

TABLE 3
Complementary Log-Log Analysis of the Adoption of Child Care Centers

	Model 1		Model 2	
	Coef.	SE	Coef.	SE
Organizational capacity:				
Size of establishment (ln)	.346*	.134	.368*	.154
Size of organization (ln)	.335**	.101	.300**	.110
Age	.004	.005	.004	.005
Government or nonprofit social services	1.106*	.446	1.190**	.442
Manufacturing	.337	.559	.266	.576
Workers' demands and leverage:				
% parents (industry)	.117***	.028	.070⁺	.039
% women (establishment)	.021*	.009	.022*	.010
Professional/technical/managerial core job	2.166***	.414	2.121***	.414
Regional unemployment rate	−.051	.100	−.129	.119
Unionized establishment	−.229	.493	−.326	.505
Institutional environment:				
S. 162 tax deductions allowed (1974–80)			.716	1.175
ERTA in place (1981–97)			1.813	1.117
HR/benefits consultants used			−.223	.372
Benefits department			.532	.361
Constant	−19.206***	2.402	−17.714***	2.941
Log likelihood	−212.528		−208.835	
BIC′	−7.143		21.856	
N establishment-years	8,918		9,135	
N events	41		41	

⁺ $P < .10$.
* $P < .05$.
** $P < .01$.
*** $P < .001$.

corporate headquarters reported, "Here, [employees have] asked for day-care. We just can't justify it with 300 employees. We don't have the space, number one, we don't have the expertise, number two, and we don't have the expense, number three, that we can handle [it]."

In response to the question "Did you ever talk about [a center] or consider it, or have workers ever asked about one?" a manager at an advertising agency with about 100 employees said, "No, we joke about it. [In] that period when everybody was having [babies], it's like, 'Gosh, we should just use that old conference room.' No, because we're so small it wouldn't be something that would work for us."

An executive at a major financial service company noted that they had established centers that provide back-up or emergency child care (but not daily care) “in places where we have critical masses of employees.” This manager did not specify what constitutes a “critical mass,” but a manager at a business services organization claimed that “you need a certain amount of numbers to make it worthwhile and we didn’t have those numbers. You need a bigger building, a couple thousand employees to even have a good target market [for an on-site center].”

In the survey sample, there were several establishments with 50–100 employees that did have a child care center, but these were all nonprofit or public sector organizations. Among the private sector organizations with child care centers, there were only two establishments with fewer than 500 employees and the median size for these establishments was 1,325 employees.

Model 1 also reveals that government agencies and nonprofit, social service organizations are significantly more likely than service organizations—over three times as likely—to adopt child care centers. This finding may reflect the greater financial slack available to these government agencies and nonprofit organizations. Alternatively, it may be that these organizations are more willing to provide child care services as part and parcel of their larger mission to serve the public. There is also evidence that organizations with a higher percentage of women are more likely to establish child care centers. Model 1 suggests that organizations in industries with a higher representation of parents are also more likely to provide centers, although this effect is not significant in model 2.

The most striking finding from the analysis of child care centers is the effect of the occupational status of the core workers. Organizations that rely on professionals, managers, or technical workers for their core tasks are 8.7 times as likely to provide child care centers as other organizations. This finding suggests that the most expensive and extensive version of employer-sponsored child care, the on-site or near-site center, is more likely to be available at workplaces with many high-status workers. Note that low unemployment rates prompted employers to adopt expense accounts. This measure of tight labor markets does not predict the adoption of child care centers, but occupational status of the core workers does. I interpret this as evidence that organizations that *consistently* face recruitment and retention difficulties—because they employ professionals and managers who are generally in more demand and harder to replace—are more willing to make the long-term investment in a child care center, while employers who face more variable labor markets add the cheaper program when needed.

The history I have outlined above suggests that the 1973 tax ruling got little attention from employers and that the 1981 tax break was quickly associated with dependent care expense accounts, even though the Senate had hoped to increase the availability of on-site child care centers. Model

2 in table 3 supports this interpretation of the historical evidence. Although the coefficients for the 1973–80 period and the 1981–97 period are positive, they are not statistically significant. Furthermore, model 2 does not improve the fit of model 1, as indicated by various fit statistics.[29] Neither use of human resources consultants nor the presence of a specialized benefits department affects an organization's likelihood of establishing a child care center. This finding corroborates the historical evidence that benefits consultants and their allies inside organizations were concentrating on the new dependent care expense accounts—which are less expensive and were used to promote the related cafeteria plans—rather than providing child care services directly to employees.

CONCLUSION

This article documents the dramatic effect of tax law—as it was interpreted by benefits consulting companies—on employers' adoption of certain child care programs. In 1981, Congress passed a new tax break to encourage employers to build new child care centers. Employer-sponsored child care programs did diffuse rapidly, but it was the dependent care expense accounts created by benefits consulting companies that gained popularity, rather than child care centers. Neither legislative intent nor a commonsense reading of the language of the law points to the creation of expense accounts. Nonetheless, benefits consultants used the change in tax law as an opportunity to market their new products (expense accounts and cafeteria plans more generally), and employers adopted the expense accounts in large numbers.

