Feminist Theory and Maternity Leave

A Feminist Critique of Maternity Leave Policies in the United States

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Abstract:

The topic of women’s rights is often difficult to discuss. There are those who believe women are essentially the same as men and so should be privy to the *exactly* the same rights of those as men. There are also those who argue for certain crucial differences between the sexes that render sameness of rights problematic. This debate is often theoretical but leads to political polarization in the case of maternity leave. I approached this issue through the analysis of the different ways women’s identity is defined in the history of feminist theory, and how these definitions of identity make a difference in the debate over maternity leave in the United States. Essentially the problem is this: no one definition for women has successfully included *all* types of women at all times, but to deny there is such a thing a “woman” prevents rights from being claimed on behalf of that group. So in the case of maternity leave there is a very real problem where those bodies capable of becoming pregnant (namely women) need some consideration, but it is difficult to say what constitutes women and how maternity leave policies can be addressed in a way that is fair and affordable. This is the topic of my investigation.
Introduction:

The feminist movement is just one of many movements that grapples with the conceptual and political benefits and problems of identity politics. Because recognition is a critical goal in the process of claiming an identity, identity politics has an important political benefit; it legitimizes the status of the identified group in the eyes of other groups or individuals, and is necessary for progress to be made in the push for equal rights. ‘Women’, however, remains an obscure concept that is difficult to pin down in a fair and inclusive manner, and as such feminists have had difficulty making any headway. The current state of feminist thinking seems to be so filled with differing opinions about even the most fundamental concepts (like the definition of women) that it can appear to be in a state of chaos. Without some sort of order to this bounty of possibilities (which are often at odds with each other), feminist theory can appear more confusing than it is useful.

My aim is to show, first, that there is order in this seemingly chaotic collection of differing and even contradicting conceptions of “woman” in feminist theory. Feminist theory has evolved according to a kind of logic where progress can be seen in the evolution of the answers to the question: ‘What is woman”. I will trace the development of what it means to be a woman in feminist thought from what I define as its beginning—in the reaction to a long-standing and deeply rooted biological definition of woman—and explain how perceptions have changed over time working out the problems from the previous step. I will show how the weaknesses of the philosophy of each distinct period of feminist thought have given rise to the emergence of each subsequent phase. I will conclude by discussing one of the current positions amongst feminists on women’s identity (the position that says no one identity can be claimed for women) and assessing this standpoint.
With this new understanding it becomes possible to assess the practical implications of the prominent current position of feminist theory (that rejects some singular identity for women), specifically in the case of maternity leave. In my discussion of contemporary maternity leave policies I aim to show that women have been, for the most part, accepted as workers in society, but at the expense of other identities they also hold. Maternity leave policies could be much improved by the acceptance of identity as something fluid and increased employer (and governmental) flexibility in accommodating these shifting senses of self. I ultimately aim to show that although some progress has been made with maternity leave policies at the international level, maternity leave policies in the United States remain unfair—tending to enforce rather than remove inequality in the work place. Adopting a more European model would ultimately lead to great improvement of our current set of policies, but also entails a new series of complications concerning the political and economic implications of this move.

Thesis 1: Woman is Womb

Early efforts to identify "woman" are rooted in what I will call biologism. Biologism can be explained as a form of essentialism that attempts to divine human nature directly from observable biological characteristics; genitals, body size, muscle mass, skin color, etc. From this standpoint observation would suffice as an adequate path to truth; woman is weaker, smaller and thus the less significant sex. She is also equipped with a uterus, which renders her body suitable for child rearing and produces serious implications concerning her nature and her social role. No law, however, can be derived from this practice because changes in the external do not necessarily result in internal changes and, if learned, external behaviors can be modified to deceive the observer (Phenomenology §339). Likewise, biologism does not provide adequate answers to the
question “what is woman,” it describes the appearance of woman but fails to consider some important aspects contributing to identity.

The work of Aristotle demonstrates the tenets of biologism quite well. He takes the stance that there is a natural and permanent inequality existing between men, who are physically larger, stronger, smarter and women who are smaller, weaker, unintelligent creatures (Politics, 1259b). His social theory includes a built in hierarchy with men at the top, slaves at the bottom and women in the middle. He divides the state into its unitary components, viz. the households, in order to get a closer look at the relationships that exist within this larger body. Aristotle identifies three primary relations within the household: master-slave, husband-wife and father-child (Politics, 1253b). Obviously it is the second relationship that is the most relevant to this study, but it is necessary to examine all three in order to gain some insight into this perspective.

First of all, it is important to note that in each of these relationships it is the free man who is the superior component. The relationship between free woman and slave or mother and child receives little attention in The Politics, which takes man as the primary subject of the state. Aristotle believes that different classes of people are governed by different natures; e.g. the nature of master will differ from that of slave, and man from that of woman or child. It is these varying natures that justify the internal hierarchy of the household and society in general. He explains the inequality of these relationships by appealing to the rational and irrational parts of the soul:

...the freeman rules over the slave after another manner from that in which the male rules over the female, or the man over the child; although the parts of the soul are present in all of them, they are present in different degrees. For the slave has no deliberative faculty at all; the woman has, but it is without authority, and the child has, but it is immature (Politics, 1260a).
Because a slave is entirely without reason, the only capacity for which this group is suited is to serve and obey their masters. A slave according to Aristotle’s definition is “he who is by nature not his own but another’s man,” a human being who is also a possession (Politics, 1254a). The female is ranked above the slave, but is often talked about as also being a possession of the man. This is because of her inferior ability to exercise reason. Man is naturally more fit for command than woman (Politics, 1259b), and so she is put into a position where it is her role to obey man. The child of course will grow into one of these roles depending on whether it is a boy, a girl or a slave child.

Woman\(^1\) serves in a very specific capacity in Aristotle’s society; she is the womb and primary caretaker of the children and is prohibited from operating outside of that realm. It is not in her nature to be loquacious, and yet Aristotle admits it is possible she might be. Virtue for a woman entails silence and obedience (qualities that would not be valued in a male body) (Politics, 1260b). She is expected only to obey men and to care for the household and the children while man is employed in more worthy tasks. The perception of woman as incapable of achieving intellectual equality with men has since created a situation in which she simply does not have access to those things that would allow her to develop and use her intellect. Formal education was superfluous; instead women remained in the home and learned only the skills necessary to procure a worthy husband. The social order that resulted from these developments was specifically suited to reinforce the stereotypes that classical philosophy claimed to be natural.

\(^1\) Here I am referring only to the group Aristotle himself considered to be women, this excludes slaves and other groups who did not conform to his definition. A more inclusive definition will develop as we progress through changing perceptions over time.
Biologism fails for several reasons. 1) It assumes that the configuration of one's body parts determines one's rational abilities. 2) It does not consider the possibility of a variety of human types *without* hierarchy. Man is taken to be the only representative of a fully rational human being and thus serves as the model by which all others are judged. Those members of society who look different from man are taken as inferior beings and are treated as such. This marginalizes more than half of humanity and does not lend itself to a better understanding of these groups. 3) It does not consider the role of society in the development of different social classes, but rather takes it for granted that social order reflects natural order. Aristotle speaks of man as a political animal, and describes society as the natural outlet of these creatures. He does not, however, consider how once formed this community might begin to impact the lives of all of its members but describes society with regard to free men only. Aristotle does not address the fact that woman's position is imposed upon her, but assumes that society developed according to nature and if woman is oppressed it is because it is her natural condition (a fact that is endorsed by observable, biological traits). But in order to confirm this theory, social obstacles would have to be removed; woman would have to be given the opportunity to exercise reason in order to say with certainty that it is not possible for her to do so.

