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Why EU Work-Family Reconciliation Policies Fail in Italy: A Feminist Legal Analysis

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University of San Francisco

**WHY EU WORK-FAMILY RECONCILIATION POLICIES
FAIL IN ITALY: A FEMINIST LEGAL ANALYSIS**

A Thesis Presented to
The Faculty of the College of Arts and Sciences
Masters Program in International Studies

In Partial Fulfillment
Of the Requirements for the Degree
Master of Arts in International Studies

Chrystal Orozco

December 2012

**WHY EU WORK-FAMILY RECONCILIATION POLICIES FAIL IN
ITALY: A FEMINIST LEGAL ANALYSIS**

In Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS

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Under the guidance and approval of the committee, and approval by all the members, this thesis has been accepted in partial fulfillment of the requirements for the degree.

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Abstract

Following the establishment of the European Parental Leave Directive (96/34/EC), the female employment rate in Italy is still ranked the third lowest in the European Union (EU) and Italian women continue to do twice as much household work as Italian men. Parents, especially women, struggle to find a balance between professional work and their family lives in a society that encourages the traditional gendered roles of the housewife and the breadwinner. The following study is a theoretical analysis of the Parental Leave Directive and the potential domestic influences that may prevent Italy from progressing socially towards gender equality. This study looks at the work of feminist authors Joan Williams, Arlie Hochschild, and Vicki Schultz to understand why the implementation of the Parental Leave Directive is simply not enough to generate social change in Italy regarding work-family reconciliation. The findings of the legal analysis in this study show that in order for Italy to move forward in gender equality, policies must be successful in eliminating the underlying political, sociological and cultural factors that perpetuate the traditional gendered family roles that revolve around the masculine norm.

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Chapter I: Introduction

Preface

As the European Union (EU) continues to enlarge to almost thirty member states, the issue of compliance to EU legislation and principles has been a popular subject of discussion in European literature (Forest and Lombardo, 2012). Following the EU's enlargement that welcomed additional states from Eastern Europe, it was questionable if the EU could successfully stretch its legal order and principles to twenty-seven states.

The European Constitution was established originally to set out the basic goals and principles of European integration. Together with the European Court of Justice, it places limits on the powers of EU institutions on member states, as well as on the member states influence on the EU (McCormick, 2008). The EU *directive* is an example of a limitation on the EU's institutions. This legislative tool is binding on member states so long as the goals and objectives are achieved; however, it is left to the member states to choose whichever measures are necessary to realize these aims. This sets a limitation on the authority of the EU's institutions, and allows member states to be flexible when it comes to transposing and implementing the EU's measures.

Since member states have the freedom to reach the goals and objectives of EU directives using a method of their choice, the outcome of national compliance to these EU measures varies from state to state. In some states, the outcomes will demonstrate the ability to reach and maintain the incentives specified by the legislation. Other states may struggle to successfully transpose EU policies into their legislation, as well as fail to fulfill the objectives the policies pursue.

Moreover, the type and extent of Europeanization within a member state can vary, depending on the policy area (Donà, 2012, p.117). EU gender policy is an example of an area that has had diverse results across member states. European gender research shows that “comparisons across member states show diverse policy outcomes rather than uniform ones” (Forest and Lombardo, 2012, p.2). When member states’ efforts fall short of reaching the goals of EU directives, the principles behind European legislation and integration may be disregarded. Member states such as Italy, which have a history of strong traditional discourse on gender roles, may compromise the incentives of EU gender policies with domestic influences, resulting in a “watering down” of the objectives and original text of the legislation (Donà, 2012).

Statement of the Problem

Since the EU’s establishment of gender equality directives, Italy has fallen behind the majority of member states in putting the EU’s recommendations to practice. Official reports from the European Commission have commented on the member state’s struggle to implement gender equality directives, and note Italy’s slow rate of social change in gender equality (Prechal et al., 2010). Italy has struggled particularly with promoting work-family reconciliation policies, which pursue the objectives of growth of female employment and increase in fertility rates (Donà, 2012). Amongst EU member states, Italy is ranked the third lowest in percentage of female employment with 49.9 percent in 2011 (barely passing Greece by 1.3 per cent), far below the Lisbon target of 60 per cent by 2010 (Eurostat, 2012).

Work-family reconciliation policies have been highly relevant since the beginning of the new millennium “to remedy situations experienced by the majority of the industrially advanced European societies, and to battle the negative repercussions on the sustainability of the traditional welfare state” (Donà, 2012; Bonoli, 2005). As a nation with a century-long traditional history based on familialism and Catholic values, as well as a government that has been infamous for neglecting gender policies, it is likely that domestic-specific factors play an important role as potential influences to the Europeanization of work-family reconciliation policies in Italy. Recently, few scholars have attributed Italy’s failure to meet the EU’s expectations in this policy area to the state’s background of policies that acted against the domestic change in work-family reconciliation, and to the ideas and discourses promoted by Italian policy actors (Donà, 2012, p.100).

Before transposing the EU’s work-family reconciliation directive into Italian laws in 2000, Italy had no such measures. As mentioned above, Italy’s dominant discourse puts women in “their role of exclusive caregivers”, which clashes with the vision the EU promotes of women as both workers and mothers (Donà, 2012, p.109). Therefore, the process of implementing the EU’s reconciliation measures into its own legislation resulted in a compromise of EU policy requirements and traditional national discourse to innovate the transposed laws.

Analysis of the institutionalization of multiple equalities in Italy has shown that Italy’s implementation of EU antidiscrimination directives has resulted in unintended consequences (Lombardo and Del Giorgio, 2012). In their study, Lombardo and Del Giorgio discuss how EU directives have effectively forced Italy to transpose

reconciliation legislation, but have also failed due to the lack of monitoring the implementation of directives. Italian Law 53/2000, the transposed European Directive 96/34/EC on parental leave, resulted in a failure to promote the father's role in family care work and to relieve problems faced by women who were trying to balance work and life due to insufficient provision of childcare services (Lombardo and Sangiuliano, 2009). While Law 53/2000 did bring new changes to reconciliation measures in Italy, such as the opportunity for both men and women to enjoy parental leave, it ultimately led discouraged men from taking parental leave. Rather than promoting EU gender equality principles, Law 53/2000 perpetuates the traditional view of women as only caregivers and men as only workers. Women in Italy are still struggling with balancing work and family life.

Thus, in taking a closer look at the implementation processes of work-family reconciliation measures in Italy, it is evident that domestic influences, such as traditional discourse of gender roles, are able to manipulate EU gender equality principles to alternately create contrasting results.

Background and Need

In the past decade, the study of Europeanization has been given increasing attention by various scholars. However, most of this literature takes a 'compliance-oriented' approach to Europeanization, treating the domestic impact of EU member states as independent from convergence (Forest and Lombardo, 2012). Other domestic-specific factors besides compliance may attribute to the incongruence between the EU's gender policy incentives and the outcome of its legislation on the national level. Therefore, studying issues connected to Europeanization must not only be compliance-oriented, as

this may be limiting to other potential factors that affect these issue. A pluralistic approach, which considers supranational, as well as domestic-specific factors, offers a more well-rounded study, which is more appropriate when discussing areas such as gender equality. Gender equality can mean many different things.

In defining the phenomenon of Europeanization, which holds multiple meanings in previous literature, this study refers to Claudio M. Raedelli's interpretation, which gives a pluralistic approach to Europeanization. According to Raedelli, Europeanization consists of:

“processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies” (Raedelli, 2004, p.3).

The fundamental part of Raedelli's definition is the emphasis on the incorporation of domestic discourse, which expands the study of Europeanization from an exclusively top-down perspective.

As the study of Europeanization has been given more attention, few scholars have begun to expand this area of research to gender equality policy in the EU. Current research is lacking works on gendering Europeanization, especially those that also engage in a theoretical discussion with Europeanization literature (Forest and Lombardo, 2012). Moreover, the literature is lacking theoretical approaches to Europeanization which focus not only on compliance mechanisms, such as legislative and institutional practices, but also on domestic-specific policy dynamics such as problem definition, issue framing,

strategic discourse usage, and idea diffusion (Donà 2012, p.117). Most studies on EU gender policies “focus only on the EU policymaking level rather than on the EU-member state interactions” (Forest and Lombardo, 2012, p.3). This study aims to fill this gap by considering factors from both areas and applying them to feminist legal theory.

Research Questions

This study seeks to contribute to existing research by answering the following questions:

1. What is the feminist legal theory surrounding the issue of work-family reconciliation laws?
2. What are the policies that the EU has established within its gender equality legislation to address the work-family conflict?
3. What conditions may make it difficult for Italy to reach the EU’s goals regarding work-family reconciliation?

Methodology

This study takes a multidimensional approach to the issue of work-family reconciliation in Italy in connection with the phenomenon of Europeanization and gender equality policies in the EU. The study begins by looking at the feminist legal theory that provides the rationale for the study and underlines the importance of the issue of reconciling work and family responsibilities. Chapter III looks at the most prominent feminist legal theories: equal treatment theory, cultural feminism, and dominance theory to frame the background of the discussion of gender law. It then introduces the work of feminist scholars who have been involved in the theoretical discussion of balancing work and family life. In the succeeding chapters, these theories are applied to the EU’s Parental

Leave Directive and the potential influences that may prevent Italy from successfully implementing the law.

To discover what influences have caused Italy to struggle with making progress on work-family reconciliation, the analysis will consider the impact of the following points: whether the EU law is consistent with feminist theory (or how equality is addressed under the law in relation to the feminist discussion on reconciling work and family responsibilities); and whether Italy has implemented the law in a way that upholds the law's gender equality principles. The second point in a sense is additionally addressing whether the Italian implementation is consistent with feminist theory as well. After analyzing these laws and investigating the cultural and political influences that come from inside of Italy, the goal of this thesis is to pinpoint the elements of this process that must change in order for Italy to successfully promote work-family reconciliation with the help of legal feminist ideas.

Theoretical Framework

The theoretical framework of this thesis is based on the idea that both men and women should be allowed to balance market (or professional) work with family (or private) work. Preventing an individual from maintaining a professional job on the grounds that they have, will, or may have to commit time to caregiving is considered discrimination under European law (Prechal & Burri, 2009, p.10). By means of analysis through the lens of feminist legal theory, this study reveals the role of the law in reconciling the work-family conflict in Italy. Feminist legal theory is an interdisciplinary field that emphasizes the role of the law in achieving feminist goals and recognizes feminism as an influential legal force (Levit et al., 2006).

This study reflects on theories of well-known legal feminists, Wendy W. Williams, Luce Irigaray, Carol Gilligan, Robin West, Catharine MacKinnon, and Joan Williams, to frame the analysis of work-family reconciliation measures. The analysis refers to the renowned feminist legal theories: Equal Treatment Theory, Cultural Feminism, Dominance Theory as an inspiration for interpreting the Parental Leave Directive and the work-family conflict in Italy. It also looks at the discussion that persists between feminists who have specifically studied this conflict.

While feminist legal theorists do not agree on the extent to which antidiscrimination law should recognize physical and social differences between men and women, they do agree that a major barrier to workforce integration relates with the way that legislation handles the physical and cultural differences between them (Levit et al., 2006, p.61). Feminist legal theorists think that work-family policies should work on a more equitable distribution between work and family responsibilities, rather than relying on the conventional assignment of women to family-oriented roles and men to work-oriented ones. The rationale of the analysis of this thesis stems from these ideas, and uses the work of the aforementioned legal feminists as an inspiration to frame the analysis of EU work-family reconciliation measures in Italy.

Purpose of Study

The purpose of this study is to discover why Italy is failing to promote work-family reconciliation measures encouraged by the EU in a way that creates actual progress within its societies. The study is carried out by theoretically analyzing EU Directive 96/34/EC on parental leave and Italian Law 53/2000, as well as assessing the conditions in Italy that may influence the Europeanization of these gender policies. This

thesis aims to discover a means that will help Italy all individuals to fulfill both roles of parent *and* worker efficiently, and to encourage men to share caregiving responsibilities. The findings of this study will contribute to research in the fields of feminist legal theory regarding the work-family conflict, and gendered Europeanization.

Limitations of Study

The research for this study was carried out primarily from the United States. The majority of the sources used in this study were extracted from university libraries and online databases that were available to the researcher at the University of San Francisco and other public universities in California. Most of the sources were written in English or translated from Italian to English. Therefore, this research does not reflect the scholarly work that may exist outside of the resources that were available to the researcher.

Summary

Work-family reconciliation has become highly relevant in European gender policy as women living in economically advanced states find themselves having difficulty with juggling work with private life. Although the EU has established binding legislation for work-family reconciliation with Directive 96/34/EC, Italy has failed to effectively promote its objectives, and Italians are struggling to find this balance between work and family responsibilities.

The following study reveals the obstacles that Italy has faced in promoting work-family reconciliation. By taking a multidimensional approach that incorporates domestic as well as supranational factors that influence this issue, the researcher hopes to contribute a more comprehensive study to the literature on gendered Europeanization.

The approach to analyzing EU law and Italy's performance is guided by renowned feminist theories that focus attention on work-family issues and on what equality actually means legally.

Chapter II. Literature Review

Introduction

Work-family reconciliation policies in Europe have become especially relevant in the past decade due to the rise of women in the workforce and the amount of women who are obtaining higher education. The EU has dedicated part of its legislation to address the issue of work and family reconciliation with its Directive on Parental Leave (96/34/EC). Although EU directives are binding upon all member states, EU gender policies have proven to show different results across member states. This study attempts to explain the variation of results by looking at the case of Italy, a member state that has failed to reach gender equality standards set by the EU. To carry out a comprehensive, yet focused study on work-family reconciliation policy, this study considers multiple influences that may contribute to the outcome of work-family reconciliation in Italy. These include domestic and supranational factors that affect work-family reconciliation in Italy as well as a qualitative analysis of the work-family reconciliation policies that apply to the member state. The following chapter is a literature review of recent scholarly work that shows how gendered Europeanization and equality policies have been assessed before, as well as where the literature is lacking improvement.

