THE CHALLENGES OF PARENTAL LEAVE REFORMS FOR FRENCH AND AMERICAN WOMEN: A CALL FOR A REVIVED FEMINIST-SOCIALIST THEORY

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INTRODUCTION

> The fear of socialism, even of the word itself, suggests how our social imaginations have been abridged and hampered. For the question of the future is, ineluctably, After regime change, what? What are we for? What do we want to see happen? And how do we want to make it happen?
>
> Adrienne Rich[1]

> A truly socialist ethics, concerned to uphold justice without suppressing liberty and to impose duties upon individuals without abolishing individuality, will find most embarrassing the problems posed by the condition of woman.
>
> Simone de Beauvoir[2]

In examining the work-family conflict for parents in the United States and in criticizing our limited social support system for children, families, and low-income individuals, progressive advocates, policymakers, and social scientists sometimes call upon more generous systemic models from Western European nations. In guiding advocates' visions for a broader and deeper social welfare system, France has served as one such model because of its relatively long commitment to child-centered and family-centered supports, and a generous policy for parental leave from employment.[3]

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1. Adrienne Rich, *Making the Connections*, NATION, Dec. 30, 2002, at 6.

2. SIMONE DE BEAUVOIR, THE SECOND SEX 58–59 (H.M. Parshley ed. & trans., Vintage Books 1989) (1952).

3. *See, e.g.*, BARBARA R. BERGMANN, SAVING OUR CHILDREN FROM POVERTY: WHAT THE UNITED STATES CAN LEARN FROM FRANCE 6 (1996) (comparing French and American programs to enhance and ensure child well-being); SHEILA B. KAMERMAN & ALFRED J. KAHN, STARTING RIGHT: HOW AMERICA NEGLECTS ITS YOUNGEST CHILDREN AND WHAT WE CAN DO ABOUT IT 21 (1995) (referring to a two-year study of six European countries, including France, that follow a pronatalist ideology); Mary Becker, *Care and Feminists*, 17 WIS. WOMEN'S L.J. 57, 105–09 (2002) (citing monetary family allowances to all families, new baby allowances, and an escalating policy of paid maternity leave—sixteen weeks for the first or second child; twenty-six weeks for a third child). Countries with similarly generous policies include Austria and Finland (like France, each provides up to a total of about three years of paid leave). Greece provides two years paid leave, plus one year unpaid.

This article points out that when comparing France's programs with those in the United States, and when considering the implications for women of social reforms in these areas in the United States, it is important to understand the historical and cultural context of the French model. France's welfare state began with a host of public health initiatives and pronatalist child-centered family policies that were established in the wake of the Franco-Prussian War of 1870 and, then again, following World War I. The very first French maternity leave statute, the so-called Strauss Law, was enacted in this vein in 1913. Named after its sponsor, a physician and senator, the law mandated paid maternal rest for women who were working in industry or domestic service both one month before and one month after the birth of a child.[4] In sharp contrast, the U.S. did not enact federal parental leave legislation of any type until 1993, when Congress passed and the President signed the Family and Medical Leave Act (FMLA).[5] The FMLA's sole related federal predecessor, the Pregnancy Discrimination Act of 1978, amended Title VII of the Civil Rights Act of 1964 to include discrimination on the basis of pregnancy under its prohibition of sex-based employment discrimination.[6]

Sweden and Denmark each provide a one-and-a-half-year leave, while Sweden also guarantees part-time work for the parent until the child reaches age eight. Unlike in France, leave in Sweden and in Iceland is available uniformly to either parent. Denmark and Finland each provide for two weeks of paternity leave for the father in addition to maternity leave for the mother. KAMERMAN & KAHN, *supra*, at 78–79.

4. *See* PAUL STRAUSS, DÉPOPULATION ET PUÉRICULTURE [Depopulation and Healthy Childrearing] 1 (1901).

> Depopulation approaches with increasing menace as a national peril; it appears less and less as a chimerical and distant danger, and a patriotic anxiety for the future begins to haunt perceptive minds.... It is the duty of nations, of cities, of families to watch over, with ever-vigilant attention, the conservation of the species.

Id. (translation from French by author). *See also* Rachel G. Fuchs, *The Right to Life: Paul Strauss and the Politics of Motherhood, in* GENDER AND THE POLITICS OF SOCIAL REFORM IN FRANCE, 1870–1914, at 98–99 (Elinor Accampo et al. eds., 1995) (outlining Paul Stauss' efforts, leading up to the 1913 legislation, to get women paid maternity leave before and after childbirth); ALISA KLAUS, EVERY CHILD A LION: THE ORIGINS OF MATERNAL AND INFANT HEALTH POLICY IN THE UNITED STATES AND FRANCE, 1890–1920, at 190–98 (1993) (describing passage of the Strauss Law as a measure to "encourage childbearing among working-class women."); SUSAN PEDERSEN, FAMILY, DEPENDENCE, AND THE ORIGINS OF THE WELFARE STATE: BRITAIN AND FRANCE, 1914–1945, 59–77 (1993) (noting that paid maternity leave is an important measure for the welfare of children as well as the mother); MARY LYNN STEWART, WOMEN, WORK, AND THE FRENCH STATE: LABOUR PROTECTION AND SOCIAL PATRIARCHY, 1879–1919, at 168–90 (1989) (discussing paid maternity leave under the Strauss Law for any woman "in an apparent state of pregnancy").

5. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. §§ 2601–2654 (2000)).

6. Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (2000)) (defining "sex-based discrimination"); Wendy W. Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325, 325 (1984–85).

Few progressives or liberals would disagree that the primary beneficiaries of policies for parental leave from employment are the children who receive the additional care that such laws permit. Instead of focusing on the child welfare implications of these laws, however, this Article focuses on the implications of parental leave laws for women's rights in each country. Parental leave laws and their expansion find support in varying inclinations of U.S. feminist legal theory[7] and maintain steady support among various U.S. women's advocacy and research groups.[8] Comparing French and American parental leave laws and their backgrounds presents an opportunity to distill each nation's prevailing vision of motherhood, women's employment, and the relationship between them.[9] Understanding the differing, but entrenched, assumptions behind the French and U.S. laws reveals the deficiencies for women under each distillation of motherhood and women's employment.