Observation of social norms reveals that they not only promote but actually *enforce* women's subordination. Often this arrangement is justified as being the most beneficial for both parties involved (men and women). Certainly women would protest against it if it did not suit them. But as John Stuart Mill points out in his essay, *The Subjection of Women*, women *have* complained (*The Feminist Papers*, 200) and if this is a natural condition then these socially constructed obstacles and regulations are wholly unnecessary. If it is against women's nature to participate in politics then why should the law ban her from so doing (*The Feminist Papers*, 200).
Mill, an early feminist, is on the cusp of what would become a major move beyond biologism—A new thesis claiming the social construction of gender identity.

**Thesis 2: Woman is Social Other**

Simone de Beauvoir famously articulated the idea that gender is a social construct, in her groundbreaking book *The Second Sex*, where she claimed, “one is not born, but rather becomes a woman” (267). She says that women were not afforded the opportunity to behave in any other way than in the inferior role prescribed by society and that they are in fact a *product* of society. She disagrees with Aristotle’s system of natural rank and takes the position that woman is more than just her body, and that her rank as “other” is a social ranking or, as later feminists came to call it, “socially constructed”. She rejects the idea of natural inferiority but recognizes that social inequality does exist. In order to explain this discrepancy de Beauvoir makes an important distinction between one’s ontology and social identity, the former is of course one’s basic mode of being, the latter that identity which one develops as a result of certain socially constructed conditions. In order to achieve equal status, de Beauvoir recommends certain changes to the current social conditions that have lent themselves to the creation of woman as “other”.

De Beauvoir begins by explaining some standard answers to the question ‘what is woman?’ According to Aristotle a female is such due to a certain *lack* of qualities, namely those that are masculine (*The Second Sex*, xxii). But even he admits that if a woman did exhibit masculine traits she would fail to be anything other than a freak, an anomaly. De Beauvoir is critical of those who take “womb”, “ovary”, “female” as being adequate to define woman (*The Second Sex*, 3). She goes on to explain why each of those hitherto accepted definitions-- linking woman to her biology and defining her in relation to man-- is incorrect. Of course biological differences exist, but it is not biological differences by themselves that lead to the primacy of one
sex over the other. “In human society nothing is natural and...woman, like much else, is a product elaborated by civilization” (The Second Sex, 725). It is the male’s role as protector of mother and child that renders his cooperation and support necessary to the development of life (The Second Sex, 35-6). The importance of this role has been emphasized to an extreme and the role of women in the development of life (which is equally important) has been all but ignored, or interpreted as “helplessness” and used to further justify subjugation. De Beauvoir’s conclusion is that woman has been defined by society as ‘the other’:

She is defined and differentiated with reference to man and not he with reference to her; she is the incidental inessential as opposed to the essential. He is the Subject, he is the Absolute—she is the Other (The Second Sex, xxii).

In society, femininity does not simply refer to that which is inherent in the female body, but requires that she participate in certain activities. It is not the female body that defines woman but participation in that mysterious lifestyle known as femininity (The Second Sex, xix). Those who fail to conform to the mandated behavior of woman, fail to be genuine women.

According to de Beauvoir men have rallied together to exploit women and to force them into a position of inferior social standing. In this role, women are judged not by virtue of their intellect, but only in the context of being women, i.e. as the less significant, less rational of the two sexes, while men are held up as the standard, not afflicted by feminine woes.

It is often said that [woman] thinks with her glands. Man superbly ignores the fact that his anatomy also includes glands, such as testicles, and that they [also] secrete hormones (The Second Sex, xxi).

The importance attached to biological differences is what drives woman to the position of ‘other,’ an obstacle that cannot be overcome due to a profound lack of organization on the part of this group. Women find themselves in a position where no concrete means of organization is available. The category of women cannot be isolated from the relationship of individual women
with men. Women exist across a wide variety of cultures, races and classes; "they have no past, no history, and no religion of their own (The Second Sex, xxw). In fact, due to familiarity and family relations women are often more loyal to men than they are to other women, creating yet another obstacle to female unity (The Second Sex, xxv).

An even greater danger to successfully achieving equality than failure to unify is the appeal that accompanies objectification: It is easy. If women are considered to be silly, weak creatures in need of protection they can enjoy living in a state of near childhood for the duration of their adult lives. Their only obligation is to find a wealthy husband and in that regard the more dependent they behave the more likely they are to succeed. Even Mary Wollstonecraft (often considered the first feminist theorist) points out in her Vindication of the Rights of Woman, that the traditional status of women excuses them from responsibility, removing the obligation to behave as fully rational human beings (The Feminist Papers, 54). De Beauvoir criticizes women for this, claiming that avoiding responsibility makes them party to their own oppression. She encourages women to reject the easy road of childlike dependence on men, for the fully human, though difficult, road of freedom (The Second Sex, 720).

Due to women’s² social standing as little more than child, she would typically be confined to the home, without the means or opportunity to engage in more meaningful activity. De Beavuoir indicates, however, that this changed at the time of the Industrial Revolution when, for the first time, women were given an opportunity to exercise more autonomy outside of the home. There were more positions than could be filled by able-bodied-men and women began to enter the workforce in greater numbers than ever before; now feminist claims could be backed by

² Please note that here again the term ‘women’ is used in the way it was used by de Beauvoir. The emphasis here is on white-middle class women. This ignores the fact that some women could not afford the novelty of home life and had entered the working world before this point.
economic force. Working outside of the home also significantly increased the social responsibilities of women who were now expected to manage a home as well as contribute to the family income. These are the ‘super women’ of Betty Friedan’s *The Feminine Mystique*. Women have continued to be dissatisfied with this new “double burden” just as much as they were dissatisfied as unfulfilled housewives.

Even as the feminist movement gained legitimacy and strength new obstacles have continued to impede progress. Women may have entered the professional realm but they are still not treated fairly by society, and social expectation is still that they will be (at least in some ways) reliant on men. Sameness philosophy would dictate that the removal of the barriers preventing women from actualizing their equality would be a sufficient measure. De Beauvoir says that the modern woman operates “on the same terms as men” and that she will be equal when she “declares herself their equal” (*The Second Sex*, 718).

Others dispute this position and point out the impossibility of woman removing herself from her natural subordination to man. But de Beauvoir is quite clear in her conviction; to de Beauvoir and other sameness feminists, social elements not only contribute to, but also are wholly responsible for the creation of the category of woman. That is why it is so vital to her project to establish that one is not born, but becomes a woman (*The Second Sex*, 267). Altering a socially created stereotype is not so impossible as altering genetically encoded facts; woman is not subordinate by nature but by habit, and habits can be changed.

De Beauvoir’s definition of women as other is de Beauvoir’s great move forward in defining women, but we must remember it is only her social definition. This identity has been created in society and can change. Women’s role in society in no way alters the truly important fact that her mode of being (ontology) is that of a free being just like man: Woman being a
human like man, is what she calls (following Sartre) a being that is “for-itself” and, unlike an object that is “in-itself”, can freely choose its own path in life. This is what is really important about our grasp of women for de Beauvoir. However, form is meaningless without content and Beauvoir will be criticized for what is perceived as her rejection of the body. She encourages women to live in the masculine world of the mind and to reject the femininity associated with the body. The sameness philosophy of Beauvoir will be challenged precisely because what it claims is a universal human standard that can be used to understand women, is really a particular, ‘man-standard.’ De Beauvoir’s takes the masculine ideal of a near body-less freedom as truth and ‘liberates’ women by inviting them to adopt that standard.

Rather than eliminating inequality, de Beauvoir has introduced a new and cruel form of subjugation. Should those qualities that were hitherto considered feminine be shunned and forgotten? Is it really possible to say they have no value at all? The difference feminists respond with a resounding NO. Feminine qualities should be embraced, not eliminated. By suggesting that woman should strive to be like men, sameness feminists were inadvertently reinforcing the negativity associated with femininity. Difference feminists flaunt their femininity and ask, “What is wrong with this?” These efforts are geared toward asserting that woman is different but that these differences do not necessitate inferiority.