By way of discussing the most relevant pieces of literature related to this study (that were accessible to the researcher), this literature review will highlight the missing gaps that this study aims to fill. The literature is separated into three different areas pertaining to the issue of work-family reconciliation in Italy: (1) Europeanization and Gender Equality in the EU; (2) Work-Family Reconciliation and Familialism in Italy; and

(3) Italy's Response to EU Gender Equality Laws. This chapter dedicates a section to each subject area, where the correlating works are addressed individually, and then discussed in relation to each other and to the significance of this study. The shortcomings of the existing research literature are addressed in the summary of this chapter, which provide a basis for the rationale for how this study contributes to research on work-family reconciliation policy, an issue that has become increasingly relevant in gender and Europeanization studies.

Europeanization and Gender Equality in the EU

Europeanization, a term with multiple meanings, is referred to in this study as the phenomenon that consists of the processes of construction, diffusion, and institutionalization of “formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies” (Raedelli, 2004, p.3). With the incorporation of gender equality into EU legislation, gendered Europeanization, or what is referred to in this thesis as the extent to which member states have constructed, diffused, and institutionalized the formal and informal rules, procedures, policy paradigms, styles, ways of doing things and shared beliefs and norms of the EU's gender equality principles, has come up in recent literature as a significant sub-category of Europeanization.

The following scholarly works related to gendered Europeanization demonstrate the need of a new approach when analyzing gender issues. Rather than taking a single-

minded approach to Europeanization by focusing on just compliance as many scholars have, studying gendered Europeanization requires a multidimensional approach as few have taken (Forest & Lombardo, 2012; Donà, 2012; Clavero & Galligan, 2009). In other words, to fully understand the extent to which member states have adopted the EU's doctrine on gender equality, researchers must look at not only external impacts, such as the compliance to European law; they must also study impacts of national and sub-national factors, such as cultural history and national discourse.

According to Maxime Forest and Emanuela Lombardo's chapter, "The Europeanization of Gender Equality Politics: A Discursive-Sociological Approach," European gender research has revealed that comparisons across member states show diverse policy outcomes rather than uniform ones (Forest & Lombardo, 2012, p.2-3). This puts gender policy in its own special category in the study of Europeanization. In this chapter, the authors address the lack of works that focus on gendering Europeanization that also engage in a theoretical discussion with the literature on Europeanization (Forest & Lombardo, 2012, p.2). This chapter offers an alternative approach to the existing theories of Europeanization that is especially appropriate to studying the making of gender equality policies in the EU.

Forest and Lombardo introduce theories on Europeanization that have shown to be limiting when applied to gender equality because of their "compliance-oriented" approaches to Europeanization. The authors note that rather than taking a "pluralistic approach" to the study of Europeanization that uses a top-down as well as a bottom-up perspective, scholars have focused on the EU policymaking level rather than on the EU-Member State interactions (Forest & Lombardo, 2012, p.8). They argue that a proper

research design cannot be only top-down; it has to also work bottom-up because “domestic political dynamics—often related to the relations between institutions and civil society that are crucial to the making of equality policies—are key in understanding policy change and the role of the EU” (Forest & Lombardo, 2012, p.11).

The authors point out that an increasing number of scholars have conceptualized Europeanization in terms besides those of convergence, noting that “domestic actors and institutions do not fit EU incentives smoothly and that the degree of convergence with EU norms in the same policy sector varies across member states” (Forest & Lombardo, 2012, p.5). To add to this argument, Forest and Lombardo introduce the “four new institutionalisms” that make up the proper methodological combination to study the making of gender policies in the EU. These four new institutionalism are: (1) Historical Institutionalism, which studies the institutionalization paths of a public intervention area in a concrete domestic context, as well as the influence those paths are likely to have on the impact of the EU; (2) Rational Choice Institutionalism, which focuses on the intentional usages of Europe in domestic politics; (3) Sociological Institutionalism, which suggests focusing on administrative, social, and political agents concerned primarily with policy change; and (4) Discursive Institutionalism, which is crucial in understanding how EU norms are internalized and which endogenous reasons shape domestic policy change (Forest & Lombardo, 2012, p.6).

Together these institutionalisms create a methodological combination that incorporates studying discursive patterns, cognitive processes, and ideational change. The authors take note of the lack in studies that have discussed the implementation of EU gender quality policies at the national level from perspectives that placed greater

emphasis on domestic factors. This study takes the perspective of Forest and Lombardo's pluralistic approach to gendered Europeanization by adding an emphasis on domestic factors in Italy that may be key in understanding policy change and the role of the EU regarding work-family reconciliation.

In their article "Constituting and Reconstituting the Gender Order in Europe," Sara Clavero and Yvonne Galligan discuss the European and national constraints on the adoption of and compliance with the directives that constitute the 'hard law' of EU gender order. The article takes a look at the evolution of gender equality law in Europe and studies the extent to which member states have been open to the Europeanization of national gender regimes. Clavero and Galligan find that challenges exist at both the European and domestic levels to the extension, and implementation, of laws, policies and practices facilitating gender equality (Clavero & Galligan, 2009, p.101).

This article addresses questions of compliance as well as the emerging literature introducing the impact of European integration on domestic change, offering a multidimensional approach to Europeanization. This is the approach that the authors argue is crucial to understanding gender equality policy in Europe. The two questions this study focuses on are whether the processes of European integration are leading to convergence among member states with regard to the rules, ideas and beliefs for dealing with common problems and making decisions; and what conditions need to be in place in order for convergence to occur (Clavero & Galligan, 2009, p.101-2). The authors argue that equal opportunities is one of the most developed areas of EU social policy, yet there is still a lack of attention to the gender aspects of Europeanization (Clavero & Galligan, 2009, p.102).

In their research, Clavero and Galligan use the “two needles eyes thesis” by Ostner & Lewis, which takes into account the “important ‘filters’” gender norms must pass through at the supranational and domestic layers of governance (Clavero & Galligan, 2009, p.102). This thesis hypothesizes that at the supranational level, the potential of the EU to effect change is heavily constrained by the fact that gender legislation is informed by a narrow conception of gender equality (strictly in terms of the workplace) and by the requirement of consensus in the Council, which allows member states to dilute proposals. Second, the thesis hypothesizes that the potential of EU gender legislation to effect domestic change is constrained at the national level as well because implementation depends heavily on the gender order operating in each individual state (Clavero & Galligan, 2009, p.102).

The findings of Clavero and Galligan’s article show that the wide diversity of responses to EU gender equality directives range across old and new member states, and they all continue to be challenged to eliminate discrimination in gender relations (Clavero & Galligan, 2009, p.115). Through post-Amsterdam Treaty cases (which introduced gender equality directives into EU legislation), the authors illustrated that national implementation depends on the domestic gender order of each member state. Although this research project takes a similar approach to Clavero and Galligan’s study by focusing on supranational and domestic factors that affect EU gender policy, the current research study focuses less on convergence of the member states, and more on what makes Italy a special case in adopting EU gender norms and policies.

Emanuela Lombardo and Elena Del Giorgio completed an analysis on the domestic impacts of two of the EU’s antidiscrimination directives in Italy. Their analysis

shows that the domestic implementation of EU antidiscrimination directives can produce unintended consequences (Lombardo & Del Giorgio, 2012, p.1). The authors argue, “while the EU has opened opportunities for the development of equality policies in Italy and institutions that were not previously available in Italy, national gatekeepers and other political dynamics have affected the type of institutionalization that took place by provoking unintended consequences from those postulated by the EU antidiscrimination directives” (Lombardo & Del Giorgio, 2012, p.1). The unintended consequences the authors mention in this article refer to faulty transposition to directives that paradoxically discriminate against those individuals it is supposed to protect, and limited or failed implementation (Lombardo & Del Giorgio, 2012, p.2).

In discussing why the EU antidiscrimination strategy in Italy can lead to unintended consequences, Lombardo and Del Giorgio point to different institutional, political, and cultural reasons for the limited institutionalization of multiple inequalities in Italy (Lombard & Del Giorgio, 2012, p.8). The authors’ findings show that although new inequalities have entered the Italian national political agenda in the first decade of 2000, the way in which they have been addressed and regulated shows little evidence of an effective implementation of EU antidiscrimination measures. Moreover, although Italy is not the only case of limited implementation of these measures, Lombardo & Del Giorgio point out that compared to other Southern member states, Italian antidiscrimination institutions have proved “particularly inefficient or faulty in transposing and implementing EU antidiscrimination legislation” (Lombardo & Del Giorgio, 2012, p.9).

Lombardo & Del Giorgio's study is important because it shows that EU directives can potentially be harmful, depending on the way that a member state adopts these measures. It also gives a member-state specific analysis of EU gender policy. However, their study is limited to two directives, 2000/43/EC and 2000/78/EC; and looks solely at the issues of sexual orientation, race and ethnicity. The current research study aims to expand research related to the domestic consequences of EU antidiscrimination policy to address the gender equality directive on parental leave work and family reconciliation. This topic that is significantly important to Italy as a member state whose culture is centered on the family structure.

In Heather Macrae's article, "The EU as a Gender Equal Polity: Myths and Realities," she addresses the inconsistency between the EU's myth of gender equality, or gender narrative, and the loyalty of European women. The author argues that there are large gaps between the national and the European levels, as well as within the EU's various policy initiatives, which are problematic to the EU's myth of gender equality (Macrae, 2010, p.156). Through two cases, Macrae discovers that if the European gender narrative runs up against contending national myths, the EU narrative may be undermined. Moreover, if EU gender initiatives are forced to compete with dominant narratives in the economic sphere, they are quickly undermined (Macrae, 2010, p.155).

The EU uses political myths to point out its key values, norms and beliefs to serve as a tool "to aid in the construction of a common identity, to confer legitimacy on an institution, and to generate loyalty for a particular political institution" (Macrae, 2010, p.156). The EU's gender equality myth focuses on two aspects of the EU's gender policies: the inclusion of gender equality at the founding of the European project, and its

continued relevance to the European project (Macrae, 2010, p.157). Macrae argues that the overall effectiveness of gender legislation and women's perception of the EU's gender policies may be limited by the member state's implementation of the EU gender policies in a way which is consistent with the provisions of the EU directive, but not with the spirit of the legislation (Macrae, 2010, p.164). Furthermore, policies may have "hidden" or unintentional gender consequences for specific groups of women, which counter the attempts by the European Commission to publicize a myth of the EU as a gender equal polity (Macrae, 2010, p.167).

Overall, Macrae's argument is that "the lack of success of the EU gender myth can be traced back to a basic gap between the policy aims and the policy outcomes of the EU gender project" (Macrae, 2010, p.171). Furthermore, Macrae thinks that the EU's approaches to gender equality are flawed, since it relies on the member states to choose how to implement its policies. Although Macrae's statements are similar to and proven by other scholars, such as the previous work by Lombardo and Del Giorgio, she only provides two specific cases on parental leave in Germany and the liberalization of the EU airline sector. The current research study explores a more in-depth analysis of supranational and domestic factors that create the gap between policy aims and policy outcomes of the EU gender equality myth.

The literature on Europeanization and gender equality in the EU has shown that the study of Europeanization is complex, and requires taking a multidimensional approach when researching its relation to gender equality. Rather than simply taking a top-down approach to gendered Europeanization, as Forest and Lombardo have argued is popular among many scholars, a pluralistic approach offers a greater understanding of

gender policies. A pluralistic approach must take into account the domestic as well as supranational influences of a member state, since they are equally important. Other scholars have already begun to use this kind of approach. Some of these authors include Clavero & Galligan (2009), Del Giorgio (2012), and Macrae (2010). However, current literature on this subject area is still missing studies that focus primarily on the domestic factors of a member state that explain the shortcomings of a particular gender area, specifically in work-family reconciliation. This study aims to fill this gap in the current literature dedicated to gender equality issues in the EU.

Italy's Response to EU Gender Equality Laws

Because this study is focused on the outcome of the EU's gender policies on work and family reconciliation in Italy, it is important to take a step back and take note of how Italy has responded to EU gender policies overall. Studying the outcomes of EU gender policies reveal significant patterns in Italy's gender policy implementation and illustrate how the outcome of work-family reconciliation policies in Italy should be studied separate from other policy areas. The following literature shows how Italy has adopted EU gender norms and gender equality policy while being pressured from both Europe and its domestic discourse. The findings of these studies emphasize the importance of member-state specific situations in adopting European principles, and pinpoint Italy's emphasis on the traditional family structure as a likely constraint from progress in gender equality.

In her chapter in a reader titled "The Europeanization of gender Equality Politics: A Discursive-Sociological Approach," edited by Maxime Forest and Emanuela

Lombardo, Alessia Donà attempts to answer the question of why there are Italian difficulties in promoting employment by helping parents reconcile work and family life. As Donà points out, EU reconciliation policies have a dual objective of growth of female employment and increase in fertility rates. In 2000, a new Italian law specifically created for work-family reconciliation was not successful, shown in Italy's low rate of female employment. Donà attributes Italy's difficulties to the "goodness-of-fit model," which says that the more the member state policy traditions diverge from EU policies, the more adaptation pressures arise and a significant domestic policy change should consequently be expected" (Donà, 2012, p.100).

The author's study introduces four types of domestic structural constraints that make up the institutional background to reconciliation of work and family life in Italy. These include: (1) political factors, such as the paralysis of Italian state feminism and the exclusion of women's organizations from policymaking, depending on what kind of government was in power; (2) institutional constraints, thanks to the marginal position of the Ministry of Equal Opportunities in the policymaking process; (3) legislative constraints—Italy had no previous legislation for reconciliation measures prior to the transposition of the EU's directives; and (4) cultural constraints, which reflect the crisis of the Italian family model based on traditional marriage, and the change of individuals' choices in forming families (Donà, 2012, p.112-5).

The dominant Italian discourse based on familialism runs against the goals of EU policies that aim to increase female employment, develop childcare services, and change male behavior Donà's study found that the right to paternity leave, inspired by the EU discourse on sharing care responsibilities, "has been filtered through the traditional

discourse on gender roles and family organization in a way that preserved the status quo. The result was to promote a kind of reconciliation without sharing by means of policies that do not effectively encourage male workers to share family responsibilities, leaving women in the traditional status of caregivers” (Donà, 2012, p.107).