Part I of this Article describes the current parental leave statutes in each country and sketches the differing and partial visions of women's roles that each law reveals. Part II examines the legal and historical context for each law, focusing in the United States on the problematic economic tendencies of our jurisprudence and in France on the problematic sex-based nature of legal protection for women. Part III calls for the revival of an intersectional and explicitly feminist-socialist theory in the United States that advocates and academics could begin to use in the United States, and perhaps internationally, in articulating cultural, political, and legal arguments to address the legalized subordination of all women.

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7. *See* Robin West, *Feminist Legal Theory, in* ENCYCLOPEDIA OF PHILOSOPHY SUPPLEMENT 183–85 (Donald M. Borchert ed., 1995) (providing an overview of different persuasions within feminist legal theory).

8. These include, for example, the National Partnership for Women and Families (formerly known as the Women's Legal Defense Fund, the leading women's legal advocate for the FMLA) and the AFL-CIO Working Women's Group. Organizations that filed *amici curiae* briefs defending the FMLA in the recent Supreme Court challenge, *Nevada Dep't of Human Res. v. Hibbs*, 123 S. Ct. 1972 (2003), include the National Women's Law Center, ACLU, Equal Rights Advocates, Feminist Majority Foundation, NARAL Foundation, National Council of Jewish Women, National Council of Negro Women, National Employment Law Project, NOW Foundation, Older Women's League, and People for the American Way. *See, e.g.*, Brief of Amici Curiae National Women's Law Center et al., *Hibbs* (No. 01-1368).

9. For a comparative theoretical and historical approach elaborated in political science, see Jane Jenson, *Paradigms and Political Discourse: Protective Legislation in France and the United States Before 1914*, 1989 CAN. J. POL. SCI. 235–258 (outlining "hegemonic societal paradigms" for citizenship roles in each country during the historical period under study). For a comparative qualitative approach in sociology, see KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 158–91 (1984), especially Chapter 7, "World Views of the Activists." This chapter describes each side of the abortion debate in her study as "an internally coherent and mutually shared view of the world that is tacit, never fully articulated, and, most importantly, completely at odds with the world view held by their opponents." *Id.*

I. PARENTAL LEAVE LAWS IN FRANCE AND THE UNITED STATES

A. France's National Maternity and Parental Leave Statutes

In France, separate laws govern a woman's leave from work for pregnancy or maternity and a parent's leave from work for early childrearing. The national maternity leave statute entitles a woman employee to a total of sixteen weeks of leave, paid out of the national social security system and intended to consist of six weeks before birth and ten weeks afterwards.[10] This period of time may last up to twenty weeks in the case of an unexpectedly difficult pregnancy; in the case of a pregnancy-related illness, leave may last up to twenty-two weeks.[11] Although the payment rate during leave is set at ninety percent of the woman employee's base wage, in practice, payments usually amount to her full salary because social security tax is not withheld during the leave period.[12] Adoption and birth of a child are treated the same for leave purposes.[13] Within fifteen days of the arrival of a new child in the home, a father is entitled to three days of paid leave.[14] The employer covers his paternity leave payment and later receives reimbursement through the national family allowance system.[15]

Although pregnancy leave is optional for a woman, an employer may not hire a woman two weeks before the expected birth of her child or six weeks afterwards; in other words, leave is effectively mandatory for at least this shorter period of time. [16] An employer may not terminate a woman employee's contract while she is on pregnancy leave or for one month following leave.[17] Any job transfer during the time of her pregnancy must be advantageous for her and without a pay reduction.[18] Once she returns to work, she must resume her prior job.[19]

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10. *See* CODE DU TRAVAIL [C. TRAV.] art. L. 122-25 to 122-26 (referring to the Labor Code at Section V: Protection de la maternité et éducation des enfants).

11. MICHEL DESPAX & JACQUES ROJOT, LABOUR LAW AND INDUSTRIAL RELATIONS IN FRANCE ¶ 188 (1987). Similar exceptions exist for the birth, or expected birth, of twins. *See* C. TRAV. art. L. 122–26.

12. DESPAX & ROJOT, *supra* note 11, ¶ 189.

13. *Id.*

14. *Id.* ¶ 192. In case of the mother's death, a father is entitled to ten weeks of post-birth leave. *See* C. TRAV. art. L. 122-26-1.

15. DESPAX & ROJOT, *supra* note 11, ¶ 192.

16. *Id.* ¶ 189.

17. *Id.*

18. *Id.*

19. *Id.* ¶ 191.

All parents, whether fathers or mothers, may use a year of unpaid parental childrearing leave if they have accumulated one year's seniority.[20] Parents also may request part-time work during this period of time and may switch back and forth between part-time work and unpaid parental leave.[21] If the mother is claiming this benefit, her unpaid leave begins at the end of her maternity leave.[22] If the father is claiming this parental leave, it begins two months after the birth of the child or the arrival of an adopted child in the home.[23] The end of the one-year parenting leave occurs at the employee's discretion, with the possibility of renewing it twice, up until the newborn child reaches age three, or up to three years after the child's adoption.[24]

B. U.S. Family and Medical Leave Act

An employee's entitlement to leave from work for parenting under U.S. federal law—the Family and Medical Leave Act of 1993 (FMLA)—is simpler and less generous than in France. The same statute that deals with maternity and parental leave also deals with leave from work to care for sick relatives (defined narrowly, but including spouse or parent as well as son or daughter)[25] and to address the employee's own "serious health condition."[26] In U.S. law, the FMLA is the only federal law addressing leave from work for any of these purposes.

Under the FMLA, an employee "shall be entitled" to a total of twelve work-weeks of leave from work during any given year because of the birth or adoption of the employee's child *and* to care for the newborn or newly-arrived child.[27] An employee may not use this leave "intermittently or on a reduced leave schedule unless the employee and the employer . . . agree otherwise."[28] Employers are not required to pay their employees during the

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20. *Id.* ¶ 190. For businesses employing fewer than one hundred employees, the employer may deny a request for parental leave if the employee's absence would hinder the employer's operation. *Id.*

21. *Id.* ¶ 191.

