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"Just Like One of the Family": Domestic Violence Paradigms and Combating On-The-Job Violence Against Household Workers in the United States

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“JUST LIKE ONE OF THE FAMILY”: DOMESTIC
VIOLENCE PARADIGMS AND COMBATING ON-THE-
JOB VIOLENCE AGAINST HOUSEHOLD WORKERS
IN THE UNITED STATES

*Kristi L. Graunke**

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INTRODUCTION

Historically and currently, the workplace for many women, particularly immigrant women and women of color, has been someone else's home. What happens to basic workplace rights, such as the right to be free from sexual harassment, rape, and physical abuse, when one's paid work experience is interwoven with someone else's home life? While feminists and to some extent the public at large have identified sexual harassment as a problem in American workplaces, mainstream examination of workplace discrimination against women seldom ventures into the domestic realm, where many of society's lowest status and poorest women work.

Throughout the history of domestic service in the United States, women who make their living by working in other people's homes have been particularly and specially subject to sexual harassment and physical,

sexual, and psychological abuse. For domestic workers,¹ workplace harassment and abuse is “domesticized”—it occurs in the privacy of the home. Thus, the abuse and harassment suffered often looks like “domestic violence”—violence that is generally understood to occur between intimate partners in the private realm—yet also reflects the circumstances and conditions of low wage, marginal work that is systematically excluded from legal protections and benefits and deeply segregated by race, ethnicity, immigration status, and gender.

This Article argues that the immense problem of on-the-job abuse experienced by domestic workers demands a multifaceted plan of attack. The proposed responses specifically draw upon the capacities, strengths, and resources of women, particularly comparatively privileged women,² as both activists and employers of domestic workers. By describing the circumstances of domestic work in the United States from the nation’s inception to the present, Part I demonstrates the prevalence and intractability of on-the-job physical and sexual abuse and argues that other women, as employers of domestic workers, have historically played a complex role in participating in, condoning, or failing to acknowledge this abuse. Part II asserts that the legal and socioeconomic contexts of contemporary domestic work reflect the prevalence of immigrant women of color in the contemporary domestic workforce and the unique challenges they face as workers in the U.S. Part III examines the present-day incidence of harassment and violence against domestic workers—as revealed through newspaper accounts, interviews with domestic workers, and case law—and analyzes common threads of experience in these narratives. Based on these findings, this Part contends that physical and sexual abuse suffered by many domestic workers combines elements of workplace harassment with characteristics typical of “domestic violence,” making this abuse more challenging to combat than “standard” workplace harassment.

Because of the commonalities between domestic violence and violence against domestic workers, Part IV argues that privileged women, who have traditionally been active as funders, social workers, lobbyists, lawyers, and volunteers in the movement to stop violence against

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1. For the purposes of this article, domestic work is defined broadly to include a wide range of remunerated household-related labor performed by typically female workers in residences that do not belong to them or their relatives. Common tasks include: childcare, care of sick or elderly persons, cleaning, cooking, errand running, and other household chores.
 2. My use of the term “privileged women” throughout this piece refers generally to middle and upper-class women, especially those with sufficient income to hire domestic workers.

women, should focus their efforts beyond violence between intimate partners to the problems of abuse and violence faced by domestic workers. Although policy advocacy is an important part of the strategy to improve conditions for domestic workers, Part V argues that the legal regimes potentially useful to victims of workplace abuse or harassment are not practically accessible to many domestic workers. The present exclusion of domestic workers from the protective labor and anti-discrimination laws that might help them to address job-related abuse reflects some of the same notions of privacy and sanctity of family that served to keep domestic violence hidden from effective intervention for so long. Even if domestic worker problems were more broadly addressed by existing labor and anti-discrimination protections, many factors specific to domestic workers' workplace and societal experience make it less likely that traditional employment law safeguards would adequately protect them.

Given the limits of labor and employment law as tools for improving conditions for domestic workers, Part VI proposes non-legal strategies to combat the problem of violence faced by domestic workers. These strategies—collective and individualized in approach—recognize the relative privilege of the women most likely to employ domestic workers. More privileged women, who are often primary employers of domestic workers and are likely to supervise and communicate with them, have a substantial role to play in the prevention of sexual, physical, and other abuse of domestic workers. Part VI asserts that domestic workers' right to freedom from abuse in the workplace can most immediately and realistically be won not only through self-organizing by domestic workers, but also by support, awareness, and a new commitment on an individual level by comparatively privileged women to become better actors in their personal lives. Women must become not only better employers, but—in what sounds like a sexist throwback, but, as I shall explain, is not—“better” mothers and wives. Being “better” might entail that comparatively privileged women become both active interrogators of the current system of divisions of household labor and re-constructors of the social order within their own homes by forcing partners and children to assume more responsibility for housework. Alternatively, “being better” might mean reconfiguring the relationship between employers and domestic workers. This reconfiguration would require greater formalization between employer and worker, less flexibility on the employer's part, and more respect for workers' lives outside the employment relation. Yet another method of reforming domestic work might ask privileged women to join with less privileged women to

advocate that some domestic work be removed from the setting of the private home.

These appeals to privileged women represent yet another (problematic) moral and practical burden out of many borne by women in family and public life, and risk falling prey to sexist discourse traditionally leveled towards women who do not perform their own household work. However, this Article concludes that the harsh reality of the situation necessitates change by women *on an individual level*. Some domestic workers suffer the hire of comparatively powerful men and women, and if women employers do not change their own ways and work to change family and community norms of how domestic workers are treated, little is likely to change at all.

I. "SYNONYMOUS WITH THE WORST DEGRADATION THAT COMES TO WOMEN:"³ HOUSEHOLD WORK AND ABUSE FROM COLONIZATION TO THE PRESENT

Since this nation's colonization, its more prosperous classes have relied on domestic servants to perform labor-intensive and low-status housework.⁴ Although the extent of employer control over the worker varied according to the system of labor—chattel slavery, indenture arrangements, or wage labor—sexual harassment and physical and sexual abuse are recurring themes in historical accounts.⁵ Another recurring theme is the extent to which the history of domestic work in the U.S. is a history of the work experiences of immigrant women and women of color. Domestic work, throughout U.S. history, has been performed by these women in numbers disproportionate to their numbers in the population as a whole.⁶ Accordingly, these groups of women have disproportionately suffered the harassment and abuse commonly endured by domestic workers, and the nature of abuse has often been shaped and

3. HELEN CAMPBELL, PRISONERS OF POVERTY: WOMEN WAGE-WORKERS, THEIR TRADES AND THEIR LIVES 234 (Greenwood Press 1975) (1887) (as part of an investigative report on the working conditions of women in the U.S., Campbell wrote that "household service has become synonymous with the worst degradation that comes to women.").

4. See JUDITH ROLLINS, BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS 48-58 (1985).

5. See generally KERRY SEGRAVE, THE SEXUAL HARASSMENT OF WOMEN IN THE WORK-PLACE, 1600 TO 1993 12-39 (1994).

6. See *infra* Part II.A.

determined in part by their race, ethnicity, and/or immigrant status.⁷ Moreover, historical evidence suggests that domestic relations between the workers and the women that supervised them are significantly implicated in accounts of abuse. The themes present in these historical accounts of abuse lend perspective to present-day patterns of abuse against domestic workers.

A. Pre-Civil War Accounts of Servitude and Abuse

The prevalence of sexual harassment and physical and sexual violence experienced by African American slaves has been well documented.⁸ White masters and overseers enjoyed near-total sexual access to slave women.⁹ Former slave Robert Ellett explained, in an interview, "In those days if you was a slave and had a good looking daughter, she was taken from you. They would put her in the big house where the young masters could have the run of her."¹⁰ In addition to other motives for rape and harassment, racist and sexist constructions of black women as unchaste¹¹ and a profit interest in the production of more slaves drove interest in sexual access.¹² Observers of Southern society remarked on the prevalence of slave children with white ancestry.¹³ For all slaves, the use or threat of physical violence served as white society's main tool for gaining sexual access, forcing labor, and generally subduing and controlling them.¹⁴ Like white masters, white mistresses were able to physically and psychologically abuse male and female slaves with impunity.¹⁵

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7. See PIERETTE HONDAGNEU-SOTELO, *DOMESTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE* 13–16 (2001) (describing the way in which the subordinate status and exploitation of domestic workers has historically been shaped by race and immigration status).
 8. See, e.g., TERESA AMOTT & JULIE MATTHAEI, *RACE, GENDER, AND WORK* 147–149 (1996); HARRIET JACOBS, *INCIDENTS IN THE LIFE OF A SLAVE GIRL* 44–48 (Oxford Univ. Press 1988) (1861); JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW* 37–38 (1985); SEGRAVE, *supra* note 5, at 16–20.
 9. AMOTT & MATTHAEI, *supra* note 8, at 147.
 10. SEGRAVE, *supra* note 5, at 19.
 11. *Id.* at 17.
 12. AMOTT & MATTHAEI, *supra* note 8, at 147.
 13. See SEGRAVE, *supra* note 5, at 17 (recounting Frederick Law Olmstead's observations of light-skinned slave children during a trip to the South).
 14. AMOTT & MATTHAEI, *supra* note 8, at 147.
 15. See JONES, *supra* note 8, at 25–26 (describing white mistresses' verbal and physical abuse of black women slaves).

There is also evidence that physical abuse of non-slave servants in the North occurred, and that the perpetrators of physical abuse were both female and male employers.¹⁶ Indentured servant women of the late 18th century experienced widespread sexual harassment and abuse,¹⁷ and also suffered the indignity of laws that allowed a master to recover compensation or extra service for time lost due to a servant's pregnancy, even if the master himself were the father.¹⁸ Even non-indentured wage-earning domestic workers labored in a society where "[t]he idea that domestics caused trouble, that they led men on, and that they were promiscuous was already firmly established in the 1600s and 1700s."¹⁹ One commentator in 1790s Philadelphia expressed the view that free white domestic servants "are usually libertines and there are hardly any women servants in Philadelphia who could not be enjoyed for a very small sum."²⁰

Since most domestic workers lived in employers' homes, employers enjoyed tremendous power over them. If a woman resisted her employer's advances, she might rapidly lose both her home and job. If she submitted, she faced the risks of pregnancy and also being dismissed due to her pregnancy, as well as a diminished chance to marry.²¹ For these and other reasons, women who could get jobs in the mills often preferred this dangerous and difficult work over work as a private household servant.²²

16. See DAVID M. KATZMAN, *SEVEN DAYS A WEEK: WOMEN AND DOMESTIC SERVICE IN INDUSTRIALIZING AMERICA* 224 (1978) (quoting Mainer John Winter's 1639 letter to an acquaintance: "You write me of some yll reports is given of my Wyfe for beateinge the maid; yf a faire waye will not do yt, beateinge must, sometimes.").

17. SEGRAVE, *supra* note 5, at 13 (stating that sexual abuse of indentured servants was so widespread that it led to infanticide among indentured servants, alerting the governor of Virginia colony to the problems of masters impregnating their servants).

18. *Id.*

19. *Id.* at 23.

20. *Id.* at 26.

21. *Id.*

22. *Id.*

B. Domestic Workers' Experiences Post-Civil War to 1920

1. Domestic Workers in the North

For half a century after the Civil War, domestic workers in the North were often white immigrant women.²³ In many households, these workers "lived-in," that is, resided in the homes of their employers,²⁴ and were thus subject to constant and often intimate interactions with their employers.²⁵ The possibility of sexual liaisons between male employers and domestic workers was a recurring theme in the literature of the day.²⁶ The idea that servants might sexually initiate boys and young men was particularly prevalent.²⁷ Seeking to make these titillating fictions reality, men of the household could take advantage of the proximity to their servants to coerce or force sexual activity.²⁸

Advocates who worked among poor single mothers in the 19th century noted that many of them had become pregnant by an employer in a domestic work situation.²⁹ Dr. Elizabeth Blackwell, who worked in a Philadelphia almshouse, observed that many of the unmarried women there had worked as domestic workers and been seduced by their masters.³⁰ Staffers of an Elmira, New York rescue house for young women noted in many of the residents' files that the residents had become pregnant by an employer.³¹ The Boston Female Asylum, which trained orphan girls in domestic work and placed them in houses, was plagued with complaints from the girls that male employers or employers' sons had tried to take advantage of them sexually.³²

23. AMOTT & MATTHAEI, *supra* note 8, at 114 (stating that in 1890, 1/3 of all domestic workers were first generation immigrants, largely from Ireland or Scandinavian countries); FAYE DUDDEN, *SERVING WOMEN: HOUSEHOLD SERVICE IN 19TH CENTURY AMERICA* 60-71 (1983) (discussing the prominence of Irish women in 19th-century domestic work).

24. See KATZMAN, *supra* note 16, at 95 (noting that most American servants lived in their employers' homes "prior to World War I.").

25. See *id.* at 95 (observing that, for live-in servants, "the work environment and tasks were thus central to their personal lives.").

26. *Id.* at 216.

27. *Id.*

28. See *id.* (discussing male employers' sexual control over domestics). Some men openly sought domestic workers for sexual companionship purposes, and some agencies supplied them with unsuspecting workers. *Id.* at 218.

29. See SEGRAVE, *supra* note 5, at 32.

30. *Id.*

31. *Id.*

32. *Id.* at 32-33.

Reformers, particularly women's rights activists, sought to draw attention to the sexual danger encountered by domestic workers on the job.³³ The most prominent example of this was Susan B. Anthony and Elizabeth Cady Stanton's advocacy on behalf of Hester Vaughan.³⁴ Vaughan was an English immigrant domestic worker in Pennsylvania who was raped by her employer and, after becoming pregnant, was fired. Indigent and no doubt unemployable because of her pregnancy, Vaughan was later discovered lying ill in an unheated room where she had given birth to her child. The child was found dead. Vaughan was convicted of infanticide and sentenced to death in 1868.³⁵ Elizabeth Cady Stanton and Susan B. Anthony argued Vaughan's case in their feminist paper *The Revolution*, focusing on the sexual and economic oppression that had combined to cause Vaughan's misfortune.³⁶ They and other activists lobbied the governor of Pennsylvania for a pardon, which he eventually granted.³⁷ Other feminist reformers in the Working Women's Association raised funds to enable Vaughan to return to her family in England.³⁸

When activists succeeded in drawing national attention to the plight of abused domestic workers, sympathetic governmental and legal responses were generally not forthcoming. In 1910, the U.S. Senate ordered the printing of a Department of Labor report on the condition of female and child wage earners in the United States.³⁹ The Report spanned nineteen volumes, and included discussions of domestic work. The portion of the Report devoted to *Relations Between Occupation and Criminality of Women* featured domestic workers prominently in its discussion of "offenses against chastity."⁴⁰ While recognizing potential dangers for domestic workers, the Report argued that the problems were due more to the domestic workers' poor virtue than aggression by employers.⁴¹

While male sexual violence against white Northern domestic workers drew some public attention in the late 19th and early 20th centuries,

33. See, e.g., *id.* at 26.

34. *Id.* at 29.

35. *Id.*

36. *Id.*

37. KATHLEEN BARRY, *SUSAN B. ANTHONY: A BIOGRAPHY OF A SINGULAR FEMINIST* 216-217 (1988).

38. *Id.*

39. S. Res. 259, 61st Cong. (1910).

40. MARY CONYINGTON, *RELATIONS BETWEEN OCCUPATION AND CRIMINALITY OF WOMEN* S. Doc. No. 61-645, at 74 (2d Sess. 1911).

41. See *id.* at 87.

modern historians of domestic work have also discussed the abusive potential of relations between female employers and servants.⁴² “Living in” made a worker more vulnerable to manipulation and mistreatment at the hands of the mistress. “Mistresses maximized their control by requiring servants to live in, thus isolating them from outside influences and making the world of the mistress the exclusive domain of the servant. Employers could also use the intimacy of the mistress/servant relationship to exploit any affection and sympathy that a servant developed for her mistress.”⁴³ Female employers’ mistreatment of domestic workers often included psychological manipulation,⁴⁴ personal questioning or other invasions of privacy,⁴⁵ and demands that workers perform long hours of unreasonably strenuous work.⁴⁶

2. Domestic Workers in the South

Although chattel slavery was abolished after the Civil War, Southern African American women continued to perform domestic labor for Southern white people.⁴⁷ They also continued to suffer the sexual and sometimes physical abuse that they had experienced in slavery.⁴⁸ African American women had no choice but to do domestic work, often under oppressive conditions.⁴⁹ An excess labor supply in the post-Civil War South restrained domestic workers’ bargaining power, and African American women needed to work in order to supplement the low wages

42. See, e.g., KATZMAN, *supra* note 16, at 176.

43. *Id.*

44. See *id.* at 157–59 (discussing “friendships” between women employers and domestics which were not mutual and generally involved the domestic enduring the moods and neediness of her employer).

45. *Id.* at 16 (noting that late 19th-century domestics’ accounts of their work as live-in workers often contained complaints of employers’ intrusive questions about their comings and goings, friends, and romantic lives).

46. *Id.* at 8–9 (citing a 1911 federal investigation of women working in laundries which found that many had left domestic service because of unreasonably hard physical labor expected of them, for example, tasks such as heavy lifting, mattress turning, sweeping and having to be on one’s feet all day); see also *id.* at 111–113 (stating that late 19th century live-in servants worked an average of 11–12 hours a day, often 7 days a week, and that they were commonly “on call” when they were not officially working).

47. *Id.* at 184–85 (stating that African American servants were the servant class for post-bellum white Southern households); JONES *supra* note 8, at 112, 127–128 (stating that in 1900, 9 out of 10 servants in southern cities were black women).

48. See JONES, *supra* note 8, at 60, 71–72, 150.

49. KATZMAN, *supra* note 16, at 184–85.

paid to African American men.⁵⁰ The few non-servant occupations open to African American women had far more applicants than available jobs.⁵¹ In addition, strict vagrancy laws allowed the labor of African American men and women to be sold by the state.⁵² Just as sharecropping arrangements could tie an African American man to the white landowner, so could it bind the women in his family to work in the landowner's household as servants.⁵³ Despite their new freedom, African American women were still regarded by whites as suited to long hours of physically grueling work.⁵⁴

Unfortunately for African American domestic workers, white ideas about the inherent immorality and seductiveness of black women, along with corresponding notions of white men's right to sexual access, survived the Civil War intact.⁵⁵ As historian David Katzman writes:

For Southern blacks, white sexual exploitation was a major problem. Blacks were outspoken in declaring this to be one of the major abuses of the Southern caste system. Domestic service seemed to compound white male sexual exploitation because it placed young girls even more directly under white power within a system that condoned white male/black female relations. This outspokenness emerges in writings by Victorian-era African Americans protesting the injustices endured by domestic workers. W.E.B. DuBois commented that African Americans were "coming to regard the [domestic] work as a relic of slavery and as degrading . . . Parents hate to

50. *Id.*

51. *Id.*

52. KATZMAN, *supra* note 16, at 96 (citing one case where two women were convicted of vagrancy and their labor has sold to the highest bidder at a courthouse auction).

