

From Duty to Right: The Transformation and Reconstruction of Maternity Protection under Old and New Maternalism

Chao-Ju Chen *

Abstract

This research is a feminist investigation and a critique of maternity protection from the perspective of substantive equality. Usually defined as law and policies aiming at protecting women workers, maternity protection has a long history but is subject to various contestations. One of the most debated issues is a question regarding equality: does maternity protection constitute a form of protection for women, or serve as a form of gender discrimination? Does the idea of maternalism underlining maternity protection rightfully affirms women's differences, or does it function to essentialize the connection between women and motherhood? The discussion begins with an introduction of maternity protection and maternalism, feminist critique of motherhood and three major issues regarding maternity protection: pregnancy discrimination as gender discrimination, the permissibility of protective legislation, and the relationship between childcare and the construction of ideal motherhood. Focusing on the the legal regulation of women's night work and of childcare in the workplace, the research reveals the transformation of maternalism from duty-centered "old maternalism" to right-oriented "new maternalism." The restriction on women's night work was loosened first in the name of national interest (economic development) and then in the names of national interests and women's right to work. The needs for child care were first largely ignored and then recognized as workers' gender-neutral right. However, this transformation from duty to right does not create equal citizenship for women, because the "choice" to perform motherhood is an encouraged one and care work is still highly gendered, classified and familized.

* Professor of Law, College of Law, National Taiwan University.
E-mail: cjtan@ntu.edu.tw

Compulsory motherhood is not abolished but rather updated. It is suggested that we depart from the embracement of maternalism and begin to recognize women's equal citizenship without treating women as essentially mothers of the family and the nation.

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