Donà’s chapter “challenges the typology based on the ‘worlds of compliance’ framework” with a “world of domestic politics” where there is a conflict between EU legislation and national policy interest that causes political resistance in the transposition stage (Donà, 2012, p.117). The current study follows a similar research model by addressing Italy’s four institutional constraints; however, it also incorporates theory to frame the argument in a U.S. feminist legal theoretical perspective.

The fifth chapter of Roberta Guerrina’s book *Mothering the Union*, “The Family-Friendly Discourse in Italy: Mothering, the Family and the Nation,” explores the “impact of the European equality agenda and family-friendly policies on the development of women’s employment rights in Italy” (Guerrina, 2005, p.114). Through studying Italy’s focus on the family as provider of care, the author finds that the application of the EU’s family-friendly and maternity policies reflects “persistent attitudes towards women and work” (Guerrina, 2005, p.127). Rather than promoting the EU gender principles, such as promoting women’s rights, when applying these measures Italy has reproduced the centrality of women’s mothering that is embedded in the very essence of its constitutional framework (Guerrina, 2005, p.128).

Since the Fascist regime, women’s social role in Italy was defined in terms of their function as child bearers and caregivers. The regime “instituted a social framework

that was built upon representations of women as careers and cared for” (Guerrina, 2005, p.115). It was not until 1971 that motherhood had become an object of serious legislative attention, with the creation of the Protection of Working Mothers Law (Legge No. 1204), which provided “a framework for the protection of all women employed in the official labour market” (Guerrina, 2005, p.118). Guerrina notes, however, that a closer look at the law reveals biases that reinforce gender power hierarchies. Together with the support of the Catholic Church, the author points out that the Fascist legacy provided the foundations upon which post-war Italy was built. Guerrina argues that this highlights the continued role of the family as “the main arena in which gender dynamics are being played out” (Guerrina, 2005, p.116).

The persistence of these dominant views in Italy results in a slow rate of social change in the state, even though there have been achievements of women in education and employment (Guerrina, 2005, p.117). Guerrina argues that this has made it hard for women to reconcile the choice of motherhood and the structures of labor market. The findings of this chapter provide an additional rationale to this research study, by pointing out the impact of Italy’s failure to keep up with European measures and gender equality standards. This study aims to add to existing literature on the issue of reconciliation of work and family life in Italy to bring attention to the difficulties that women in Italy face.

As part of Sergio Fabbrini and Simona Piattoni’s book, *Italy in the European Union: Redefining National Interest in a Compound Polity*, Alessia Donà wrote a chapter on the development of Italian equality policy, an issue that had never been part of the Italian political agenda before the pressures from Europe to transpose the EU gender equality directives (Donà, 2008, p.107). In studying what she calls “a five-step

development to the current equality legislation,” Donà finds that Italian actors played a differential role during the intergovernmental negotiations. Furthermore, in Italy, despite the EU recognizing equality as a widely accepted principle and value for its member states, Donà argues that, “the political color of the governing coalition still makes a difference in sustaining or in slowing progress to an equal society” (Donà, 2008, p.125).

In her research, Donà points out the relevance of institutional and individual variables. She points out four components that affected the gender equality policymaking process in Italy. First, there was a lack of coordination inside the executive and between the EU and national levels that caused Italy to fail during the 2000 policy process. Second, there are actor-based factors, the failure of the outcome of the 2000 policy that changed the success of the 2002 directive. Third, systematic variables, such as the political variable of governmental stability mattered. Finally, the Department of Equal Opportunities has proved to be the crucial institution for framing Italian “preferences in line with the European discourse on equality and for ensuring a working coordination between the EU and national levels” (Donà, 2008, p.125).

Donà’s chapter outlines the important factors of Italy’s development history of gender equality policies under the pressure of the EU directives. These components are important for understanding the manner in which Italy has responded to a policy area that was previously foreign to their agenda, and demonstrates only the first steps that the Italian constitution took in becoming a defender of gender equality. What Donà’s chapter does not provide is a timely demonstration of how Italy has responded to the EU’s directive on work-family reconciliation over the last decade.

In an article titled, “Women’s Policy Machinery in Italy between European Pressure and Domestic Constraints,” Marila Guadagnani and Alessia Donà discuss the main changes that have taken place in Italy over the past decade regarding gender equality. The authors also address the issue of how Italy came to be considered as a “Mediterranean welfare state regime,” a title given to states with a basis on the central role of the family as an institution that ensures social protection with a minimum state intervention (Guadagnani & Donà, 2007, p.164). In response to European pressure and the transfer of responsibilities from the state to the local governments, women’s policy machinery has undergone a process of reinforcement at the central and local levels (Guadagnani & Donà, 2007, p.179). The authors found that the influence of the EU on women’s policy agencies has been filtered by the political color of the government. They also note that the EU is a new political arena in which women could act on the same level as those of other countries and “encouraging signals” have started to emerge at the local level (Guadagnani & Donà, 2007, p.180).

Guadagnani and Donà argue that three particular changes have affected the Italian political system over the past decade, which have had important influence on gender policies. The first change was the crisis that hit the political system during the 1990s, which opened up a period for institutional reforms that led to a “bipolar-type” competition between Italy’s political parties. The second change, Italy’s entry into the single European currency area, forced Italy to reorganize and control its national budget under the requirements of the Growth and Stability Pact. This partly relieved tax pressure, but also reduced cuts in social welfare spending, which made it more difficult for families with pre-school children and elderly people to support (Guadagnani & Donà,

2007, p.166-7). Finally, the third change concerned the decentralization of administrative policy power to the local governments. This gave the responsibility of equality policies to the regional governments, consolidating women's policy agencies at the local level (Guadagnani & Donà, 2007, p.167).

The authors argue that the consolidation of women's policy machinery at the domestic level has had mixed results, depending on the type of agencies and policy areas involved and on the political color of the government (Guadagnani & Donà, 2007, p.172). With an unstable government and the change of three ministers in only five years, the role of the ministers has been weakened, and overall there has not been a stable cooperation with women's groups and individuals (Guadagnani & Donà, 2007, p.173). As this article demonstrates, an unstable government, the lack of a stable cooperation with women, and no previous history of gender mainstreaming are all important Italian factors that have affected the state's success in implementing effective gender policies.

The findings of this article and the preceding articles in this subject area bring up important elements that are incorporated into this research study. When studying the adoption of supranational laws, it is imperative to note important changes that have occurred with the member states themselves, as Guadagnani and Donà establish in their work. In Italy, political, historical, and economic factors significantly influence the way that gender equality is addressed as well as how EU equality directives have been adopted in Italy. This study considers the factors that these authors have researched, but will also look closer at other domestic elements, including work and family reconciliation policy implementation in Italy and the government of Silvio Berlusconi.

Work-Family Reconciliation and Familialism in Italy

Italy serves as a special case in work-family reconciliation policy because it has a historical background based on familialism and a society that supports women predominantly taking the role as caretaker. Ranking as one of the EU member states with the lowest percentage in female employment has brought Italy into the discussion on gender equality legislation in the EU. As this study aims to highlight the domestic factors that cause Italy to struggle with the EU's gender equality policies and standards, studying the background of work-family discourse in Italy is important to discovering and understanding gender policy outcomes. The subsequent pieces of literature are studies that call attention to Italy's lack of experience with gender policies that address the work-family conflict and point out the instances where Italy's efforts were counterproductive to gender equality.

Samantha Velluti researches the question of whether gender mainstreaming and legislative measures could improve the industrial relations system in Italy, where there are low levels of female employment and precarious positions belong primarily to women (Velluti, 2008, p.195). In her article titled "Promotion of Gender Equality at the Workplace: Gender Mainstreaming and Collective Bargaining in Italy," Velluti highlights the importance of the family in Italy (as in other Southern European countries), characterized by "intergenerational dependency and social solidarity, low fertility, and female labour market participation rates, which may be explained mainly by a traditional notion of gender contract" (Velluti, 2008, p.196). Despite the importance of the family, the author finds that its role is being undermined by the lack of public caring services for families and, in particular, for working mothers. She argues that effective gender

mainstreaming policies in countries like Italy are therefore “pivotal to changing the prevailing traditional concept of gender contract which also underpins gender equality and labour market legislation and policies” (Velluti, 2008, p.196).

Velluti brings up an important note about why Italy is a special case when it comes to implementing measures dedicated to gender equality in the workplace. Italy’s work and family related policies were not the result of a decision to address the disparities between men and women at work, nor in response to demands for equality encouraged by societal change or political discourse; rather, they were “the consequence of the adoption and implementation of the universal egalitarian principle enshrined in Article 3 of the Italian Constitution” (Velluti, 2008, p.197). However, these Italian policies were not directly concerned with the protection of women workers or gender equality. They were concerned with equal pay.

Nevertheless, the adoption of the EU’s sex equality directives did reinforce the importance of sex equality legislation and became a priority of the government’s agenda (Velluti, 2008, p.197). Although there have been improvements following the transposition of EU directives and the emergence of equality discourse in Italy’s legislation, Velluti states that discriminatory practices and a low rate of female employment prevail. She attributes this primarily to the reason that “even though equality between women and men is protected by law, this remains premised on a traditional and patriarchal notion of gender contract and thus substantive equality for many Italian women remains a mirage” (Velluti, 2008, p.211).

Velluti provides evidence for the argument that equality legislation on its own cannot eradicate the discriminatory practices to women at the workplace. The reasons for this are the weak or ineffective implementation of enforcement mechanisms, a “quasi-hostile” political environment and attitude to gender equality in Italy (due mainly to “the persistence of a traditional notion of gender contract on which cultural, legal and political discourses are premised”), and an unwillingness to improve the situation for women in paid and unpaid work (Velluti, 2008, p.199). Moreover, equality legislation, according to Velluti should be accompanied by a general gender mainstreaming approach that operates to “change discursive as well as structural and organisational barriers to substantive equality” (Velluti, 2008, p.212).

In their article in *Women's Studies International Forum*, titled “Gender and Employment’ in the Italian Policy Debates: The Construction of ‘Non-Employed’ Gendered Subjects,” Emanuela Lombardo and Maria Sangiuliano study the categories of subjects debates on gender and employment create. They argue that Italian “non-employment policies construct specific subjects by reproducing stereotypes concerning the division of productive and reproductive work, and by politically articulating the intersection of gender and class, ethnicity, and age which contributes to further disadvantages for women” (Lombardo & Sangiuliano, 2009, p.445). As in the previous article by Velluti, Lombardo and Sangiuliano demonstrate the influence of the dominant discourse regarding the importance of the family structure that places women outside of the workplace.

The authors declare Italian familialism as an important part of its socio-political context that makes the situation for women one of the worst in Europe. In Italy, maternity

forces women to retire from their professional life, and only 13.4% of mothers go back to work immediately after compulsory maternity leave (Lombardo & Sangiuliano, 2009, p.446). This statistic shows the employment paths that are constructed for men and women, leaving the responsibility of care work to women. The lack of public child and family care resulting from a political decision leaves women with no choice but to remain in the private sphere of the family (Lombardo & Sangiuliano, 2009, p.447). Even after the establishment of Law 53/200 on parental leave (transposed from EU directive 96/43/EC), women still faced problems balancing work and family life because of the insufficient childcare services the legislation provided. Moreover, it resulted in discouraging men from using parental leave, since the leave only paid 30% of their salary (Lombardo & Sangiuliano, 2009, p.448). As a result, new Italian mothers are pushed into the label of “non-employment”.

Lombardo and Sangiuliano reveal in their analysis of Italian debates on reconciliation, domestic/care work, social benefits, and pensions that policies tend to push women into the category of “non-employed”. These policies “construct categories of subjects by reproducing gender stereotypes concerning the division of productive and reproductive work [...] generating further disadvantages for women” (Lombardo & Sangiuliano, 2009, p.449). This non-employed category includes working mothers who are discouraged to work by social security provisions, mainly to supply low-cost or free care work for the Italian state and men (Lombardo & Sangiuliano, 2009, p.451). The authors partially attribute this to the Italian “Mediterranean welfare state” based on familialism, which has been allowed to dominate Italian politics with the help of a low

percentage of women's representation in Parliament over the last decade (Lombardo & Sangiuliano, 2009, p.447).

The findings of this article demonstrate the negative impacts Italy's discourse of familialism has for women, especially for new mothers. The consequences of new legislation that would hypothetically create positive achievements for gender equality are instead resulting in further subjection of women who are trying to balance professional work and family life. This study applies feminist legal theory regarding parental leave to the findings of this article, which will create a well-supported argument to the importance of effective work-family reconciliation measures.

In her article on the missing links of the European gender mainstreaming approach, Mita Marra focuses on work and family reconciliation across Southern Italian regions, the Italian Mezzogiorno, to create a more "egalitarian and socially inclusive development." Although the piece is focused on the disparities mainly between the north and south regions of Italy, Marra's article could be applied to the same disparities between women of different socioeconomic backgrounds across Italy in general. Marra's findings show that, "while poor women may be stigmatized as inadequate mothers, middle-class women are pushed to join men in employment and civic sphere at the expense of caring" (Marra, 2012, p.349). Furthermore, the article shows that women may be constrained from staying outside the labor market due to inadequate public care work and the pressure of maintaining traditional gendered family roles and power relations within the household.

In attempting to answer the question of limited female employment in Italy, Marra “examines what family-friendly policies do, what they could do, and what they should do to promote work-life reconciliation in the South of Italy” (Marra, 2012, p.350). When it comes to implementing gender equality policies, Marra states that change only occurs to the extent that these policies go along with the values and cultures of those individuals and institutions that are implementing them. Therefore, the way laws are implemented locally can often worsen the problems they are intended to fix.

The main finding of Marra’s study is that “overall, gender-sensitive policies overlook within-gender heterogeneity in the way work-life balance is pursued within different contexts,” so gender equality policy should attempt to accommodate the situation of each of the individuals it affects, grasping the “needs and the outcomes of different work-life balances across diverse social groups, such as single mothers” (Marra, 2012, p.367). Marra’s study provides a basis for the theoretical analysis of work-family reconciliation policies in this study.