53. *Id.*

54. ELIZABETH CLARK-LEWIS, *LIVING IN, LIVING OUT: AFRICAN AMERICAN DOMESTICS IN WASHINGTON, DC 1910-1940* 27, 46-47 (1994) (citing interviews with retired Southern-born African American domestics that indicate that black domestics in the rural South performed grueling physical labor along with men, and that children as young as 9 years old also did hard labor). For example, one of Clark-Lewis' interviewees, Bernice Reeder, stated that white Southern employers "wanted strong-looking girls 'cause the work was so hard." *Id.* at 47.

55. See KATZMAN, *supra* note 16, at 216-17; SEGRAVE, *supra* note 5, at 20-21.

expose . . . their daughters to the ever-possible fate of concubinage.”⁵⁶

Sexual abuse of black women was not always instigated by white men alone; white women sometimes condoned or encouraged male sexual abuse. In a 1912 issue of the *Independent* magazine, a domestic worker in the rural South described her own experience of being fired because she would not let her male employer kiss her: “I believe nearly all white men take, and expect to take, undue liberties with their colored female servants—not only the fathers, but in many cases the sons also. Those servants who rebel against such familiarity must either leave or expect a mighty hard time, if they stay.”⁵⁷ The worker went on to state:

This moral debasement is not at all times unknown to the white women in these homes. I know of more than one colored woman who was openly importuned by white women to become the mistresses of their white husbands, on the ground that they, the white wives, were afraid that, if their husbands did not associate with colored women, they would certainly do so with outside white women.⁵⁸

As a response to the threat of sexual abuse and in a general repudiation of the living and working arrangements during slavery, Southern servants found ways to assert their distance and protect themselves from white employers. Unlike their white counterparts in the North, African American domestic workers often refused to live in the employer’s household.⁵⁹ Young girls did not begin work as domestics in the rural South without receiving a warning from older women about white men, and occasionally, a device for self-protection.⁶⁰ In addition, Southern

56. KATZMAN, *supra* note 16, at 216–17 (quoting W.E.B. DuBois, *Negroes of Farmville, Virginia: A Social Study*, BULLETIN OF THE DEPARTMENT OF LABOR III 21 (Jan. 1898)).

57. A Negro Nurse [pseud.], *More Slavery at the South*, 72 INDEP. 198 (Jan. 25, 1912).

58. *Id.*

59. AMOTT & MATTHAEI, *supra* note 8, at 160–61 (noting that black women domestic workers preferred to “live out,” and that married black women often worked as laundresses in their own homes); KATZMAN, *supra* note 16, at 198–99.

60. CLARK-LEWIS, *supra* note 54, at 48–49. Clark-Lewis’ 1980s interviews with elderly Southern-born African American domestic workers who had migrated to Washington, DC in the early 20th century revealed that, in the rural South, young African American domestics were thoroughly warned about white male employers. Odessa Minnie Barnes stated that “[n]obody was sent out before you was told to be careful of the white man or his sons. They’d tell you the stories of rape . . . hard too! No lies.

African American mothers struggled to find ways to keep their daughters from going into domestic work. A daughter of a former slave wrote to a newspaper in 1904 that “[t]here is no sacrifice I would not make, no hardship I would not undergo rather than allow my daughters to go in service where they would be thrown constantly in contact with Southern white men, for they consider the colored girl their special prey.”⁶¹

C. Domestic Work 1920 to Present

From the 1920s to the 1980s the social and legal contexts of domestic work in the United States altered dramatically. Mass migration of African Americans to the northern states, labor-conscious reforms of the New Deal, social and demographic change wrought by the Civil Rights movement, and recent waves of immigration have contributed to changing the status of domestic workers. Despite progressive changes in the situation of domestic workers, problems of on-the-job abuse persisted throughout this era and continue to the present day.

1. Moving Out, Living Out: African American Migration and Re-Making Domestic Relations in the North

Mass migration by Southern African Americans to the North in the first decades of the 20th century created more than demographic change. As Southern black women entered domestic service in Northern cities, they began to re-make the domestic employer-employee relationship by insisting on increased physical and psychological distance from their employers. The early 20th century witnessed a massive migration

You was to be told true, so you'd not get raped. Everyone warned you and told you to 'be careful.'" *Id.* at 48. Weida Edwards echoed this, recounting that "[y]ou couldn't be out working 'til you knew how people was raped. You'd know how to run, or always not to be in the house with the white man or big sons. Just everyone told you something to keep you from being raped, 'cause it happened, and they told you." *Id.* Ora Fisher's family warned and armed her: "My mama told you first. Next was aunts and all. Now, then just before I was to leave with the family, my daddy just gave me a razor and he said it's for any man who tries to force himself on you. It's for the white man. He gave us *all* one! That I know." *Id.* at 49.

61. A Southern Colored Woman [pseud.], *The Race Problem—An Autobiography*, 56 INDEP. 587 (Mar. 17, 1904).

of African Americans from the rural South to Northern urban areas.⁶² In fact, the intractable reality of Southern white men abusing black women in their employ may have played a motivating role in this migration.⁶³ Despite high hopes for escaping domestic work and its abuses through migration, black women migrants found that even in Northern cities, domestic work was the main work available for and identified with black women.⁶⁴ Newly migrated African American domestic workers came to disproportionately comprise a Northern urban servant class that had previously been populated largely by white women.⁶⁵

As a newly prevalent domestic workforce in the North, African American women asserted greater control over their working lives by insisting that they live apart from their places of employment.⁶⁶ This growing trend of “living out” often ran contrary to employers’ wishes, because it meant doing without the around-the-clock convenience of a live-in servant.⁶⁷ In addition, employers of “outside” workers enjoyed less control over their servants’ activities.⁶⁸

Although the trend of “living out” grew among domestic workers as a means of fighting exploitation of their bodies and labor, domestic workers of the era between the World Wars still struggled against a variety of abuses. Psychological abuse and manipulation remained a problem in many relationships between female employers and domestic workers.⁶⁹ Sexual abuse and harassment also persisted. In 1979, re-

62. See JONES, *supra* note 8, at 155–57 (stating that thousands of African Americans migrated north every year between 1870–1910, and an estimated 500,000, or 5% of the southern black population, migrated north between 1916–1921).

63. AMOTT & MATTHAEI, *supra* note 8, at 168; JONES, *supra* note 8, at 164.

64. CLARK-LEWIS, *supra* note 54, at 68–69.

65. Cf. KATZMAN, *supra* note 16, at 72–73 (citing Census figures showing that the number of white female domestic workers declined by one-third between 1890 and 1920, while the numbers of black female domestic workers increased by 43% during the same period); PHYLLIS PALMER, DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES, 1920–1945 12 (1989) (citing Census statistics showing that 46% of employed black women worked as domestics in 1920, 53% in 1930, and 60% in 1940).

66. See CLARK-LEWIS, *supra* note 54, at 129–33, 147–62 (discussing generally the increased freedom experienced by dayworkers after they transitioned from “live in” service); JONES, *supra* note 8, at 165; KATZMAN, *supra* note 16, at 177 (linking the growth of “live out” service in the early 20th-century to increased employer dependence on black women as domestic workers).

67. KATZMAN, *supra* note 16, at 177–78.

68. *Id.* at 177–79.

69. See CLARK-LEWIS, *supra* note 54, at 106–13, 117–19, 124. Clark-Lewis explains that dealing with and trying to avoid mistresses’ “nasty spell[s]” was the focus of much

searchers interviewed elderly African American women who had worked as domestic workers in the segregated South and elderly white women who had employed domestic workers during the same era.⁷⁰ The African American women's accounts reveal common and painful experiences of sexual harassment and abuse by male employers.⁷¹ The white women employers' accounts reveal a willful effort to ignore or deny the problem.⁷²

In addition to sexual and psychological abuse, domestic workers still faced physical abuse on the job. African American domestic workers experienced incidents of outright physical abuse by employers well into the 20th century,⁷³ and often complained of abusive behavior by employers' children.⁷⁴ A domestic worker's November 1931 letter, directed

servant-to-servant communication in multiple servant households, and a major topic of domestics' complaints' about their employers. *Id.* at 119.

70. See generally, SUSAN TUCKER, *TELLING MEMORIES AMONG SOUTHERN WOMEN: DOMESTIC WORKERS AND THEIR EMPLOYERS IN THE SEGREGATED SOUTH* (1988).
71. *Id.* at 165, 215–18. Tucker observes generally: "Although the black women to whom we spoke were only a small sample of domestic workers, they agreed that sexual harassment of black women by their white male employers was a clear possibility." *Id.* at 215.
72. *Id.* at 19. Tucker writes that "[the black interviewees] would say, 'You wouldn't want to know it.' I believe this to be a correct judgment: though I had read of sexual exploitation of domestics in white homes . . . I did not see this subject as something I should ask about, even as I designed the questionnaire. However, as I heard many references to mulatto women, I began to inquire further. What I came to see was that white women, indeed, usually denied ever hearing of sexual exploitation of black domestics, either within the white home or by the men in the household. They denied it so completely that it was consistently a subject on which I got only a one- or two-sentence response that usually focused on men called 'poor white trash.' It is my feeling that such a complete denial is probably linked to the fact that most women, to some degree or another, fear rape. White women were told as children that black men were their potential rapists and that only in aligning themselves with white men could they be spared. Thus, they did not want to believe white men known to them, or similar to the white men known to them, capable of such acts." *Id.*
73. See KATZMAN, *supra* note 16, at 96–97 (discussing a 1922 report by the Chicago Commission on Race Relations that related the case of a black woman brought from a small town in rural Florida to work as a domestic for a white Chicago family. The woman attempted to leave the household, and was kicked, beaten and threatened with a gun. Although she filed assault and battery charges, they were dismissed for lack of evidence); see also TUCKER, *supra* note 70, at 15 (relating an anecdote shared by a retired Southern domestic worker in a 1979 interview, telling of one black domestic who was beaten by a white man for "talking back" to the white women for whom she worked. According to the interviewee, the worker was beaten so badly that she could not work for five weeks).
74. BONNIE THORNTON DILL, *ACROSS THE BOUNDARIES OF RACE AND CLASS: AN EXPLORATION OF WORK AND FAMILY AMONG BLACK FEMALE DOMESTIC WORKERS* 131

at the Women's Bureau of the Department of Labor, noted: "A great many places the children will strike a person and the women will only say 'don't pay attention to the children.'"⁷⁵ Domestic workers felt they could not scold children for fear of being fired, and children followed parents' cues and treated domestic workers as clear inferiors.⁷⁶

Domestic workers' labor freed the middle class housewife to direct her attentions toward more attractively feminine activities such as child-rearing, husband-tending, cooking, and social obligations.⁷⁷ It also freed her to participate in volunteer and political groups, and paid employment.⁷⁸ However, this freedom for the middle- and upper-class white housewife was sometimes achieved at the cost of their employees' health.⁷⁹ Physical abuse through overwork and a lack of regard for the limits of domestic workers' bodies is manifest in writings by post-World War I domestic workers about their work.⁸⁰ Middle class women generally assigned part-time domestic workers to do the heaviest and dirtiest of household labor, such as cleaning bathrooms, scrubbing floors on hands and knees, and washing laundry (which was particularly physically laborious before electric washing machines became commonly used appliances).⁸¹ Women employers frequently demanded that domestic workers clean floors on their hands and knees, a chore viewed not only as physically painful, but degrading.⁸²

(1994) (describing incident in which employer's child kicked the family's domestic worker); PALMER, *supra* note 65, at 81.

75. Letter to Women's Bureau, Department of Labor (Nov., 1933), (on file with the Library of Congress), *quoted in* PALMER, *supra* note 65, at 81.

76. PALMER, *supra* note 65, at 81.

77. DELLA THOMPSON LUTES, *A HOME OF YOUR OWN* 330 (1925) (giving homemaking advice and describing the wife as "social secretary of the home, seeing that children make the right friends, and that father's interests are properly looked after through social contacts.").

78. *See* PALMER, *supra* note 65, at 114.

79. *See, e.g.*, EVELYN NAKANO GLENN, *ISSEI, NISEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE AMERICAN WOMEN IN DOMESTIC SERVICE* 146 (1986) (noting that, in her interviews of retired Japanese American domestics who had worked during the early 1920s, at least two interviewees complained that the combination of hard labor with responsibilities at home had ruined their health).

80. PALMER, *supra* note 65, at 74–80.

81. *Id.* at 42–48, 50–53 (describing the heaviness of tasks assigned to domestic workers in 1920s–40s).

82. *See, e.g.*, TUCKER, *supra* note 70, at 88 (quoting an interview of retired Southern black domestic worker Ella Thomas, telling about a time the employer directed Thomas to get down on her hands and knees to wax the floor. Thomas refused, telling the employer that "I only gets on my knees to pray.").

The physical pain caused by overwork is expressed powerfully in a voluminous series of domestic workers' letters to Eleanor and President Roosevelt and Labor Secretary Frances Perkins during the 1930s.⁸³ In these letters, numerous domestic workers recount details of hard physical labor, lifting and straining, hand infections resulting from having to use harsh chemicals without gloves, and being forced to wash household floors on their hands and knees rather than the mops that their employers would use if forced to do it themselves.⁸⁴ Domestic workers complained repeatedly that they were not seen as human.⁸⁵ A July 1933 letter to President Roosevelt stated: "[Employers] are harder on the colored woman. They seem to think that a colored woman have [sic] no feeling tiredness [sic]."⁸⁶ A November 1938 letter to Eleanor Roosevelt, advocating for domestic workers' inclusion in New Deal labor reforms, bore a similar complaint:

Dear madam[,] I have heard of your great work among the poor and decided to write you asking isn't there any thing to be done about private family work where girls and women do the work of 4 people and earn half the pay of one . . . Isn't there some kind of a law that could help this dire situation among the working girl.⁸⁷

2. Kept Down, Left Out: Domestic Workers and the Unfulfilled Promise of the New Deal

With their hopes raised by newly-passed legislation benefiting many workers, domestic workers in the 1930s appealed loudly to the Roosevelt administration for federal relief from oppressive working conditions.⁸⁸ Despite their impassioned letter-writing, domestic workers were explicitly excluded from major New Deal labor protections

83. See PALMER, *supra* note 65, at 71, 75 (commenting at one point that these letters "form a litany . . . The complaints are ordinary and repetitious, like housework itself.").

84. *Id.* at 82–83 (summarizing the numerous letters received in the 1930's by both the government and political organizations from domestic workers).

85. *Id.* at 74 (summarizing letters received by the government from domestic workers during the 1930's).

86. Letter from Baltimore, Md., to President Roosevelt (July 1933) (on file with the Library of Congress), *quoted in id.* at 82.

87. Letter from "A Working Girl," to Eleanor Roosevelt (Nov. 7, 1938) (on file with the Library of Congress), *quoted in id.* at 74–76.

88. *Id.* at 71.

like old age insurance and minimum wage laws.⁸⁹ This exclusion did not result from indifference or lack of awareness of the problems facing domestic workers. On the contrary, “the position of paid household workers engendered a vigorous debate over the desirability of characterizing the relationship between maid and mistress as an employment relationship.”⁹⁰ During the debate over proposed New Deal labor protections, domestic workers actively lobbied for coverage under the Fair Labor Standards Act (FLSA), Social Security Act, and National Labor Relations Act (NLRA).⁹¹ Women’s groups like the Young Women’s Christian Association (YWCA), civil rights organizations such as the National Association for the Advancement of Colored People (NAACP), and some trade unions pressed for an industrial notion of household employment, trying to equate domestic work with other work deemed worthy of protection by legislation.⁹²

The exclusions of domestic workers from New Deal protections disproportionately affected women of color. As enacted, the domestic worker exclusions of the FLSA meant that the vast majority of black women workers were excluded from FLSA coverage.⁹³ The FLSA exclusions also reflected an understanding of domestic work as mere “help,” something less than real work. Speaking in support of the FLSA, President Roosevelt stressed that “[n]o law ever suggested intended a minimum wages and hours bill to apply to domestic help.”⁹⁴

Protecting the privacy of the home was also a concern of New Deal exclusionists. In response to a concerted letter-writing effort by advocacy groups to insist that domestic workers be covered by wage-setting protections of the National Industrial Recovery Act, General Hugh Johnson of the National Recovery Administration wrote,

Ever since the establishment of this [NRA] administration, we have received numerous communications concerning the status of household help. While we are in full sympathy, there is no possible way we can take direct action in their behalf. The homes of individual citizens cannot be made the

89. SUZANNE METTLER, *DIVIDING CITIZENS: GENDER AND FEDERALISM IN NEW DEAL PUBLIC POLICY* 72–73, 204 (1998).

90. Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 855 (1999).

91. PALMER, *supra* note 65, at 118–33.

92. *Id.* at 119, 124.

93. *Id.* at 121.

94. METTLER, *supra* note 89, at 188.

subject of regulations or restrictions and even if this were feasible, the question of enforcement would be virtually impossible.⁹⁵

General Johnson thus invoked an assumption that private homes could not—and, implicitly, should not—be regulated.

Rationales surrounding privacy and sanctity of the home were key in justifying the continued exclusion of domestic workers from protective labor and employment regulation.⁹⁶ “In describing domestic service as ‘personal,’ employers underscored its secluded nature within the home and its connection with the intimacies of family life. For employers, those attributes rendered the relationship between maid and mistress ‘an affair of the individual with which the public at large had no concern.’”⁹⁷

Change finally occurred after long-term consciousness-raising by civil rights and labor groups. Amendments to the Social Security Act covered a select few domestic workers in 1950,⁹⁸ and amendments to the FLSA in 1974,⁹⁹ and the federal unemployment insurance regime in 1976¹⁰⁰ extended some coverage to domestic workers. Two major exclusions continue to hamper domestic workers’ ability to combat physical or sexual abuse in the workplace. First, most domestic workers working in private households are de facto excluded from Title VII anti-discrimination law, due to the statutory definition of “employer” as a person with 15 or more employees.¹⁰¹ Thus, only domestic workers working among staffs of 15 or more (in say, a true mansion) would be able to bring a sexual harassment suit under Title VII. Secondly, domestic workers are explicitly excluded from coverage by the National Labor Relations Act,¹⁰² and therefore have no legal

95. Letter from A.R. Forbush, Correspondence Division, To Eva Bulkely (Jan. 31, 1934) (on file with the federal government at NA RG9, Metal File 622, Box 65), *quoted in* PALMER, *supra* note 65, at 120.