22. *Id.*

23. *Id.*

24. *See* C. TRAV. art. L. 122-28-1.

25. 29 U.S.C. § 2612(a)(1)(C) (2000). "Son or daughter" is defined as "a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability." *Id.* § 2611(12). "Spouse" refers to "a husband or wife, as the case may be." *Id.* § 2611(13). "Parent" refers to "the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter." *Id.* § 2611(7).

26. *Id.* § 2612(a)(1)(D).

27. *Id.* § 2612(a)(1)(A)–(B).

28. *Id.* § 2612(b)(1).

leave period,[29] although they may permit or require their employees to substitute employer-paid vacation, sick leave, or family leave for FMLA leave.[30] Effectively, therefore, FMLA leave is unpaid. If a husband and wife are employed by the same employer, they may take only an aggregate twelve weeks between them.[31]

The FMLA, as enacted, was designed both to encourage "gender-neutral"[32] parenting and also to accommodate "the legitimate interests of employers."[33] Eligible employees are employees who have been employed with the employer for at least a year and have worked for at least 1,250 hours with the employer.[34] The FMLA applies only to those employers who employ fifty or more employees.[35] Regarding employee protections, employees taking leave are entitled to be restored to their previous, or an equivalent, position upon return from leave.[36] In addition, employers may not interfere with an employee's right to take leave,[37] nor may they discriminate against an employee for having taken FMLA leave.[38]

C. Differing Visions of Motherhood and Paid Work Outside the Home

Examining the French maternity and parental leave statutes in even a cursory manner reveals a picture that is supportive of both women's motherhood experiences and parents' childrearing experiences. This picture emerges precisely because the French statutes suggest, and to some extent mandate, a longer, more supportive, and more inclusive leave from employment than what is available in the United States. While French maternity leave alone is sixteen weeks, and parental leave provisions extend that leave for childrearing for up to a total of about three years, the total amount of leave available to new parents in the United States, for maternity and early parenting both, is twelve weeks. Maternity leave in France effectively is mandatory for employers and thereby for employees; FMLA

29. *Id.* § 2612(c).
30. *Id.* § 2612(d)(2)(A).
31. *Id.* § 2612(f).
32. *See id.* § 2601(b)(4) ("Purposes" section); *see also id.* § 2601(a)(6) ("Findings" section) (stating that "employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender"). *But see id.* § 2601(a)(5) ("Findings" section) (stating that "due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men").
33. *Id.* § 2601(b)(3).
34. *Id.* § 2611(2)(A)(i)–(ii).
35. *Id.* § 2611(4)(A)(i).
36. *Id.* § 2614(a)(1)(A)–(B).
37. *Id.* § 2615(a)(1).
38. *Id.* § 2615(b).

leave in the United States is anything but mandatory. Leave in France is paid—not by the employer but directly out of the national social welfare system. In the United States, leave is unpaid—effectively placing the burden of the cost of missed wages squarely on the shoulders of parents themselves and, in turn, the cost of missed hours on their employers (which may vary in size and resources). Finally, the FMLA applies only to those employers who employ fifty or more employees, thereby severely limiting the number of individuals in the United States who are even eligible to use it; the French system does not have this limitation. From the perspective of women who want to be mothers, the French system is more supportive and more generous than the U.S. system which, in contrast, gives great deference to employers.

From the perspective of workplace equality, however, a different picture emerges. In France, only women are eligible for maternity leave; fathers may take only three days of paternity leave. In other words, women are required to spend the sixteen weeks of their maternity leave preparing for birth and caring for the newborn alone, and fathers are not encouraged to participate. Although both parents now may take parenting leave, fathers were added to the parental childrearing law only in 1984.[39] In the United States, however, both men and women employees are equally eligible for leave and are penalized for both taking leave only if they are with the same employer. The FMLA statute itself suggests reason for concern with an unequal employment system such as the French: "employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender."[40] From the perspective of women who want to achieve respect, success, and uninhibited advancement in the workplace—or even who want to be able to seek equal employment in any way—this difference between the two regimes is vital.

II. WOMEN AS WORKERS AND WOMEN AS MOTHERS

The historically gender-based nature of the law's protection in France and the spartan nature of the U.S. provisions have serious potential for perpetuating discrimination against and subordination of women on the one hand, and a gender-neutral capitalism for all on the other. Given the backdrop of case law in each country, as well as stories and statistics on

39. DESPAX & ROJOT, *supra* note 11, ¶ 190.

40. 29 U.S.C. § 2601(a)(6) (2000) ("Findings" section). Given the context of the language and its legislative history, "gender" here presumably refers to biological sex. *Id.*

women's experiences as mothers and as workers, such an observation is not surprising.

A. Sex Discrimination, Equal Protection, and the Unintended Consequences of Individual Economic Advancement for U.S. Women

The experiences of discrimination and subordination on the basis of gender that result from formally unequal workplace protections and the deep cultural and historical assumptions behind them were an essential backdrop to the U.S. FMLA legislation. The "Purposes" language of the FMLA itself explicitly states that the statute should accomplish its goals "in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis."[41] Given relatively successful prior case law brought forward in the name of eradicating sex discrimination and formal inequality between the sexes, a more generalized concern with workplace equity under the FMLA made excellent sense to women's advocates supporting the legislation.[42]

Indeed, significant symbolic victories for women under sex discrimination claims continue to occur in the United States, and formal equality for women continues to emerge. For example, in a majority opinion written by Justice William Brennan as recently as 1989, the U.S. Supreme Court felt compelled to explain in the context of a statutory sex discrimination claim that "[w]e sit not to determine whether [the plaintiff] Ms. Hopkins is nice, but to decide whether the partners reacted negatively to her personality because she is a woman."[43] Similarly, in a constitutional equal protection context, the Supreme Court reiterated, in a majority opinion authored by Justice Ruth Bader Ginsburg in 1996, that "[sex-based] classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women."[44] In the 2002–03 Supreme Court term, the FMLA itself narrowly escaped serious constitutional restrictions that some members of the Court sought to impose

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41. *Id.* § 2601(b)(4).

42. *See* Williams, *supra* note 6, at 325 (explaining this rationale as applied to her and other advocates and providing background for related work on the Pregnancy Discrimination Act).