The preceding articles focus on Italy’s discourse on work-family reconciliation, highlighting the influence of Italian familism has on the effectiveness and attitudes towards work and family related policies. The literature shows that Italy’s familism often gets in the way of the intended outcomes of work-family reconciliation measures, and sometimes produces worse situations for working Italian mothers. The data in this subject area will serve as a reference point for the theoretical analysis of this research study. Using a theoretical lens to study EU and Italian work-family reconciliation measures will produce similar arguments in assessing both their positive and negative qualities.

Summary

The literature above belonging to the subject areas of gendered Europeanization, work-family reconciliation policy and familialism in Italy, and Italian responses to EU gender equality legislation represent three important topics directly relating to the background and research of this study. In attempting to answer the questions of why member states such as Italy struggle to reach gender equality standards, while others achieve them with ease, previous literature shows that it is important to assess not only implementation methods, but also domestic barriers and influences to gender policy. Moreover, it is important to analyze how Italy has responded to EU gender policy through previous studies to find potential patterns and important influences that affect the main issue in this study: the reconciliation of market and family work.

However, the literature is lacking a study that incorporates different perspectives, such as gendered Europeanization theory in a member state specific case study on work-family reconciliation. As shown above, previous literature is in need of Europeanization studies that place greater emphasis on domestic factors (since they are equally as, if not more, important than supranational factors) when analyzing EU policy outcomes. This study addresses this need. Additionally, this study contains a theoretical perspective on the issue of work-family reconciliation, which is imperative to existing literature.

By addressing these gaps in previous and current literature, this research study aims to contribute to an issue that affects not only women, but also men and children on an international scale. Work-family reconciliation is an important stepping-stone to eliminating the discriminatory repercussions of traditional gender roles and ultimately to

gender equality. More women are now entering the job market and both mothers and fathers are increasingly concerned with having the capability to balance professional and family work.

Chapter III. Theoretical Framework: Feminist Legal Theory

Introduction

Workforce integration of men and women is an element of gender equality that has been widely addressed by feminists. Pregnancy, maternity/parental leave, and the work-family conflict have become important issues in this discussion. These issues highlight important physical and cultural differences between men and women that have made it difficult to establish policies that effectively encourage workforce integration. Although feminists have struggled to agree on a solution to this debate, many of them agree that the law has an important responsibility to acknowledge the physical and cultural differences between men and women (Levit et al. 2006, p.61). Feminist scholars have addressed pregnancy, maternity/parental leave, and the work-family conflict through the concepts of feminist legal theory. In short, feminist legal theory emphasizes the role of the law in creating societal change in favor of gender equality, and therefore is the appropriate theoretical approach to addressing the research questions posed by this study.

This chapter provides the rationale for using feminist legal theory as a basis for the analysis of gender law in the EU and Italy throughout the succeeding chapters. It begins by introducing the field of feminist legal theory and the principles within it that have been used to discuss the work-family conflict. Feminist legal theory exposes the significance of work-family reconciliation policy as it pertains to the lives of women, men and children.

The literature of this chapter not only highlights the work of early feminists on what it means to be gender equal; it further explores the feminist literature that has emerged around the particular issue of balancing work and family responsibilities, including that of Arlie Hochschild, Joan Williams, and Vicki Schultz. These feminist scholars have studied the difficulties parents face in balancing work and family life in the Western World, exposing the reality of a standstill to becoming a society that accepts the intersection of professional work and household responsibilities—especially for women.

Feminist legal theory and the literature on the work-family conflict reveal the complexity of reconciling the private and public spheres of work and of the broad concept of gender equality as well. Gender equality in the workplace and the work-family conflict have been part of the discussion in feminist literature for decades, demonstrating the importance of work-family laws that work toward finding a balance between work and family life. The European Parental Leave Directive is relevant to this body of feminist literature as one of these laws that is directed toward moving past this standstill of accepting the reconciliation of professional work and private life.

Feminist Legal Theory

Feminist legal theory is distinct from other feminist theory because it “emphasizes the role of the law in society and prescribing change,” rather than deemphasizing the role of the law or dismissing its importance altogether (Levit et al., 2006, p.8). This study looks at the role of European policies in Italian society and in promoting work-family reconciliation. The extent to which laws have been capable of creating change in a state that had no previous work-family related policies is the focus of this study and will be

analyzed using feminist legal theory. Although most of this legal feminist work is based in the United States, the intention of this analysis is not to judge the conditions in Europe and Italy from a “U.S. American” feminist point of view. Rather, the intention is to use these works of feminist legal theory as a defense for equality for both sexes for the well-being of all.

Feminist legal theory (and feminism in general) is a broad concept, which includes many different arguments, theories, and disagreements. Therefore, this chapter highlights the areas of feminist legal theory that relate to work-family reconciliation policy and connect to the conditions of gender equality and the work-family conflict. Within feminist legal theory, there are sub-theories, given that feminists disagree on many subjects. While they are divided into categories, this does not mean that feminist legal theories are entirely separate. In fact, they often overlap. This section begins by looking at early feminist legal thought surrounding equal treatment theory; then goes on to cover other theories which had been created for situations where equal treatment theory was inadequate. Over time, feminists created more kinds of theory to replace or complement existing feminist theory in order to address a greater variety of issues, such as balancing work and family life.

Equal Treatment Theory

Equal treatment theory is one of the earliest legal feminist theories and is deemed responsible for the first wave of feminist legal theory in the 1960s. It stemmed from the liberal ideas during the era of women’s suffrage in philosophy and political theory that endorse equal citizenship, equal opportunities in the public arena, individualism, and

rationality (Levit et al., 2006, p.16). Its central principle is that both sexes should receive equal treatment under law if they are similarly situated.

Wendy W. Williams is a law professor at Georgetown University and an equal treatment theorist who has written on the issue of pregnancy and maternity leave. She proposes that the equal treatment approach to pregnant wageworkers is a better approach to the pregnancy dilemma (Williams, 1984/5, p.380). Her argument is that treating pregnancy and childbirth as a “unique” quality that only women have may create structural barriers to the full participation of women in the workforce. Instead, Williams thinks that pregnancy should be treated as similar to any other physical condition that affects workplace participation for both sexes (Williams, 1984/5, p.327).

Many feminist scholars have criticized equal treatment theory for precluding the “uniqueness” of pregnancy belonging to women and for the theory’s acceptance of the idea that the male experience is the norm (Levit et al.; 2006, p.18). Other feminists realized that when it came to certain issues such as pregnancy and maternity, equal treatment between the sexes did not translate into *equality*. There were certain aspects (biological and cultural, for example) that feminists believed called for exceptions to be made for women.

Cultural Feminism

Those feminists who believed in making exceptions for women under special circumstances supported cultural feminism (also called difference theory or special treatment theory), which is based on the idea that the differences between the sexes should be acknowledged and compensated for legally. Cultural feminist theory in law

drew from the scholarship of Carol Gilligan's *In a Different Voice: Psychological Theory and Women's Development* (1982). Gilligan is a U.S. American feminist, ethicist, and psychologist whose philosophy argues that "the problem of interpretation that shadows the understanding of women's development arises from the differences observed in their experience of relationships" (Gilligan, 1982, p.24).

Cultural feminists, such as Luce Irigaray, a Belgium-born French feminist, philosopher and cultural theorist, and Robin West, an American feminist and professor of law at the University of Maryland, emphasize the biological differences between men and women, proposing that the law must accommodate these differences to some extent. In her book, *The Sex Which is Not One* (1985), Irigaray argues that women *could* be considered equal to men and have the same economic, social and political rights, but women would still have to preserve their "femininity" that is forced upon them, and this would create a contradiction (Irigaray, 1985, p.84). Therefore, Irigaray proposes that the description of law needs to acknowledge that men and women are not exactly the same. West's article "Jurisprudence and Gender" (1988) also stresses the language of the law and poses the question: What is a human being? West argues that within law the meaning of the term "human being" presupposes that all humans are the same, when in reality they are separated by physical boundaries (West, 1988, p.1). She states that "women are not essentially, necessarily, inevitably, invariably, always, and forever separate from other human beings: women, distinctively, are quite clearly 'connected' to another human life when pregnant, [...] but the gap between legal theory's description of human nature and true nature also presents a *conceptual* obstacle to the development of feminist jurisprudence" (West, 1988, p.2-4).

This debate between equal treatment theorists and cultural feminists has existed in feminist work for decades and continues to affect current feminist literature. Pregnancy and maternity leave is a key disagreement between equal treatment theory and cultural feminism. What has been called the “equal treatment-special treatment” or “sameness-difference” debate continues to divide legal feminist theory. Other legal feminists have chosen to criticize both sides of the dispute, or to avoid the dispute completely by offering other alternatives, such as “questioning basic institutional structures and the social ideas that perpetuate them,” as Joan Williams has (Levit et al., 2006, p.22).

Dominance Theory

While equal treatment feminists and cultural feminists failed to agree on which view translated into genuine gender equality, other feminists noticed that both theories looked past an important issue: male domination. Dominance theory (or radical feminism) departs from these two feminist legal theories and the “sameness-difference” debate, criticizing both approaches for allowing the male to be the standard or norm. According to dominance theory, “the inequalities women experience as sex discrimination in the economic, political, and familial arenas result from patterns of male domination” (Levit et al., 2006, p.22).

Catharine A. MacKinnon, the American feminist scholar who introduced dominance theory, thinks that the mainstream doctrine of the law of sex discrimination is “largely responsible for the fact that sex equality law has been so utterly ineffective at getting women what [they] need and are socially prevented from having on the basis of condition of birth: a chance at productive lives of reasonable physical security, self-

expression, individuation, and minimal respect and dignity” (MacKinnon, 2006, p.244). She argues that the two alternatives to equality are: “be the same as men” (equal treatment theory) and “be different from men” (cultural feminism). The problem with these alternatives is that they use men as a standard, or the way that “man has become the measure of all things” (MacKinnon, 2006, p.245). From this view, MacKinnon states that both equal treatment theory and cultural feminism simply provide two ways for the law to hold women to a male standard and call that equality (MacKinnon, 2006, p.245).

Dominance theorists would say that having men as a standard is not only damaging to women, but to men as well. Because both men and women are socialized toward stereotypic behaviors characteristic of their sex, “[m]en who do not conform to traditional images of manliness and who act in effeminate ways are considered a threat to masculinity and are not only subordinated to women, but often punished for their gender transgressions” (Levit et al., 2006, p.25).

Feminist scholar Joan Williams additionally criticizes the classic “sameness-difference” debate and offers a different approach to feminist legal theory that is aimed at deconstructing the social and institutional factors that confine men and women to their separate social roles. Williams thinks that the language of sameness and difference is divisive, confusing and analytically flawed. She argues that treating men and women the same is “a strategy that works well where the goal is to eliminate the disabilities traditionally experienced by women, but it can backfire when applied to women’s traditional privileges, for treating caregiving women the same as men who do not have caregiving responsibilities only exacerbates such women’s gender disadvantage” (Williams, 2000, p.207). Her theory to applying the principle of treating men and women

the same requires that formal equality be combined with an analysis of gender and power. The result of this analysis is to offer a “general theory of gender equality, which requires first the dismantling of masculine norms, and then treating men and women the same in ways sensitive to the linkage of gender and power” (Williams, 2000, p.207).

Feminists like Williams, who have studied the work-family conflict in depth, have shown through their work that neither of these feminist legal theories is sufficient alone to solving the issues of inequality that women face in everyday life. Instead, they are all equally important to consider when analyzing these kinds of issues, particularly issues such as balancing work and family life, which are deep-rooted in traditional social customs. The following section refers to three prominent feminist authors who have addressed the work-family conflict extensively. Their work makes up the backdrop for assessing work-family laws, such as the EU’s Parental Leave Directive.

The Work-Family Conflict in Feminist Theory

Joan Williams is one of the feminist authors who has written about the work-family conflict, and what it means for parents who seek to balance work and family life. Her work and the work of Arlie Hochschild and Vicki Schultz reveal the multifaceted problem that individuals—especially women—are confronted by when attempting to have careers outside the home and fulfill household duties such as raising their own children. The work-family conflict is not only a conflict between public and private work spheres; it is additionally a conflict between gender equality, traditional gender roles, growing work hours, children’s needs, the ostracism of caregiving, and the cultural background of each individual. Altogether, these feminists suggest the need for change in the way that

society and law addresses the conflict. As their studies have shown, even in American and European societies—where the feminist movement has taken place over decades—women are discouraged from having successful careers *and* having children. This has led to women (and sometimes men) forced to choose between a role inside or outside the home. The works of these feminists point to the core problems that policymakers must acknowledge when tackling the work-family conflict and discrimination in the workplace.

The Second Shift

Arlie Hochschild is the author of a book written in the 1980s and published in 1989 about the hardships that women and men face in dual-career households titled, *The Second Shift: Working Families and the Revolution at Home* (1989). Hochschild's book exposes the truths of juggling market work with parenting and household responsibilities through primary research in two-income households in the San Francisco Bay Area. Although her studies are not recent, the updated edition of her novel and countless studies carried out since her first publication of *The Second Shift* show that much has not really changed. The so-called “stalled revolution” in work-family reconciliation persists (Hochschild & Machung, 2012, p.261).

The focus of Hochschild's book is the “second shift,” a term which came from a woman she had interviewed around the time she started to write the book. The “second shift” refers to the time and duties individuals (usually women) return to at home after finishing their prior shift at their professional jobs outside the home. “Second shift” duties usually consist of cooking dinner, cleaning the home, upholding a marriage, taking

care of children, feeding the dog, etc. If the amount of hours invested in the second shift were added up for a whole year, the time would amount to a whole extra month's time of work per year (Hochschild & Machung, 2012). Women have traditionally taken on the "second shift," since more women used to be full-time housewives. Yet, housework is unpaid and is still not acknowledged as "real" work in modern society. While more women have entered the economy, there has yet to be a "cultural understanding of marriage and work that would make this transition smooth" (Hochschild & Machung, 2012, p.11). This is what Hochschild calls "the stalled revolution." The stalled revolution persists when women are changing, and not much else is.