96. Smith, *supra* note 90, at 911–12.

97. *Id.* (quoting Lucy Maynard Salmon, an early researcher and historian of domestic work).

98. Social Security Act Amendments of 1950, 42 U.S.C. § 409(a)(6)(B) (1994).

99. 29 U.S.C. § 206(f)(1) (1994).

100. PALMER, *supra* note 65, at 155 (noting that coverage was limited and de facto excluded most day workers).

101. 42 U.S.C. § 2000e(b) (defining employers covered by Title VII).

102. 29 U.S.C. § 152(3) (definition of “employee” covered by the NLRA “shall not include any individual employed . . . in the domestic service of any family or person at his home.”).

protection or status should they try to organize and take collective action against abusive behavior.

II. STATUS: THE NEXUS OF RACE, GENDER, POVERTY, AND IMMIGRANT STATUS

The nexus between race, gender, immigrant status, socio-economic status, legal status, and contemporary domestic work has had an enormous impact on the lives of contemporary domestic workers, their power to escape or resist abusive working conditions, and the legal regimes that govern their situation. Domestic workers of color face considerable gender, race, and national origin discrimination that remains virtually unregulated by federal anti-discrimination law.¹⁰³ Moreover, the challenges and disadvantages faced by domestic workers because of their immigrant status make them more vulnerable to abuse and less able to rely on the law or social supports for assistance in times of need.

A. Women of Color, Immigration, and the Altered Demographics of Domestic Work

Since the latter half of the 20th century, the achievements of the Civil Rights movement have altered the demographics of the domestic labor force.¹⁰⁴ In 1950, fully 41% of all employed black women worked in private households.¹⁰⁵ By 1970, domestic work was no longer the most common profession for African American women.¹⁰⁶ By 1972, African American women were 16.4% of domestic workers, a share that fell dramatically to 7.4% in 1980 and to 3.5% by the end of the 1980s.¹⁰⁷ From the 1970s onward, domestic work was increasingly associated with immigrant women.¹⁰⁸

103. Title VII, the federal law barring discrimination in employment based on race, ethnicity, national origin or sex, de facto excludes most domestic workers because it applies only to workplaces where 15 or more employees work. See 42 U.S.C. § 2000e(b) (defining employers covered by Title VII).

104. See JONES, *supra* note 8, at 301–304 (describing the impact of Title VII and affirmative action measures on black women's employment patterns).

105. *Id.* at 257.

106. See HONDAGNEU-SOTELO, *supra* note 7, at 16.

107. See *id.*

108. *Id.* at 16–17.

The 20th century domestic workforce has never been solely African American and white. In the early 20th century, women of Japanese¹⁰⁹ and Mexican¹¹⁰ ancestry were disproportionately represented among servants in the Western states. Since the 1970s, however, Latina and Caribbean immigrant domestic workers increasingly filled domestic positions—not solely in Western cities, but in Northeastern cities and suburbs.¹¹¹ Driven from their countries of origin by poverty and sometimes political strife, waves of new immigrants came from Latin America, the Caribbean, and Asia during the 1970s, 80s and 90s.¹¹² Many of these new immigrants, particularly women without fluent English language skills or legal immigrant status, have entered domestic service.¹¹³

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109. See GLENN, *supra* note 79, at 72–73 (noting that in 1900, 56.8% of foreign-born Japanese (Issei) women in the U.S. worked as servants; in 1920, 26.6%; in 1930, 17.7%; and in 1940, 10.3%). Despite the steady decrease overall, data indicates that the disproportionate representation of Japanese-American women in domestic labor could be enormous at a regional level: in San Francisco in 1940, 50.4% of Issei women and 56.7% of Nisei (second generation) women worked as domestics. *Id.* at 77.
110. See AMOTT & MATTHAEI, *supra* note 8, at 75–76; PALMER, *supra* note 65, at 12 (both citing census figures indicating that, by 1930, 33–45% of working Chicanas were domestic servants).
111. See HONDAGNEU-SOTELO, *supra* note 7, at 17; Kathy A. Kaufman, *Outsourcing the Hearth: The Impact of Immigration on Labor Allocation in American Families*, in IMMIGRATION RESEARCH FOR A NEW CENTURY 347 (Nancy Foner et al. eds., 2000) (noting that 69.3% of New York City's domestic service labor force is foreign-born).
112. See HONDAGNEU-SOTELO, *supra* note 7, at 7–8 (discussing political and economic factors behind massive Central American and Mexican immigration to the U.S. from the 1970s on); LOUIS DESIPIO & RODOLFO O. DE LA GARZA, MAKING AMERICANS AND REMAKING AMERICA 21 (1998) (citing INS figures demonstrating that large numbers of immigrants to the U.S. in the 1970s, 80s and 90s came from Asian, Caribbean, and Latin American countries); Immigration and Naturalization Service, *Annual Report of Legal Immigration Fiscal Year 2000* 2 (2000), available at <http://www.ins.gov/graphics/aboutins/statistics> (reporting that 39% of all legal immigrants in 2000, as in 1999, came from 5 countries: Mexico, China, Philippines, India and Vietnam); PETER H. SCHUCK, CITIZENS, STRANGERS, AND IN-BETWEENS 3 (1998) (stating that from 1987–1996, approximately 10 million legal immigrants were admitted to the U.S., with several million more entering illegally).
113. See Kaufman, *supra* note 111, at 352–53 (describing immigrant women's barriers to finding employment other than domestic work); Suzanne Goldberg, *In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws*, 3 YALE J.L. & FEMINISM 63, 80–81 (1990) (discussing how limited English skills and immigrant status prevent immigrant women from obtaining jobs outside domestic work); see also Diana Velloso, *Immigrant Latina Domestic Workers and Sexual Harassment*, 5 AM. U.J. GENDER & L. 407, 409 (1997).

*B. Status and Abuse: How Immigration and
Race Shape Domestic Workers' Experiences*

An increasingly immigrant labor force has meant changes in the living and working situations of domestic workers. Because contemporary immigrant domestic workers often want to keep their living costs low in order to send money to family in their countries of origin, the trend towards "live out" work began reversing.¹¹⁴ New immigrant domestic workers are increasingly likely to live with their employers,¹¹⁵ a situation which arguably increases their vulnerability to abuse. In addition, immigrant job-seekers in cities with high immigrant populations have experienced intense competition for available domestic positions.¹¹⁶ This competition has depressed wages and working conditions,¹¹⁷ making it more difficult for domestic workers to flee poor working conditions—or outright abuse—by finding another job.¹¹⁸

Domestic work remains a major area of employment for women of color and women of other marginalized groups, particularly immigrants,¹¹⁹ many of whom are undocumented.¹²⁰ Unhampered by federal

114. *Id.*

115. *Id.*

116. Kaufman, *supra* note 111, at 348–49, 351; HONDAGNEU-SOTELO, *supra* note 7, at 8.

117. Kaufman, *supra* note 111, at 349, 351; HONDAGNEU-SOTELO, *supra* note 7, at 8.

118. *See* Kaufman, *supra* note 111, at 350–51.

119. *See* HONDAGNEU-SOTELO, *supra* note 7, at 17 (stating that in Los Angeles in 1990, 68% of domestic workers were foreign-born Latinas); ROLLINS, *supra* note 4, at 57 (noting that at the largest home health aide agency in Boston, 96% of employees were women, and most were "minorities, . . . blacks, Puerto Ricans, Cape Verdeans, [or] West Indians."); Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1, 31 (1999) (citing statistics that 25% of foreign born workers in the U.S. today are domestic workers); Goldberg, *supra* note 113, at 69–70 (citing Department of Labor statistics that of women domestics in 1988, 22.6% were African American and 16.3% were Latina); Katherine Silbaugh, *Grounded Applications: Feminism and the Law at the Millennium*, 50 ME. L. REV. 201, 202 (1998) (citing Department of Labor statistics showing that 96% of all private household workers are women and the majority of housecleaners are African American and Latina); Vellos, *supra* note 113, at 409 (citing Census statistics showing that Latinas are the largest racial/ethnic group entering domestic work in the U.S.).

120. Because undocumented workers often fear deportation and other consequences of government contact, they tend to elude government sources of information for generating statistics about workers. Many scholars believe there are a large number of undocumented immigrants in domestic work, but also that these workers tend to be systematically undercounted. *See, e.g.*, Vellos, *supra* note 113, at 413 (commenting on unreliability of statistics because so many domestic workers are undocumented); ROLLINS, *supra* note 4, at 57 (stating that numbers of immigrant women in domestic

employment discrimination law,¹²¹ contemporary employers of domestic workers often demonstrate explicit racial, ethnic, and gendered preferences in hiring.¹²² These preferences may reflect employers' racist and sexist notions about which women can be most easily controlled as employees.¹²³ Many white female employers of domestic workers in the Los Angeles area, for example, have expressed a strong preference for hiring lighter-skinned Latinas, as contrasted with African Americans and other darker-skinned women.¹²⁴ Employers appear to view lighter skinned Latinas as reliable, hardworking, submissive, and, because of language difference and foreignness, unlikely to gossip about family matters to people within the employer's community.¹²⁵ Fear of black women and the possibility of the black men related to them coming to the employer's home loom large in the minds of some employers.¹²⁶ Gendered and racialized preferences also manifest themselves in employer preferences for domestic workers who meet Anglo ideals of feminine attractiveness without being too alluring.¹²⁷ Conversely, abusive male employers have apparently chosen domestic workers of a certain race because of racist notions about their perceived sexual availability.¹²⁸

Immigration status plays an enormous role in the options available to domestic workers. American-born domestic workers who have limited or non-existent job opportunities may find themselves forced to

work is underestimated because of lumping of Caribbean and Latin American immigrant women in overbroad "Hispanic" and "Black" census categories); MARY ROMERO, MAID IN THE U.S.A. 10 (1992) (describing Chicana domestics as hidden population because many are undocumented and/or engaged in very informal employment arrangement and are thus often undercounted).

121. Title VII, the federal law barring discrimination in employment based on race, ethnicity, national origin or sex, de facto excludes most domestic workers because it applies only to workplaces where 15 or more employees work. *See* 42 U.S.C. § 2000e(b) (defining employers covered by Title VII).
122. *See* HONDAGNEU-SOTELO, *supra* note 7, at 55–60; Kaufman, *supra* note 111, at 358–363 (describing domestic employers' stated racial and ethnic preferences).
123. HONDAGNEU-SOTELO, *supra* note 7, at 56–57.
124. *See id.* at 55–57.
125. *Id.*
126. *Id.* at 56.
127. *See id.* at 109–112 (finding that employers seeking domestic workers through placement agencies preferred young, thin, attractive, and light-skinned Latina women); *id.* at 110 (finding that women using domestic worker placement agencies request that domestic workers not be overly sexy).
128. *See, e.g.,* People v. Braley, 879 P.2d 410 (Colo. Ct. App. 1994). Braley was convicted of the sexual assault of three undocumented Mexican women whom he had brought to the U.S. to work as domestic workers in his household. Prior to the rapes, Braley had made statements to his daughter that "Mexicans were bred for sex." *Id.* at 414.

accept less-than-ideal job situations.¹²⁹ In situations of sexual harassment and/or abuse, however, they are more likely to be able to quit than their immigrant counterparts.¹³⁰ Undocumented immigrant domestic workers find it more difficult to resist and avoid sexual, physical, and economic exploitation because they are afraid that if they complain their employers will turn them into the Immigration and Naturalization Service (INS) and they will face deportation.¹³¹ Many undocumented women immigrants came to the U.S. not only to escape poverty, but also domestic, community, police, and/or military violence in their countries of origin.¹³² Immigrant workers who face abuse by employers in the U.S. are thus forced into a non-choice between violence at the hands of the employer or the violence awaiting them in their families or countries of origin. Given these terrible choices, the former situation may often—although not always—prove the less horrible option.

Moreover, most immigrant domestic workers, whether undocumented or not, are in situations of strong economic coercion which can limit their abilities to resist and escape abuse. Frequently, a domestic worker's family in her country of origin desperately needs the paltry wages she sends back home.¹³³ Quitting in response to sexual harassment may be complicated by the low wages of many domestic

129. See, e.g., Goldberg, *supra* note 113, at 78–79 (describing a U.S.-born worker's decision to stay in an unsatisfactory domestic position as influenced by the limited employment opportunities available to her).

130. See HONDAGNEU-SOTELO, *supra* note 7, at 129–30 (pointing to subordinate citizenship status as a reason why simply quitting may be difficult for Latina immigrant workers).

131. Jennifer Gordon, *We Make the Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 418–19 (1995) (describing undocumented workers' fear that if they take action against employer exploitation, they will be reported to the INS and deported); Berta Esperanza Hernandez-Truyol, *Las Olvidadas—Gendered In Justice/Gendered Injustice: Latinas, Fronteras, and the Law*, 1 J. GENDER RACE & JUST. 353, 367 (1998) (stating that high levels of sexual harassment and abuse experienced by undocumented workers go unreported because of worker fears of being reported to INS); ROMERO, *supra* note 120, at 92 (stating that male employers who harass Mexican immigrant domestic workers commonly threaten them with deportation if they do not submit to sexual advances).

132. See, e.g., Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and International Black Women*, 50 ME. L. REV. 309, 314–17, 323 (1998) (discussing the multiple forms of violence faced by Jamaican women in Jamaica).

133. See, e.g., Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/national Black Women in the United States*, 76 OR. L. REV. 567, 599 (1997) (describing the importance of the remittances of Jamaican migrant women workers in the U.S. to the Jamaican economy).

workers.¹³⁴ Social supports such as welfare and food stamps are available only on a limited basis for non-citizens, and are generally unavailable to undocumented workers.¹³⁵ Because many domestic workers cannot afford to go without work for long, they may try to tough out harassment rather than quit.¹³⁶ The fear of economic insecurity is even more intense for undocumented workers, who will probably have a harder time getting a non-domestic job than their legal immigrant or American-born counterparts.¹³⁷

Even legal immigrant women risk coercion by employers because they may have legal status only through work visas tied to employers.¹³⁸ Maintaining a temporary work visa with a sponsoring employer is critical if a worker wants to achieve legal permanent resident status in the future,¹³⁹ status that would open up higher-paying job opportunities and the possibility for a stable, more financially secure future in the United States. Further intensifying this problem is the fact that domestic workers, even those with valid work visas, are not among the INS' favored immigrants.¹⁴⁰ Thus, the transition period from employer-based temporary work visa holder to legal permanent resident can average ten to

134. See Vellos, *supra* note 113, at 419–20 (discussing how economic necessity makes it difficult for undocumented Latina domestic workers to quit their jobs).

135. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title IV, Pub. L. 104-193, 110 Stat. 2260–70, 2274 (provisions limiting aid to persons who are not a “qualified alien” and defining “qualified alien”). *But see* Jonathan Peterson, *White House to Try to Restore Food Aid to Legal Immigrants*, N.Y. TIMES, Jan. 10, 2002, at A15 (discussing President Bush’s plan to restore food stamp aid for legal immigrants who have been in the U.S. at least 5 years).

136. Domestic workers’ wages tend to be low; often below or near the minimum wage. See HONDAGNEU-SOTELO, *supra* note 7, at 36 (finding in her mid-1990s study of 153 Los Angeles domestic workers that 79% of live-in workers made less than the applicable minimum wage). Scholars of low wage work have emphasized the difficulty of sustaining even a single person on a minimum-wage income. *E.g.*, BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001).

137. See Vellos, *supra* note 113, at 420 (discussing undocumented immigrant workers’ fear of entrapment by the INS in non-domestic jobs).

138. Lewis, *supra* note 132, at 323 (noting that domestic workers sometimes depend on employers for immigration status and are therefore more susceptible to physical and sexual abuse by employers).

139. Vellos, *supra* note 113, at 428 (noting that a worker who quits her sponsoring employer often loses her opportunity for a green card).

140. Nancy Ann Root & Sharyn A. Tejani, *Undocumented: The Roles of Women in Immigration Law*, 83 GEO. L.J. 605, 612 (1994) (noting that the labor hierarchy used to rank applications for green cards disadvantages traditionally lower status occupations, such as housework, more likely to be done by women).

twenty years for a domestic worker.¹⁴¹ Even if one employer decides to hire a domestic worker for long enough to see her through the green card application process, the employer's sponsorship can be a means of manipulating and coercing the worker.¹⁴²

While immigration status may prevent a worker from protesting employer abuses, the law also plays a major part in silencing domestic workers' complaints. As discussed above, restrictive immigration laws consign women immigrants to marginal positions in the U.S. from which they must contest bad treatment. Although Congress has expanded the number of protective laws applying to domestic workers in the past 30 years,¹⁴³ domestic workers are still excluded, often explicitly, from certain labor protections enjoyed by most workers in the U.S.¹⁴⁴

III. "LIKE ONE OF THE FAMILY": DOMESTIC VIOLENCE AND VIOLENCE AGAINST DOMESTIC WORKERS

The long historical tradition of abuse of domestic workers discussed in Part I, coupled with the vulnerable socio-economic and legal status of contemporary domestic workers described in Part II, has positioned them as workers uniquely subject to exploitation and abuse. Drawing on accounts from the media, case law, and sociological studies, this Part examines the abuse suffered by contemporary domestic workers. This Part exposes certain motifs prevalent in their experiences of job-related abuse, and draws connections between these themes and those common to the experience of victims of domestic violence. Among these contemporary accounts, some themes are notable for the way in which they dovetail with circumstances common to what we call "domestic violence"—violence between intimate partners. The situation

141. Lewis, *supra* note 133, at 592 (citing a ten to twenty year wait for a temporary work visa holder to get a green card); Root & Tejani, *supra* note 140, at 612 (stating that a domestic worker on a work visa must often wait 15 years for legal permanent resident status).

142. Vellos, *supra* note 113, at 428 (discussing how employer sponsors of domestic workers applying for green cards may threaten to withdraw sponsorship in order to coerce sexual activity).

143. See, e.g., 1974 Amendments to the Fair Labor Standards Act, Pub. L. No. 93-259, § 7(b)(1), 88 Stat. 55, 62 (codified at 29 U.S.C. § 206(f)(1)) (extending coverage of federal minimum wage law to domestic workers).