Thesis 3: Woman is Wonderful

Difference feminists promote a policy of embracing distinctively feminine qualities, drawing these characteristics in direct conflict with masculine attributes. They reassert the value of those characteristics that are observably female and tend to agree that socialization has an impact on women, but perhaps not in the same way as sameness feminists. What seems to be the issue here is not that women are forced to behave as women, but that they are conditioned to
think negatively of their own femininity and shamed into a position of inferiority. This male-
given definition of identity becomes a source of self-hatred and conflict (*The Second Wave*, 155).
Like advocates of biologism, difference feminists want to say that ‘woman’ is something that can
be identified by certain characteristics that differ from those of men.

Difference feminists believe that most first-wave “sameness” feminists promote the
shameful assimilation to which these women referred. Marilyn French articulates this problem
when she says that it is too often the case that women fall victim to becoming pseudo-men and
indicates that the development of a set of feminine values is the only appropriate solution
(*Beyond Power*, 474).

Equality is not similarity or identity. To be equal to men does not mean to be like them.
It is essential that women confront the pervasive attitude that what men do and how they
do it represents a *human* standard with the question: What do these actions create? And
what is created by women’s behavior in this situation? (*Beyond Power*, 484).

In particular, French is interested in the way men’s and women’s behavior toward power differs
and creates different things. Men, she says, “unthinkingly, worship control, especially power-
over” (*Beyond Power* 486). Men’s power is always dominating and excluding, it tends to create
destruction and oppression. Women’s power on the other hand, which she calls “power-to”, is
fundamentally creative and inclusive. She also speaks about power relationships between men
and women, where women and men share power differently. “Male identity rests not only on *not*
being a woman, but also on being in control of all women in one’s immediate life, and preferably
in one’s work life as well” (*Beyond Power* 487). While not all men will have power over all
women *only* men have power and *never* women. As long as women depend on male culture for
a source of definition and approval, freedom cannot be achieved. Sameness feminists did not
provide an adequate response for creating equality due to their use of the “man-standard”.
Second-wave feminists like the Radicallesbians are much more sensitive to the depth and pervasiveness of women’s oppression in all spheres of life, public and private, than were first wave feminists. They do not and cannot ignore the fact that, for too long, women have been ruled by masculine impulses and norms. Living in accordance with these values is damaging to the female psyche and not something that can be allowed to continue. In *The Woman Identified Woman*, the Radicallesbians explain why it is dangerous to search for the definition of ‘womanhood’ in a masculine defined world.

As long as we cling to the idea of ‘being a woman’, we will sense some conflict with that incipient self, that sense of I, that sense of a whole person. It is very difficult to realize and accept that being ‘feminine’ and being a whole person are irreconcilable. Only women can give each other a new sense of self. That identity we have to develop with reference to ourselves, and not in relation to men (emphasis added, *The Second Wave*, 156).

This is the kind of thinking that gives rise to the separatist movement in feminism. French describes this movement as a belief that women require a community of women for their comfort and safety. Existence in the male-world is tiresome, but the masculine ideal is too strongly rooted to be eliminated. As a result all-women communes are the best solution to society’s treatment of femininity. In this way women can exist and behave in a way that is entirely and genuinely female, without being made to feel inferior or being marginalized in their social group (*Beyond Power*, 447).

But now we have run into what has perhaps become one of the highest points of contention within feminism: What is genuinely female? If a new femininity is to be adopted, what is its definition and who decides what that definition will be? Surely the women will decide, but which women? The Radicallesbians say adopting a uniform female identity will culminate in “solidarity as sisters” (*The Second Wave* 156), but they do not seem to truly
appreciate the diversity amongst women. Is the female identity something static that can be pinpointed and adopted? Can the diversity between and amongst women be reduced to a series of common factors shared by all?

A study by Lawrence Kolhberg devised several tests of sex-role behavior and determined what characteristics could be called distinctively female, French lists some of these: opposed to war, dedicated to welfare of people everywhere, concerned with the poor and an emphasis on children - basically nurturing (Beyond Power, 472). French believes that these feminine values of intimacy and care are necessary parts of life that must be valued. French explains the importance of cultivating trust, expressiveness of feelings and intimacy in children as an important aspect of development (Beyond Power, 480-1). Women are associated with social interactions that allow for valuable exchanges while men are concerned with power and domination only.

Female morality...seems related to the morality of cooperative cultures, cultures that have retained ancient matricentric values...female morality is more concerned with the web of relations than a hierarchy of rules. For women, morality lies not in rights but in recognizing connection and taking responsibility for it. Women’s ethic evolves around a central insight: that the self and the other are interdependent. Thus violence destroys both; care nourishes both” (Beyond Power, 482).

This feminine piece of the puzzle is what is often undervalued in our masculine society and it is these qualities that feminists must embrace and promote in society at large.

But isn’t this notion of “caring and nurturing” the exact definition given to women by men? Does adopting these so-called “female qualities” as defined by men and promoting them as ideal really indicate any progress for women? Monique Wittig opposes this “woman is wonderful” thesis. It assumes woman is one uniform thing; it is essentialism all over again. Furthermore, it is an adoption of a confining narrow role for women assigned by men to oppress
them. In her work *One is Not Born a Woman*, Wittig agrees that women cannot become men but wonders who is supposed to determine which features best define women as such.

The difference feminists cannot devise a rule that adequately expresses the role of *all* women. Descriptions of 'woman' as far back as Aristotle have tended to focus on one specific type of woman (typically the middle to upper class, white woman). Are the experiences of women in this group really so general that they can be mapped onto all other races and classes of women? Difference feminists act as if this is the case and end up repeating the mistakes of biologism, though in a mediated way. They fail to consider the inherent variety within the group that is woman. By choosing one particular type of woman to serve as the model, they marginalize all females who cannot or do not ascribe to the new standard. A new group of feminists who I refer to as diversity feminists emerged to respond to this oversight. Diversity or intersectionality feminists understand each person’s identity as a site of intersection between a variety of identities that a person might embody. For this group it is not possible to understand women’s oppression without examining it in terms of all the other components of her identity, they recognize the importance of examining racism and classism in conjunction with sexism and make some insightful discoveries as a result.

**Thesis 4: Each Woman is Different**

Recognition is vital to feminist efforts; in order for a person or group of people to have access to political power that person (or group of people) must be recognized as a legitimate actor within society. While difference feminists sought to eradicate certain problems inherent in the sameness philosophy, namely the transformation of women into men, they also created new complications that feminists like Elizabeth Spelman warn against. In her book, *Inessential Woman*, Spelman cautions her reader against the evils of choosing one definition of womanhood
to stand as the model for all women. Spelman realizes that it is the natural assumption of white-middle class feminists to assume that all women share the same experience as them, however this is not the case. She wishes to move closer to identifying ‘woman’ by pointing out problems with previous discussions of this topic.

Spelman begins by discussing the tendency of feminist literature and discussion to ignore the oppression of the female slave in Aristotle’s polis (Inessential Woman, 50). Sexism is commonly thought of as the oppression faced by women as women, i.e. in the absence of any other form of oppression. For instance many feminists critique Aristotle’s depictions of women but fail to notice that female slaves are oppressed in his picture as well (and in a way that is different from free women). The exclusion of Aristotle’s slave women from feminist work is just one of many examples of cases where women who are oppressed for reasons other than being women are ignored by feminists.

Feminist theorists’ exclusion of women oppressed for reasons beyond their sex makes sense insofar as it is assumed that ‘womanness’ can be isolated from other traits, but it is Spelman’s goal to demonstrate that this is not the case. Sexism is inextricably linked with racism and classism, and even the allegedly neutral white, middle-class woman has experiences that are unique to her race and to her class. This belief is central to the position of intersectionality. Feminists who rally behind this position believe each individual is a site of intersecting identities. Understanding an individual’s experience of oppression will have to take each of these into consideration; to neglect any one aspect of identity is to misunderstand the

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3 From this point forward ‘women’ (plural) will be used. It is in this movement that the idea of some essential womanhood is really coming into question and more complex aspects of identity are finally being considered.
4 In the first-wave of the feminist movement, Sojourner Truth gave voice to this problem in her speech “Ain’t I a Woman”. Showing that the oppression of a woman slave (who does back-breaking physical labor) is forgotten by white feminists asking for men to stop treating women as “helpless”. Truth says, “I could work as much and eat as much as a man - when I could get it - and bare the lash as well! And ain’t I a woman?” She does not see herself in the description of women that is being used to procure women’s rights.
identity of the person in question. The differences between women of different races and classes cannot be successfully negotiated until feminist theory becomes a conglomeration of the assessment of the lives of a vast variety of women.