Hochschild attempts to figure out why there is a stalled revolution by asking the question: "If more mothers of young children are stepping into full-time jobs outside the home, and if most couples can't afford household help, how much are fathers doing at home?" (Hochschild & Machung, 2012, p.2) Her book's individual case studies followed the lives of ten married couples with young children and two incomes in order to answer this question. Hochschild and her research partner Anne Machung recorded the structures that were present inside each home regarding the distribution of "second shift" duties, how each individual felt household duties should be distributed (gender ideology), and how each individual acted upon those beliefs (gender strategy). For her primary research, Hochschild would sometimes hold interviews with the couples (separately and together), or would sit and observe the life of these families, as if she were the "household dog," requesting that the families act as if she were not there. After years of her research, Hochschild had personally gotten to know these case studies, and discovered that there

were various strategies used by each household in order to find some sort of balance between each parent.

The ten couples Hochschild includes in her book made up only a portion of the total households she studied, but were chosen to be in the book because they were families who did not end up divorced. These ten case studies represent a variety of different ways that the “second shift” is approached and distributed. Every couple did the “second shift” differently. By studying these couples, Hochschild realized that there were various elements that caused this stalled revolution.

First, there was an inconsistency with the way that individuals felt household duties should be distributed, and how they actually were distributed. Although many women and men believed that household work should be divided up evenly, this did not translate into reality. For example, each person might have had different ideas of “equally.” Additionally, individuals had trouble deciding between what they believed was right, and what they believed they *should* do. Both men and women had trouble with sharing the “second shift” even though they knew it was the right thing to do. Their jobs and cultural background often had a lot to do with this. Amongst these couples, there were a variety of gender ideologies between them. There were those couples that had traditional gender ideology, transitional ideology, and those whose ideology was egalitarian. Regardless of the ideal to which each couple aspired to be, Hochschild’s studies showed that the strain of working the “second shift” affects men as well as women (Hochschild & Machung, 2012, p.187). The findings of Hochschild’s studies did not reveal a pattern that showed that more egalitarian couples distributed the “second

shift” duties more evenly. In fact, the women who worked more outside the home often had to do the majority of the “second shift” as well.

Some of the women believed in equal sharing of the “second shift,” but did not receive any or enough help from their husbands with household work, tried to change the roles at home (Hochschild & Machung, 2012, p191). Stuck between the pressure of traditional views and modern circumstances, many of these women felt they needed to fight their husband’s habits in order to prevent working the extra month per year. Other strategies of finding help with the “second shift” include “supermoming” (working a full time job outside of the home while also spending time with their children late at night), cutting back at work, cutting back on housework, their marriage, themselves, and their children, or seeking help in a nanny or maid.

Men also used similar strategies, including “superdading,” but Hochschild notes that their situations differed fundamentally (Hochschild & Machung, 2012, p.196). Traditionally the “second shift” did not fall to men, as it did to women. Therefore, most men involved in the study did not have the same sense of obligation to household work, but instead were *pressured* into taking on part or most of the “second shift.” The women in Hochschild’s study were well aware of this fundamental difference between men, and many of the wives who once tried to change the household roles They rationalized their failure to convince their husbands to equally share the “second shift” by believing they were “lucky” their husbands helped as much as they did, comparing their husbands to other men they knew who did not help their wives with household work.

Women in Hochschild's book who refused to be housewives and chose to hold full time positions outside of the home seem to have been affected the most. Even if they had a husband who was willing to equally share the household responsibilities, these couples ran into problems in sharing the "second shift." Even if these women were "lucky" enough to have a husband who was willing to take half of the household responsibilities, they were constrained by their jobs, which demanded an amount of time and effort if they wanted to maintain their high positions in the workplace, leaving little time for these women to fulfill their half of the "second shift." This is what Hochschild refers to as the "maternal wall," as made famous by Joan Williams (Hochschild & Machung, 2012, p.140). The maternal wall prevents women from obtaining as high of positions as men, partially because these jobs discriminate against working mothers and because these positions take too much time away from their second shift at home.

In short, Hochschild's study discovered that many couples now "*believe* in sharing, but at this point in history few actually do" (Hochschild & Machung, 2012, p.198). How much a working father actually shares the "second shift" depends on "the interaction between a husband's gender strategy (with all its emotional meanings) and the wife's strategy (with all its emotional meanings)" (Hochschild, 2012, p.198). Furthermore, a working husband's actions also depend on other circumstances in his career. Women find themselves stuck between the desire to enter the economy with successful, full time jobs, and the tug of maintaining their "womanhood" at home. Hochschild blames the clashes between these marriages on a broad social tension between a faster-changing "female culture" and a slower-changing "male culture." This stalled revolution is characterized by the image of "the go-get-'em" women that has yet

to be fully matched by the image of the “let’s-take-care-of-the-kids-together” man (Hochschild & Machung, 2012, p.200). Because the contribution of the traditional homemaker has been devalued by men (and now women) society has not been able to move forward in this stalled revolution. As long as the “woman’s work” that some men do is socially devalued and defined as woman’s work, men who share it will be given odd looks, and the revolution will stay at a standstill.

Hochschild’s research emphasizes the danger of this stalled revolution in household work. During this stalled revolution, children can be the victims. She found that most working mothers are already doing as much as they can; it is the men who can do more (Hochschild & Machung, 2012, p.230). The amount of household work the husbands in her study contributed to their homes pointed to the deeper issue of male power and dominance. *The Second Shift* shows that patriarchy has not yet disappeared, but has “changed form” (Hochschild & Machung, 2012, p.244). In patriarchy’s old form, women were limited to the home and economically maintained there; in its new form, women are free to enter the economy, but are still tied to the home.

Part of the reason the stalled revolution is staying stalled is attributed to how little corporations and governments have done to accommodate the needs of working parents (Hochschild & Machung, 2012, p.257). As the nuclear family is still the ideal setting in which to raise children, support from corporations and the government are needed in order for parents to do this well. Hochschild emphasizes the role of how a nation organizes its workforce and day-care centers “reflects the work and family roles it envisions for each sex” (Hochschild & Machung, 2012, p.258). Furthermore, Hochschild touches on the need for more profamily policies from the government and in the

workplace. The ideal profamily policy would “offer paid parental leave to parents, [...] paid ‘care leave’ to tend the elderly.” It would “pull up wages in ‘women’s’ jobs [...] by instituting lower-hour, more flexible ‘family phases’ for all regular jobs filled by parents of young children” (Hochschild & Machung, 2012, p.258).

While Hochschild focuses on how working men and women are dividing the “second shift,” Joan Williams instead puts attention on the structural and institutional factors that create this gender strategy that perpetuates this stalled revolution, and how society could change these conditions. Like Hochschild, Williams emphasizes the role of profamily policies in the workplace and the government in helping working parents balance work with the second shift at home.

Unbending Gender

In her book *Unbending Gender: Why Family and Work Conflict and What to Do About It* (2000), Williams argues that we need to redefine equality as changing the relationship of market and family work so that all adults—men as well as women—can meet both family and work ideals (Williams, 2000, p.41). The agenda of this strategy that she calls “Reconstructive Feminism” is to deconstruct the system of *domesticity* that marginalizes caregivers and defines the ideal-worker role on masculine terms. Williams’s pro-family approach to feminism and her focus on changing the systems that perpetuate discrimination in the work place separate her work from that of other legal feminists.

Domesticity and the Ideal-Worker

Williams identifies domesticity as the “entrenched, almost unquestioned, American norm and practice” that has two defining characteristics:

The organization of market work around the ideal of a worker who works full time, works overtime, taking little or no time off for childbearing or child rearing; and a “system of providing for caregiving by marginalizing the caregivers, thereby cutting them off from most of the social roles that offer responsibility and authority” (Williams, 2000, p.1).

Within the ideology of domesticity, men “naturally” belong in the market because they are supposed to be competitive and aggressive. Meanwhile, women belong at home because of their “natural” focus on relationships, children, and an ethic of care (Williams, 2000, p.1). According to Williams, this gender system still holds among two-thirds of Americans, and hurts not only women, but also men, children, politics and our emotional life (Williams, 2000, p.3). While Williams’s work is primarily focused on the U.S., this study focuses attention on how this is alive in well in other places, including Europe, in the succeeding chapters. The contemporary version of domesticity is hiding behind what Williams calls the “choice rhetoric” that claims women “make the choice” between market work and family work. Williams argues that this focuses the attention away from three constraints that form the backbone of domesticity’s organization of work, constraining women to the domestic sphere (Williams, 2000, p.20).

The first constraint is that “employers are entitled to ideal-workers with immunity from family work” (Williams, 2000, p.20). The emergence of domesticity ultimately led to a crippling arrangement of gender identities and stereotypes, where men were assigned with the characteristics associated with competition and women with the traits associated with cooperation (Williams, 2000, p.23). The second constraint of domesticity is that men are entitled and required to be ideal-workers. Domesticity brought on the expectation that men should be masculine breadwinners. This led to the association of manhood with

success in market work, and a man's work became representative of his social identity (Williams, 2000, p.25). As dominance theorists have asserted, this association with manhood as the norm is not only damaging to women; rather, it is especially damaging to men as it made anxiety a "permanent feature of masculinity," which has even been linked to higher rates of heart attacks. Since men now associated work success with "supporting the family," women started to define their work as "helping their husbands" (Williams, 2000, p.28). The final constraint of domesticity is that mothers should have "all the time and love in the world to give" (Williams, 2000, p.31). The shift of child care into the home creates this idea that child care providers are "strangers" and creates this fear that children will not get proper care if they are not raised at home by their mothers. The consequence is that childcare is no longer seen as "work" and devalues the women's work at home (Williams, 2000, p.33). Men's withdrawal from family work meant that women were left with the choice of doing it themselves or leaving it undone.

Reconstructive Feminism

The traditional feminist approach to equality in the workplace in relation to pregnancy and maternity revolves around the "full-commodification strategy" where "feminism is still linked with the glorification of market work and the devaluation of domestic work" (Williams, 2000, p.41-2). Its central assumption was that women would feel comfortable turning over family work to the market to the same extent that traditional fathers had (Williams, 2000, p.49). In reality, both women *and* men revealed that they wished they had more time for family work (Williams, 2000, p.59). This assumption that parents would feel comfortable handing over the child care duties to the market creates an unrealistic norm of parental care that expects both mothers and fathers

“to perform as ideal-workers in a system designed for men supported by a flow of family work from women” (Williams, 2000, p.53). Williams criticizes the full-commodification strategy and argues that it results in confusion of women once they have children. It tells women that they have the “choice” to choose between market work and family work, when the result is that most women go off to market work only to return home to the “second shift” of family work (Williams, 2000, p.41).

Instead, Williams proposes that feminists need to analyze and deconstruct domesticity, and abandon the fiction that both mothers and fathers can perform as ideal workers in a system designed for men supported by a flow of family work from women (Williams, 2000, p.53). This is the agenda of *reconstructive feminism*. Williams claims that we must restructure the relationship of market work and family work to a model that allows a greater balance between both mothers and fathers when it comes to providing money and providing care. “Once masculine norms are eliminated, women do not need special treatment or equality of results. All they need is a level playing field instead of one slanted in ways that currently pull women down” (Williams, 2000, p.208).

The ultimate goal of reconstructive feminism is “to deconstruct domesticity, and reconstruct market work and family entitlements” (Williams, 2000, p.213). While reconstructive feminism primarily benefits women, it also benefits their children, men, and nonparents. Domesticity hurts children economically because it marginalizes their mothers. It also hurts them because marginalizing their mothers discourages them for standing up for children’s needs (Williams, 2000, p.57). Reconstructive feminism opens up many opportunities for men also, allowing them to feel comfortable with being “family men,” rather than feeling though their masculinity is “threatened.” Even

nonparents would benefit from the deconstruction of the ideal-worker norm. Flexibility in work hours and duties would allow for a more successful work-life balance for every individual (Williams, 2000, p.61).

Williams proposes a new gender theory that focuses attention back to work-family issues after feminist theory turned away from these issues in the early 1980s (Williams, 2000, p.275). Claiming that dominance feminism has only changed the subject rather than solving the theoretical problems of the “sameness-difference” debate, Williams attempts to clear them up through analysis and deconstruction of domesticity. She contributes to feminist theory the essential language that shows how both men and women are caught in “force fields that suck them back toward ideal-worker and marginalized-caregiver roles” (Williams, 2000, p.276). On these accounts, the analysis of this study will refer back to Williams’s work as it provides constructive guidelines for equality policymaking.

Life’s Work

Vicki Schultz is another feminist author and professor that develops a vision of social justice in the work-family conflict through redistribution and restructuring of paid work (Schultz, 2000, p.1881). In her essay titled, “Life’s Work” (2000), Schultz calls attention to the rise of inequality in high positions of paid work to women. She promotes the reformation of “law and culture to create a world in which everyone has the right to participate meaningfully in life-sustaining work, with the social support necessary to do so” (Schultz, 2000, p.1881). The aim of Schultz’s essay is to create a “more ambitious reimagining of the relationship between the state and the market—and a more ambitious

set of politics” that other feminists have proposed, in order to make paid work the basis for equal citizenship (Schultz, 2000, p.1885). Her work is directed more specifically at what steps to take within law to create positive change in paid work. While some of her advice is similar to that of Williams and Hochschild, Schultz’s essay is important because she provides specific examples for ways that society and politics could change to create an equal slate for all workers, including parents.

In Schultz’s view, making paid work is the obvious answer to creating equal citizenship, because paid work is a “central social good” (Schultz, 2000, p.1928). Work

“provides us with a forum to realize at least some of our aspirations, to form bonds with others, to serve society, and to project ourselves into the larger world beyond our own families and friends. It also provides us with the wherewithal to sustain ourselves, economically and socially, so that we may enter into intimate relationships with the security that permits us to love (and leave) freely, without need of recompense” (Schultz, 2000, p.2000).

As a central social good, Schultz advises that it “must be reshaped and redistributed in order to create more empowering life prospects and more egalitarian relations throughout social life” (Schultz, 2000, p.1928). Schultz’s specific recommendations for making paid work the basis for equal citizenship in the future point to supplement employment discrimination law. This includes the measures such as, “job creation programs, wage subsidies, universal child care and health care programs, enhanced employee representation, and a reduced workweek for everyone” (Schultz, 2000, p.1885).