144. See discussion *supra* Part I.C.2.

of abused domestic workers has in some cases been explicitly compared to those suffered by traditional victims of domestic abuse.¹⁴⁵

The sociology of employer-employee relations in domestic work demonstrates the ways in which domestic workers occupy a position that is part worker, part family member. In this hybrid position, domestic workers suffer the worst aspects of being a female family member charged with responsibility for reproductive labor¹⁴⁶ and the worst aspects of being a low-status worker. This position makes them uniquely vulnerable to repetitive, often severe violence and harassment. Using examples of contemporary abuse experienced by domestic workers, the sections below discuss how aspects of this abuse often mirror traditional characteristics of domestic violence.

145. Psychologists, as well as scholars of domestic work, have made these observations. Nancy K. Brown, a therapist who treated an Irish nanny who had been sexually harassed and isolated from the outside world by her employers, described the nanny as exhibiting behavior similar to that of battered women. Joanne Lipman, *Far From Home, Irish Nanny Found Herself Isolated and Terrified*, WALL ST. J., April 14, 1994, at A6. Dr. Judith Sprei, a psychologist who treated a Filipina housekeeper raped by her employer, "compared the dynamic between the live-in housekeeper and her boss to that faced by battered women and abused children." Catherine M. Brennan, *Housekeeper Wins Civil Rape Verdict, Jury Awards \$120K After Finding Retired Economist Liable*, THE DAILY RECORD (Baltimore), June 11, 1997, at 13. In an article on the experiences of women migrant domestic workers Joan Fitzpatrick and Katrina Kelly observe that "where the maid becomes a resident member of the household, she may face physical and psychological violence and subordination, including demands for sexual services, which replicates the general phenomenon of domestic violence . . . [v]iolence against participants in the maid trade is a species of domestic violence, aggravated by the cultural divide between employer and employee and the subordinate alien status of the victim." Joan Fitzpatrick & Katrina R. Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT'L & COMP. L. REV. 47, 67, 86 (1998).

146. I use the term "reproductive labor" in this article to refer to

labor that maintains people on a daily basis and intergenerationally—work that women traditionally expended in their roles as wives, mothers, and homemakers. It includes activities such as preparing meals, washing and repairing clothing, maintaining household furnishings, feeding and taking care of infants, socializing children, and providing emotional support for adults.

Evelyn Nakano Glenn, *Cleaning Up/Kept Down: A Historical Perspective on Racial Inequality in "Women's Work"*, 43 STAN. L. REV. 1333, 1339 (1991). See also, Hondagneu-Sotelo, *supra* note 7, at 23 ("Some feminist theorists, especially those influenced by Marxist thought, have used the term 'social reproduction' or 'reproductive labor' to refer to the myriad of activities, tasks, and resources expended in the daily upkeep of homes and people.").

A. Dependency

Advocates for survivors of domestic abuse often point to the myriad ways in which an abuser uses economic and psychological dependencies to control his victim and keep her from leaving him.¹⁴⁷ The nature of domestic work often results in the same dynamics of power and control, complicating efforts to escape an abusive situation, especially where the worker is extremely dependent on the employer. Specifically, immigrant status and economic dependency often interact to trap a domestic worker in an abusive work situation.

Domestic violence advocates working in U.S. immigrant communities have highlighted the ways in which an abuser's control over his victim is increased by the victim's non-citizen status.¹⁴⁸ Similarly, immigration status, particularly undocumented status, increases a worker's vulnerability to exploitation by magnifying her dependency on her employer. Many workers are brought into the U.S. by their employers, often as lone young women, without accompanying family or friends to assist them with immigration matters and general acclimation.¹⁴⁹ Domestic workers may depend on their employers'

147. See ANN GOETTING, GETTING OUT: LIFE STORIES OF WOMEN WHO LEFT ABUSIVE MEN 5 (1999) (discussing how the social and economic order compels women's economic and emotional dependency on their abusers).

148. See, e.g., Jenny Rivera, *Domestic Violence Against Latinas By Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 234 (1994) (quoting a Latina domestic violence victim who stated that her abusive partner threatened to deport her if she complained to the police); Sujata Warriar, *Social, Legal and Community Challenges Facing South Asian Immigrant Women*, in BREAKING THE SILENCE: DOMESTIC VIOLENCE IN THE SOUTH ASIAN-AMERICAN COMMUNITY 89, 91-94 (Sandhya Nankami ed., 2000) (describing language, financial, and legal barriers that prevent immigrant women from reporting domestic violence).

149. See, e.g., David France, *Slavery's New Face*, NEWSWEEK, Dec. 18, 2000, at 60 (describing experiences of a Cameroonian teenager brought to the U.S. by her abusive employer); *Haitian Girl's Plight Uncovers 'Restavecs'*, PRESS JOURNAL (Vero Beach, FL), Nov. 7, 1999, at A14 (Haitian girl came to U.S. at age nine to work for employer); *United States v. Sanga*, 967 F.2d 1332 (9th Cir. 1992) (pertaining to a Filipino woman smuggled to Guam by her employer); *Nanayakkara v. Zimmerman*, No. CIV. A. 94-4572, 1996 WL 622770 (E.D. Pa. 1996) (concerning a 19 year old domestic worker who had been a victim of her employer's sexual assaults and had immigrated from Sri Lanka); *People v. Braley*, 879 P.2d 410 (Colo. Ct. App. 1994) (pertaining to three women victims whose employer sexually assaulted them and brought them from Mexico to work at his home in Colorado); Mireya Navarro, *In the Land of the Free, a Modern Slave*, N.Y. TIMES, Dec. 12, 1996, at A22 (describing the experiences of an abused domestic worker illegally brought from India to work in

sponsorship for a chance at legal immigrant status, and can be coerced by the promise of assistance with immigration and work matters.¹⁵⁰ In addition, employers often take physical control over immigrant workers' most important immigration-related documents, such as visas, plane tickets home, or passports, for "safekeeping," thus constricting their movement and freedom to leave the employers or return home.¹⁵¹

For many domestic workers, undocumented status figures prominently in the degree of control abusive employers may enjoy over them, and their access to assistance. Undocumented workers face a special vulnerability should they choose to complain about employer abuses or seek assistance from the justice system.¹⁵² Unfortunately, employers exploit this vulnerability.¹⁵³

The case of Claudia Garate exemplifies this.¹⁵⁴ When Garate, an undocumented Chilean nanny, sued her employers after being slapped and underpaid by them, the employers used her undocumented status to exact revenge.¹⁵⁵ Although Garate's legal claim was successful, her employers retaliated by contacting the INS, which then informed Garate that she would have to leave the country or be deported.¹⁵⁶ For immigrant women like Garate, deportation proves a powerful threat.

Domestic violence advocates widely acknowledge that, like immigration status, a victim's economic disempowerment fosters dependency between the victim and her abuser.¹⁵⁷ Similarly, in many

Miami); Lipman, *supra* note 145, at A6 (concerning an Irish au pair who came to the U.S. to work with a Long Island family).

150. This dynamic is exemplified by the facts of *U.S. v. Sanga*, a case in which Efred Sanga was charged with unlawfully smuggling Annie Marie Quinlob, his domestic employee, into Guam. Sanga promised Quinlob a Guam ID card (a card that she needed in order to work legally in Guam outside of his home) in exchange for her having sex with him. 967 F.2d at 1335.
151. *Id.* at 1334 (describing how Sanga stole Quinlob's return air ticket and passport); Monique P. Yazigi, *So Hard to Find Good Employers These Days*, N.Y. TIMES, Aug. 15, 1999, at 1C (discussing an employer who kept her domestic workers' passports while they were in her employ).
152. See Gordon, *supra* note 131, at 415-17 (discussing how anti-immigrant laws "actively promote the creation of an immigrant workforce whose fear of losing its jobs and being deported are easily exploitable.").
153. See, e.g., Vellos, *supra* note 113, at 428 (discussing the use of green card status as a manipulation tool by employers of domestic workers).
154. Joanne Lipman, *The Nanny Trap: Dark Side of Child Care Is How Poorly Workers Are Sometimes Treated*, WALL ST. J., Apr. 14, 1994, at A1.
155. *Id.*
156. *Id.*
157. See, e.g., Martha F. Davis, *The Economics of Abuse*, in BATTERED WOMEN, CHILDREN, AND WELFARE REFORM 17, 21-22 (Ruth A. Brandwein, ed., 1999) (discussing financial dependency as a reason many women find it difficult to leave abusive partners);

accounts of abuse suffered by domestic workers, a state of economic dependency is a factor exacerbating workers' entrapment in an abusive situation.¹⁵⁸ Many abused domestic workers are live-in workers who depend on their employer for room and board. In addition, in most cases of physical and sexual abuse, the domestic workers are also being underpaid—or not paid at all.¹⁵⁹ Even if domestic workers are paid the federal minimum wage or above, these wages are likely to be so low that it would be very difficult for a domestic worker facing abuse to withstand the financial crisis occasioned by quitting her job.¹⁶⁰ In *U.S. v. Sanga*,¹⁶¹ the Ninth Circuit explicitly recognized how the economic coercion at work in an employer-domestic employee relationship might shape the worker's ability to protest abuse: "The record in this case shows that [the defendant] conspired . . . to obtain a low-cost, live-in maid who would be unable to object to the conditions of . . . [his] sexual advances."¹⁶²

B. Isolation

In domestic violence situations, abusers often exert control over their victims by isolating them from the outside world.¹⁶³ The isolation experienced by someone who is a recent immigrant—who does not speak the

SHAWN D. HALEY & ELLIE BRAUN-HALEY, *WAR ON THE HOMEFRONT: AN EXAMINATION OF WIFE ABUSE* 9 (2000) (describing abusers' use of finances to control their victims).

158. See Vellos, *supra* note 113, at 420 (describing how economic necessity, combined with other factors, prevent domestic workers from leaving abusive work situations).
159. See, e.g., Navarro *supra* note 149, at A22 (describing an abused worker who was a live-in employee and whose employers never paid her); Lipman, *supra* note 154, at A1, (discussing a live-in employee who was grossly underpaid by her employers); Lipman, *supra* note 145, at A6, (describing a nanny who was underpaid and feared losing her live-in housing arrangement if she quit or complained); JoAnn Grbach, *Gaithersburg Man Sentenced for Enslaving Brazilian Woman*, (Gaithersburg, MD), Aug. 16, 2000, <http://www.gazette.net/20033/gaithersburg/news/22199-1.html> (discussing a live-in worker who was unpaid); *Haitian Girl's Plight*, *supra* note 149 (describing a live-in who worked for room and board only); Sanga, 967 F.2d at 1135 (discussing a live-in who was grossly underpaid).
160. In recent years, many scholars and commentators have discussed the extreme difficulties faced by low wage workers in attempting to support themselves and dependents on minimum or near-minimum wage. See generally EHRENREICH, *supra* note 136; KATHERINE S. NEWMAN, *NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY* (1999); FRANCES JULIA RIEMER, *WORKING AT THE MARGINS: MOVING OFF WELFARE IN AMERICA* (2001).
161. 967 F.2d 1332 (9th Cir. 1992).
162. *Id.* at 1335.
163. See HALEY & BRAUN-HALEY, *supra* note 157, at 13.

language, and likely knows no one in the U.S. but her employers—may be quite extreme.¹⁶⁴ This isolation allows employers to exert power and control that can result in a type of psychological dependency, which may hamper domestic workers' ability to escape abusive employment situations.¹⁶⁵ Michael Gennaco, who has prosecuted several cases of domestic worker enslavement with the civil rights division of the Los Angeles U.S. Attorney's office, has claimed that "a good part of [workers' imprisonment] can be psychological. You isolate the victim, essentially creating a prison without walls. You take any resources that they have, such as a passport, so if they were able to escape, they would still not have the wherewithal to go to the INS."¹⁶⁶ Tactics like these have been likened to the use of isolation as a mechanism for power and control in situations of domestic violence.¹⁶⁷

As a workplace, the home embodies isolation, especially for live-in immigrant workers, who live and work in the same place.¹⁶⁸ As in many traditional domestic violence situations,¹⁶⁹ domestic workers may suffer brutal abuse in silence for long periods of time, without any outsiders realizing what is occurring. The story of Hilda Dos Santos illustrates this point.¹⁷⁰ Dos Santos, an undocumented Brazilian woman, worked without pay and suffered physical abuse for fifteen years in the home of her Maryland employers, Margarida and Rene Bonetti.¹⁷¹ When the authorities were finally alerted to Dos Santos' situation, she was found with an infected gash in her leg and an untreated stomach tumor the size of a soccer ball.¹⁷² In her testimony at Rene Bonetti's trial, Dos Santos detailed years of physical abuse, including how Margarida Bonetti had once spooned scalding hot soup on her face as punishment for not preparing

164. See HONDAGNEU-SOTELO, *supra* note 7, at 32–33 (describing social isolation of live-in domestic workers).

165. Abusers' use of isolation to control their victims and foster psychological dependency has been explored by domestic violence literature. See, e.g., Del Martin, *Letter From a Battered Wife*, in WOMAN BATTERING IN THE UNITED STATES: TILL DEATH DO US PART 52, 55 (Helen M. Eigenberg, ed., 2001); HALEY & BRAUN-HALEY, *supra* note 157, at 41–42.

166. *Bought and Sold* (NBC News Television Broadcast, Mar. 18, 2001).

167. Fitzpatrick & Kelly, *supra* note 145, at 86 ("[L]ike domestic violence against family members, abuse of migrant household workers is traceable to disparities in power and the impunity associated with isolation in the private household realm.")

168. See HONDAGNEU-SOTELO, *supra* note 7, at 32–33.

169. HALEY & BRAUN-HALEY, *supra* note 157, at 141 (noting the length of some abusive relationships).

170. Grbach, *supra* note 159.

171. *Id.*

172. France, *supra* note 149, at 62.

the soup properly.¹⁷³ Other cases of abuse involving undocumented domestic workers present comparably severe and long-term situations of enforced isolation.¹⁷⁴

Moreover, abusive employers, like abusive partners in traditional domestic violence situations, may be very adept at controlling and restricting their employees' contact with anyone outside the employing family.¹⁷⁵ This was true in the case of Christi Elangwe, a 17-year old Cameroonian woman brought illegally into the U.S. by her employers to work in their Maryland home.¹⁷⁶ Although Elangwe's employers did not beat her, they exercised total control over her activities and denied her access to the outside world.¹⁷⁷ For most of her five years' residence with the employing family, Elangwe was not allowed to use the telephone, forbidden to go into the front yard without an escort, and forbidden to talk with anyone she encountered outside the household.¹⁷⁸ Due to Elangwe's employers' tight control over her, few of the neighbors even knew that she

173. Grbach, *supra* note 159.

174. Several recent media accounts illustrate the kind of severe brutality that employers can inflict upon live-in domestic workers over long periods of time without being reported to the authorities. Francesca Ekka, an undocumented Indian immigrant who worked as a housekeeper and au pair for a wealthy couple in a Miami suburb, was slapped, kicked, burned, pelted with thrown objects, tied up with a leash and collar, dunked in soapy water until she could not hold her breath any longer, forced to sleep outside, locked in a dark room for two days, and driven to a remote wilderness area and abandoned (only to be picked up later) by her employers. She was never paid, nor was she given a day off during her 7-month tenure. She only summoned the courage to call 911 after her employers told her "today is your last day alive." Navarro, *supra* note 149, at A22. Hope, a nine-year-old girl brought to the U.S. from Haiti by a wealthy South Florida family to serve as a domestic worker, suffered repeated sexual assaults during the three years she worked and lived in their household. *Haitian Girl's Plight*, *supra* note 149. Annie Marie Quinlob's employer enforced her isolation by stealing her return air ticket and demanded sex from her in exchange for his procuring a Guam ID card that would allow her to work outside his home. *United States v. Sanga*, 967 F.2d at 1334-35 (9th Cir. 1992). The employer of "PB," a Cameroonian teenager brought illegally to the U.S. to work in a suburban Detroit home raped her repeatedly during the years she worked in his household, threatening her and her family with death if she ever told anyone about the abuse. Until PB finally approached a neighbor to ask for help, they had idea that she even lived in the house. France, *supra* note 149, at 64-65.

175. See GOETTING, *supra* note 147, at 141 (describing tactics used by one abuser to restrict his partner's contact with the outside world); HALEY & BRAUN-HALEY, *supra* note 157, at 13 (describing domestic abusers' control tactics).

176. France, *supra* note 149, at 61.

177. *Id.*

178. *Id.*

existed.¹⁷⁹ Other abusive employers have similarly sought to cut off domestic employees' contact outside the household.¹⁸⁰

If a worker does not have contact with the outside world, it is unlikely that anyone else will know she is being mistreated, and thus unlikely that concerned persons or social service organizations will be able to support and assist a domestic worker in escaping a bad employment relationship.¹⁸¹ If the worker is kept in total isolation, it is also unlikely that law enforcement will intervene.¹⁸²

C. Living-In: Proximity to Abuse, Family Connections, and Domestic Space

Violence suffered by domestic workers mirrors domestic violence in terms of the often-constant physical proximity between the abuser and the victim and the frequency and length of abuse facilitated by that proximity. This proximity is not generally present in non-domestic working environments. Like victims in a traditional domestic violence situation, live-in domestic workers are likely to have constant interaction with their employers, creating frequent opportunities for abuse to occur

179. *Id.*

180. Several cases are illustrative. "PB," a Cameroonian teenager raped by her Detroit employer, later discovered that letters she wrote to her parents had never been sent, and letters from her parents had been confiscated by her employers. In addition, PB's employers insisted that she be accompanied everywhere, and told her that she would be arrested by American authorities if she ever went out alone. *See id.* at 64. Deborah Rocks, the Irish nanny who suffered sexual harassment and other abuse at the hands of her Long Island employers, was forbidden by her employers to call her mother in Ireland. *See* Lipman, *supra* note 145, at A6. Francesca Ekka was never given a day off, therefore she would have had few opportunities to make friends, meet people outside of the employing family, or even leave the house. *See* Navarro, *supra* note 149, at A22.

181. *See* Chisun Lee, *Domestic Disturbance*, VILLAGE VOICE, Mar. 19, 2002, at 31–32, 35 [hereinafter, Lee, *Domestic Disturbance*]; Chisun Lee, *Breaking Their Silence*, VILLAGE VOICE, Apr. 3, 2002, at 47–48, 50 [hereinafter Lee, *Breaking Their Silence*] (describing how invisibility of domestic workers prevents assistance of domestic workers and enforcement of legal norms). Domestic violence scholars have also described how abusers' isolating tactics prevent their victims from seeking outside help. *See, e.g.*, HELEN M. EIGENBERG, *WOMAN BATTERING IN THE UNITED STATES: TILL DEATH DO US PART* 61 (2001).