43. Price Waterhouse v. Hopkins, 490 U.S. 228, 258 (1989). In this case the plaintiff, a senior manager in an accounting firm, was passed over for partnership consideration and charged that she was discriminated against because she was female. *Id.* at 231–32.

44. United States v. Virginia, 518 U.S. 515, 534 (1996) (citation omitted) (holding that Equal Protection precludes Virginia from excluding women from admission to the Virginia Military Institute).

on the law's applicability to state employees—restrictions to which the Court has recently subjected other civil rights statutes.[45]

The slow pace of formal equality law and our conservative legal and political environment aside, plaintiffs that have achieved success thus far under a regime of gender-neutrality share important rhetorical characteristics. For example, neither the plaintiff in *Price Waterhouse*, nor the "some women, at least" included by the United States in the Virginia Military Institute case appear to have been mothers or caregivers, at least for the legal purposes of their cases.[46] More importantly, both of them sought an almost symbolic entry into, or acceptance by, highly elite corporate or military institutions—which closely resemble each other as rigidly competitive, exceedingly hierarchical, disproportionately white, and inherently capitalist. And they each won. Their legal victories suggest, rhetorically at least, that real legal success for women in the United States constitutes individual economic and hierarchical advancement; at the moment, anything else is legally and politically invisible.[47]

Codification of this individualistic economic legal culture in the FMLA risks perpetuating the capitalism already inherent in U.S. case law and legislation for women's rights.[48] Some emerging FMLA case law in the federal courts illustrates the concern.[49] For example, federal courts across

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45. *See* Nevada Dep't of Human Res. v. Hibbs, 123 S.Ct. 1972, 1976–1977 (2003) (holding that state employees may recover monetary damages for a state's failure to comply with the family-care provisions of the FMLA since it was a valid exercise of Congress' power under the Fourteenth Amendment).

46. *See Virginia*, 518 U.S. at 540 (quoting United States v. Commonwealth of Virginia, 766 F. Supp. 1407, 1414 (W.D. Va. 1991)).

47. For some examples of the otherwise invisible experiences of women and many others who struggle in the individualistic economic system of the United States, see generally, MARIO BENCASTRO, ODYSSEY TO THE NORTH (Susan Giersbach Rascón trans., 1998) that describes, *inter alia*, several low-wage work experiences of recent Salvadoran refugees and immigrants in the United States (Washington, D.C.), including several women's experiences; BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA 11–49 (2001), especially Chapter One: "Serving in Florida" that describes Ehrenreich's recent experience of low-wage waitressing and housekeeping in the United States (Florida), as well as that of her coworkers.

48. For a brief overview of the history of capitalism in U.S. law and politics and an explanation of the Law and Economics critique of the closely-related Americans with Disabilities Act, see Ruth Colker, *Hypercapitalism: Affirmative Protections for People with Disabilities, Illness and Parenting Responsibilities under United States Law*, 9 YALE J.L. & FEMINISM 213, 213–20 (1997).

49. For an overview of federal FMLA case law, see generally, Naomi S. Stern, Project, *Second Annual Review of Gender and Sexuality Law, Employment Discrimination Law Chapter: Family and Medical Leave*, 2 GEO. J. GENDER & LAW 663 (2001). I am not intending to argue that relatively generous interpretations of the FMLA do not also exist in federal court decisions or regulations or that there is no possibility of expansion of the FMLA under our existing system. Indeed, significant progress has been made, and there is much room for expansion of the existing law. *See, e.g.*, Duckworth v. Pratt & Whitney, Inc., 152 F.3d 1, 4 n.3 (1st Cir. 1998) (holding that FMLA coverage extended to prospective, as well as former, employees and that a broad definition of employee under federal

the country have held, variously, that a pregnant woman can be fired while on FMLA leave;[50] that a mother may not use FMLA leave if her child is stillborn;[51] that a mother may not use FMLA leave after her child reaches age one;[52] and that a seven-year-old child repeatedly examined for sexual molestation does not suffer from a serious health condition entitling his mother to FMLA leave.[53] Federal courts have explicitly treated the Act's definition of "care" narrowly. In one case, a mother was not entitled to use FMLA leave to grieve for the death of her son "because a deceased person has no basic medical, nutritional, or psychological needs which need to be 'cared for.'"[54] In another case, a mother was not entitled to use FMLA leave to move her teenage son in with relatives because she was not moving him so he could receive medical or psychological treatment, but rather to protect him from repeated beatings by his classmates.[55]

These decisions reveal a strong capitalistic trend in U.S. jurisprudence. The reasoning in each case minimizes a parent-employee's entitlement to leave and, in turn, the employer's obligation under the statute. Indeed, the court in each case strove to be as accommodating to the employer as possible and to define parenting and care as narrowly as possible. In every

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regulations is a valid and permissible interpretation of the FMLA statute); Pendarvis v. Xerox Corp., 3 F. Supp. 2d 53, 55 (D.D.C. 1998) (finding that FMLA covered a pregnant woman with morning sickness when she was unable to perform her job); *see also* Donna Lenhoff & Claudia Withers, *Implementation of the Family and Medical Leave Act: Toward the Family-Friendly Workplace*, 3 AM. U. J. GENDER & L. 39, 40–47, 53–57 (1994) (outlining the legislative history of the FMLA and positive future policy directions, written by women's advocates supporting the legislation). My point is to illustrate that *even the most generous* opinions and interpretations give significant deference to large employers, revealing a deep capitalist sentiment in U.S. case law on the FMLA and in general.

50. *See* O'Connor v. PCA Family Health Plan, Inc., 200 F.3d 1349, 1354 (11th Cir. 2000) (describing a retaliatory discharge claim by a pregnant woman who was fired as part of a company-wide reduction in force), *reh'g denied*, 211 F. 3d 596 (11th Cir. 2000).

51. *See* Szabo v. Trs. of Boston Univ., No. 98-1410, 1998 WL 1085688, at *5 (1st Cir. Dec. 31, 1998) (unpublished opinion) ("Tragically, Szabo's child was stillborn, but this means that she was not entitled to maternity leave under the Act, since such leave is only required under the Act in order to care for a son or daughter.").