Yet, favorable tax policies are clearly not sufficient for the diffusion of new child care benefits. Neither the 1973 tax break for organizations that created child care centers or subsidized employees' use of community child care nor the 1981 tax law had a discernible effect on employers' provision of child care centers. It is difficult to disentangle whether the limited interest in child care centers is due to the costs of the program, the specific incentives provided by these tax breaks, the limited publicity provided to these tax breaks, or the status of those advocating for child care

[29] A third model with a linear time trend performs better than model 2 but worse than model 1. The best-fitting model, model 1, assumes that the risk of adopting a child care center is constant over time.

centers.[30] Former child care administrators, as well as feminists and child development researchers, were the primary advocates of employer-sponsored child care centers in the 1970s, 1980s, and early 1990s (Friedman 1983; Kelly 1999; Martin 2000). These advocates had little clout in the corporate world, and they "focused exclusively on on-site centers" rather than lower-cost child care benefits (Friedman 1983, p. 24). In contrast, expense accounts were developed, promoted, and administered by trusted advisors who knew that their clients and potential clients would be interested in cheap benefits.

Based on their relative costs, no one would find it surprising that many more organizations provide dependent care expense accounts than on-site child care centers. What is interesting is the way that the cheap child care benefit became an option for employers who wanted to respond to employees' child care needs. The benefit that now seems to be an economically obvious decision, a "no-brainer" as one manager described it, emerged from changes in the legal environment and, importantly, from the creative interpretation of tax law by benefits consulting companies. Benefits consulting companies acted strategically by interpreting the tax law in ways that tied it into their own cafeteria plans, by pushing for official approval of this interpretation and revising their programs after the IRS denounced the first expense accounts, and by marketing their new services as they publicized the changes in tax law. Then they advised employers to act strategically by adopting the least expensive program that still signaled "family-friendliness" and responsiveness to workers' child care needs. The institutional environment was manipulated (to use Oliver's [1991] term), but it was the benefits consulting companies, rather than the employing organizations themselves, that crafted these interpretations of the law.

Previous institutional studies of law and organizations make this process of collective construction of the law familiar. However, the theory of the transformation of law developed in these studies begins with the claim that ambiguous law (or uncertainty arising from the structure of the state, in Dobbin and Sutton's [1998] recent formulation) creates the possibility

[30] Studies of employers' response to a provision in the Economic Growth and Tax Relief Act of 2001 that created a 25% tax credit on investments in child care centers may help determine whether employer-sponsored child care centers can overcome the cost issue or not. This tax break represents a larger incentive to employers, it has received a significant amount of press attention, and there are now savvy work-life consultants (e.g., the Association of Work-Life Professionals, accessed on Sept. 25, 2002, at http://www.awlp.org/certification ["Work-Life Certificate"]) and trusted vendors (e.g., Bright Horizons, accessed on Sept. 15, 2002, at http://www.brighthorizons.com/client/index.html ["About Us"]) advocating on-site centers for some organizations. If child care centers do not increase under these conditions, it would seem that centers are simply too expensive to appeal to large numbers of employers.

of organizations mediating the law. In the case of employer-sponsored child care, the law is transformed despite the fact that it is seemingly concrete and specific. This finding leads me to ask whether ambiguous law is necessary for this process. I argue that transformation of law by organizational actors and their agents occurs because the policy-making process is open to these actors, not necessarily because the law is ambiguous or challenged. These findings raise questions about when this process occurs or does not occur and when advocates are successful in transforming the law in line with their interests (cf. Jaffee and Freeman 2002). Future research could fruitfully investigate *which* interested actors and agents are recognized as a legitimate part of the policy-making process and how different actors and agents fare in their efforts to transform the law. Studies of this topic might lead to an integration of institutional theory of law and organizations with critical perspectives on legal mobilization and the regulatory process.

I have argued that the collective construction of the law is a more common process than has been previously claimed, but this does not necessarily imply that the law, as it is collectively constructed, can accomplish major changes in employers' policies, practices, or benefits. Empirical research suggests that the law is transformed *in specific ways*; it is often "managerialized" or pushed in directions that mesh with organizational interests and may minimize the substantive changes in the workplace (Edelman 2001; Edelman et al. 1993, 2001). In this study, for example, benefits consultants recognized management's interests in low-cost responses to child care needs and saw a way to advance their own interests in the new cafeteria plans they were marketing. Once the regulatory agency accepted dependent care expense accounts—which are cheap, easy to administer, and do not involve bringing children to the workplace or giving workers more time to care for their children themselves—as a valid use of the tax break, the law was transformed in a way that matched organizational interests and the cheap benefit was adopted widely.

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