Similar to the goals of Williams's reconstructive feminism, Schultz plan of changing paid work in order aims to benefit all people, including babysitters and gay and lesbian parents. In her essay, Schultz realizes that creating a society that enables everyone to participate equally in working life is no easy feat. In order to successfully do so, she urges individuals to "think seriously about how to structure work and the workweek so that everyone can combine a genuine commitment to work with an active involvement in family and civic life" (Schultz, 2000, p.1999). This means that policies should cater to the constant demands of family life, including a flexible schedule for day-to-day family time and leaves from jobs to attend long-term family issues (Schultz, 2000, p.1999). Schultz further advocates that leaves should be fully paid; otherwise, unpaid or partially-paid leaves would only be available to those who are privileged. Efficient gender integration calls for "reforms that encourage men and women to work similar and saner hours that will allow both to participate more fully in all life's experiences" (Schultz, 2000, p.2000).

In Schultz's view, the government should take advantage of the power it holds over firms and labor markets to create paid work that society finds valuable. It should ensure that no one is denied access to quality jobs, job-holding services, wage levels, and working conditions on the grounds of identity-based discrimination (Schultz, 2000, p.1940). These recommendations are directed to policymaking institutions, such as the EU, which are working towards equality in the workplace and helping its citizens balance work and family life through profamily policies.

Summary

The feminist theory and work-family literature brought up in this chapter presents the discussion that has taken place within the issue of pregnancy, maternity and the work-

family conflict. The dispute between equal treatment theorists and cultural feminists has dated back to the 1960s, and demonstrates the complexity of “equality” (particularly in legal terms). Feminists that have taken part in this discussion have been unable to come to a consensus on whether pregnancy should be treated as a special condition distinct to women, or if it should be considered equitable to any other disability that affects men or women in the workplace. Dominance theorists then came in to the discussion to change the focus to the way that feminists have allowed men to be the metric or norm in legal theory. Joan Williams picks up on this issue and digs deeper into creating a new gender theory that deconstructs the social and institutional influences that perpetuate the way that society has separated the type of work according to sex or gender. Williams’s theory deconstructs domesticity and reconstructs the organization of market and family work by eliminating the norm of the ideal worker that is established in terms of men. This removes the necessity for either special treatment or equality of results.

Through the work of feminist authors who have studied the work-family conflict in depth, it is apparent that the conflict arises from a number of deep-rooted, theoretical, and societal factors that must be addressed in work and governmental policies. These authors have proven that solving the work-family conflict is not just a matter of sameness versus difference, but requires looking at early feminist thought to understand how current conditions came to be. In the work of Hochschild and Williams, it is evident that dominance theory is significant to understanding why women by default feel compelled to take responsibility for the “second shift” while men enjoy an extra month of leisure per year, or why domesticity still persists in modern societies. However, putting feminist

legal theory into the context of the work-family conflict provides answers for how to address the issue.

In *The Second Shift*, Hochschild conveys the importance of gender strategy, gender ideology, culture, and patriarchy through real-life examples of couples that accommodate the so-called stalled revolution. In order to continue this revolution of household work, Hochschild insists that we need to accept the idea of men sharing the “second shift” as *normal*. She believes that work and governmental policies have the potential to make influential change through profamily measures which accommodate the needs of working parents. Williams’s work builds on Hochschild’s observance of a stalled revolution by pointing out the institutional elements that prevent progress in valuing household work: domesticity. The remnants of domesticity that are so entrenched in modern society help explain why women are marginalized to household work, and how this hurts women, men, children, politics and our emotional life. Williams calls on a reconstruction of what it means to be an ideal worker around the values that people hold in family, in particular around the norm of parental care (Williams, 2000, p.5). Finally, Schultz additionally advocates for a reconstruction and redistribution of paid work through specific policies that accommodate the demands of family life for the well-being of all.

In regards to the European Parental Leave Directive, examined in Chapter IV, these authors will be brought up again to analyze how European gender legislation addresses the issue that perpetuates the marginalizes household work and prevents a successful balance between work and family life. Chapter V then studies the national influences within Italy, which also determine the outcome of the law.

Chapter IV. EU Gender Equality Principles and the Parental Leave Directive

Introduction

As part of its plans to incorporate the appropriate legislative tools necessary to address its pressing social issues, the EU has recently developed a set of laws to promote gender equality. Of these new developments, it has dedicated a group of directives for issues that deal with pregnancy, maternity, and parental leave. This study looks at EU Law 96/34/EC, the Parental Leave Directive, one of the first European gender equality laws that addresses gender equality in European social policy. This directive is particularly important due to the lack of previous work-family related legislation in several of the EU's member states (including Italy).

The agenda of this study is manifold and will be carried out over two chapters. To understand the outcome of the EU's work-family policies on the member state level, this study assesses the nature of the law's provisions under a feminist legal lens referring the authors discusses in Chapter III, whether or not Italy has successfully implemented them in a way that upholds European gender equality principles, and the cultural and political aspects which may make it difficult for Italy to efficiently implement the Parental Leave Directive.

This chapter is a theoretical analysis of the EU's Parental Leave Directive using the feminist literature regarding pregnancy, maternity/parental leave, and the work-family conflict. The chapter begins by providing a background to the Parental Leave Directive, which looks at the development of the EU's gender equality and antidiscrimination policies. This brings up the feminist discussion of what constitutes "equality."

Furthermore, this chapter examines the specific measures of the Parental Leave Directive under the lens of feminist literature to reveal the strengths and potential weakness of the EU Directive that may influence its ability in improving the work-life balance in Italy.

The final part of this chapter explores the transposition and implementation of the Parental Leave Directives provisions into Italian law as part of an assessment of how the Parental Leave Directive accommodates the needs of working parents and the recommendations of feminist authors.

European Gender Equality Principles

Equality is one of the principles inscribed in the European Charter of Fundamental rights in 2000. The first part of European legislation that addressed gender equality was in the 1957 Founding Treaty of the European Economic Community (now called the European Union), which contained one provision regarding equal pay between men and women (Article 119 EEC; now Article 141 EC) (Prechal & Burri, 2009). In recent decades, the EU has made a stronger commitment to reduce the inequalities between men and women. They have even made claims of achieving “50 Years of Gender Equality.” According to Article 3(2) of the EC Treaty, the EU must “aim to eliminate all inequalities” and “promote equality between men and women in all the activities listed in Article 3 EC” (Prechal & Burri, 2009, p.3).

Following a court case in 1975 that successfully used the principal of equal pay between men and women, the European Commission established the first of numerous directives on gender equality (European Commission, 2010). Until the 1990s, the European directives on gender equality only applied to economic issues, such as equal

pay and equal treatment in the workplace. Since then, the EU has produced directives that prohibit discrimination based on sex that address social policy as well. The European Commission even acknowledges the influence of gender roles, how they affect individual decisions “on education, on career paths, on working arrangements, on family and on fertility” (European Commission, 2010, p.3). These directives on gender equality inscribe the EU’s five central concepts of gender equality: direct discrimination, indirect discrimination, positive action, instruction to discriminate, and harassment on grounds of a person’s sex. According to a report by the European Commission on how these gender equality directives are transposed into national law, national law has “faithfully and often even literally transposed these concepts into their national legislation” (Prechal & Burri, 2009, p.5).

Despite the promise of these improvements to the European agenda, there are still many points to consider whether the EU’s gender policies have been effective. For example, what does the EU mean by “equality”? An important theme in the previous chapter on feminist legal theory proved that under different circumstances, this “equality” could have different meanings. Equal treatment theorists and cultural feminists have shown the complexity of the term and its diverse interpretations. For example, equal treatment feminists believe that true equality under law means that all individuals similarly situated must receive equal treatment regardless of their sex or gender. For cultural feminists, however, this kind of treatment is limiting because it overlooks the reality that people are not all the same, and there are factors that cannot be controlled and must be accounted for under the law. The largest argument for this position is pregnancy. Cultural feminists argue that pregnancy is a natural condition, and women should not be

punished for it; therefore, they should have special conditions for pregnant women, such as extra time off for breastfeeding, under law. However, these two arguments are only part of the debate on equality.

Considering the work-family conflict makes the debate on equality much more complex, as authors such as Joan Williams, Arlie Hochschild, and Vicki Schultz have argued. According to these feminist scholars, work-family legislation must consider underlying factors, such as patriarchy and domesticity, the actual needs of working parents, and creating measures in a way that organizes the national workforce to accommodate these family needs. These considerations are addressed throughout the rest of the chapter.

European Directive 76/34/EC on Parental Leave

Discrimination on the grounds of pregnancy and maternity is considered direct discrimination under European law, and therefore is illegal in its member states (Prechal & Burri, 2009, p.10). The protection of women as regards pregnancy and maternity was integrated into Directive 96/34/EC after a request from the Commission in 1995 to implement the framework agreement on parental leave (OJ L 145 of 3.6.1996, p.4). Directive 96/34/EC, or the Parental Leave Directive, sets out the “minimum requirements on parental leave and time off from work on the grounds of *force majeure*, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women” (OJ L 145 of 3.6.1996, p.6).

The signatory member states (with the exception of the United Kingdom and Northern Ireland, who chose their own direction of social policy based on the 1989 Social

Charter) were required to bring into force the laws, regulations, and administrative provisions necessary to comply with this directive by June 3, 1998, or at least prove that the latest management and labor have incorporated necessary measures by agreement by this date. Member states are required to take “any necessary measure” to enable them to guarantee results set forth by the Directive. They also had the option of extending this date by one year.

The Parental Leave Directive incorporates measures that have the potential to be innovative for balancing work life with family life, as well as for balancing family work between men and women, eliminating traditional gender roles. Directive 96/34/EC promotes a strategy that allows for “better organization of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the two sides of industry in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations” (OJ L 145 of 3.6.1996, p.6).

All three of the feminist authors who studied the work-family conflict emphasize the need for more flexible working hours and job security for parents after temporarily leaving their jobs to tend to family obligations, such as maternity or sickness. Better organization and flexibility of working hours, according to Hochschild, relieves parents from the stress of cutting back on work hours, household duties, or attention to their children, while allowing more time to complete “second shift” tasks. Offering both men and women the opportunity to reconcile their responsibilities may also encourage men to be more open to being open about taking part of the household work, without feeling the guilt of not living up to their expected “manhood” by working longer hours at work. However, in order to encourage men to cut back on their hours without the worry of

looking bad around their employees who do not have children or families, the law must also in some way change the way the workforce thinks about men taking responsibility for household responsibilities by making it *normal* for men to work the “second shift” (Hochschild & Machung, 2012).

Under its general considerations, the Directive also suggests that “men should be encouraged to assume an equal share of family responsibilities,” for example, to take parental leave (OJ L 145 of 3.6.1996, p.6). This contributes to the European Commission’s strategy to eliminate the traditional gender roles that have existed throughout all of its member states. The elimination of traditional gender roles is a strategy that is consistent with one of the goals of dominance theory—to eradicate the patterns of male domination. To successfully get rid of masculine norms in the workplace, encouraging men to take on an equal share of household responsibilities is important. Schultz asserts that we “must call for reforms that encourage men and women to work similar and saner hours that will allow both to participate more fully in all life's experiences” (Schultz, 2000, p.2000). Traditional gender roles and the patterns of male domination are at the core of the work-family conflict, because they have defined the ideal worker requirements and behavior for decades.

Therefore, feminist theory suggests it is crucial to address male domination and the way it affects societies perception on what kind of work men or women are assigned to. Williams’s analysis of domesticity demonstrates the ways in which it has created masculine norms in the workplace, which discriminate against women. For example, the ideal-worker schedule is built around the individual who works full time, including extra over time, completely separated from the private sphere of household responsibilities.

Other than the ideal-worker schedule, many jobs are designed around masculine norms and discriminate against women who also have household duties, and usually bear children. The workplace may discriminate in other contexts, such as designing jobs around men's bodies and mandatory dress codes that are considered masculine (Williams, 2000, p.62).

The minimum requirements of the Parental Leave Directive grant men and women workers an individual right to parental leave on the grounds of birth or adoption of a child. This right to parental leave will allow them to take care of that child for at least three months until the child is eight years old (OJ L 145 of 3.6.1996, p.7). In principle, the right to parental leave should be given in a *non-transferable* basis (where if the father does not use his leave, then it is lost); however, the Directive leaves member states the option to shape their policies in a manner that is most appropriate for their own circumstances, so long as the minimum requirements of the agreement are accepted. If the non-transferability of maternal/parental leave is not binding to member states, it is likely that national governments will not add this condition to their legislation.

The Directive also contains a provision that is supposed to protect male and female workers against dismissal on the ground of applying for or the taking of parental leave. It offers them the right to return to the same job or a similar one at the end of their time off. These are elements that affect many women who wish to take part in market work, and are on the fence about bearing children due to the fear of not being hired or losing their jobs for this reason, as Joan Williams (2000) discusses in her book.

According to Williams's theory on why work and family conflict, one of the reasons why women are marginalized economically is due to the fact that they are even able to bear

children, because they cannot fit the ideal-worker norm that employers search for. This is what she calls the “maternal wall” (Williams, 2000, p.69). The “maternal wall” affects women who often have high positions in their work and are either thinking of taking maternity leave or are just returning from maternity leave. There is this expectation that once she becomes a mother, she will no longer be able to work just as hard as before, so her workplace treats her with hostility and prejudice (Williams, 2000, p.69).

The “maternal wall” had also affected many mothers in Hochschild’s study. Some of the women confessed that they cut back from their time with their children and attention to their spouses just to keep the job position they work so hard for. This negatively affected their marriages. Although some of them worked more than their husbands, they still found themselves left with all the “second shift” responsibilities when they got home (either because their husbands also worked full time and believed their work was more valuable or they felt that they were not responsible for the “second shift”). Because of the fear of losing their jobs on the grounds of needing “too much” time for responsibilities, women sacrificed the parts of their lives outside their work.