By attempting to isolate one variable of the female experience feminists have not developed a comprehensive study about women as such, but have focused almost exclusively on one specific group of women and attempted to draw generalizations from there. This fallacy of reduction does not lend itself to accurate interpretations of the female experience. Spelman notes that Simone de Beauvoir recognizes the necessity of comprehending women in conjunction with race and class but does not actually include these considerations in her discussion of woman. Even after acknowledging that the experience of a woman may depend on her ethnicity, race or social standing, de Beauvoir continues to make comparisons between the experiences of women and the experiences of blacks or Jews, seeming to forget that these groups also encompass women.

But what happens when feminists try to account for the differences amongst women? Is there still something that unifies women as women, and if there is can we discuss it without reference to these other characteristics? Spelman does not offer any conclusive answers to these questions but merely suggests that they are items worthy of consideration. Feminism she says, must specify which men and women it is talking about, and that it must stop using language that suggests that a white middle-class woman’s position vis-à-vis her white middle-class husband is no different than her position vis-à-vis men from other groups (Inessential Woman, 174).

It is important that feminists be aware of the implications of the language and examples used within their theories. Women should not play the role of oppressor to other women. It is better to openly disagree than to silence one group or another by excluding them from the conversation
(Inessential Woman, 176). Rosemarie Tong refers to the recognition of the diversity among women’s experiences as global feminism and says that although “women are interconnected...in order to understand what binds them together, women must first understand what separates them” (Feminist Thought, 228).

While revolutionary within feminism, this diversity thesis is not universally accepted. For one, it is fraught with difficulties; it is difficult if not impossible to fathom all the variables we must now consider in discussions of women. It also does little to indicate what might constitute the underlying unity of women that could serve us politically in the quest for women’s equality. How can we demand women’s equality if we can’t say who women are? In the face of an inability to derive a cohesive female identity deconstructionists conclude that ‘woman’, or even ‘women’ as the diversity feminist would have it, is a myth, a fabrication, a societal construction that does not actually exist, i.e. there are no women at all, as we’ve tried to conceive of them. This certainly is a tempting solution to the seemingly endless task of defining women in references to their countless identities.

Thesis 5: Woman is Not

In some ways the thesis ‘woman is not’ suggests: a refusal to act. Here identity is scorned as something to be rejected; a confining and unhelpful attempt to discover or explain ‘women’. Advocates of this kind of thinking do not operate with the intention of discovering the identity of women, but want to discover how gender-identity came to be so critical to the understanding of self, and to break down old false assumptions about identity so that it can be deconstructed and removed. Feminists who take this approach are called deconstructionists.

Judith Butler, well known for her deconstructionist approach to gender, agrees with the diversity feminists to a point; she also advocates the role of other characteristics (besides gender)
in determining the identities of women. She expounds on Spelman’s accusation that commonly accepted definitions of ‘women’ forget to include race and class (with the additional component of sexual preference). Butler recognizes, as the Radicallesbians so eloquently pointed out, when you take off all the packaging it seems that the purpose of women is to “get fucked by men” (*The Second Wave*, 154). But this, like other estimations of women, is unsatisfactory (to say the least) because it is blatantly heterosexual and merely reinforces a policy of exclusion (*Gender Trouble*, viii).

If one ‘is’ a woman, that is surely not all one is; the term fails to be exhaustive...because gender is not always constituted coherently or consistently in different historical contexts, and because gender intersects with racial, class, ethnic, sexual and regional modalities of discursively constituted identities” (*Gender Trouble*, 4)

At first this sounds much like Spelman’s argument, but Butler’s conclusions concerning the implications of multifaceted identities are much different. She appeals to the conundrum of Foucault’s juridical power.

Juridical power claims to identify certain aspects of society through observations of reality, but in actuality it produces the things it claims merely to describe (*Gender Trouble*, 3). According to Butler, gender is a product of this type of power; the roles that have been developed claim only to describe what is, but are instead producing self-sustaining identities. By this reckoning gender identity is similar to something like a speed limit; the posted speed does not indicate how fast it is possible to go but informs drivers of how fast they are allowed to go. This is a recommendation backed by the force of law and there are penalties for behaving outside the parameters of the posted speed limit. Likewise, gender roles do not entail all the possibilities of identity, but make recommendations for behavior that are enforced by social norms.
Gender is not a stagnant characteristic that can be pinpointed and described, it is what the body becomes “through a serious of acts which are renewed, revised, and consolidated through time” (Performatve Acts, 403-4). Women (and men) are taught certain modes of behavior to which they are expected to conform. We perform the gender roles laid out for us and get praised or blamed in accordance with how well we match the ideals. Only then do we develop our gender “identity”. The punishment that accompanies violating these roles is not always formal—though in some cultures it is—but there are penalties (Gender Trouble, xiii). Gender reality, then, is actually only real insofar as it is performed (Butler Performatve Acts, 407). Identity, Butler says, is not to be the foundation of women (Gender Trouble, 8). Instead, she recommends an anti-foundationalist approach whereby we proceed without adopting nor requiring an identity. In this way,

...when agreed-upon identities or agreed-upon dialogic structures, through which already established identities are communicated, no longer constitute the theme or subject of politics, then identities can come into being and dissolve depending on the concrete practices that constitute them (Gender Trouble, 22).

Contemporary inquiries often wonder whether gender could be constructed differently or if some social determinism necessarily results in certain roles. If the latter is the case then it would seem that all we have succeeded in doing is replacing a ‘biology-is-destiny’ model of feminism with a ‘culture-is-destiny’ alternative (Gender Trouble, 11). In either case women have little choice in the course of their development—a depressing prospect. Deconstruction feminists doubt that either of these could tell the entire story. For one, both theories consolidate ‘women’ into a uniform womanhood, as if there is some one thing that is woman and any person belonging to this group will demonstrate certain biological or social characteristics consistent
with that ‘thing’. But the diversity feminists have already pointed out the all-too-often ignored
diversity within the group that is women, so it seems a more subtle theory of identity is required.

Georgia Warnke sheds some light on the situation when she compares the analysis of
identity to that of a text. “Just like texts, people have different meanings in different contexts
and the meanings they have depend upon the relations, situations and frameworks in terms of
which we are trying to understand them” (After Identity, 7). She points out that there are several
perspectives that may be used to discover the meaning of a person and, depending on our
purposes we may emphasize some characteristics over others. Most importantly, “An identity is
never either the whole of who we are or who we always are” (After Identity, 7). I may be a
woman but I am also a Sagittarius, a student of philosophy, a writing tutor and a member of the
dance team. These qualities do not operate exclusively of one another but contribute to a more
complete understanding of who I am. In different contexts, different aspects of my identity are
more important, while other aspects might become completely irrelevant (e.g, while I am
tutoring a student on writing a thesis statement, my gender has little relevance). To try to
understand me as a woman without including these other identities in the assessment provides a
skewed and incomplete picture of who I am. If this is the case, then Butler is correct in her
assertion that claiming a single, unchanging identity is a grave danger to the individual or group
bold enough to do so. If at any time there is deviation from that identity—which there is bound
to be—it will fail or will marginalize members.

In the case of women this is particularly problematic; there seems to be a great deal of
political and social benefit to be gained from claiming a uniform identity, but (as we have seen)
this is easier said than done.
Because of their different races and classes, there are not characteristics that all women possess. Furthermore, if we look for commonalities, we are in danger not only of overlooking differences between women but also of establishing normative standards for the category of women that define certain women out of it (After Identity, 10-1).