182. *See* Lee, *Domestic Disturbance*, *supra* note 181, at 31–33; Lee, *Breaking Their Silence*, *supra* note 181, at 47–48, 50; EIGENBERG, *supra* note 181, at 61.

over a long period.¹⁸³ Domestic worker-employer relationships and abuse, much like abuse in a marriage or romantic relationship, may persist for years.¹⁸⁴

As previously discussed, many cases of employer abuse of domestic workers, particularly the more severe ones, occur when a domestic worker lives in the household in which she works. Under these circumstances, domestic workers can, in certain ways, be seen as “one of the family.”¹⁸⁵ In some cases, this means that the employers, as heads of the household, assume they may exercise control over a domestic worker without encountering the restrictions and state regulatory intrusions accompanying the employer-employee relationship.¹⁸⁶ Indeed, employers often desire to see their relationship to domestic workers in their employ as private and familial, not an employer-employee relationship.¹⁸⁷

The view of domestic workers as a familial adjunct is not solely due to attitudes of male employers’ about the nature of domestic work. The behaviors of female employers indicate that issues of status and hierarchy are very much at stake in their supervision of female domestic workers.¹⁸⁸ Mary Romero explicitly links female employers’ poor treatment of domes-

183. See, e.g., *Parks v. Kownacki*, 711 N.E.2d 1208, 1210 (Ill. App. Ct. 1999) (Parks, a live-in housekeeper in Kownacki’s home, was raped approximately once or twice a week during the 3 years in which she worked for and lived with Kownacki).

184. See, e.g., Brennan, *supra* note 145, at 13 (Agapita Bojos, a live-in housekeeper in Maryland, was raped repeatedly by her employer over the course of several years of employment); Grbach, *supra* note 159 (live-in housekeeper worked for her abusers for nearly 15 years before the authorities found out about her situation); Sanga, 967 F.2d at 1335 (live-in maid worked for abusers for nearly two years); *Haitian Girl’s Plight*, *supra* note 149 (live-in worker endured repeated sexual assaults by a family member of her employer for three years).

185. See HONDAGNEU-SOTELO, *supra* note 7, at 10, 182.

186. See *id.* at 10.

187. See, e.g., Mary Romero, *One of the Family, or Just the Mexican Maid’s Daughter?: Belonging, Identity and Social Mobility*, in *WOMEN’S UNTOLD STORIES: BREAKING SILENCE, TALKING BACK, VOICING COMPLEXITY* 142, 153–54 (Mary Romero & Abigail J. Stewart eds., 1999) (discussing employers’ tendency to cast conflicts with domestic workers as personal, familial disagreements, not in terms of an employer-employee relationship); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: “Where Can You Find Good Help These Days?”*, 53 U. MIAMI L. REV. 1045, 1047 (1999) [hereinafter Romero, *Immigration*] (noting how “the employer-employee relationship is further denied by employers’ claims that their maid is ‘just like one of the family.’”); Katherine Silbaugh, *Turning Labor Into Love: Housework and the Law*, 91 Nw. U. L. REV. 1, 73 (1996) (stating that “[l]abor laws give way when the employee is ‘part of the family.’”).

188. See Mary Romero, *Bursting the Foundational Myths of Reproductive Labor Under Capitalism: A Call for Brave New Families or Brave New Villages?*, 8 AM. U. J. GENDER SOC. POL’Y & L. 177, 191 (2000).

tic workers to ways in which the traditional hierarchy of the family degrades those who do housework:

Research on private household workers identifies the ways that women in their family role(s) hire other women to relieve them of the unpleasant burdens of reproductive labor. It is not unusual for these same women, when positioned as employers, to treat the paid worker in the same fashion that their family members treated them.¹⁸⁹

Alternately, female employers often view domestic workers “as an extension of the more menial part of themselves rather than as autonomous employees.”¹⁹⁰ This dynamic parallels the practice of coverture—the old common law view that, upon marriage, woman’s legal identity was merged with her husband, and her labor and body became an extension of his.¹⁹¹ The coverture doctrine and its lasting effects are understood by traditional domestic violence scholars as an important explanation for the persistence of domestic abuse to the present day.¹⁹² The history of domestic work in the United States, rooted in the practices of slavery and indentured servitude, presents a similar history of some persons owning the labor of others. Domestic workers’ accounts of working conditions provide abundant evidence that they are often treated as more menial parts of their employers or quasi-family members who may be assigned to difficult, dirty, and often highly intimate tasks.¹⁹³ Assignments of certain work under certain conditions to domestic workers may be a means by which some employers, consciously or not, express the low status they accord their employees.¹⁹⁴ Of greater relevance are domestic workers’ self-reported feelings of humiliation, degradation,

189. *Id.*

190. Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 *YALE J.L. & FEMINISM* 51, 57 (1997).

191. See Isabel Marcus, *Reframing “Domestic Violence”: Terrorism in the Home*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 19–20 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994).

192. See generally *id.* at 20–25.

193. See, e.g., ROMERO, *supra* note 120, at 101–102 (quoting domestic workers whose employers assigned them intimate tasks, such as picking up underwear strewn on the floor and filling birth control prescriptions); Lee, *Breaking Their Silence*, *supra* note 181 (quoting domestic workers whose employers required them to shovel snow, sew dresses, and mop the floor with a handcloth nightly).

194. A prime example of this is the common employer requirement that domestic workers scrub the floors on hands and knees. See, e.g., Lee, *Breaking Their Silence*, *supra* note 181, at 50; ROLLINS, *supra* note 4, at 65, 67–69, 142.

and low status relative to their employers.¹⁹⁵ Although this treatment does not rise to the level of assault or what might be commonly viewed as harassment, it may lead to abuse. Status hierarchies in the relationship between domestic worker and employer are often conveyed through work assignments and employer supervision of work. In a study of Boston area domestic workers and employers conducted in the mid-1980s, sociologist Judith Rollins noted that her domestic worker interviewees discussed the physical strain they experienced as a result of the tasks assigned them.¹⁹⁶ Like the domestic workers who had written the letters to President and Eleanor Roosevelt in the 1930s, Rollins' interviewees often expressed a belief that their employers had little regard for their physical limits.¹⁹⁷ Sometimes using the exact same language of their 1930s counterparts, the interviewees stated that they merely wanted to be treated "like a human being."¹⁹⁸ Rollins interviewee Esther Jones described a woman for whom she was employed for eighteen years: "She's a driver. Seems like that's where she gets her therapy from—working you. She likes to *work you*. Seems like the harder she works you the better she feels. She just keeps giving you more and more work, telling you what to do and how to do it."¹⁹⁹ This account, coupled with others attesting to overwork under the supervision of female employers,²⁰⁰ suggests that female employers may derive pleasure and power in the household from reinforcing hierarchical relationships between themselves and domestic workers.

195. See, e.g., Lee, *Breaking Their Silence*, *supra* note 181, at 48 (quoting domestic worker who viewed her employer's treatment of her as reminiscent of a master-slave dynamic); Chisun Lee, *The Heart of the Work*, VILLAGE VOICE, Apr. 23, 2002, at 45 [hereinafter Lee, *Heart of the Work*] (quoting domestic workers who reported feeling humiliated or insulted by employer's treatment of them).

196. See ROLLINS, *supra* note 4, at 63–64.

197. Interviewees frequently complained of the physical toll their work had taken on them: lower back problems, varicose veins, and ankle and foot problems. Many domestic workers felt that their employers had inconsiderately made their work harder than it needed to be by buying only the cheapest and flimsiest cleaning equipment, equipment that required workers to put forth much more physical labor to get the job done right. Like domestic workers before them, Rollins' worker interviewees rejected outright the chore of scrubbing floors on their hands and knees, a method that they regarded to be physically straining, degrading, and unnecessary for cleaning purposes. *Id.* at 65, 67–69, 142.

198. *Id.* at 132 (quoting domestic Nancy Clay).

199. *Id.* at 64–65.

200. Domestic workers have described performing exhausting tasks, such as daily floor cleaning by hand and snow-shoveling. Moreover, they have endured long work hours, for example, 15-hour days and 112-hour work weeks. See Lee, *Breaking Their Silence*, *supra* note 181, at 48.

Domestic workers have complained of work assignments that, while not physically difficult, seemed to entangle them too much with their employers' private and sexual lives. Being "one of the family" in this sense means having to undertake chores that would ordinarily be confined exclusively to family members because they are intimate and personal.²⁰¹ Moreover, like victims of domestic violence, domestic workers may be forced to perform tasks that seem intentionally degrading.²⁰²

Psychological harassment may also result from the overpersonalization of the relationship and related invasions of domestic workers' privacy. Interviewees in Rollins' study recounted several instances of prying by employers into their personal and private lives.²⁰³ The interviewees spoke of female employers feeling that they had the right to ask domestic workers far more personal questions than domestic workers could ask of the employers.²⁰⁴ Although these invasions are arguably more invasive because the relationship between domestic workers and employers is not familial, this dynamic parallels that of a traditional domestic abuser maintaining tight control over his victim through surveillance and questioning.²⁰⁵

Sociologists studying domestic work also point to the psychological abuse inflicted on domestic workers through frequent, low-level sexual

201. For example, in one study, interviewees complained about employers and their teenage children leaving dirty underwear scattered on the floor for the domestic worker to pick up, rather than making the minor effort to toss it into a hamper. One interviewee complained that her employer sent her out to pick up her birth control pill prescription. ROMERO, *supra* note 120, at 101–102, 159. Some chores assigned to domestic workers are clearly too intimate to be considered within the reasonable scope of employment. One journalist interviewed Helene, a Haitian domestic worker whose employer demanded that Helene massage her body, including her breasts, daily. When Helene refused, Mrs. R accused her of trying to pursue an affair with Mr. R. See Maria Laurino, *I'm Nobody's Girl: New York's Indentured Servants*, VILLAGE VOICE, Oct. 14, 1986, at 18.

202. For example, three Thai domestic workers interviewed for a recent NBC news program complained that their California employer had forced them to serve her by crawling on their hands and knees to approach her when she was seated. *Bought and Sold*, *supra* note 166. This parallels humiliation tactics used by abusers in traditional domestic violence situations. See EIGENBERG, *supra* note 181, at 61 (describing denigration tactics employed by batterers).

203. Live-in domestic workers told of excessive monitoring and surveillance. One domestic found that the employer had set up a tape recorder in the domestic's room to record her comings and goings; another reported an employer had searched her room. ROLLINS, *supra* note 4, at 145–46.

204. *Id.* at 163–65.

205. See EIGENBERG, *supra* note 181, at 61.

harassment.²⁰⁶ This harassment is facilitated by the domestic workers' frequent interactions with male family members. Mary Romero recounts visiting an academic colleague in his home and witnessing him constantly flirt, tease, and make sexist remarks to his 16-year old live-in domestic worker, despite her obvious discomfort.²⁰⁷ In her interviews, Rollins uncovered evidence of concern about sexual harassment.²⁰⁸

A status differential between the employer and the domestic employee is further expressed through poor treatment of domestic workers by employers' children.²⁰⁹ Due to the quasi-familial status of domestic workers, children may treat them less like outside adults, and more like family members. Parents have even appeared to acquiesce in or condone their children's abuse of domestic workers. In her study of Chicana domestic workers, Mary Romero recounts how she witnessed an employer allow his children to yell at and make fun of Juanita, a 16-year-old Mexican woman who was the family's live-in housekeeper.²¹⁰ Relatedly, an anonymous West Indian nanny for a wealthy New York City family, interviewed for a 1999 *New York Times* article about poor employer behavior, reported that she had once been kicked in the shins by her employers' teenage son when she refused to make sandwiches for him and his friends.²¹¹ The nanny told the parents, who "made believe they cared," but did not punish their son.²¹² In her mid-1990s interviews with Los Angeles area domestic workers, sociologist Pierette Hondangeu-Sotelo found that domestic workers who had been kicked

206. ROMERO, *supra* note 120, at 90 (asserting that sexual harassment is "a common problem particularly among live-in domestics").

207. *Id.* at 1-3.

208. It was, however, expressed in vague terms, and Rollins noted that interviewees tended to be evasive:

Domestics, like employers, preferred to work with another woman. The reason given was the risk of sexual advances from male employers. Most domestics were reluctant to expand on brief remarks like, 'Men tend to get fresh.' My probing for more specifics brought comments like, 'Well, a lot of my girlfriends tell me they've had problems with men they've worked for.' . . . But the number of oblique statements [like this one] . . . suggested that some of my interviewees had themselves had unpleasant experiences."

ROLLINS, *supra*, note 4, at 150.

209. See DILL, *supra* note 74, at 131 (recounting her interviews with African-American domestic workers in New York City, one worker related her experience of being kicked in the shins by an employer's child. While the worker promptly kicked the child back, doubtless many domestic workers would have feared to do the same because they did not want to lose their jobs).

210. *Id.* at 2.

211. Yazigi, *supra* note 151, at 2.

212. *Id.*

or slapped by employers' children expressed frustration at employers who did not punish their children or did not give the domestic worker permission to discipline them.²¹³

Historically, discourses about family and privacy have been used to justify excluding domestic workers from labor protections. These privacy rationales echo the language of privacy and sanctity of family that have been employed to preclude state intervention in "traditional" domestic violence between intimate partners.²¹⁴ These rationales also shape how contemporary domestic workers experience abuse on the job. Some employers accused of abuse have explicitly discussed their relationships with their domestic employees in terms of familial or consensual romantic relations.²¹⁵

New Deal era reformers, who pushed for treating the household workers as parties to a legally-regulated employment relationship, struggled to overcome "traditionalist" attitudes of many household employers who saw regulation of domestic work as invasive of family privacy.²¹⁶ In the end, preservation of the ideological divide between family and the market won out:

Traditionalists worried that if reformers had their way and transformed domestic service into a business relationship between employer and employee, the divide between the private family and the public market would collapse, with the latter subsuming the former and in the process 'killing the most important social and spiritual values.'²¹⁷

213. HONDAGNEU-SOTELO, *supra* note 7, at 41–42.

214. See Reva Siegel, *The Rule of Love: Wife-Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2150–53 (1998) (discussing judicial discourses of privacy that historically have worked to rationalize a lack of legal intervention in domestic violence).

215. For example, the attorney defending the employers of Hope, a 12-year old Haitian girl who had worked without pay and had been raped by the employers' son, maintained that the girl had been treated no differently than the couple's children: "The little girl was like their daughter." *Haitian Girl's Plight*, *supra* note 149, at A14. In *Parks v. Kownacki*, the court depicts Gina Parks as Father Kownacki's live-in mistress, over whom he enjoyed total, proprietary sexual control. 711 N.E.2d at 1210 "Father Kownacki continued to exert such psychological control over Gina that in the evenings she served as his mistress, submitting to sexual intercourse whenever Father Kownacki required it . . . Father Kownacki encouraged and insisted that Gina date boys for appearances' sake, but she was not to have a sexual relationship with anyone but Father Kownacki.").

216. Smith, *supra* note 90, at 906–08.

217. *Id.* at 910 (quoting the National Committee on Household Employment director Amey Watson in 1934).

As Peggie Smith explains, by characterizing domestic service as “‘personal,’ employers underscored its secluded nature within the home and its connection with the intimacies of family life. For employers, those attributes rendered the relationship between maid and mistress ‘an affair of the individual with which the public at large ha[d] no concern.’”²¹⁸ These privacy rationales against regulation have been raised to protect a bourgeois way of life enabled by unregulated access to the labor of domestic workers.²¹⁹ The domestic worker’s “very person belonged to the family for the duration of the employment arrangement, and thus, the family claimed a quasi-property right—couched in the language of family privacy—to exploit her labor without interference from the government or imposition of a self-regulatory standard.”²²⁰

The privacy that shrouds intimate partner relationships and domestic employer-employee relationships is also reflected in the space and contexts in which abuse takes place. Scholars of domestic violence have observed that abusers may exercise a domestic “authoritarianism” over what occurs in the space of the home.²²¹ In particular, abusers monitor the specificities of domestic activities and punish victims for not complying with the abuser’s orders about how the household should be run.²²²

Similarly, spaces and situations in which domestic workers experience abuse often correlates with notions of family, privacy, and the household as an authoritarian setting. Space and situation figure notably in contemporary domestic workers’ accounts of abuse. For live-in domestic workers, the place where abuse happens is typically the employer’s home. There is also a convergence of spaces and situation in the employer’s home in which abuse particularly tends to occur. In particular, sexual assault frequently begins in the bedroom.²²³ The abuser attacks his victim not only in the intimate space of his home, but also

218. *Id.* at 911 (quoting Lucy Maynard Salmon, an early researcher and historian of domestic service).

219. *Id.* at 913.

220. *Id.* at 914.

221. See HALEY & BRAUN-HALEY, *supra* note 157, at 10-11 (offering examples of domestic authoritarianism practiced by some abusers).

222. See *id.*; GOETTING, *supra* note 147, at 51, 111.

223. Gina Parks was raped for the first time by her employer when she was cleaning her employer’s bedroom. Parks, 711 N.E.2d at 1210. In one Missouri rape case, the defendant homeowner approached a 16-year old Dial-a-Maid worker while she was cleaning his bedroom, threatened her with a gun and raped her on the bed. *Missouri v. Bartreau*, 571 S.W. 2d 483, 484 (Mo. App. 1978).

while she is on the job performing household tasks. Failure to perform a household task to the employer's liking becomes an excuse for physical brutality.²²⁴ In the space of the home, domestic objects are often employed to enact the abuse.²²⁵

If, as Shani D'Cruze asserts, "[s]pace works as metaphor; it has an 'oblique' relationship to material conditions and social relations,"²²⁶ the possibility for sexual assaults (and, perhaps, the seeming justification in the minds of the abusers) would here seem to arise not only from the space of bedroom or kitchen, but from the relationship between employer and subordinate, and the historically-rooted notion that women who do household labor are low-status, and because of their color and/or foreignness, and class situation, sexually loose and available.²²⁷

Status relations thus become played out explicitly in the sexual assault of domestic workers, where all the lower-status indicia converge. Domestic workers are often immigrant women of color, not white citizens; they clean up after people rather than making messes for people to clean up; like wives and mothers, they labor in the state-insulated privacy of family bedrooms, not state-monitored and regulated boardrooms. The convergence of what is low-status, hidden, and traditionally protected from the state increases domestic workers' vulnerability and shapes their experiences of violence in the characteristics of traditional domestic violence between familial or romantic intimates.