52. Krohn v. Forsting, 11 F. Supp. 2d 1082, 1092 (E.D. Mo. 1998).

53. Martyszenko v. Safeway, Inc., 120 F.3d 120, 124 (8th Cir. 1997).

54. Beal v. Rubbermaid Commercial Prods., Inc., 972 F. Supp. 1216, 1226 (S.D. Iowa 1997) (citing Brown v. J.C. Penney Corp., 924 F. Supp. 1158, 1163 (S.D. Fla. 1996)), *aff'd*, 149 F.3d 1186 (8th Cir. 1998).

55. *See* Marchisheck v. San Mateo County, 199 F.3d 1068, 1076 (9th Cir. 1999), *cert. denied*, 530 U.S. 1214 (2000).

> Indeed, Plaintiff had no specific plans to seek medical attention for Shaun when she reached the Philippines, and he did not see a doctor of any kind for more than five months after he moved overseas. Further, it is undisputed that there were no psychological services available within a three-hour drive of the rural area of the Philippines to which Plaintiff took Shaun.

Id.

one of these examples, the defendant is a large, wealthy corporation or state bureaucracy with significant bargaining power, and the plaintiff is an individual woman employee who is dependent on her employer for earnings and, in turn, with a child dependent on her for care. In each of the examples, the employer wins and the employee loses. The individual and collective harm that employees who are parents or caregivers disproportionately continue to suffer as a result of the lack of support they receive for parenting and caregiving in the United States has been well described and documented in recent years by legal scholars, philosophers, and sociologists.[56] Narrow and especially capitalistic legal interpretations, as in the cases outlined above, are adverse both to the congressional purposes of the FMLA statute and to these deeper, more longstanding problems that the FMLA sought to address in the first place.

B. Women Workers in France and Statutory Protection Based on Sex

Interestingly, however, France's more generous maternity leave and parenting provisions would not pass muster under a U.S.-style equal protection or statutory sex discrimination review and, indeed, in some sections are facially discriminatory. Although the French parenting provisions now include fathers, the French maternity leave law still applies only to mothers.[57] Fathers receive only three days of paternity leave.[58] Furthermore, as described immediately below, France conformed its parenting leave legislation to civil rights principles only after being belatedly sued by the Commission of the European Communities under a European Union (EU) directive for equal treatment.[59] The remaining

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56. *See* ROBIN WEST, CARING FOR JUSTICE 111–21 (1997) (describing harm to women because of their greater domestic burden); EVA FEDER KITTAY, LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY 133–46 (1999) (analyzing how the FMLA, as a "liberal social policy aimed at women," addresses dependency concerns; describing the ongoing needs of caregiving women); Roberta M. Spalter-Roth & Heidi I. Hartmann, *Science and Politics and the "Dual Vision" of Feminist Policy Research: The Example of Family and Medical Leave, in* PARENTAL LEAVE AND CHILD CARE: SETTING A RESEARCH AND POLICY AGENDA 49–56, 60–62 (Janet Shibley Hyde & Marilyn J. Essex eds., 1991) (researching disparities in the economic situations of women who give birth as compared to women who do not, to men whose wives give birth, and to women of different races who give birth); Robin West, *Rights, Capabilities, and the Good Society*, 69 FORDHAM L. REV. 1901, 1924–29 (2001) (imagining a jurisprudence based on the right to care); Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, 1999 U. CHI. LEGAL F. 21, 51–54 (discussing the need to provide emotional and economic security to caregivers). *See generally*, ARLIE RUSSELL HOCHSCHILD, THE SECOND SHIFT (1989) (finding that women have a longer work week than men when including domestic work; advocating for family-friendly workplace reforms).

57. DESPAX & ROJOT, *supra* note 11, ¶ 190.

58. *Id.* ¶ 192.

59. *See* Case 312/86, Commission of the European Communities v. French Republic, 1988

maternity leave provisions stand as a "special treatment" exception that EU case law permits.[60]

In response to a 1976 Council of Europe equal treatment directive,[61] France initially conformed its statutory labor code in 1983 to prohibit employment discrimination based on sex.[62] However, the redrafted code maintained its existing sex-based provisions related to pregnancy, nursing, maternity leave, and several other work-related protections for women and permitted collective bargaining agreements to contain clauses implementing these sex-based provisions.[63] In *Commission v. French Republic*, decided in 1988, the Commission sued France, arguing that the exceptions maintained by collective bargaining agreements still violated the 1976 equal treatment directive and were too broad even for any of the sex-based exceptions allowed under EU case law.[64]

The French government defended its decision by arguing that because the safeguarded provisions protected women, they helped ensure women's equality.[65] In addition, the so-called special rights were designed to recognize the existing family arrangements of the majority of French households, and EU member nations have, or should have, discretion in implementing the directive to reflect such national trends.[66] The directive,

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E.C.R. 6135 (referring to the case brought to ensure implementation of Council Directive 76/207 that mandates equal treatment for men and women regarding access to employment, vocational training and promotion, and working conditions).

60. *Id.* ¶ 9. A "special treatment" principle, such as the EU's, probably runs counter to much progressive-liberal U.S. legal sentiment, not to mention law. *See* Williams, *supra* note 6, at 374-80 (criticizing the "special treatment" model for maternity leave originally promulgated by the International Labour Organization in 1919, to which France's regime closely corresponds, and instead favoring Sweden's gender-neutral model; noting difference between positive action for women and special treatment). It is worth noting that in addition to being gender-neutral, the Swedish model relies concurrently on socialist sentiments. *See also* INT'L LABOUR OFFICE, 88TH SESS., MATERNITY PROTECTION AT WORK: REVISION OF THE MATERNITY PROTECTION CONVENTION (REVISED), 1952 (NO. 103), AND RECOMMENDATION, 1952 (No. 95) (2000) (proposing changes to maternity protection from conclusions of the International Labor Conference as part of an overall plan to develop international standards relating to parental leave), *available at* http://www-ilo-mirror.cornell.edu/public/english/standards/relm/ilc/ilc88/rep-iv-1.htm (last visited Jan. 20, 2004).