It is likely that the “maternal wall” could just as well translate into a “parental wall” or a “familial wall, ” for anyone who is discriminated against in the workplace for having private responsibilities that threaten their performance as an “ideal worker.” Protecting workers against the dismissal on the ground of taking parental leave could potentially prevent the cutbacks women have faced upon returning from maternity leave, and contribute to greater job security for those who have earned their positions in the workplace.

The components of the Parental Leave Directive that have been highlighted thus far all address important steps that have the potential to contribute to the elimination of discrimination based on maternity and parenthood. In addition to protecting workers from discrimination or dismissal on the grounds of taking maternal/parental leave, feminist theory suggests that governments protect workers through profamily policies that organize its workforce and childcare centers around the actual needs of working parents and children (Hochschild & Machung, 2012, p.258).

However, profamily policies must not only create reforms institutionally; feminist theory shows that in order for profamily policies to be efficient in solving the work-family conflict, they must be successful in changing the deeper problems that perpetuate male dominance and the marginalization of household work within the society. As mentioned above and in Chapter III, Williams's entire book surrounds the consequences of the harmful gender strategy she calls domesticity. Williams argues that domesticity is the underlying cause for the perpetuation of traditional gendered roles within the family that prevent society from changing its views of how private and public work should be distributed.

Domesticity and other traditional views about gendered roles in the family are embedded in the cultures of individuals, which they acquire from their background or community. In Hochschild's study, the culture of certain individuals often affected the way that they felt about contributing to household work and the way they acted upon these beliefs (Hochschild & Machung, 2012). All three feminist scholars who studied the

sharing of household responsibilities identified the need for society's view to change regarding the organization of public and private work. Hochschild argues that until it is acceptable and normal for a man to work the "second shift," couples will continue to fight over equally sharing household duties and the stalled revolution will stay stalled (Hochschild & Machung, 2012). Furthermore, Williams calls for a deconstruction of domesticity and traditional gendered roles. Both she and Schultz encourage a reconstruction of paid work and the norm of parental care to be more family-friendly. The importance of addressing these necessary changes is evident when assessing the national factors that could be attributed to insufficient results in sharing the second shift in Italy in the next chapter.

The extent to which Italy has adopted the Directive is an important component to this analysis. To sufficiently analyze the EU's gender equality policies, it is necessary to also study the transposition of Italian Law 53/2000 as part of the legal analysis of Directive 96/34/EC. The European Commission claims that the Parental Leave Directive "contributed greatly to improving the opportunities available to working parents in the Member States to better reconcile their work and family responsibilities" (OJ 86 of 8.3.2010, p.13). Additionally, the Commission has reported that Directive 96/34/EC "served as a catalyst for positive change" to help working parents balance work and family life in Italy, but did not create sufficient results in encouraging men to take equal responsibility in family work (OJ 86 of 8.3.2010, p.17).

Italy's Transposition of Directive 96/34/EC: Law 53/2000

As a European Directive, Law 96/34/EC is binding upon the EU's member states. Directives, as a legislative tool, are used "to bring different national laws into line with each other" (European Commission, 2012). This means that each member state must transpose the Parental Leave Directive into their national legislation, and fulfill all of the Directive's objectives by the date given by the European Commission. The signatory member states agreed to transpose Directive 96/34/EC on June 3, 1998 (having the option of an extension of a year), but Italy had not adopted appropriate measures until 2000. On March 8, 2000, Italy introduced its first law on work-family reconciliation measures: Law Number 53 of 2000.

The adoption of Law 53/2000 marks an important shift in equality policies for Italy. It is considered innovative because it addresses issues that have been debated by Italian feminists since the 1980s, and because it attempts to eradicate the "traditional Italian attitude" concerning female workers and women at the center of the family (Longo & Sangiuliano, 2007, p.3). According to a report from October 2000 sponsored by the European Commission on the implementation of Directive 96/34/EC, Italy transposed the Directive "correctly" with "no causes for complaint" (Clauwaert & Harger, 2000, p.54).

Law 53/2000's provisions exceed the minimum requirements of the EU Framework on Parental Leave in several areas. For example, while the Directive calls for a minimum of three months of parental leave for either men or women, the Italian law gives both parents the right to leave "for no more than a total of 10 months during the

first eight years of a child's life" (ILO, 2011). It also gives men a "bonus" month for taking at least three months of parental leave (Clauwaert & Harger, 2000, p.56). Some of its other notable achievements include measures that support work time flexibility, the promotion and coordination of city times, and a "new attempt to redefine women's and men's roles in children's care through the fundamental distinction of maternity leave from parental leave" (Longo & Sangiuliano, 2007, p.31).

Although these provisions seem innovative in challenging traditional gender roles in market work and family work, they have not been successful in doing so. Law 53/2000's mandatory maternity leave requirement exceeds the Framework Agreement on Parental Leave, but that does not necessarily translate into a positive outcome. Leaving a mother or soon-to-be mother without the choice to work for the months leading up to and following delivery assumes that she is not able to and/or does not want to continue to work for that period of time. Men are given an incentive to take a more prominent role in family work by offering them a "bonus" month of leave. However, the fact that parental leave is paid 30% of their regular salary versus 80% for maternity leave discourages many men from taking parental leave (Longo & Sangiuliano, 2007, p.31).

Does this entail equality? From the perspective of equal treatment theory, it would if both men and women were offered equal portions of their salary upon taking leave. However, cultural feminists would argue that because men and women are biologically different (e.g. women physically give birth and breastfeed), they are not equally situated as parents; therefore, offering women a higher salary is appropriate. This is a perfect example of the disagreements within feminist legal theory. Although it is not obvious which answer is correct, it is evident that by paying women more to remain in their

caregiving role, this provision is perpetuating traditional gender roles of male breadwinners and female caregivers (Lombardo & Del Giorgio, 2012, p.4).

In order to protect those individuals who are not privileged with the option of taking parental leave, Schultz recommends that all individuals are given equal pay for maternal or parental leave (Schultz, 2000, p.1999). Those individuals who cannot afford to take only a partial amount of their salary would have no choice but to stay at work. This approach is limiting to those who do not have “breadwinner wages” and does not help everyone (Schultz, 2000, p.2000).

Unintended consequences of the law are a reminder to consider that what is inscribed in law does not always translate into reality on the ground. Law 53/2000 applies to all workers, “but in practice it covers only some of them” (Clauwaert & Harger, 2000, p.55). Some female employees and young women who are doing “atypical jobs” (up to 200,000 women) cannot qualify for this legislation. Moreover, many employers as well as employees are not educated about the law and its instruments (Longo & Sangiuliano, 2007, p.49). It takes more than simply creating and implementing a law to create change in social policy issues, such as work-family reconciliation. This holds especially true when the law aims to break down a gender system that has been in place for decades. While the law is innovative in the sense that it covers untouched territory in Italian equality legislation by questioning traditional gender roles, this does not guarantee that Italy’s implementation will guarantee equality.

According to feminist Joan Williams, “equality requires changing each type of norm: not only changing the formal rules, but also changing the way judges apply the

rules and changing social customs (such as the ideal-worker norm) that are embedded in informal rules and unspoken expectations” (Williams, 2000, p.216). Therefore, in Chapter V, this study turns to the examination of national and sub-national influences in Italy that impede on substantial progress for work-family reconciliation.

Summary

This chapter looked at the EU’s gender equality principles and the progress that has been made within its treaties towards eliminating discrimination on the grounds of sex, maternity and parental care. The European Commission has promoted equality between men and women in the balance of work life and family life by providing a framework that grants working parents the right to take time off work to care for their children and maintain a job outside of the household.

An assessment of the Parental Leave Directive’s specific measures under the lens of feminist theory showed that the Directive offered various important provisions for the encouragement of sharing the “second shift” and protecting individuals from the “maternal wall” in the workplace. However, these improvements would only be successful if they change the deep-rooted societal factors that perpetuate the marginalization of women to the private sphere.

Chapter IV revealed that the Directive’s provisions were groundbreaking for Italy, which lacked prior work-family policies in its national legislation. The Directive’s objectives offer protection from discrimination on the grounds of pregnancy and maternity, and offer parents the right to take time from work to commit to their caregiving duties without the risk of losing their jobs.

In analyzing Law 53/2000, the findings were that Italy transposed EU Directive 96/34/EC completely and correctly without reason for complaint by the European Commission. Nevertheless, in practice, these measures have not reconciled professional and family work for men and women. A gap in pay between male and female workers persists, and women still do twice as much family work as men.

It is insufficient to stop here and assume that only the policymaking and transposition of the Parental Leave Directive are solely accountable for the conditions in Italy. The way that the European directive, and EU policy in general, works in relation to national law of the member states is not to interfere directly with national law. Rather, EU legislation serves as a catalyst to bring member states together in the aims of incorporating the EU's fundamental principles.

Chapter V is an assessment of national and subnational factors that may prevent Italy from achieving work-family reconciliation. As discussed above, the provisions of the European Law are only the part of the strategy to reconstruct work in a manner that acknowledges family and parental needs. The other part of the work-family conflict is the need to deconstruct the elements that prevent the revolution in household work.

Chapter V. Work-Family Reconciliation in Italy

Introduction

Within the previous twenty years, the EU has incorporated new gender equality and anti-discrimination measures into its political agenda. The EU established directives and new strategies for its member states to achieve gender equality (European Commission, 2007). As a nation with no previous measures on work-family reconciliation, Italy has struggled with incorporating the EU's Parental Leave Directive and gender equality principles into its formal and informal policies. While Italy "correctly" transposed the Directive into its legislation and has slightly improved its female employment rate, there has been a slower rate of social change (Guerrina, 2005, p.117). Mothers are still finding it difficult to balance work and family life.

These conditions resemble what Arlie Hochschild has called the "stalled revolution" in household work. From her research, Hochschild discovered that although American women were increasingly encouraged to enter the workforce, this progress was not accompanied by an equal amount of progress in social views of women in private work or the amount of help men were willing to contribute to household responsibilities. Roberta Guerrina's work (2005) and other Italian research (Lombardo, 2012; Marra, 2012) shows that the same situation persists in Italy as well.

To generate a comprehensive assessment of Italy's performance in adopting the EU's work-family reconciliation policies, it is important to recognize the situation in Italy that existed prior to Law 53/2000, and to highlight the domestic pressures that influence gender policy-making and implementation procedures. Following the incorporation of

reconciliation measures into Italy's legislation, the female employment rate remains low and women still handle most of the care responsibilities (Marra, 2012). These conditions still persist partially due to the domestic discourse that perpetuates traditional gendered family roles and power relations in the household (Marra, 2012, p.349). This chapter will show how the dominant discourse is embedded in Italy's history, culture, and politics. Many of these factors contribute to the stalled revolution and reveal the characteristics of traditional views of that resemble Williams's domesticity, which hinder Italy's advancement toward gender equality.

The Work-Family Conflict in Italy

Reconciliation policies have two objectives: the growth of female employment, and an increase in fertility rates. These objectives are meant to "remedy the situations of industrially advanced European societies and to battle the negative repercussions of the 'traditional welfare state'" (Donà, 2012, p.99). Italy has been categorized as a traditional welfare state (also referred to as a "Mediterranean" or "Southern welfare state regime") for privileging male workers and having a social budget that is strongly skewed towards pensions (Knijn & Saraceno, 2010, p.445). Italy has lacked a family policy in the form of services for children, care, monetary transfer and measures to reconcile professional and family life until the legislation adopted to comply with European directives (Guadagnani & Donà, 2007, p.164). Since the adoption of work-family reconciliation measures, women still produce a lower income at an average of fifteen percent lower than men, and make up less than forty percent of the full time workforce (Eurostat, 2006).

Even though Law 53/2000's provisions allow women to maintain their full time jobs, mothers are still complaining about having difficulty with balancing both work and family responsibilities, due to the lack of social and institutional improvement. Although women are now encouraged to return to work after maternity, there is a lack of funding invested in childcare facilities, and women find themselves pushed back into their traditional gendered family roles, discouraged to work, form and maintain a family (Marra, 2012).

The EU discourse on sharing care responsibilities has been "filtered" through Italy's dominant traditional discourse on gender roles and family organization in a way that actually discouraged the use of parental leave by men (Donà, 2012, p.107). The country's historical, cultural, and political views surround the *familialism* tradition. The discourse of familialism reinforces the traditional gendered family roles and power relations within the household, and therefore influences social policy.

Italian Familialism

Familialism is the "ideological attribution of a central role to the traditional family and the reliance on the family as provider of social protection" (Lombardo & Del Giorgio, 2012, p.3). This ideology dates back to the Italian fascist regime under Benito Mussolini. Fascist law and propaganda sank deeply into Italian culture and affected gender and family relations in ways that are still present in the twenty-first century (Counihan, 2004). Fascism created a sharp division of labor with women as homemakers whose lives consisted of catering around their husbands and children, and men as breadwinners ruling the family (Counihan, 2004, p.47). As the Fascist regime valued the

family structure, policy encouraged early marriage and big families, and women from working outside of the home by marginalizing women in the workforce (Counihan, 2004, p.47). Fascism promoted marriage and the family, and relied heavily on the unpaid labor of women that women gave in care responsibilities. Women were identified as the protector of the home and procreators, discouraged from education and work outside the home, were given a lower pay scale, and promoted female dependence by defining their role as a “giving service” (Counihan, 2004, p.49). Long after the collapse of the fascist regime, this tradition still dominates Italian society a century later. The fascist era solidified these trends that subordinated women in Italy, which lingered in the minds of many Italians even in the 1980s (Counihan, 2004, p.49). The support of the Catholic Church further cemented the position of gender power hierarchies in the social and political order.

The gender dynamics of the fascist legacy reveal the same elements that make up the gender system that Williams argues is the almost unquestioned norm and practice in American society. Domesticity is alive and well in Italian society as well, hidden behind the preservation of the traditional Italian family. Domesticity’s description of men and women “served to justify and reproduce its breadwinner/housewife roles by establishing norms that identified successful gender performance with character traits suitable for these roles” (Williams, 2000, p.1). The ideology of domesticity holds that men “naturally” belong in the market because they are “competitive” an “aggressive”; women belong in the home because of their “natural focus” on relationships, children and an ethic of care (Williams, 2000, p.1). Within domesticity, women are marginalized to the private sphere and are discouraged from entering professional work. Marginalization of

women is masked in the rhetoric that women “choose” to stay in the private sphere and are “uninterested” in taking jobs that are traditionally held by men. In actuality, the norm of domesticity, living through the remnants of fascist familialism in Italy, is marginalizing women from stepping outside the norm of the housewife. This choice rhetoric only perpetuates the system and discourages individuals to break it. These are the exact fundamentals that fascist policy encouraged throughout the twentieth century in Italy.