224. For example, employer Margarida Bonetti spooned hot soup on Hilda Dos Santos as punishment for Dos Santos' inadequate preparation of the soup. Here, both the method and occasion for physical brutality arose from performance of a household task. See Grbach, *supra* note 159.

225. See *id.* (employer burned domestic worker with hot soup); Amy Klein, *Slave Trade is Flourishing in U.S.*, MILWAUKEE J. SENTINEL, Aug. 20, 2000, at 27A (employers beat domestic worker with their belts and high-heeled shoes).

226. SHANI D'CRUZE, CRIMES OF OUTRAGE: SEX, VIOLENCE, AND VICTORIAN WORKING WOMEN 31 (1998).

227. See, e.g., discussion of historical stereotypes of African American and white domestics as sexually loose and available, *supra*, Part I; Maria Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, in CRITICAL RACE FEMINISM 188-89 (Adrien Katherine Wing ed., 1997) (discussing sexual harassment as implicating power relations in society at large, thus women of color are likely targets because they have the least power in the workplace; identifying stereotypes of Latina women as "hot-blooded" and overly sexual); Braley, 879 P.2d at 414, (describing an employer who sexually assaulted three Mexican domestics working in his home and made statements that "Mexicans were bred for sex.").

D. Legal Responses to Abuse: Indifference and Exclusion

Scholars of domestic violence have frequently emphasized the ways in which the legal system has failed to treat the problem of domestic violence seriously and respond to abused women's needs. Historically, judges have failed to consider domestic violence serious enough to merit legal intervention in private domestic life.²²⁸ Recently, the Supreme Court rejected hard-won legislation by Congress that had treated gender-motivated violence—such as that frequently experienced by women in intimate abusive relationships—as violations of the victims' civil rights.²²⁹ Domestic violence scholars also have pointed out the ways in which existing domestic violence laws are weak and chronically under-enforced by law enforcement officials and judges in certain locations.²³⁰

Domestic workers encounter similar problems when they appeal to the law for protection or compensation for the harms they suffer as a result of employer abuse. Although some courts have been able to compensate domestic workers for their suffering and impose criminal penalties on abusive employers,²³¹ there is limited criminal or civil legal recognition of specific injuries of harassment, or sexual or physical abuse visited upon domestic workers. As discussed earlier, the large majority of domestic workers are not able to sue employers for sexual harassment or

228. See, e.g., Sharon D. Herzberger & Noreen L. Channels, *Criminal-Justice Processing of Violent and Nonviolent Offenders: The Effects of Familial Relationship to the Victim*, in *ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE* 63–75 (Dean D. Knudsen & JoAnn L. Miller eds., 1991) (discussing the generally more lenient legal treatment given family violence offenders); Siegel, *supra* note 214, at 2152–53.

229. *United States v. Morrison*, 529 U.S. 598, 627 (2000) (striking down the civil remedy provision in the Violence Against Women Act, a provision that permitted persons who had suffered gender motivated violence to sue their attackers for damages).

230. See, e.g., NEIL WEBSDALE, *RURAL BATTERING AND THE JUSTICE SYSTEM: AN ETHNOGRAPHY* 91–112, 127–151 (1998) (documenting the underenforcement of laws against domestic violence and light sentences for batterers in rural Kentucky); Helen M. Eigenberg, *Criminal Justice System Response*, in *WOMAN BATTERING IN THE UNITED STATES: TILL DEATH DO US PART*, *supra* note 165, at 269–292 [hereinafter Eigenberg, *Criminal Justice*] (describing problems of underenforcement of domestic violence laws); Helen M. Eigenberg et al., *Contributory Factors Affecting Arrest in Domestic and Non-Domestic Assaults*, in *WOMAN BATTERING IN THE UNITED STATES: TILL DEATH DO US PART*, *supra* note 165, at 312–13 [hereinafter Eigenberg et al., *Contributory Factors*] (describing disparate treatment of domestic violence cases compared to non-domestic assaults).

231. See, e.g., France, *supra* note 149, at 60 (describing criminal prosecution of abusive employers); Brennan, *supra* note 145, at 13 (detailing damages won in a civil suit against an abusive employer).

other acts of workplace discrimination.²³² Domestic workers must rely on the few employment protections that apply to them: basic tort remedies,²³³ or the state's decision to criminally prosecute particularly abusive employers.²³⁴

When abusive employers are penalized, penalties tend to be slight, mirroring the light sentences often traditionally given domestic violence offenders.²³⁵ For example, World Bank economist Robert Marbouche was charged with raping and sexually assaulting Agapita Bojos, his live-in housekeeper, numerous times during her six years' employment with him. Yet Marbouche's sole criminal conviction was for an incident of fourth degree sexual assault, a comparatively minor episode in which he came into Bojos' room while she was sleeping and fondled her breasts.²³⁶ He was sentenced to only thirty days in jail, but was found civilly liable for damages of \$120,000.²³⁷

The sentences visited upon abusive employers often seem out of proportion to the abuse inflicted on their employees, and may reflect the comparatively powerful standing employers enjoy in their communities. Rene Bonetti, who enslaved and abused Hilda Rosa Dos Santos for nearly 15 years, was fined \$100,000 and sentenced to only six years in jail for his crimes.²³⁸ Eivind Richard Larsen, a Wisconsin man who raped his housekeeper on three occasions, was able to plea bargain charges of felony third degree sexual assault down to three counts of misdemeanor fourth degree assault.²³⁹ Larsen's attorneys argued that based on Larsen's standing in the community, lack of prior criminal

232. See *supra* Part II of this paper.

233. See, e.g., Brennan, *supra* note 145 (describing an abused workers' claims against the employer for battery, intentional infliction of emotional distress and constructive discharge).

234. E.g., *U.S. v. Sanga*, 967 F.2d 1332 (9th Cir. 1992) (prosecuting an abusive employer for alien-smuggling); *Nanayakkara v. Zimmerman*, 1996 WL 622770 (E.D. Pa. 1996) (prosecuting an abusive employer for rape, involuntary deviate sexual intercourse, false imprisonment, indecent exposure, simple assault, terroristic threats, and criminal conspiracy). Yet, my research suggests that even when abuse of domestic workers is challenged in court, light sentences for abusers, inadequate compensation, and a lack of judicial sensitivity to the unique problems faced by domestic workers signal that many courts do not take this abuse very seriously.

235. See Eigenberg, *Criminal Justice*, *supra* note 230, at 281-91 (describing non-punishment and sometimes lax treatment of domestic violence offenders by prosecutors and courts).

236. Brennan, *supra* note 145, at 13.

237. *Id.*

238. Grbach, *supra* note 159.

239. *Wisconsin v. Larsen*, No. 88-1367CR, 1988 WL 148390, at *1 (Wis. Ct. App. Dec. 22, 1988).

record, alcohol problems related to the “incident,” and the risk of Larsen losing his job if he was incarcerated, Larsen should not have to serve jail time.²⁴⁰ Larsen’s punishment was three years’ probation, six months’ jail time, and a \$5,000 fine.²⁴¹

An important distinction between civil suits brought by domestic violence victims and those of abused domestic workers is that domestic workers may have some viable financial claims against employers, based on underpayment of wages or their having labored in a situation of involuntary servitude. Yet the slight financial restitution typically accorded to unpaid or underpaid domestic workers seems to reflect the low value society at large assigns to household labor. Rene Bonetti, employer of Hilda Dos Santos, was ordered to pay only \$110,000 to her in restitution.²⁴² When divided by the number of years of her enslavement, Dos Santos was compensated little more than \$7,000 per year for her labor in the Bonetti household. Annie Marie Quinlob received only a total of \$43,574.40 from both of her captors, despite the fact that the district court calculated that she was underpaid by \$61,406.28 during her two years of work.²⁴³

The most remunerative legal decisions for domestic workers seem to be those dealing with federal law forbidding trafficking in persons and involuntary servitude. Courts are willing to apply the law to contemporary situations in which domestic workers are held in virtual or actual enslavement, where threat of physical force is often used to trap the worker. In the criminal matter resulting from the enslavement and sexual abuse of Annie Marie Quinlob, Quinlob’s employers, the Sangas, were permitted to plead guilty to conspiracy to smuggle an alien and unlawful procurement of citizenship.²⁴⁴ The lower court ordered that they pay restitution to Quinlob, the victim of their smuggling crime, as provided by the Victim and Witness Protection Act,²⁴⁵ calculated as wages underpaid for two years’ work. This totaled judgments of \$21,787.20 each against both Sanga and his wife.²⁴⁶ This judgment was affirmed by Ninth Circuit, which held that Quinlob was a “victim” within the meaning of the protection statute and was thus

240 *Id.*

241. *Id.* at *2–3 (appealing this sentence and fine, Larsen contended that it was unduly harsh, but the appellate court upheld the sentence and fine, noting that they were “well on the low side of the range provided by the legislature.”)

242. Grbach, *supra* note 159.

243. Sanga, 967 F.2d at 1335.

244. *Id.* at 1333.

245. 18 U.S.C. §§ 3663–3664 (2000).

246. Sanga, 967 F.2d at 1335.

allowed restitution.²⁴⁷ Clearly seeking to compensate Quinlob for her suffering, the court rejected Efren Sanga's argument that Quinlob was criminally complicit in Sanga's smuggling and ID procurement.²⁴⁸ While the laws against enslavement and trafficking in persons²⁴⁹ have been applied with some success to provide restitution to domestic workers, prosecutions of abusive employers are often achieved through immigration-related charges that have primarily the government's—not the victim's—interests at heart.²⁵⁰

As discussed in Part II, *supra*, employment discrimination law is structured to exclude the large majority of domestic workers from protection for sexual harassment and other acts of workplace discrimination. However, even if more domestic workers could sue employers for sexual harassment, there is reason to believe that courts might have difficulty understanding the particularized forms of sexual harassment likely to be suffered by domestic workers. *Galonsky v. Williams*,²⁵¹ an unsuccessful sexual harassment suit, illustrates not only the problems of domestic workers' exclusions from sexual harassment law, but also sheds light on judges' limitations with respect to conceptualizing and understanding the type of abuse they face. In that case, Maria Gonzalez and Carmen Rodriguez, domestic employees of talk show host Montel Williams, joined with other women employees to sue Williams and his enterprises under Title VII.²⁵² Gonzalez and Rodriguez alleged

247. *Id.*

248. In rejecting the complicity argument, the court stated that "there is no evidence in the record that Quinlob volunteered to be kept as a virtual slave of the Sangas for almost two years . . . Any criminal complicity in the conspiracy which Quinlob might bear stopped at the point at which she became the object of, rather than a participant in the criminal goals of the conspirators . . . The record in this case shows that Sanga conspired to . . . obtain a low-cost, live-in maid who would be unable to object to the conditions of . . . Sanga's sexual advances." *Id.*

249. See 8 U.S.C. § 1324(a) (providing criminal penalties for any person who knowingly transports to the U.S., or conceals or harbors an alien in the U.S. for commercial purposes of private gain).

250. For example, the Sangas were convicted mainly of immigration related crimes. These convictions enabled Quinlob to receive restitution as a victim of their crimes under the Victim and Witness Protection Act of 1982, 28 U.S.C. § 3663 (2000). See 967 F.2d at 1335. The employers who held Christi Elangwe in captivity for 5 years were charged with harboring an alien, as well as forcing her to work without pay. See France, *supra* note 149, at 65. Similarly, the couple who employed and abused Francesca Ekka pled guilty to conspiring to hold Ekka in involuntary servitude and inducing her illegal residence in the U.S., and holding her in violation of immigration laws. See Navarro, *supra* note 149, at A22.

251. No. 96 CIV. 6207 (JSM), 1997 WL 759445 (S.D.N.Y. Dec. 10, 1997).

252. *Id.* at *1.

that the talk show host's wife and mother-in-law harassed them by appearing in front of them bare-breasted and showing them sexually explicit gifts.²⁵³ The District Court, ruling on the defendants' motion for Rule 11 Sanctions against the plaintiffs' attorneys, held that the claims of the two domestic employees were not covered by federal or state anti-discrimination law.²⁵⁴ After accusing Gonzalez and Rodriguez of making the allegations for "public relations value,"²⁵⁵ the court went on to state that:

It is hard to see how walking around bare breasted in one's home—conduct that would have been permissible if engaged in on the streets of New York can give rise to an actionable hostile work environment claim. While [the mother-in-law's] displaying of sexually explicit gifts may have been offensive, it hardly constitutes the type of pervasive conduct necessary to sustain a hostile work environment claim.²⁵⁶

Finding that the plaintiffs' claims were baseless, the court imposed Rule 11 sanctions.²⁵⁷

The court in *Galonsky* rejected the domestic workers' claims of sexual harassment, based in part on an assumption that the behavior they described—their employers' propensity to walk around naked in front of them and the alleged giving of sexually explicit gifts—did not rise to the level of actionable sexual harassment. The *Galonsky* court failed to see context, that is, how something that might be legal and unthreatening if done on New York City streets, coupled with the seemingly-minor giving of offensive gifts, might deeply discomfort and threaten employees who work alone day after day with their employers in a private home. Furthermore, the court did not realize that employers' propensity to deliberately walk around naked in front of domestic workers is cause for discomfort recurrently mentioned by those who clean private houses and hotel rooms for a living.²⁵⁸ There is also a

253. *Id.* at *4.

254. *Id.*

255. *Id.*

256. *Id.* (internal citations omitted).

257. *Id.* at *5–6.

258. See, e.g., VERTA MAE (GROSVENOR), THURSDAYS AND EVERY OTHER SUNDAY OFF: A DOMESTIC RAP (1972) at 52–53 (describing domestics' and hotel maids' complaints about employers and hotel room occupants who deliberately or indifferently walk around naked or partially clothed in front of them); TUCKER, *supra* note 70, at

likelihood that a court would consider Kotzen and Williams' ostensibly-legal partial nudity in front of the domestic workers—"conduct that would have been permissible if engaged in on the streets of New York"²⁵⁹—impermissibly harassing outside the domestic context.²⁶⁰ In the context of a domestic environment, in which there is a large power disparity between employer and domestic worker and where employees are isolated and often work in private spaces, employers' deliberate and indifferent over-exposure of their private lives—and physical selves—to domestic workers may have harassing effects.

Judges have shown insensitivity not only to the types of harms that domestic workers suffer, but to the vulnerable positions they occupy as litigants. Judge Kenneth Ryskamp's actions in the context of *Vargas v. Peltz*²⁶¹ illustrate insensitivity to the vulnerability of domestic workers who complain about on-the-job abuse. Maria Vargas, a Costa Rican immigrant, filed a sexual harassment suit against millionaire financier Nelson Peltz. Vargas claimed that Peltz had harassed her when she worked in his apartment, by sexually propositioning her and then firing her and her husband after she refused his advances.²⁶² District Judge Ryskamp dismissed the suit with prejudice, pointing to evidence that Vargas had fabricated the allegations.²⁶³ However, Ryskamp did not stop there. Characterizing the case as "one of the most serious frauds on the court I have ever seen," Ryskamp ordered the case files turned over to the U.S. Attorney's office and state attorney's office for possible criminal action against Vargas for perjury, extortion, and obstruction of justice.²⁶⁴ Calling Vargas "a pathological liar," the judge stated that he would write immigration officials to urge them to deport her.²⁶⁵ Even assuming that

217–18 (describing an incident in which the employer's friend exposed himself to the domestic worker).

259. Galonsky, 1997 WL 759445, at *4.

260. See, e.g., *O'Rourke v. City of Providence*, 235 F.3d 713 (1st Cir. 2001) (upholding jury verdict in Title VII case where plaintiff's co-workers exposed her to posters and magazines depicting nude men and women); *Bower v. Dowdy*, No. 97-1903, 1998 U.S. App. LEXIS 11792 (4th Cir. June 5, 1998) (finding public policy exception to common law employment-at-will standard where plaintiff was forced to view nude pictures in the workplace); *Llewellyn v. Celanese Corp.*, 693 F. Supp. 369 (W.D.N.C. Mar. 1, 1988) (finding employer liable under Title VII where male employees deliberately appeared nude and semi-nude in front of plaintiff co-worker).

261. 901 F. Supp. 1572 (S.D.Fla. 1995).

262. *Id.* at 1573; Val Ellicott, *Judge Blisters Millionaire's Maid as 'Liar,' Tosses Sex Harassment Suit*, PALM BEACH POST, Mar. 17, 1995, at 1A.

263. *Vargas*, 901 F.Supp. at 1582.

264. Ellicott, *supra* note 262, at 1A.

265. *Id.*

Vargas herself had concocted evidence and thus deserved dismissal of her lawsuit, Ryskamp did not appear to consider what a chilling effect his INS referral might have on future legal claims by immigrant domestic workers. Vargas thus got far more of a punishment for her fabrication than an equally bad-acting litigant with citizenship would. The possibility of immigration sanctions based on a judge's belief that the plaintiff lied could serve as a strong deterrent even for truth-telling immigrant domestic workers worried about risking deportation.

IV. THE POLITICS OF PRIVILEGED WOMEN: MARSHALLING THE RESOURCES OF THE VIOLENCE AGAINST WOMEN MOVEMENT

Given the considerable commonalities between domestic violence and violence against domestic workers, it is evident that the organizations, strategies, and resources of the anti-domestic violence movement should be deployed more broadly to address the problem of violence suffered by domestic workers in their workplaces. Ultimately, political organizing, appropriate channeling of resources, and changes in societal and individual behavior is needed. These are changes that privileged women as powerful political activists and primary employers of domestic workers, are well poised to spearhead.

Domestic workers' isolation in the exceptionally private workplace of the home, coupled with their legal, racial, immigrant, and class-based disadvantages, makes them vulnerable to sexual, physical, and economic abuse and coercion. Given that existing law does not adequately protect domestic workers as employees, women as individuals and leaders of non-governmental entities, should themselves act to change the way domestic workers are treated in the workplace. In light of the power that privileged women²⁶⁶ have as political actors and, often, as employers of

266. I use the term "privileged women" to refer primarily to middle and upper-class women, who, relatively speaking, have the time and financial resources, and political clout to sustain organizations and influence policy-making. These women may, or may not, employ domestic workers in their own homes. In focusing on these privileged actors, I do not mean to overlook or discount the activist achievements of less privileged women. At the grassroots level, poor women of color have powerfully mobilized to fight violence against them in the workplace and in the home. See, e.g., Jenny Rivera, *Intimate Partner Violence Strategies: Models for Community Participation*, 50 ME. L. REV. 283, 303-05 (1998) (describing the Violence Intervention Program, a community-based Latina-run domestic violence organization serving East Harlem and the Bronx); HONDANGNEU-SOTELO, *supra* note 7, at 219-229 (describing grassroots organizing efforts by Latina domestic workers in Los Angeles). This

not-so-privileged women,²⁶⁷ successful strategies to lessen the incidence of sexual harassment and sexual and physical abuse encountered by domestic workers must harness the political, economic, social, and family capital of privileged women.