Excluding particular ‘women’ from the group ‘women’ is a self-contradictory and self-defeating move. While Spelman believes that an identity can eventually be found if we are only more cautious in our analysis (Inessential Woman, 183), Butler and Warnke warn about the danger of identity politics in general. Both Butler and Warnke take the stance that any attempt to lock a person or a group of people into a fixed identity would not be able to consider all the various possibilities of being, and necessarily leads to misrecognition. As such it is a greater danger than claiming no identity at all. Warnke explains this when she says:

The problem is not that these understandings do not articulate identities we possess within certain situations. Instead, what is problematic is that these understandings attempt to monopolize who or what we are, to obscure the equal status of other identities and identifications and to appear in contexts in which they make no sense and on which they have no purchase (After Identity, 171).

The danger as Warnke sees it is not necessarily that gender exists, but that gender has become such a vital component of identity, and worse, that it has been accompanied by rigid gender roles that are damaging to the category of people considered to be women. She points out that while it may be beneficial to cast off the chains of womanhood it is impossible to redress past grievances without it. For political purposes it is not always practical to assert that there are no women, or those things that have become women’s issues would cease to be of any social importance.

The fact remains that a certain group of people has been deemed ‘women’ and that group has been systematically oppressed and mistreated. Whether or not these women have been properly identified or defined, gender has been used against this group. As a result there are times when it is useful and even necessary to emphasize gender. “Feminists need to be strategic,
determining when to insist on the non-existence of women and when, conversely to struggle for their recognition...” (After Identity, 158). Warnke specifically addresses the issue of ‘woman workers’ pointing to this as an example of a time when gender is irrelevant but has often been used against women.

Warnke claims that woman workers like male workers should be recognized as being interested in high incomes; it should not be assumed that because a worker has a female body that she is focused on ‘family friendly’ lower-paying employment. In addition, it is unfair and biased to assume that because a potential employee is equipped with breasts, she is liable to leave in favor of child bearing (After Identity 159). Finally men and women are equally likely to have invested interest in forming a family; to assume only a women cares about this is ignorant. But Warnke recognizes that there are certain situations where a worker’s identity as woman does become relevant, the case of maternity leave is one of these instances.

An Overview of Maternity Leave: The Inadequacies of the United States

International laws and regulations concerning maternity leave differ, but it is generally defined as a designated amount of time off of work for mothers during and after pregnancy. If and when a woman chooses to return to her job (within this time period) her position within her facility of employment is preserved. After maternity leave has expired the worker must either return or terminate her employment. The goal of maternity leave according to an article published in Medical Care journal is to “promote maternal and infant health, to facilitate the development of parent-child attachment, and to provide economic security” (Dowd 507-8). Studies focusing on the United States have found that the problem with maternity leave within
the states is that no U.S. company provides an adequate number of days off in order to actually ensure the safety of mother and child, and the leave they do offer is generally unpaid.

An article on negotiating tensions between employment and pregnancy in the United States, by Herve Queneau and Michael Marmo, explains that the U.S. maternity standards are inferior on an international scale.

Most countries finance maternity leave benefits through a social insurance system under which all employees and employers contribute. Other countries use public funds to cover all costs of maternity benefits (International Labor Office, Marmo 65).

A study published in the *Comparative Labor Law and Policy* journal reports similar findings. When the U.S was compared to five other countries of comparable economic structures, their maternity leave policies were found to be the least generous. The U.S federally mandates 12 weeks medical leave (including for maternity purposes) with job protection to women who qualify. In order to qualify, however, women must work in the public sector or else work in a private sector corporation that meets certain federal requirements (i.e. has more than 50 employees). This is nothing when the federal policies of other countries are taken into consideration.

...in the United Kingdom, legal stipulations allow for a duration of job-protected leave of up to 40 weeks...In Germany and the Netherlands, it reaches up to 100% of net wage with German employers bearing approximately 40% of gross payroll costs during maternity leave. Legal regulations in the United States do not provide for additional parental leave after the end of maternity leave, while women in Germany are legally granted a relatively broad range of choices concerning addition leave and part-time arrangements during the first three years of childbirth (Alewell 297).

Not to mention, of the countries surveyed the U.S. is the only one without compulsory (obligatory) leave for employees. In fact, the minimum leave authorized by the U.S. federal government is the shortest of all the countries assessed and is even shorter than the compulsory leave of the Netherlands, which is 14 weeks (Alewell 306). The researchers offer a variety of
justifications for this lack of a satisfactory maternity leave policy—primary among these is that expenses increase as duration of leave increases due to the costs of reorganization resulting from extended employee absence—but go on to explain why these concerns are unfounded.

An assessment that calculates federal expenses as the number of weeks full pay is compensated to employees on leave shows that expenses are low even where mandated and compulsory maternity leaves are high. An additional component measuring predictability of when employees return did not add any unreasonable expenses to the findings. Germany, for example, offers 14 weeks of mandated leave, eight of which are compulsory, and has a low degree of predictability (due to the extended duration of maternity leave in combination with the option of additional maternity leave). An employee in Germany may return to work after a brief eight to 14 weeks, or they may, at six weeks notice, postpone the decision to return for up to another three years. But even under these circumstances only about 5.6 weeks of pay (with pay measured in terms of full weeks per year that payment of full weekly wages is made by the employer) are dispensed over the course of a year (Alewell 309). The rest of the regular salary of the worker is covered by federal social programs and public funds which do not exist in the United States.

In addition, the study found that shorter provisions for maternity leave actually render women more likely to leave the workplace, while longer periods of leave result in higher retention rates (Alewell 311-2). A study conducted by Masahiro Abe, Yoshio Higuchi and Jane Waldfogel comparing maternity leave in the United States, Britain and Japan found that in all three countries the employment rate of married women with infants is between 20 and 40% lower than that of married women with no children. The same trend continues with children up until pre-school ages (Abe 524). It is more difficult to reconcile work with childcare when the
child is very young, but this study showed that longer maternity leave results in more positive return rates (Alewell 312). It is important to recognize that retention benefits both employers and the women in question, so that it is worthwhile for both groups if these retention rates are improved. Furthermore it is worthwhile to not just women and their employers, but to the family unit that these women are part of. Most women work because their income is important to their family (Garand 46). The loss of this income is potentially devastating to the financial situation of the family.

A recent hearing held by the European Parliament’s Women’s Rights committee proposed that the minimum maternity leave provided by employers in Europe be extended from 14 to 18 weeks and also recommended provisions for shared leave between parents in order to allow both parents to stay home with the child during the first year (European Parliament 1.20.2009). These recommendations would improve the relatively satisfactory maternity leave policies of countries throughout Europe. But in the United States maternity leave is not even the norm. It is only offered to a particular group of women workers, viz. those who work in the public sector or in private institutions that meet federal standards, and does not provide adequate coverage even for that group.

A fact sheet released by the Institute for Women’s Policy Research describes the policies in place at 100 U.S. companies rated to have the best working conditions for women by Working Mother magazine. The study is not confined to maternity leaves but also provides insight to paternity leave and adoptive leave. Of the 100 highest ranked companies less than half offer more than 6 weeks of paid maternity leave and 7% offer no paid maternity leave at all (Lovell 1). More details are provided in the chart below which assesses the top 100 companies based on how much leave they allow.
Provided by the institute for women’s policy research:

Table 1. Working Mother 100 Best Companies, 2006:
Percent offering paid maternity leave for birth mothers, by maximum leave length

<table>
<thead>
<tr>
<th>Number of weeks of paid maternity leave</th>
<th>Percent of companies offering specified number of weeks</th>
<th>Cumulative percent of companies offering some paid maternity leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>more than 12 weeks</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>11 to 12 weeks</td>
<td>11%</td>
<td>19%</td>
</tr>
<tr>
<td>9 to 10 weeks</td>
<td>9%</td>
<td>28%</td>
</tr>
<tr>
<td>7 to 8 weeks</td>
<td>20%</td>
<td>48%</td>
</tr>
<tr>
<td>5 to 6 weeks</td>
<td>28%</td>
<td>76%</td>
</tr>
<tr>
<td>3 to 4 weeks</td>
<td>10%</td>
<td>86%</td>
</tr>
<tr>
<td>1-2 weeks</td>
<td>7%</td>
<td>93%</td>
</tr>
<tr>
<td>0 weeks(^a)</td>
<td>7%</td>
<td></td>
</tr>
</tbody>
</table>

Note: Years on the job influence the amount of paid maternity leave an individual worker may be entitled to in many establishments. This table shows the longest possible amount of paid leave.\(^a\)
Zero weeks includes companies for which no data are provided on paid maternity leave.