61. *See* Council Directive 76/207/EEC, of February 9, 1976 on Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions, 1976 O.J. (L 039) 40–42, *available at* http://www.logos-net.net/ilo/150_base/en/instr/eu_27.htm.

62. Case 312/86, Commission v. French Republic, 1988 E.C.R. 6315, ¶ 3.

63. *Id.* ¶ 8.

64. *See id.* ¶ 14. The exception provided for in Article 2 refers in particular to the situations of pregnancy and maternity. *Id.* ¶ 13.

65. *Id.* ¶ 7, 10.

66. *Id.* ¶ 11.

France argued, was not intended to supersede or alter family dynamics or the division of responsibilities within marriage.[67]

Under newly emerging EU case law, however, the only sex-based exceptions permitted are those that apply much more narrowly to pregnancy and maternity.[68] In the only relevant precedent EU case, from Germany in 1984,[69] the European Court of Justice (ECJ) held:

> First, it is legitimate to ensure the protection of a woman's biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth; secondly, it is legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment.[70]

Relying on this reasoning, the ECJ concluded in the French case that because the sex-based exceptions that France allowed were broader than those outlined in the German case for pregnancy and maternity, France had violated its obligations under the EU directive and, therefore, under the European Economic Community Treaty.[71] However, the Court allowed the more narrowly sex-based pregnancy and maternity provisions in the French Labor Code to remain, following ECJ reasoning in the German case.

The ECJ decision in the French case reveals the difficulties of tacking on requirements for formal equality between the sexes, without much more, after years of historically-embedded and ongoing subordination of women. Although the sex-based nature of the French legislation reflects a deeply ingrained national cultural appreciation of birth and early childrearing, similar to that expressed by the ECJ in the German example, these sex-based provisions also must be understood in historical and political context. French women's experiences as workers and, more generally, as French citizens and members of the public, still suggest a long road ahead. The embedded sex bias underlying unequal treatment in France demonstrates a cultural history that has regarded and treated women as subordinate, probably somewhat more so than in the United States, historically.

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67. *Id.*

68. *Id.* ¶ 9.

69. *See* Case 184/83, Hofmann v. Barmer Ersatzkasse, 1984 E.C.R. 3047 (denying a man maternity benefits when he claimed them instead of his wife, who was working outside the home).

70. *Id.* ¶ 25.

71. *See* Case 312/86, Commission v. French Republic, 1988 E.C.R. 6315, ¶ 24.

As French feminist philosopher Simone de Beauvoir articulated in 1949 in response to proponents of motherhood at the time, "it is not as mothers that women have gained the right to vote, and the unwed mother is still in disrepute; it is only in marriage that the mother is glorified—that is, only when she is subordinated to a husband."[72] Indeed, French women did not gain suffrage until 1944,[73] which explains the timeliness of de Beauvoir's commentary. Of the countries in the Council of Europe, by 1994 France was merely seventeenth in the number of women elected to national office.[74] Successful efforts by some French feminist advocates to pass a law in 2000 mandating the equal representation (*parité*) of men and women on electoral candidate lists were met with equal measures of disdain, humor, and resignation following actual election outcomes in June 2002, which increased the proportion of women in the French National Assembly only by 1.4 %.[75] Rather than urge reform or further implementation of the fledgling law to include more stringent enforcement provisions, which were cited by advocates as one possible explanation for the sudden drop-off in the law's popular support, many in France simply consider the law dead, according to anecdotal reports.[76] In June 2002, the major French daily, *Le Monde*, published a post-mortem editorial labeling *parité* a national joke.[77] Women politicians, judges, and scholars interviewed about the law have cited a more profound reason for its limited effect—namely *le machisme*, or the deeply ingrained sexist mentality of French governmental institutions and daily life.[78]

The French workplace reflects this mentality. Men's wages are twenty-five percent higher than women's.[79] A national report on women in the workplace made to the National Assembly in 1989 stated that although only twelve percent of all workers were employed in financially insecure part-time jobs, women made up eighty-five percent of this category.[80] Even

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72. DE BEAUVOIR, *supra* note 2, at 525.

73. *See* Jane Jenson & Mariette Sineau, *The Same or Different? An Unending Dilemma for French Women*, *in* WOMEN AND POLITICS WORLDWIDE 244, 244 (Barbara J. Nelson & Najma Chowdhury eds., 1994) (emphasizing that "France was one of the last [nations] to give the vote to its female citizens").

74. *Id.*

75. *See* Garance Franke-Ruta, *Liberté, Egalité, Sororité*, LEGAL AFF., Jan.–Feb. 2003, (noting the development of the movement for equal representation on ballots for men and women in France) *available at* WL 2003-Feb LEGAFF 30, 31-32.

76. *Id.* at 30–35.

77. *Id.* at 34.

78. *Id.* at 32.

79. Jenson & Sineau, *supra* note 73, at 248.

80. *Id.* at 255. In the United States, nearly seventy percent of the twenty-percent part-time workforce is comprised of women. Nancy E. Dowd, *Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers*, 16 HARV. BLACKLETTER L.J. at 185, 200 (2000).

further, public service employers had recently expanded the use of temporary employment contracts, and seventy percent of these had gone to women.[81] No progress was made on closing the wage gap, and women's unemployment was twice that of men's.[82] The Assembly responded to the report not by augmenting efforts in the area of women's employment, but rather by shrinking the governmental committee in charge of women's workplace issues.[83] In another anecdotal example, a woman professor—the only chaired woman faculty member at a major Paris university—who was interviewed by a journalist in 2000, recounted how she was regularly asked by her male colleagues at the university to take the notes in all faculty meetings.[84] For example, "'Françoise,' . . . 'it's for posterity. Someone has to take them,'" a faculty colleague typically prods her.[85]

Only in the early 1990s was the issue of sexual harassment in employment legally coming to the fore at all in France, as part of the only-then-emerging movement opposing violence against women.[86] Prior to the early 1990s and probably still, many in France viewed laws against sexual harassment as prudishly American.[87] From a media perspective on violence against women, a report commissioned by the French junior minister responsible for women's rights found in 2001 that French advertisements that degrade women with overtones of violence, sexual domination, and bestiality were on the rise.[88] An accompanying poll determined that while about half of French women were "often" or "very frequently" shocked by how women were depicted in French advertising, a majority of men (fifty-seven percent) stated that they were "never" or "rarely" shocked by how women were portrayed.[89]