The achievements of the violence against women movement powerfully exemplify the capacity of organized women to collectively influence politics, law, and society.²⁶⁸ Privileged women have taken part in activism, lobbying, fundraising, and volunteer work to win legal change, educate the public about violence against women, and create support networks and resources for victims of rape and domestic violence.²⁶⁹ The battered women's movement exemplifies the kind of activism that may be helpful to domestic workers, as the movement offers "some hope for combining legislation and collective action to address the seemingly intractable problems posed here."²⁷⁰

Yet the violence against women movement has tended to focus almost exclusively on sexual and physical violence between intimate partners or those in a dating relationship, or victims of stranger rape. Workplace violence has been understood largely in terms of sexual harassment in standard work contexts, without much attention to the special dimensions of the problem endured by women who work in low-wage workplaces such as other people's homes. Leaders in the violence against women movement should think beyond traditional notions of sexual harassment to examine the many dimensions of workplace violence against women, particularly violence experienced by low-wage immigrant workers like domestic workers.

article's focus on privileged women is intended to highlight the reality that the work of relatively powerful women, both at a political and individual level, is needed to create sustainable improvement in the conditions of domestic work.

267. Although male and female heads of household may both pay for domestic work, research on contemporary domestic work strongly suggests that it is overwhelmingly women who are in charge of seeking, hiring, and communicating with domestic workers. HONDAGNEU-SOTELO, *supra* note 7, at 22, 177.
268. See Elizabeth M. Schneider, *Epilogue: Making Reconceptualization of Violence Against Women Real*, 58 ALB. L. REV. 1245, 1246, 1251 (1995) (explaining that the collective achievements of the battered women's movement include shifting social norms, influencing policy, and developing resources for battered women).
269. See ANN RUSSO, *TAKING BACK OUR LIVES: A CALL TO ACTION FOR THE FEMINIST MOVEMENT* 8-9 (2001) (describing organizations and activities of the U.S. violence against women movement; noting leadership roles of middle class and professional women in these organizations); Rivera, *supra* note 266, at 295-303 (describing the work of attorneys at the Puerto Rican Legal Defense Fund and "intellectuals, academics, scholars, and other community leaders" in The Hispanic Task Force of New Jersey's state lobbying efforts).
270. Goldberg, *supra* note 113, at 100.

A. Expanding Local Domestic Violence Services and Outreach

Activism combating violence against women must take a holistic approach with respect to the problems faced by domestic workers and other poor and/or immigrant clients. Activism in the violence against women movement has begun to successfully articulate the need for culturally-tailored services and outreach to communities of color and immigrant communities.²⁷¹ Various provisions of the Violence Against Women Act (VAWA) reflect this activism by providing grants to develop and improve outreach and victim services targeted to racial, linguistic, and ethnic minorities.²⁷² In addition, in their applications for VAWA grants, states are required to share demographic information about the expected service population.²⁷³ Because violence against domestic workers features many of the characteristics that commonly apply to domestic violence, domestic violence centers and legal services programs that serve victims of domestic violence should do substantial outreach and tailoring of their services to meet the needs of domestic workers who might desire assistance and support.

Legal services organizations have provided “community outreach” to immigrant women workers, have helped workers learn negotiation and resolution skills, and have offered an opportunity to discuss issues of concern.²⁷⁴ Since the reality is that many domestic workers are unlikely to be able or inclined to take formal legal action against abusive employers,²⁷⁵ services geared toward their needs should focus on helping workers develop strategies to leave abusive workplaces or negotiate with their employers.²⁷⁶ Realistically, few domestic workers will have the time to attend workshops and group sessions, so outreach must also take the form of radio and print public service announcements about the right to

271. See Rivera, *supra* note 266, at 294–305 (describing activist organizations’ campaigns to bring attention to the unique problems faced by battered Latinas).

272. Hernandez-Truyol, *supra* note 131, at 402.

273. *Id.*

274. Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Outreach*, 4 CLINICAL L. REV. 433, 446–48 (1998).

275. See *infra* Part V, for a discussion of factors hampering domestic workers’ ability to take legal action against their employers.

276. Eagly, *supra* note 274, at 478 (discussing the case of a Latina immigrant client who was being sexually harassed at work and successfully used skills learned in a negotiation workshop to get the harasser to stop); HONDAGNEU-SOTELO, *supra* note 7, at 227 (describing a Los Angeles domestic workers’ organization where members meet monthly to discuss strategies for dealing with difficult employers and improving overall working conditions).

be free of violence and harassment in the domestic workplace and the availability of services.²⁷⁷ Programs must also assure that the services offered are culturally and linguistically suited to the clients—for example to immigrant women of color who may not speak English—and that the program can connect a client with resources related to matters of immigration, employment, and financial assistance, all of which a domestic worker trying to leave an abusive work arrangement may need.²⁷⁸

One simple area in which feminist organizing and service provision might be of great assistance is expanding the traditional idea of shelters for abused women by establishing or funding longer-term, low-cost, non-employer-based housing options for domestic workers. Live-in domestic workers are often subject to ongoing sexual harassment and invasions of privacy, and are overwhelmingly the victims of enslavement and recurrent sexual or physical abuse.²⁷⁹ The experience of living in one's workplace elides the lines between family, personal life, and work, in a way that often enables employers to take advantage of domestic workers' quasi-familial status. Feminist efforts to create low-cost, off-site housing independent of employer control might prove enormously valuable to domestic workers as a preventative measure against workplace exploitation. If a domestic worker enjoys an independent housing situation, she will not be at the twenty-four hour beck and call of her employer, and she will be more likely to maintain separation of work and free time. If an employment situation is becoming abusive, the domestic worker with non-employer controlled housing can walk off the job without fearing immediate homelessness.

Laura Padilla has explored ideas for the creation of low-cost, collective housing units for low-income Latina women.²⁸⁰ Proposed co-housing would provide private, inexpensive apartments organized around a shared community center. Residents of the co-housing community could be paid as child care providers, and other services and programs could be conducted in the community center.²⁸¹ The

277. See Gordon, *supra* note 131, at 433–34 (describing the Workplace Project's use of radio and Spanish-language newspaper ads and stories, distribution of Spanish-language comic books depicting workers dealing with workplace problems (including a sexual harassment scenario), and political/educational theater about workers rights).

278. See Hernandez-Truyol, *supra* note 131, at 384 (1998) (commenting on lack of adequate services for Latina victims of violence, including the lack of culturally sensitive and Spanish-speaking staff at shelters, crisis centers, and hotlines).

279. See *supra* Part III.

280. Laura Padilla, *Single-Parent Latinas on the Margin: Seeking a Room With a View, Meals, and Built-In Community*, 13 *Wis. WOMEN'S L.J.* 179, 206–20 (1998).

281. *Id.* at 207–209.

co-housing model provides an added benefit of opportunities for friendships and the development of practical and emotional support networks among low-income women. This may prove especially valuable to recently arrived immigrant women, who are more likely to take live-in positions because they do not have family or other sources of support in the U.S.²⁸² Although it might be difficult for feminists to initiate large scale co-housing projects without public money, it may be feasible to assemble sufficient funds from grants, donations, and other sources to fund a few small-scale projects.

*B. Domestic Work and National and Global Efforts
to Address Violence Against Women*

The resources of the violence against women movement go beyond community houses or the neighborhood crisis center. International organizations and institutions have globally recognized abuse of domestic workers in forums such as the Beijing Conference.²⁸³ Even so, more human rights NGOs need to get involved in lobbying for measures to improve the situation of migrant domestic workers.²⁸⁴ Along these lines, women leaders of major civil rights groups in the U.S., such as the National Organization for Women (NOW), can—and sometimes do—employ organizational lobbying power and resources to bring attention to the problems faced by domestic workers.²⁸⁵

Recent advocacy by immigrants' rights and women's groups have been instrumental in passing legislation to assist domestic workers. Thanks to this activism, the Violence Against Women Act of 1994 and subsequent INS policies provide a means by which an undocumented immigrant who is battered by her spouse may file independently for legal permanent residency in the United States, if her spouse is a legal permanent resident or United States Citizen.²⁸⁶ Under these laws, such a victim of spousal violence—who might in desperation turn from an

282. HONDAGNEU-SOTELO, *supra* note 7, at 17, 196–200.

283. Fitzpatrick & Kelly, *supra* note 145, at 86 (discussing the Final Act and Platform for Action of the Fourth World Conference on Women in Beijing).

284. *Id.* at 85–87.

285. HONDAGNEU-SOTELO, *supra* note 7, at 266 n.31 (describing domestic workers' rights advocacy booklet created by NOW).

286. See 8 U.S.C. 1154(a)(1); see also Lena H. Sun, *Battered Immigrants Gain Ally Against Abusers*, WASH. POST, March 27, 1996 (discussing INS rules allowing battered spouses of legal permanent residents to file independently for permanent resident status).

abusive spouse to a potentially abusive employer for visa or green card sponsorship—would not need to rely on another party to attain legal status. Another recent victory for domestic worker advocates has been the passage of the Victims of Trafficking and Violence Protection Act of 2000, which enables some foreign-born victims of trafficking and involuntary servitude—many of whom are domestic workers—to remain in the U.S. on temporary work visas, with a possible avenue for attaining legal permanent resident status.²⁸⁷ This Act passed by overwhelming margins in the House and Senate,²⁸⁸ and was vigorously supported by major activist groups such as the Feminist Majority Foundation and Human Rights Watch.²⁸⁹

Privileged women may play a powerful role beyond expanding attention directed at and resources devoted to assisting domestic workers threatened by violence. Mary Romero observes that, “[f]or most domestics, the occupation continues to be regulated by community norms and values that determine informal labor arrangements made between a private household worker and her employer.”²⁹⁰ Privileged women and their organizations have a particularly important responsibility to educate fellow privileged women about legal and ethical standards for employment of domestic workers. Public service announcements and education campaigns directed at employers, as well as general community and peer pressure, can carve out better norms for employment of domestic workers.²⁹¹

V. THE LIMITS OF CURRENT LEGAL PROTECTIONS

Advocates, such as those described above, have argued widely for immigration reforms and increased integration of domestic workers into existing labor and employment law protections as a means for reducing

287. Pub. L. No. 106-386, 114 Stat. 1464 (2000).

288. See *Modern Slaves*, STAR TRIB. (Minneapolis, MN), Oct. 12, 2000, at A22 (noting that the bill passed unanimously in the Senate and was one vote short of unanimous passage in the House).

289. See Feminist Majority Foundation 2000, at http://www.feminist.org/welcome/fm_2000.html; *Feminist Victory: VAWA Passes Unanimously* at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=4417> (Oct. 12, 2000); *Campaign Against the Trafficking of Women and Girls*, at <http://www.hrw.org/about/projects/traffcamp/intro.html>.

290. Romero, *Immigration*, *supra* note 187, at 1062–63 (citing a sociologist’s suggestion of educating employers and state support).

291. HONDAGNEU-SOTELO, *supra* note 7, at 241–42.

exploitation.²⁹² Giving domestic workers the protections enjoyed by most U.S. workers would send a message that the employer-domestic relationship is an employment—not a familial—relationship. This message would hopefully infiltrate the consciousness of domestic employers. Further, immigration reforms might make it easier for domestic workers to leave abusive situations and to speak out against this abuse.²⁹³ Yet reform efforts directed toward including domestic workers in existing labor protections face major hurdles to achievement.²⁹⁴ The often-vulnerable legal status of immigrant domestic workers, coupled with the disadvantages they face as litigants, may hinder effective use of the legal system.²⁹⁵

While legal reforms are an important component of strategies to improve working conditions for domestic workers, substantial legal reform may not successfully discourage harassment and physical and sexual abuse on the job. As discussed in this Part, legal reform, taken

292. See Goldberg, *supra* note 113, at 96 (proposing modifications to the IRCA so that domestic workers would not be required to show legal documents to get hired); Silbaugh, *supra* note 187, at 72 (criticizing how exemptions of domestic workers from the NLRA, OSHA, and most states' workers' compensation coverage "paint a picture of a *kind* of work that does not look like work, even when it is done for pay") (emphasis in original); Kathleen DeLaney, *A Response to "Nannygate": Untangling U.S. Immigration Law to Enable American Parents to Hire Foreign Child Care Providers*, 70 IND. L. J. 305, 306 (1993) (suggesting reforms to immigration law to increase the supply of foreign childcare workers).

293. See Vellos, *supra* note 113, at 432 (suggesting facilitation of legal immigration for domestic workers, so that undocumented workers would "have the mobility to leave exploitative work environments.").

294. See *supra* Part I (describing the political difficulties faced in trying to integrate domestic workers into labor and employment law); see also Jenny Rivera, Comments, in *Revolutions Within Communities: The Fifth Annual Domestic Violence Conference*, 29 FORDHAM URB. L.J. 13, 60–62 (2001) (discussing poverty and lack of political power among Latino immigrants as factors hindering their access to legal remedies and institutional supports).

295. See Gordon, *supra* note 131, at 415–27, 422 n.51 (describing barriers to immigrant workers' access to institutional mechanisms for legal enforcement); See HONDAGNEU-SOTELO, *supra* note 7, at 231–35 (discussing difficulties facing Latina domestic workers in using the legal mechanisms for filing wage and hour claims). Even if existing enforcement institutions were friendlier to immigrant domestic workers, such workers still face a shortage of free or low-cost legal services to assist them in making claims. See Gordon, *supra* note 131, at 422–23 (discussing immigrant workers' lack of access to employment-related legal services); See Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 67–68 (1988) (discussing the instability of and scarcity of funding for public legal services); See Restrictions on Legal Assistance to Aliens, 45 C.F.R. §§ 1626.3–.4 (2001) (excluding undocumented immigrants from access to federally-funded legal services except in cases of violence by spouse or parent).

alone, proves inadequate. First, the problems of non- and under-enforcement of existing laws with regard to domestic work call into question the efficacy of reforming laws when enforcement resources are scarce and mechanisms weak. Secondly, the limited ability of existing legal frameworks for employer-employee relations fail to fully account for the specific difficulties encountered by domestic workers in their day-to-day working lives.

A. Nonenforcement and Underenforcement

Although activists over the past thirty years have succeeded in winning some inclusions for domestic workers in basic labor laws, there is strong evidence that even the laws that exist frequently go un- and under-enforced. In 1992, information in the Congressional Record indicated that only 25% of households with domestic workers complied with social security tax requirements.²⁹⁶ In the early 1990s, a survey of affluent Los Angeles area women who hired domestic workers found that the overwhelming majority did not pay Social Security taxes, Medicare taxes, or withhold income taxes as legally required.²⁹⁷ Failure to deduct taxes may result from the employer's eagerness to avoid paperwork and the domestic worker's desire to avoid any deductions to her already meager pay.²⁹⁸ Yet the violations go beyond tax evasions. Studies of domestic work indicate that in regions with many immigrant workers, minimum wage violations are endemic.²⁹⁹

As has been discussed previously, undocumented immigrant domestic workers who fear deportation have little incentive to report legal

296. Banks, *supra* note 119, at 3.

297. *Id.* at 23 (citing Hondagneu-Sotelo's study).

298. ROLLINS, *supra* note 4, at 76-78 (discussing rampant nonpayment of Social Security taxes by employers of domestic workers and noting that for many domestic workers, immediate cash seems more important than planning for the future by paying Social Security taxes).

299. See AMOTT & MATTHAEI, *supra* note 8, at 88 (citing 1985 study of domestic workers in El Paso, which indicated that more than ten percent of the workers earned, on average, between \$1.88-\$2.50 per hour, despite the minimum wage of \$3.35); HONDAGNEU-SOTELO, *supra* note 7, at 36 (finding in her mid-1990s study of 153 Los Angeles domestic workers that 79% of live-in workers made less than the applicable minimum wage). See also Goldberg, *supra* note 113, at 64-65 (asserting that non-enforcement and under-enforcement is rampant with respect to protective laws that apply to domestic workers).

violations such as underpayment.³⁰⁰ Even if a worker does wish to seek help for legal violations, such as below-minimum wage pay, she may find herself discouraged from doing so because of the likelihood that she has not paid appropriate taxes on her earnings.³⁰¹ Enforcement problems are further aggravated by lack of awareness on the part of regulatory organizations. Domestic workers, particularly those who are immigrants and who work under-the-table, are vastly undercounted.³⁰² They are a consummately invisible workforce, hidden away in private homes where many both live and work, far from government consciousness and scrutiny. As Suzanne Goldberg asserts, “[t]he employment’s location in the private sphere, where regulators have traditionally [sic] hesitated to intervene, compounds the other challenges present in any work environment.”³⁰³ Even well-meaning enforcement agencies have insufficient resources to commit to enforcement,³⁰⁴ particularly in workplaces like individual homes, where often only one worker is affected.³⁰⁵

Moreover, as a non-unionized, highly-dispersed workforce largely comprised of immigrant women of color, domestic workers simply do not have the political clout to get regulators’ attention. Their attempts to access the regulatory and justice systems may be hampered further by discrimination “based on combinations of race, immigration status, gender, age, education, and other factors,”³⁰⁶ and judicial lack of knowl-

300. See *supra* Part II.B (discussing the risks faced by undocumented immigrant domestic workers who speak out against abuse).

301. See, e.g., Gordon, *supra* note 131, at 420 (describing an incident in which an immigrant worker who had not been paid the minimum wage, but also had not paid any taxes on his under-the-table earnings was discouraged by a staff person at a local Department of Labor office from filing a claim against his employer. The staffer told the worker that he would likely owe as much or more in back taxes, so he shouldn’t bother filing a claim for underpaid wages.).