It is important to keep in mind that this sample includes those companies considered the most friendly to working mothers, and that no federal law requires paid maternity leave in the U.S. Clearly, even among these companies conditions are not ideal. In addition to very few companies offering more than six weeks of paid maternity leave, none offer more than six weeks of paid paternity leave and only 7% allow greater than six weeks for adoptive leave (Lovell 2). This places the responsibility of taking leave primarily on the birth mother of the child, and does little to protect the interests of adoptive parents. But with women comprising nearly half of the work force of the United States (46.5% according to Bureau of Labor statistics for 2008) and the expectation that this figure will continue to increase, it is important to consider how these dueling interests will be reconciled.

Employment, Health and Economic Concerns: Tailoring Leave to Mother’s Needs
An assessment of the tensions between employment and pregnancy by *Family Relations* journal identifies three components that contribute to a women’s decision concerning maternity leave: employment concerns, concerns over the health of mother and child and economic concerns (Marmo 59). The first is dependent on the individual assessments of the woman; if she believes taking maternity leave will result in discrimination or negatively impact her chances for advancement, she may opt to take less time than is allowed or recommended. Most women are willing to sacrifice health concerns in order to demonstrate that they are able and willing employees.

But studies are emerging that stress the importance of time away from work for the health of both the mother and the child. Recent findings suggest, “for women working in adverse conditions, longer maternity leaves would reduce the risk of preterm births and thus the risk of infant mortality” (Marmo 52). The standard six to eight weeks of maternity leave offered by U.S. employers, whether paid or unpaid, does not afford women adequate time to return to a prenatal body state. A study of postpartum ailments and the impact of time away from work on alleviating these symptoms shows that the average time off to ensure the safety of the woman should be approximately 24 weeks (Dowd 508).

Not only does time off of work provide mothers with the opportunity to recuperate from the effects of pregnancy and childbirth but it also gives time to adjust to changes in relationships or other role identities (Dowd 508). A study in *Medical Care* journal provides empirical evidence to this fact. While the sample pool for this study is very specific (English speaking, living in the Twin Cities, 91% white, 67% married) its findings are telling. Three primary components of health were observed—vitality, mental health and role function. Observations reveal that positive effects occur at 12, 15 and 20 weeks off of work respectively (Dowd 518).
An additional study by Gjerdingen and Chaloner reports that maternity leaves less than 24 weeks contribute to adverse changes in the mental health of mothers (Dowd 508) but even those women who have leave do not typically experience the positive effects of time away because, due to social and economic pressure, they return before the healing process is complete. “Seventy five percent of women had returned to work by 12 weeks, 85% by 15 weeks and 91% had returned to work by 20 weeks after childbirth” (Down 518). A certain adjustment period is required and the majority of women simply do not or cannot take that much time off of work. In the case of Troupe v. May Department Store an employee, Kimberly Troupe, become impregnated but could ill-afford to take the pay cut that accompanied her maternity leave. Rather than take time off, Troupe opted to work through the pregnancy. When morning sickness and other pregnancy related ailments began to result in frequent lateness Troupe was dismissed. The court upheld the decision because she was treated in the same fashion as any other employee (Marmo 62).

This is consistent with the Pregnancy Discrimination Act (1978) a bill intended to protect the interest of pregnant workers. The language of the document reads as follows:

A pregnant woman is allowed to continue to work as long as she is able to perform her job. Thus, an employer cannot legally force a pregnant woman to leave her job before or after childbirth. Second, if an employer has accommodated employees who have not been able to perform their regular duties due to non-pregnancy-related health reasons, then similar accommodations must be made available to pregnant women (Marmo 60).

The Pregnancy Discrimination Act tries to prevent institutionalized discrimination against pregnant women, but it does not provide the equality its makers intended. To begin, it puts women in a precarious situation whereby employers who do not have comprehensive medical leave policies are not obliged to make any additional considerations for pregnancy. Second,
even where policies are more satisfactory pregnancy is treated the same as any illness or injury, which seems like a dangerous view to have of the process that propagates humanity.

The problem with family and pregnancy leave legislation in the U.S. is that it operates under the assumption that by treating women the same as men, their interests will be protected; it forgets that these interests might, in certain cases, necessarily differ from those of men. When a woman is pregnant she is experiencing something that is unique to her anatomy and requires different considerations from "non-pregnancy-related health issues". During this time her health concerns and her concerns for the health of her child will require unique attention that differs qualitatively form the kind of attention she might receive at other times. Unfortunately, the drive to treat all employees equally often prevents this kind of attention from being possible.

The typical attitude in the U.S. demonstrates a return to the tenants of sameness philosophy. Women are expected to have the same needs and interests as men. It is as if employers believe that by allowing women to take time off to take care of their "women's issue" they have created an unfair situation where women are being treated differently from and thus unequal to men. Or they think that a little time off is enough to create a "fair" situation. But pregnancy is more than just some physical ailment; women do not give birth and then magically return to their normal body state. There are a bounty of post-pregnancy related conditions that rest and relaxation greatly alleviate—postpartum depression, hemorrhoids, uterine cramps and respiratory symptoms are some of the most common and severe ailments; less common problems range from carpal tunnel syndrome to stress incontinence and can include a variety of other discomforts that might negatively impact work performance (Dowd 508). Women need time to recuperate, not to mention time for the care that has to be devoted to the infant, nursing every few hours, changing diapers and responding to cries through the night (just to name a few); but
they often sacrifice the limited time that is given to them in order to maintain a positive image in a world where the pregnant condition is seen as a mark of feminine weakness.

A comparison between the maternity leave policies in the U.S. and France shows some ways the U.S.'s drive for equal treatment is actually detrimental to the people it strives to protect.

Pregnancy legislation in the United States and France are based on diametrically opposed philosophies; U.S. law is based on a belief in equality or nondiscrimination, whereas French pregnancy law is predicated on the idea that the health of the mother and her child need to be protected (Marmo 60).

While neither policy is flawless there are certain components of the French system that might be beneficial if included in U.S. regulations. In France, for example, all women are guaranteed leave, while in the U.S. not all women qualify. Additionally, women in France are legally entitled to paid leave, while women in the U.S. are at the mercy of their employers.

But where the U.S. standards neglect the economic needs of the mother, French standards forget the importance of employment concerns. Pregnant women are not allowed but are forced to take at least two weeks of leave prior to the projected due date of the child. This stresses the differences between men and women, placing the latter on the pedestal of maternity, but in turn creates a serious impediment to women who want to be hired to certain positions. Employers are apprehensive to hire someone legally entitled to so much time off. It also creates barriers when considerations are being made for raises and promotions. This may be true in all countries where leave is compulsory rather than merely mandated. When this 'condition' is viewed as a female problem, it is no longer something that is relevant to the good of the company or anyone who falls outside of the group that is women. Pregnancy has therefore been determined to constitute an additional risk: an unnecessary, preventable condition that does not merit required insurance coverage in the United States. Of course this is outrageous when the scope of the necessity of
pregnancy is actually considered, but it is not because it is not considered to be a masculine concern.