C. Understanding Women's Motherhood as a Nexus for Comparison

While sex-based maternity leave legislation may contribute to, as well as reflect, a specifically (though hardly uniquely) French historical and cultural misogyny, the United States seems to face a similarly daunting barrier in the form of a historical, and culturally American, capitalism. The

81. Jenson & Sineau, *supra* note 73, at 256.

82. *Id.*

83. *Id.*

84. Jane Kramer, *Liberty, Equality, Sorority*, THE NEW YORKER, May 29, 2000, at 112, 117.

85. *Id.*

86. Jenson & Sineau, *supra* note 73, at 256.

87. Franke-Ruta, *supra* note 75, at 34.

88. Family Violence Prevention Fund, *In the News*, NEWSFLASH, July 27, 2001, *at* http://endabuse.org/newsflash/index.php3?Search=Article&NewsFlashID=267 (last visited Mar. 6, 2004).

89. *Id.*

two countries historically have shared these barriers and their realities are complex and subtle; this Article makes no claim that national or cultural identities in either country can be boiled down so simply. In my comparison, I deliberately highlight American, as opposed to Western European or global, capitalism to emphasize for a predominantly American audience that women in the United States face not only the sexism that has begun to be addressed by civil rights laws but also an entrenched anti-employee, anti-poor, and, indeed, anti-socialist sentiment that severely hinders our progress in the area of women's rights (as elsewhere in the progressive movement). From several different feminist perspectives, it seems clear to me that an inegalitarian parental leave model such as the French—which, although based at least in part on the on-and-off socialist political sentiments in that country, barely pays lip service even to formal equality—is not really the best response. For this reason, feminists in the United States, whether academics, advocates, or politicians, need to continue to work in our own uniquely "American" way to fashion an egalitarian theoretical model that also challenges the anti-employee, anti-poor, and anti-socialist sentiments that have their roots in U.S. history and culture.

Some U.S. feminist legal scholars have urged expanded maternity leave and other workplace protections for mothers and caregivers, among other legal and political reforms, *precisely* to protect motherhood, or the nurturing relationship between mother and child. As Martha Fineman explains, "[t]he caregiving family [should] be . . . entitled to special, prefer[ential] treatment by the state."[90] Although broader and theoretically more elaborate, Fineman's concern with protecting the motherhood relationship closely resembles the ECJ's concern—first articulated in the German case and then confirmed in the French and so different from the United States—with protecting "the special relationship between a woman and her child over the period which follows pregnancy and childbirth."[91] For Fineman, motherhood deserves governmental support and encouragement by virtue of its rhetorical, as well as biological, power: "The strength of the image is in its redistributive potential, grounded on empirical evidence . . . about the need for and the assumption of caretaking."[92] For this reason, Fineman calls for the public valuation of caregiving itself.

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90. MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES 231 (1995).

91. Case 184/83, Hofmann v. Barmer Ersatzkasse, 1984 E.C.R. 3047, ¶ 25.

92. FINEMAN, *supra* note 90, at 234.

Partly in response to Fineman, U.S. feminist legal scholar Dorothy Roberts points out the striking differences among women's experience of motherhood and caregiving:

> [T]he very experience of Black mothers may aid feminists in developing a complex political interpretation of motherhood that includes the view of mothering as a radical vocation. . . . My point is that I do not think there exists a usable cultural symbol of Mother we can excavate. Rather, we must create her from our diverse and common experiences of mothering and from our political vision of what a just institution of motherhood would be.
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> . . . .
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> . . . Indeed, it is *in their role as mothers* that women are most differentiated by race, class, and sexual orientation.[93]

From this perspective, some of the danger in relying on motherhood as a universal experience among women of different backgrounds lies in assuming not only that there is one vision of motherhood, but also that this vision already is complete. Even a mere comparison of parental leave laws between the two relatively similar nations of the United States and France is just another illustration of precisely how different experiences and visions of motherhood can be. Static assumptions about motherhood need not hold, however, for as Roberts continues, "Mothers from all backgrounds share an interest in transforming the gendered division of labor which assigns unpaid caretaking tasks to women without public support and structures the workplace around men's needs."[94]

Others warn of further unintended consequences that are especially relevant to the FMLA in the United States and that arise from the vigilant pursuit of women's equality in childcare and childrearing. In the context of discussing the work-family issue for the legal profession, another U.S. feminist legal scholar, Nancy Dowd, warns that continuing to advance formal equality for women "must not come on the backs of other women workers in legal workplaces, or other women workers who do waged family work for lawyers—housework and childcare."[95] The dilemma that Dowd presents for the legal profession mirrors a larger U.S. problem presented by the FMLA: governmental miserliness towards caregiving women—whether

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93. Dorothy E. Roberts, *The Unrealized Power of Mother*, 5 COLUM. J. GENDER & L. 141, 146–47 (1995) (citing Dorothy E. Roberts, *Motherhood and Crime*, SOC. TEXT 99, 115–16 (1995)).

94. *Id.* at 150.

95. Dowd, *supra* note 80, at 186. Or, as philosopher Kittay puts it, "We are not adhering to a principle of *doulia* when we exploit other women to care for our children." KITTAY, *supra* note 56, at 145.

women take leave from paid work to care for their own children, or whether their (under)paid work is to care for other women's children. First, the FMLA is narrow even for qualifying women employees, as discussed above. Second, the women employees who are directly affected by the FMLA do not include the most economically disadvantaged women in the United States—those most likely in the United States to engage in caregiving work, often as an underpaid second job—but rather salaried women who are already working at relatively large private or state employers.[96] Third, the size limitation on employers covered under the Act, fifty employees or more, means that a majority of the U.S. workforce, women workers included, is not even covered by its provisions.[97]

A more generous understanding of the motherhood relationship and its impact for paid work on *all* women in the United States could provide an important rationale for expanding the FMLA's coverage and, more generally, for government support of parental caregiving, paid childcare work, and perhaps, broader "dependency" work as well. Furthermore, such an understanding of the nature of caregiving, if genuinely and inclusively feminist, might avoid the harmful commodification and economic stagnation of caring work—as caring work becomes further publicly and economically recognized, as it has already in Britain and in some sectors of the U.S. economy.[98] However, I would posit that even an appropriate valuation of motherhood, caregiving, or dependency work, however distant, simply will not be sufficient to cure what ails us if it is not also accompanied by some measure of explicitly redistributive and economic reform that probably finds some practical grounding in socialist, and not exclusively feminist, sentiments.