The familialism discourse has provided the basic elements for domesticity to influence Italian politics, culture, and society throughout a century. The fascist legacy provided “the foundations upon which post-war Italian society was built, and highlights the continued role of the family as the main arena in which gender dynamics are being played out” (Guerrina, 2005, p.116). Even with the adoption of new gender equality law, the traditional gendered family norms embedded into the dominant discourse of society still persist and keep individuals separated into their assigned breadwinner and caretaker roles. As dominance theorists have argued, equality cannot be achieved through only formal measures, such as the Parental Leave Directive. The masculine norms that exist within the informal rules in society must also be broken through in order for there to be change in all areas that perpetuate inequality.

The Italian Government

The gender dynamics of familialism have influenced Italy’s political color and policymaking. Although gender equality policy agencies were the first equality institutions to be developed in Italy during the 1980s and 1990s (Lombardo & Del

Giorgio, 2012, p.3), promoting gender equality in Italy has not been so successful for a few reasons. The Italian political arena has been made up of an ideological divide of a strong Catholic party and a strong socialist party (Lombardo & Del Giorgio, 2012, p.3). This means that while they do not agree on most issues, they do reach a political consensus on the emphasis of familialism, which is not accompanied by a strong interest in gender equality (Lombardo & Del Giorgio, 2012, p.3). Since the drafting of the Italian Constitution in 1948, the Christian Democrat Party defended the idea that the family had to be “regarded as a social unit based on natural law in agreement with the Catholic and fascist visions of family relations and of women’s role in society” (Marra, 2012, p.352). The political emphasis on familialism reinforces Italy’s commitment to preserving traditional gender roles and the norms of domesticity.

Furthermore, having such diverse political parties in the Italian government has made it difficult to maintain progress on various political issues, including gender policy. It goes without saying that the politics of the Italian government influences the adoption and implementation of the Parental Leave Directive and other antidiscrimination policies. The progress of gender equality has changed, depending on how each political party addresses the issue. The development of Italian gender and equality policy agencies showed greater progress coming from the center-left party than from the center-right. Under the center-left Prodi government, the Ministry for Rights and Equal Opportunities (EO) was created in 1996 (Lombardo & Del Giorgio, 2012, p.4). However, the EO was not sufficiently equipped for carrying out its duties, from the lack of funding and interests of other governments, such as that of Silvio Berlusconi. The EU’s discourse on employability considers the goal of increasing labor market as a necessary step towards

Europe's economic recovery (Donà, 2012, p.107). In a time of economic crisis, the issue of gender equality has been neglected, and reconciliation measures have been excluded from the center-right government's agenda (Donà, 2012, p.107). Consequently, Italy has compromised between EU requirements and national concerns when implementing reconciliation procedures.

Why Work-Family Reconciliation Policies Fail in Italy

An assessment of the social, political and cultural state of Italy before and after the transposition of the EU's Parental Leave Directive into Italian Law 53/2000 has shown that although Italy has correctly transposed the Directive under the requirements of the European Commission (including the provisions that work towards protecting women from the maternal wall and encouraging an equal share of household responsibilities), the Parental Leave Directive has failed to change important social and institutional elements in Italy that are crucial to achieving work-family reconciliation.

The most obvious of these elements that has prevented any progress in the deconstruction of traditional gendered roles is the prominence and importance of familialism in Italy. As this chapter has explained, those who have held political, social, or economic power in Italy have worked hard to preserve the tradition of familialism, which relies on the structure of the nuclear family, and the marginalization of women to the household.

In order for there to be change in the stalled revolution that exists in Italy, the work of feminist authors included in this analysis suggests that the idea of "man's work" versus "woman's work" must be deconstructed to make it normal for both men and

women to share the second shift at home. In Italy, there has not been much change in the allocation of work inside and outside of the home. Strong historical ties to Fascist Italy and the presence of the Catholic Church help keep the nuclear family at the center of Italian society. Like the women in Hochschild's study, women are encouraged to enter the economy and have successful careers; yet, they still do twice as much household work than men because that has always been their role in the traditional Italian household.

Furthermore, Williams, Hochschild, and Schultz's work has shown that paid work must be reconstructed in a way that accommodates family needs. As discussed in the previous chapters, this includes more flexible hours, job security, and paid maternal/parental leave. Although Italy has transposed these needs into its national law, Italy has failed to successfully enforce these measures. Therefore, Italy's failure to actually enforce measures inscribed in its laws has further prevented Italy from achieving the EU's work-family standards.

Summary

The foregoing chapter makes up the second part of the theoretical analysis of Italy's performance in accommodating the principles set forth by the EU's Parental Leave Directive. This part of the analysis covered the domestic elements that are crucial in understanding the way that gender policies work in Italy, which have made it difficult for Italy to make progress in work-family reconciliation. From examining the historical, cultural and political elements that characterize Italy, this study revealed that the dominant national discourse related to gender policy continues to revolve around the

fascist ideology of familialism. The ideology of familialism is so entrenched in every cultural, political, economical, historical, and social aspect of Italy, that it is simply too important to ignore.

The existing commitment to Italian familialism perpetuates the marginalization of women to the private sphere of family work, and keeps both men and women in their traditional roles of the breadwinner and the housewife. The persistence of this gender system is one national factor that has prevented Italy from progressing in work-family reconciliation. Furthermore, following the complete transposition of the EU's Parental Leave Directive into national law, Italy has still failed to enforce the measures under Law 53/2000, treating its provisions as mere guidelines. Chapter V has stressed the importance of social, cultural, and political factors that may make it difficult for Italy to fulfill the EU's standards in work-family reconciliation regardless of the member state's ability to transpose EU measures into national law. Without deconstructing the deep-rooted problems of reconciling public and private work, such as the gender systems that perpetuate traditional customs, the stalled revolution in sharing household responsibilities will continue to be stalled.

Chapter VI. Discussion

Introduction

The preceding study is a theoretical assessment of the work-family conflict in the EU, which used the work of renowned feminist legal authors to analyze the provisions of the Parental Leave Directive and its progress in Italy. To discover the underlying reasons for Italy's struggle in achieving the EU's gender equality standards in female work and sharing household responsibilities, this study applies the views of early feminist theorists and recent feminist authors to the provisions of the Parental Leave Directive. This part of the assessment revealed that the Directive includes various provisions that are innovative in gender policy in Europe and in Italy, which feminist authors have identified important for overall progress for work-family reconciliation. Furthermore, this study examined the conditions that exist within Italy that help explain why law implementation alone is insufficient for creating true social change regarding work-family reconciliation. The findings suggest that Italy's failure to efficiently enforce Law 53/2000's measures, reinforced by a government and history that discourages change in the traditional gendered roles are at the center of the problem.

Research Findings

After reviewing the prominent feminist legal theories in Chapter III, it is evident that equality is an abstract concept and term. Examining the Parental Leave Directive from the standpoint of early feminist theories (equal treatment theory, cultural feminism, and dominance theory) underlined the complexity of exactly what it attempts to accomplish—generating gender equality by declaring men and women equal within its

provisions. Early equal treatment theorists and cultural feminists thought that law could result in gender equality, depending on how men and women's differences were treated within its provisions. Equal treatment feminists were the first to declare that gender equality results from identical treatment of equally situated individuals, regardless of their sex or gender. Cultural feminists, on the other hand, assert that it instead results from identical treatment of individuals, with exceptions to make up for the ways in which women are different. However, over time, feminists have learned that it takes much more than words on a legally binding document to make inequality disappear. Dominance feminists and feminist authors such as those mentioned in this study explain that it takes more than a declaration of equality to change the oppressive dynamics that exist behind closed doors.

Especially when it comes to the issues of pregnancy, maternity and parental leave, the path to gender equality becomes complex. Not only is it unclear on when and when not to treat parents and non-parents equally; however, it is difficult to change a system of work that has existed for decades. As Joan William's book demonstrated, society has been built around the organization of men doing work outside of the home and women remaining in household work. Even as more women are encouraged to join the economy because their salaries are needed, these women find that the majority of professional work is still built around the traditional figure of the male norm. The hours of good professional job are based on an "ideal worker" whose lives do not include care responsibilities. Job equipment and dress code are based on the traditional notion of masculinity. The idea of which job positions a women could hold are changing, but the traditional idea of what it means to be a successful worker has not changed at the same

rate. Household responsibilities such as caregiving, cleaning, and cooking dinner is still seen as primarily a woman's job, as the book of Hochschild has documented. Therefore, there is much more to achieve than just legally *declaring* men and women equal in the workplace.

An examination of the Directive's specific measures revealed that besides its inability to produce a strong incentive for member states to exceed its minimum requirements, the law is innovative for its kind—especially for traditional European welfare states, such as Italy, that were in need of this type of policy. The provisions under the Parental Leave Directive promote the encouragement of men to take on an equal share of care responsibilities, paid parental leave, and the flexibility of ways to organize work and time to suit the needs of society (OJ L 145 of 3.6.1996, p.6). These are all strategies recommended by Hochschild, Williams, and Schultz that contribute towards the redistribution of work responsibilities and a society that is more family-friendly.

Although the Parental Leave Directive looked promising for stimulating positive change towards gender equality and Italy completely transposed the Directive into Law 53/2000, it did not explain why Italian women still made up less than forty percent of the full time workforce and struggled to balance work life with family life, if they had the opportunity to do so.

Previous literature that has focused on the Europeanization of EU gender policy promotes not just looking at the European level of gender policy, but also looking deeper into the political, social, and economic dynamics that exist at the member state level. The research findings of this study have proven that these elements are crucial for a

comprehensive understanding of how EU gender policy is adopted. The analysis in Chapter V revealed that domesticity (in the form of Italian familialism) is at the core of how EU gender policies have been implemented in Italy. Italian familialism originated from the fascist era in Italy, in which the traditional family structure was the center of society and politics. This ideology has carried over to the political parties and policy-makers of current Italy. Together with the influence of the Vatican and the Catholic Church, they have worked to preserve the nuclear family as the center of society and politics.

Because familialism is so entrenched within Italy society—as well as in its politics, national history, culture, economics, etc.—it is obvious that Italy has implemented the Parental Leave Directive in a way that upholds the recommendations of the EU, but in a manner that also preserves Italy’s national needs. An example of this is evident in the Directive’s incorporation of parental leave for men. Italy did adopt a measure that granted men the right to parental leave; however, the measure was manipulated in a way that men would be discouraged from accepting it.

If Italian society continues to be centered on a gender system that discourages women from entering the workforce—or encourages women to enter the workforce as long as they fit the norm of the “ideal worker” centered on the male figure—progress will not be made in gender equality. According to Williams, Hochschild, and Schultz, the only way progress will be made in work-family reconciliation is by deconstructing the gender system that preserves traditional gendered roles from the inside out. Williams has named this strategy reconstructive feminism. Therefore, it is necessary that in order for there to be positive change toward gender equality and EU objectives, Italy must deconstruct its

current gender system by redefining the role of women and men in the household structure, and by accepting a new norm for parental care that is concerned with equally dividing care duties between women and men.

Implications on Previous and Current Research

The research findings of this study aim to strengthen the theory of feminists who have dedicated their work to the work-family conflict, such as Joan Williams, Arlie Hochschild, and Vicki Schultz, among others, and to contribute to the expanding work of scholars who have begun taking theoretical and multi-dimensional approaches to studying gender equality policy in the EU. This study defends the argument made by previous feminists that gender policies could only be successful in creating social change within a society if they stimulate change within deep-rooted national discourse that perpetuates unequal conditions within that society.

Perhaps this study will initiate a trend in current research of applying work-family theory to European gender studies, so that future research will include a growing number of studies that focus on the member state level of European gender issues. This study could potentially be useful to students, researchers, or even policy-makers to have a better understanding of the significance of feminist legal theory and domestic-specific influences in the discipline of gender policies in the EU.

Chapter VII. Conclusions and Recommendations

As an international, legally binding body, the EU holds the potential to stimulate progress in gender equality across its member states through its binding measures. The EU has adopted work-family reconciliation policies into its legislation in order to assist its member states in making progress in achieving gender equality. However, statistics from the European Union's database and official reports for the European Union show that Italy's performance in reconciling work and family life has not been successful in reaching European standards. Rather, women make up less than forty percent of the full time workforce and devote twice as much time as men to family work (Guadagnani & Donà, 2007, p.164). The purpose of the foregoing study is to address the persisting struggle of the individuals in Italy who still have difficulty trying to balance the work and family life even after the transposition of the EU's Parental Leave Directive.

The findings of this study contribute a new approach to Europeanization and gender equality law, which incorporates the emphasis on supranational and national influences to the progress of gender policies. Integrating feminist legal theory with Europeanization theory for the case of work and family reconciliation in Italy revealed the importance of national ideology in relation to policy-making and adoption. The strategy taken in this study aimed to incorporate diverse approaches in order to create a better understanding of a subject matter that is complex.

Reconciliation of work and family life is not just a European policy issue. It is a global issue and also a national issue for Italy. It affects women, men, children, politics

and the economy. Therefore, it is only appropriate to address this issue from a multidimensional perspective to understand how it affects multiple spheres of society.

The research findings of this study bring up important considerations about the way that gender equality needs to be approached in order for it to progress. The findings serve as a reminder for anti-discrimination policymakers, for example, to recognize the powerful domestic influences that perpetuate discrimination within society. Policymakers and social activists could potentially use this analysis to establish a new way of approaching gender equality in Italy. Students, researchers, and professionals could also use this study as a mold for future research in a related field. There is potential for those who wish to continue further research on this issue following the transposition of the Revised Parental Leave Directive of 2010.

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