It has been argued that “allowing policies to exclude coverage for conditions related to pregnancy fails to acknowledge facts of biology unique to women and therefore also fails to provide sufficient protection to women in the workplace” (After Identity, 183). Certain efforts have been made to remedy this perspective, and it seems that progress has been made in a variety of areas. But all three considerations (employment, health and economic) must be included in any policy that will truly be effective in eliminating the conflict between employment and pregnancy.

It is also important to realize that whether or not gender roles are accepted as critical components of identity there are certain biological differences between people that require varying degrees of attention; in the case of a pregnant woman time off is a necessity. But pregnancy, as Warnke pointed out, does not affect women only; a man who becomes a father is equally obligated to conform to the obligations of parenthood and it would alleviate the burden of the mother if the father were also allotted parental leave of some kind. Either the mother or the father could fill the role of primary caretaker of the child following the maternal period (of course the mother, whose body bears the child will still require initial maternity leave). Both parents may desire time off in the interest of raising the child. Modern advocates of maternity leave describe it as a necessary policy to help employees balance work with family demands; it is not solely a ‘women’s’ issue but is rather a vital concern for the family unit in general. While only people with certain bodies are capable of becoming pregnant and all of these people fall under the category of women it is not something that can be viewed as limited to ‘women’, and yet it is often the case that pregnancy is considered to be a female concern only.
A Step in the Right Direction: The Changing Face of Maternity Leave

Pregnancy and childcare are no longer considered to be the responsibility of the female alone. Fathers are taking on more responsibilities related to homecare and child rearing and as a result the competing demands of work and family are no longer felt by the mother alone (Garand 46). The face of the American family is changing: ‘Mom’ is no longer the woman in an apron pulling a meat loaf out of the oven when her husband returns from work. She is a strong self-reliant being with a variety of occupations available to her (housewife not excluded). Federal policy reflects these changes through bills like the Family and Medical Leave Act (FMLA), which allows both men and women time off of work for family related or medical reasons, including maternity leave. Feminists like Warnke advocate using FMLA and other identity neutral legislation to promote a balance between work and family (After Identity, 184).

FMLA is a step in the right direction but is not comprehensive in its response to maternal difficulties. It provides for just 12 weeks of unpaid job-protected leave for purposes of childbirth and other family or medical reasons for employees. Because these 12 weeks include absences because of health problems and family related concerns that merely include pregnancy, the duration of maternity leave might actually be shorter than this, whereas in other countries maternity leave is granted independently from sickness-related absences (Alewell 320). Under this policy it is in the best interest of the employee to use as few weeks as possible for maternity leave in order to reserve time off for other health or family-related emergencies (Alewell 319).

Further, the employer may refuse to reinstate ‘highly compensated employees...if...such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer.’ As a result of these exemptions and qualifications, it is estimated that only 55% of employees and 19% of new mothers are in fact covered by the FMLA provision (Alewell 519).
But the language of the act is vague, what constitutes “substantial” and “grievous” economic injury, and who decides? There does not seem to be a standard for determining these measures. And not everyone is eligible for even these meager efforts; employees qualify only if they work in the public sector or for a private sector employer with greater than 50 employees. Furthermore, it ignores critical differences between maternity and parental leave. The former is a necessity for a body in the natal state—it is vital for the health of the pregnant woman and the child that a certain amount of time off of work is allowed. On the other hand parental leave constitutes additional leave that can be taken by any parent with a child who is in need of care. This could be applied to the birth mother, father or adoptive parents giving each an equal opportunity to spend time with their infant child. While the physical needs of the pregnant woman are not eliminated, policy that considers post-natal parental obligations would more evenly spread the responsibility of child care and better serve the interests of both employees (who are free to attend to their obligations to the infant) and employers (who will experience higher employee retention rates).

Employment concerns were in fact noticeably alleviated when FMLA was signed into law. While it does not address economic or health concerns, FMLA is a good start for the United States and has some immediate and potential future benefits. First, giving pregnant women maternity leave makes them more likely to return to work, thus reducing the training costs and time spent looking for new employees. A study comparing maternity leave policies in U.S, Japan and Britain accounted for a variety of variables including number of births, age and tenure, and found that even with all of these considerations noted “women who were eligible for maternity leave were much more likely to return to their pre-birth employers than those who were not” (Abe 540).
More women returning to work after taking leave will further decrease the recruiting and training costs for female employees. As a consequence, the net effect of maternity leave may well be positive, even if at first sight maternity leave would seem to simply increase the employment costs of female employees (Alewell 316).

In fact, 92.5% of companies surveyed who had implemented FMLA said it had no noticeable effect on their income or expenses and 2.5% actually achieved reductions in costs (Marmo 64).

In addition to the benefits of maternity leave in general, there are some positive qualities associated with continued pay during that time. Besides eliminating the economic concerns of the women in question,

Paid maternity leave would positively impact the accumulation of human capital in several ways. First, because it would increase women’s labor force participation during their childbearing years, it would enable them to receive more on-the-job training, something that would continue to pay dividends in later years. Second, because medical studies (Barker, 1990) suggest that longer maternity leaves have a positive impact on child development, this early nurturing of children should eventually lead to a more productive workforce (Marmo 64).

Even when the reorganization costs of replacement workers are considered, companies fare quite well. According to Alewell an employer is confronted with two choices when leave it requested: to engage in work-sharing arrangements or to employee a substitute. Of course the nature of the work must be taken into account, a highly specified job may not lend itself to work-sharing arrangements, in other cases hiring a substitute might not be practical. These considerations aside it makes the most sense to act in accordance with the amount of leave requested. Employer costs of work sharing will increase as duration of leave increases, while the costs of utilizing a substitute decrease as length of leave increases. In the U.S. where the duration of leave is short it makes the most sense to employ a work-sharing solution, in other countries it is more practical to hire a substitute (Alewell 301-2). From this estimation it seems
that the social benefits of paid maternity leave far outweigh the costs to the company, which
benefits from such policies in the long run by producing loyal and dedicated employees.

Policies like these, if universally accepted, would go a long way in reducing the burden
placed on employees wishing to have children. Not only would they provide women with the
necessary time off to heal but would allow the father to play a more active role in the rearing of a
young child. In fact, there is some appeal to extending policies from maternity leave to childcare
leave. This policy has been successfully implemented in Japan and seems to have produced
some rather favorable results. For one, it responds to the health concerns of women returning to
work and since it was passed in 1991 retention rates of female employees have noticeably
increased (Abe 531). In addition, employees covered by the policy are about twice as likely to
return to work following childbirth as those who are not (Abe 535).

Childcare leave policies create a much needed compromise between employment and
childrearing. Children, especially young children, require attention and when neither parent has
the job flexibility to respond to parental obligations a change of employment becomes necessary.
The childcare leave policy in Japan “allows mothers or fathers to take parental leave when the
child is under the age of one” (Abe 532), taking responsibility off the mother and allowing the
couple to make a decision together. When additional maternity leave (parental leave) is
extended to either parent, families are able to make more informed decisions about which adult
will become the primary caretaker of the infant. Paternity leave is typically unpaid and so
families would have to consider who can afford time away from work both financially and
professionally. This kind of policy gives parents the opportunity to remain involved in raising
their child while also remaining loyal to their employer, thus eliminating the need to choose one
over the other.
While it may sound unreasonable at first to ask employers to allow so much employee flexibility, further investigation provides testimony to its effectiveness. In France and other countries, paid leave has not been burdensome and in the U.S it is not likely that employers would be asked to bear the totality of the costs that do incur which would be subsidized by government programs and should be minimal (Marmo 63). Retention rates would be improved by further extensions of the policy to include paternal, adoptive and childcare leave. Additional parental leave policies would spread the responsibility from a highly specified group to a much broader employee constituency. Employees who feel that their interests are well looked after are more likely to remain loyal to the same company.