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96. *See* KITTAY, *supra* note 56, at 134–39 (decrying the FMLA for not providing paid leave and not covering a majority of the workforce).

97. *Id.* at 138–39.

98. For descriptions of the experiences of paid caregiving workers, exemplified by individuals working in the service industries, see, for example, ARLIE RUSSEL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING 9-11, 13–17 (1983) (describing the emotional style of offering services as part of the service itself in industries such as airlines and customer service and the growing number of jobs calling for emotional labor). *See also* Clare Ungerson, *The Commodification of Care: Current Policies and Future Politics, in* GENDER AND CITIZENSHIP IN TRANSITION 173-97 (Barbara Hobson ed., 2000) (describing existing national care allowances in Britain and the dangers of the growth of such payments for class relations and sex relations). *See generally* Cameron Lynne Macdonald, *Shadow Mothers: Nannies, Au Pairs, and Invisible Work, in* WORKING IN THE SERVICE SOCIETY 244 (Cameron Lynne Macdonald & Carmen Sirianni eds., 1996) (examining the working conditions and resistance strategies of live-in child care providers and comparing their experiences with those documented in other studies of domestic workers).

III. A ROUGH SKETCH OF A REVIVED SOCIALIST FEMINISM

From the vantage point of multiple deficiencies in women's treatment, as illustrated by a comparison of the French and U.S. cases, articulating a positive outlook requires, at a minimum, concurrent attention to subordination both on the basis of sex and on the basis of economic class, wealth, and poverty distinctions. Feminist socialists in the United States began to address this combined subordination academically and politically in the late 1970s, specifically with an eye to the economic oppression of women through the division of labor, both within the home and outside it, and with potentially broader implications. I suggest that some of their concerns and ideas must be revived in the U.S. context.

According to one of its earlier proponents, socialist feminist theory understands the interwoven nature of class- and sex-based oppression and seeks to synthesize a solution, in the form of a combined radical feminism and Marxian analysis. Women's labor in a capitalist society such as ours, which is largely domestic labor, implies a compounded exploitation for women, whatever the site of our work.[99] Socialist feminism relies heavily on the Marxian notion of "species being" as the ideal "of what is possible for people in an unalienated society."[100] Our work and lives remain alienated because industry exploits us; in other words, forces us to engage in unpaid, surplus labor to generate products over which we have no control.[101]

Thus, in the words of one feminist scholar, "[t]o define capitalist patriarchy as the source of the problem is at the same time to suggest that socialist feminism is the answer."[102] Not only must we rethink how our society places us in class-based categories, but we also must redefine these categories from the perspective of our diverse realities and our diverse consciousness of that reality.[103] This answer is not additive or incremental, but rather relational and concurrent. A vital part of any feminist solution to any social problem—but especially to the issues of work and family—must address the implications of economic class divisions among women.

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99. *See* Zillah R. Eisenstein, *Developing a Theory of Capitalist Patriarchy and Socialist Feminism, in* CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM 31 (Zillah R. Eisenstein ed., 1979) (demonstrating that class categories perpetuate the sexual division of labor in society, "along with the artificial needs that have been created through the class system").

100. *Id.* at 8.

101. *See* ALISON M. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE 136 (1983) (portraying women as the laboring group in a production society dominated by males).

102. Eisenstein, *supra* note 99, at 6.

103. *See id.* (showing that society's conception of "woman" overshadows her oppression).

Broader interpretations of this socialist feminist movement also have recognized the inseparability of many women's experiences of oppression based on sex, class, and race.[104] As expressed in 1977 by the Black Feminist Combahee River Collective, "If black women were free, it would mean that everyone else would have to be free since our freedom would necessitate the destruction of all the systems of oppression."[105] In other words, to truly abolish any form of domination we must abolish all of them.[106] The result would be fulfillment of material human needs, such as shelter, food, and clothing, as well as the "social and often individual human needs for bearing and rearing children, for sexual satisfaction and . . . for emotional nurturance. Every society has to produce the means to satisfy these needs."[107]

CONCLUSION

Integrating a thorough socialist feminism into the practice of law and politics in any country, or internationally, would require infinitely more theorizing and strategizing than scholars have already done or that I am intending to accomplish in this Article. Given the current dominance of capitalism in the United States and globally, however, starting such an effort is worthwhile. Surely some version of socialist feminism, or even just a more populist feminist movement than we now have, could squarely address the challenge posed by the ever-burgeoning capitalist rhetoric in Congress, the White House, and throughout the U.S. legal and political systems. There already are strains of passively anti-capitalist, if not actively pro-socialist, themes in national populist rhetoric by some U.S. legislators and presidential candidates, as there always have been throughout U.S. history and throughout the U.S. labor movement. The presence of such rhetoric suggests that socialist feminist sentiments might more easily find a home in U.S. politics and law than one initially might think.

In the above comparison between the French and U.S. systems, I have argued that both regimes suffer from significant deficits. Part of our solution must at least attempt to liberate both motherhood and the workplace for women—not, as in France, by subordinating women's

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104. *See* JAGGAR, *supra* note 101, at 124 (comparing and contrasting socialist feminist theory with radical feminist theories).

105. *The Combahee River Collective: A Black Feminist Statement, in* CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM 362, 368 (Zillah R. Eisenstein ed., 1979).

106. JAGGAR, *supra* note 101, at 124.

107. *Id.* at 135.

employment to their reproductive capacity, and not, as in the United States, by providing women with equal rights to alienate other women's caregiving labor. Parental leave legislation is hardly the seed of a socialist feminist revolution. Although only part of the answer, a more highly elaborated socialist feminism would provide an important instrument for feminist political and legal activists who wish to improve women's experiences both in employment and in caregiving.