It is worthwhile to seriously consider the effectiveness of the maternity leave policies internationally and contemplate what elements might be used to improve those of the United States. It is true that in many ways the U.S is very different from other countries, but as a country that prides itself on its bounty of opportunities it is self-contradictory to deny women workers access to adequate maternity considerations. The excuses used to justify these policies (or lack-there-of) are endless, but fail to be persuasive. The U.S must take a more proactive approach to redress these grievances.

**Recommendations for Improvement**

Freedom from discrimination in the workplace will not be achieved until the differences between individual workers are recognized and accounted for. Pregnant women and their families represent a specific group with specific needs. The refusal by employers to compensate for the needs of this group is a form of discrimination that is all-too-often ignored. In an effort to guarantee equality they too fall into the pit of essentialism and assume that the identities of their employees as workers can be isolated from other, equally important identities they might
have. This is exactly the behavior deconstruction feminists warn against and is the part of the reason why women have been viewed as overly demanding in their requests for maternity and childcare leave.

In regard to maternity leave, the policies need to be updated to correspond with the promises they entail. Employment, health and economic concerns of the family must all be safeguarded. In order to protect the health of mother and child, leaves must be made longer; in addition parent-child relationships cannot be fostered without some sort of additional parental leave. At least part of this time off should be compensated with regular pay and job security must be maintained for the duration of leave. Of course there are dangers to implementing these measures and perhaps not all feminists would agree that this is the best path. A minimum of 24 weeks maternity leave might reinforce the image of women as weaker, dependent creatures who have a real need of masculine protection. Unfortunately I have no concrete recommendations for preventing this interpretation; people are bound to think what they want to think even when facts supporting the necessity of extensive leave are readily available.

If a woman requires 24-weeks to heal following the birth of her child, she should have access to that time off of work without putting her employment at risk. Whether or not all 24-weeks should be paid time off is another issue entirely and one without nearly as much supporting evidence. It is my personal belief that at least a part of that time should be paid, if not all of it. In this way having a child remains economically viable, otherwise having children becomes a thing for the rich (who can afford to take time off of work), or for women whose husbands are the primary breadwinners. Economic concerns are arguably the most important family concern for those considering having a baby; but it is also the biggest concern for employers. In the nations with the most satisfactory leave policies, payment was guaranteed during the maternity
leave period (though not generally for any additional or parental leave) and was subsidized through government social programs. Employers paid a certain percentage but government funding keeps these expenses low. But we, as a nation, do not like it when the government interferes with our ability to make money, and for employers a federal mandate forcing them to provide paid leave to pregnant employees does just that.

While maternity leave and additional maternity leave policies may not be universally satisfactory neither are they wholly flawed. Internationally, policies tend to be rather comprehensive. It is in the United States where freedom and equality are taken as central tenets that the least satisfactory federal policies are found. By borrowing and implementing guidelines that have proven effective in other countries the lives of working women in the United States could be vastly improved. Yes, 24 weeks seems like an undo amount of time to be absent from work (especially if it is paid time) but by splitting the costs between employers and socially funded programs, many federal governments offer close to that without experiencing much duress.

In Ireland a pregnant employee is entitled to 26 consecutive weeks paid maternity leave, under the condition that a request is filed four weeks in advance. Additional time off is allowed for both parents in order to take antenatal classes, again pending a request in advance (Equality Authority). A comprehensive policy like this one responds to critics who insist that extensive maternity leave is not possible. Not only is maternity leave a possibility, it is a necessity. But certain changes need to be made to those guidelines already in place, especially in the United States. First and foremost, the legislation that ‘protects’ the rights of the worker through ‘equal’ treatment that does not recognize diversity needs to be changed. Bills that are intended to protect should not double up as tools of oppression. The language on documents (like the Pregnancy
Discrimination Act) must be updated to convey that fair treatment does not necessarily mean exactly the same treatment. It means that workers will have access to those things that allow them to complete their jobs to the best of their abilities without endangering their well being or the well being of their infant child.

Conclusions:

It is easy to see why the federal government of the U.S. has had some difficulty developing fair and comprehensive maternity leave polices. The definition of ‘fair treatment’ was developed with a particular standard or specific group of people in mind as the norm. Everyone else must conform to those standards or else suffer. Because pregnancy is neither permanent nor something every individual experiences, compensating pregnant employees with paid and lengthy maternity leave seems to be a ‘special’ and thus unfair treatment in the mind of the federal government and average American citizen alike. The 12 weeks of unpaid leave promised by U.S. federal law seems like more than enough when assessed from this perspective. But consider the case of Japan where unpaid, but job-protected childcare leave is standard or Germany where (as long as certain formalities are completed) parents are given partially paid leave up until the child is three (Alewell 321). What has motivated these countries to be so generous while employers in the “land of the free” are still offering ultimatums: “be back in 12 weeks or pack up your desk”? The primary motivation seems to be differing philosophies concerning the rationale behind leave. Countries like France operate under the assumption that there are certain additional protections that need to be afforded to women. This results in leave that is lengthy and includes at least a portion of compulsory time off. The United States, on the other hand, tries to treat pregnant employees as if they are no different from any other employee,
and creates a situation that negatively impacts pregnant employees, working mothers post-pregnancy and also the company who must not incur the expenses associated with hiring and training replacement employees, (not to mention losing the expertise of someone who might be a valued member of staff). Because of the presumed costs and tendency toward ‘equal’ treatment, pregnancy is categorized as an additional risk. It is considered expensive to cover and is seen as constituting something akin to an additional insurance policy.

But pregnancy is more than just some additional risk or expense, and cost effective policies can and must be adopted. In Germany, for example, maternity leave is paid for at least the first eight weeks and the parental leave that follows is quite flexible. Employees with children have the option to shift from full to part-time employment for a specified period of time up until the child’s third birthday. The request for this leave must be filed six weeks prior to its start and must include the dates the employee requires part time status for up to two years (Alewell 322). This provides the company with the information necessary to make appropriate changes in staff thus lowering the expenses associated with leave. A policy like this creates a reasonable compromise between employers and parents. It may be difficult for the worker to predict when part-time or full-time work will be necessary over a two-year period but it is well worth the hassle to enjoy the benefits afforded by parental leave. On the side of the employer an employee is retained, perhaps at reduced hours but the costs associated with hiring new employees will also decrease with the successful implementation of this policy.

In most of the countries studied parental leave is standard (though unpaid after initial paid maternity leave has expired). Pregnancy and childcare is not understood as a female issue but as a family issue. This is another important attitude that could go a long way in the United States where paternal leave is all but neglected. In this regard it is clear that the drive for total equality
in the United States has actually created a situation where inequality reigns. This is Aristotle’s hierarchy repeated, man is taken as the ideal representative of a worker and women (who have different needs) are taken to be an inferior model.

The problem cannot be solved by inserting women into the role currently filled by men nor can the hierarchy simply be turned on its head (as difference feminists would say). Instead, the solution is to be found in a new vision of the system in general; Warnke uses the phrase ‘strategic feminism.’ There is something to the idea that certain identities might be stressed or adopted at certain times. It is certainly consistent with Butler’s point that gender is performative, we might act in accordance with different identities according to the situations in which we find ourselves. Except that with pregnancy I am not performing gender, my body is going through a biological process beyond my choice. Most of the time it should not be important to my career that I am a woman, what should be important are my skills, my work ethic, education, attitude and other factors that have direct relevance to my performance. But this cannot always be the case, and during pregnancy a different identity becomes important and includes a different set of needs.

Women cannot be treated as those who might potentially become pregnant, but neither can pregnancy be neglected when it does occur. Men are certainly not thought of as employees who might potentially become fathers; in fact, whether or not a man is a father tends to be considered irrelevant to his role as a worker. But in the case that a male does become a parent, isn’t he just as likely to request more time off of work? Maternity leave policies should take into account the needs (both physical and economic) of the birth mother and child, as well as the role of the parent in general. A comprehensive federal policy with extended paid maternity leave and
subsequent parental leave is likely to have benefits far outweighing any immediate costs, and
success is not only possible but evident though observation of international norms and standards.