302. See HONDAGNEU-SOTELO, *supra* note 7, at 17.

303. Goldberg, *supra* note 113, at 65.

304. See Gordon, *supra* note 131, at 418–20; HONDAGNEU-SOTELO, *supra* note 7, at 213.

305. See HONDAGNEU-SOTELO, *supra* note 7, at 213.

306. Goldberg, *supra* note 113, at 65 (discussing multiple kinds of discrimination faced by domestic workers). See also Gordon, *supra* note 131, at 420–22 (noting that even where immigrant workers are covered by labor laws, systemic problems in regulatory agencies, such as lack of multi-lingual staff, cultural insensitivity, and even individual staffers’ threats to report “illegal” immigrants to the INS, interfere with workers’ attempts to enforce their rights); Maria Ontiveros, *To Help Those Most In Need: Undocumented Workers’ Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607, 621 (1994) (discussing societal, cultural, and structural problems faced by immigrant women in reporting and taking action against sexual harassment).

edge about the laws that protect domestic workers.³⁰⁷ Nancy Cervantes, a Los Angeles attorney who helps domestic workers file back wage claims against former employers, described how domestic workers' attempts to access the justice system are further compounded by a general lack of understanding that domestic work is work: "The judges think, 'What could this person have been doing for twelve hours a day?' It reflects the attitude that a lot of women encounter with their husbands if they're housewives, which is, 'What did you do all day? How could you possibly be tired?'"³⁰⁸ Thus, even with the existence of protective laws, judicial, institutional and political will to enforce these laws is often lacking.

B. Inability for Traditional Employment Law to Account for Harms Experienced by Domestic Workers on the Job

Even supposing that domestic workers were more integrated into existing legal regimes and there were fewer barriers to enforcement and access to regulatory and court systems, traditional labor law and anti-discrimination law might still be of limited utility to domestic workers facing physical and sexual abuse and sexual harassment on the job. A lot of the sexual harassment and general indignities experienced by domestic workers on the job may not meet some judges' interpretations of what qualifies as sexual harassment under traditional understandings of quid pro quo or hostile environment.³⁰⁹ In general, much psychological abuse visited upon domestic workers, whether sexualized or not, probably fails to qualify for legal actionability in basic tort law. As Regina Austin has pointed out, severe psychological abuse is commonly endured by workers in low-wage, low-status occupations, but very little of this abuse is considered actionable by courts under claims of intentional infliction of emotional distress.³¹⁰ Austin notes that "[t]he law intervenes only where the distress inflicted is so severe that no

307. HONDAGNEU-SOTELO, *supra* note 7, at 232–33 (noting that some California small claims court judges and labor commissioners presiding over domestic workers' wage claims seem surprised to learn that domestic workers are covered by minimum wage laws).

308. *Id.* at 232 (quoting an interview with attorney Nancy Cervantes).

309. This point is well illustrated by the court's reasoning about sexual harassment in *Galonsky*, 1997 WL 759445, discussed *supra*, Part III.D.

310. Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1, 1–9 (1988).

reasonable man could be expected to endure it."³¹¹ To be actionable, behavior usually must be outrageous, uncommon, and not pervasive.³¹² Further, the injury standard is so high that plaintiffs who seem to have survived, functioned, and moved on despite the abuse have a harder time bringing a successful action.³¹³ Although plaintiffs who are overly fragile and deferential to their employers may not meet the "reasonable person" standard, plaintiffs who talk back and resist employer abuse do not fare well in these tort actions.³¹⁴ Thus, domestic workers who have suffered harassment would probably have difficulty meeting the narrow and often conflicting standards for successfully suing for employer-caused emotional suffering in tort.

While tort or Title VII laws might better account for the injuries of sexual assault (and, in the case of tort, non-sexual physical assault), these laws are still often inadequate to compensate for the long-term effects of suffering assault in the workplace.³¹⁵ Civil rights provisions such as the one originally enacted in the Violence Against Women Act of 1994,³¹⁶ providing for damage suits against perpetrators of gender-motivated violence, might have proved more helpful. However, the Supreme Court's recent decision in *United States v. Morrison* has quickly dispensed with that remedy.³¹⁷

VI. CHANGE STARTS AT HOME: RETHINKING DOMESTIC LABOR RELATIONS

Given the severity of the problems domestic workers face on the job and the limits of legal solutions, an approach focused solely on policy advocacy and provision of services and assistance to domestic workers will not suffice to curb abuse. Just as traditional domestic violence has its roots in the patriarchal form of relationships between men and women, many of the problems experienced by domestic workers inhere in the hierarchical relationships that constitute the institution of domestic work. This theory suggests that the feminist practice of locat-

311. *Id.* at 16 (citing Restatement of Torts).

312. *Id.* at 16.

313. *Id.* at 17-18.

314. *Id.*

315. Martha Davis, *Rape in the Workplace*, 41 S.D. L. REV. 411 (1996) (arguing that existing legal regimes such as workers' compensation, Title VII, and tort remedies do not adequately provide for compensation for victims of rape in the workplace).

316. 42 U.S.C. § 13981 (1994).

317. 529 U.S. at 627 (2000).

ing oppression in personal and familial relationships should be applied with equal force to understand the oppression at work between employers and domestic workers. This analysis must incorporate comprehension of class- and race-based hierarchies and the historical devaluation of household labor and those who perform it. At the core of this critique is an analysis of privileged *women's* roles as primary employers of domestic workers. While working as public advocates and expanding the service network might be one way for women to address this problem, women who hire domestic workers can also address these issues within their own home. This section urges privileged women who might be sympathetic to feminist concerns about domestic work to reconsider how housework is accomplished in their homes by considering three potential types of change: abolishing domestic work outright (calling upon privileged persons not to use domestic workers to accomplish their household work); reforming domestic work through reconfiguration of the employer-domestic worker relationship; and deprivatization of care-taking work.

*A. Privileged Women and Feminist Struggle in the Home:
The Case for Abolition of Hired Domestic Work*

While men may still be in positions of greater and ultimate economic power and authority in households that hire domestic workers, female heads-of-household are not economically or socially powerless.³¹⁸ Even within the patriarchal structure of the home, women—particularly upper-middle- and upper-class households in which both spouses are professionals employed outside the home—may enjoy substantial economic and social power within the family.³¹⁹ Women have been traditionally burdened with matters of household management and ensuring the housework is done. Today this arrangement means that middle- and upper-class women sometimes hire domestic workers to

318. It is important here to make one notable exception, which will be reiterated in the main text. Privileged women who suffer abuse at the hands of their partner cannot be said to be “empowered” within the relationships of home and family such that they could be expected to exercise control in the household and powerfully intervene on behalf of a domestic worker who is being abused by the other head-of-household.

319. See generally, Naomi Cahn, *The Power of Caretaking*, 12 YALE J.L. & FEMINISM 177 (2000) (discussing women’s power in the household). Cf. HONDAGNEU-SOTELO, *supra* note 7, at 172–82 (many of the employers interviewed by Hondangneu-Sotelo were highly educated professionals who had well-paying jobs).

accomplish that work.³²⁰ Historically and currently, women are most likely to be the direct employers of domestic workers—the ones that supervise, communicate with, and have the most direct contact with domestic workers.³²¹ Whether or not privileged women ally themselves with organizations working to end violence against women, there is a lot they can do at an individual level, as employers, to prevent abuse of domestic workers in their employ.

Although individual employers' attempts at treating domestic workers better may improve the situation, the hiring of another to clean up after oneself and one's family may inevitably communicate and reinforce messages about status hierarchies and the value of certain kinds of work above others.³²² Racial differences between domestic workers and their employers communicate general messages about race and class hierarchies in American life.³²³ Joan Williams points out that the ways in which race and class privilege inform white middle-class women's definition of liberation and accomplishment in terms of work outside the home have often denigrated domestic labor.³²⁴ This situation has served to devalue caregiving and domesticity, which Williams argues have been historically very important to women of color.³²⁵ Accordingly, Williams asserts that "a shift away from the full-commodification model [of accomplishing household labor] to a model whose aim is to give all workers time for family work takes one step toward defusing the racial

320. Smith, *supra* note 90, at 919 ("Even as women participate in the paid labor force, they remain culturally and socially responsible for childcare and household maintenance. In the absence of both supportive legislative initiatives and greater male involvement in childcare some women find domestic service a viable solution to help balance the demands of their work lives with 'their' domestic responsibilities.").

321. HONDAGNEU-SOTELO, *supra* note 7, at 22, 177 (noting that it is overwhelmingly women heads-of-household who seek, hire, communicate with, and pay domestic workers).

322. Barbara Ehrenreich, *Maid to Order: The Politics of Other Women's Work*, HARPER'S, April 2000, at 59, 69. ("[Your home] is also the place where your children are raised, and what they learn pretty quickly is that some people are less worthy than others. Even better wages and working conditions won't erase the hierarchy between an employer and his or her domestic help, because the help is usually only because the employer has 'something better' to do with her time, as one report on the growth of cleaning services puts it, not noticing the obvious implication that the cleaning person herself has nothing better to do with her time.").

323. JOAN WILLIAMS, UNBENDING GENDER 150–57, 164–68, 174 (2000).

324. *Id.*

325. *Id.* at 167–68 (discussing the importance of family and home life for black and Latina women).

anger that surrounds domestic work.³²⁶ In such a scenario, the housework reverts back to the family; it becomes the family's responsibility to clean up their own messes, without outside assistance.

This solution, though, does not necessarily lead to a just result. Although men may be doing more housework than they ever have before, if household work is not hired out to another woman, female heads-of-household do most of it.³²⁷ In her 1980s interviews with female employers of domestic workers, Judith Rollins discovered that "none of [her] interviewees—not the young Ph.D.'s any more than the older employers who had never worked—was pressuring her husband to take more household responsibility. For these women, the masculist [sic] idea that housework is 'women's work' remained unchallenged."³²⁸

Contemporary maid services are sold as a means of avoiding such battles over sharing household duties.³²⁹ Barbara Ehrenreich's critique of hired domestic labor suggests that we need to re-invigorate discussions between men and women about sharing household responsibilities. It is important to note here that due to psychologically and often physically abusive relationships, some female heads-of-household, even professional privileged women, may simply be unable to start these battles without endangering their own well-being. These suggestions cannot be directed at women in such situations. Even when abuse is not a part of the picture, the suggestion of reigniting battles over housework may lead to some unease. It may unfairly put a certain burden on women to start these arguments. Yet the burden of disturbing domestic peace to create change is one that women have borne before, knowing that the political began with the personal, and the personal began at home, in struggles to

326. *Id.* at 163. Williams defines the "full commodification model" as the traditional feminist strategy for full equality in which women work full time and delegate child care and housework to the market. *Id.* at 40. See also Glenn, *supra* note 146, at 1350 (describing a post World War II era "expansion of commodified services to replace the 'social reproduction' labor women formerly performed in the home.").

327. Silbaugh, *supra* note 187, at 8–9 (summarizing a range of time-use studies that indicate that women do much more housework than men—as much as 60% more); Ehrenreich, *supra* note 322, at 61 (citing July 1999 study by the University of Maryland, showing that women do, on average, 2/3 of household labor); WILLIAMS, *supra* note 323, at 2 (noting that American women do 2/3 of housework and shoulder 80% of childcare responsibilities in their families).

328. ROLLINS, *supra* note 4, at 184–85.

329. Ehrenreich, *supra* note 322, at 62 (quoting a Merry Maids franchise owner as saying, "I kid some women. I say, '[w]e even save marriages.' In this new eighties period you expect more from the male partner, but very often you don't get the cooperation you would like to have. The alternative is to pay someone to come in. . . .").

transform their relationships with male partners.³³⁰ Furthermore, the battle needs to expand to holding male and female children responsible for chores and the basics of cleaning up after themselves. It is unfortunate that:

Upper-middle-class children raised in the servant economy of the Nineties are bound to grow up as domestically incompetent as their parents and no less dependent on people to clean up after them The overclass is raising a generation of young people who will, without constant assistance, suffocate in their own detritus.³³¹

Domestic workers who clean up after employers' children have criticized employers' for excusals of their children's incredibly messy rooms and assumptions that "the maid" will clean up after them completely.³³² Holding children responsible for housework is a strategy employed by domestic workers in their own homes, since they must contend with a double shift of paid housework in other people's houses and unpaid housework in their own. In her study of 25 Chicana domestic workers in the Denver area, Mary Romero found that almost all of the subjects assigned their male and female children regular chores, such as dish washing, laundry, cooking, and vacuuming, to assist with housework in their own homes.³³³

Women might also try to convince family members and employers—many of whom may have strong incentives to keep professional female workers on staff—to make lifestyle changes that will create more time or less necessity for housework.³³⁴ Pursuant to her criticisms that feminism has glorified market work and denigrated housework and childrearing, Joan Williams urges a "reconstructive feminism" that seeks

330. WILLIAMS, *supra* note 323, at 58 ("Women may change all they want; unless men undergo corresponding transformations, change will grind to a halt. Feminists have ignored this maxim at their peril.").

331. Ehrenreich, *supra* note 322, at 69.

332. ROMERO, *supra* note 120, at 5.

333. *Id.* at 37–38. Romero notes that even in these families, who, by necessity, shared household labor, the mothers still had the assumed responsibility for housework and did the majority of it. *Id.* at 39.

334. See Ehrenreich, *supra* note 322, at 68–69 (describing trends of larger new homes with multiple rooms to clean and increasing time-binds faced by middle class workers as factors motivating use of hired domestic labor); see also Romero, *supra* note 188, at 193–194 (suggesting different structures and arrangements for caretakers, including telecommuting, flextime, job sharing, part time jobs with benefits, shift swapping provisions, shorter or compressed workweek, and no mandatory overtime).

to restructure work around the ideal of parents caring for their own children:³³⁵ “Instead of defining equality as allowing women into market work on the terms traditionally available to men, 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.”³³⁶ Some of Williams’ “reconstructive feminist” proposals include: de-stigmatizing part-time work by mandating equal pay for part-time work;³³⁷ organizing job sharing and other flexible schedule arrangements to “eliminate masculine work norms;”³³⁸ and amending the FLSA to increase the rate of overtime pay and reduce the standard workweek to 35 or 37.5 hours.³³⁹

Although the abolition of domestic work might defuse some race and class tensions and ease feminist guilt,³⁴⁰ would abolition actually benefit domestic workers themselves? Could abolition actually work in contemporary workaholic America? The next section confronts some of the practical problems with an abolitionist strategy.

B. What About Domestic Workers?: Re-Configuring Domestic Work

The abolition approach described above may have the salutary effect of re-politicizing upper- and middle-class homes as a site of feminist struggle, but it also may be problematic from several standpoints. First, hired domestic workers will be displaced should privileged families assume total responsibility for their own household labor. Are domestic worker jobs really ones we should be glad to eliminate? Secondly, an individualized approach that exhorts employers to stop using domestic workers is simply unlikely to succeed on a massive scale. This section considers each of these criticisms, ultimately examining ways in which the employer-domestic worker relationship might be reconsidered by

335. WILLIAMS, *supra* note 323, at 4–5.

336. *Id.* at 41.

337. *Id.* at 96–97.

338. *Id.* at 86–88.

339. *Id.* at 111.

340. Interviews with women employers indicate that many experience guilt, embarrassment, or discomfort over their roles. *See, e.g.*, HONDANGNEU-SOTELO, *supra* note 7, 10–11 (analyzing employer’s feelings as arising from a tension between political ideals of egalitarianism and participation in a master-servant relation); Lee, *Heart of the Work*, *supra* note 195, at 46 (quoting Suzanne Levine, editor of *Ms.* magazine from 1972–1987, who described “feeling bad” about aspects of her employment of a domestic worker).

individual actors in order to improve the working lives of domestic employees.

1. Putting Workers First: Do Domestic Workers Really Want Domestic Work Abolished?

Evidence suggests that domestic workers tend to feel negatively about their jobs. In her mid-1990s interviews with Latina domestic workers, sociologist Pierrette Hondagneu-Sotelo found that the workers, like their African American predecessors 50 years before,³⁴¹ keenly felt the low status of their occupation:

For their part, the women who do the work are well aware of the low status and stigma attached to paid domestic work. None of the Latina immigrants I interviewed aspired to the job, none want their daughters to do it, and the younger ones hope to leave the occupation altogether in a few years.³⁴²

In general, job opportunities overall for most women of color, particularly immigrant women, tend to be the least appealing jobs in society—low-status, low-wage, and arduous.³⁴³ Yet given this, domestic work may be the most appealing of the unattractive choices.³⁴⁴ Likewise, workers generally preferred live-out jobs to live-in jobs.³⁴⁵ Women who were able to get work as independent live-out housecleaners enjoyed the autonomy of moving between several different houses a day, where they generally performed their job in private while the employers were at work.³⁴⁶ These housecleaners also expressed pleasure and satisfaction in the visible outcomes of their hard work, such as sparkling mirrors and bathrooms.³⁴⁷ Thus private domestic work does not have to be work that

341. *See supra* Part I.C.1.

342. HONDAGNEU-SOTELO, *supra* note 7, at 12.

343. Glenn, *supra* note 146, at 1348–51.

344. For example, many of Mary Romero's Chicana interviewees stated that they liked domestic work better than other low-wage work available to them such as fast food, commercial laundry work, nurse's aide work, or agricultural labor. They explained that they preferred domestic service because of its potential for more autonomy, more flexible work schedules to accommodate family and other commitments, and, often, the ability to take children to the job with them, obviating the need to make child-care arrangements. ROMERO, *supra* note 120, at 12, 40–42.

345. HONDAGNEU-SOTELO, *supra* note 7, at 157–59.

346. *Id.*

347. *Id.*

is completely unfriendly to women. In fact, domestic work can be the best of a number of low-wage options, and may offer some room for autonomy where the employer is not constantly supervising the domestic's work.

In addition, declining to hire private domestic workers will not, in itself, disrupt a social order in which the workplace is deeply stratified by race and gender. If hiring of private domestic workers diminishes, former employers of domestic workers are likely to make more use of an already-burgeoning non-domestic service economy to assist with reproductive labor.³⁴⁸ The increasing commodification of housework in the non-domestic service economy means that racial and class hierarchies present in the relationship between employers and private domestic workers almost surely will be replicated.³⁴⁹ Simply put, immigrant women and women of color who can no longer obtain domestic worker positions in private households will be compelled to turn to this low-wage service economy, where women of color are already over-represented.³⁵⁰

Despite the fact that displaced domestic workers probably would not enjoy much improvement in their working lives by acquiring a job in "public reproductive labor," there are some possible long-term benefits to taking domestic labor—if it is to be done by non-family members at all—out of the home. Although "[i]n many ways, minority women are performing the same kinds of unskilled or onerous work they did before, only in a new setting[.]"³⁵¹ this new setting has the potential to

348. See Glenn, *supra* note 146, at 1350–51. Glenn defines reproductive labor as "labor that maintains people on a daily basis and intergenerationally—work that women traditionally expended in their roles as wives, mothers, and homemakers. It includes activities such as preparing meals, washing and repairing clothing, maintaining household furnishings, feeding and taking care of infants, socializing children, and providing emotional support for adults." *Id.* at 1339.

349. *Id.* at 1350–51 (describing the commodification of household services, services Glenn terms "public reproductive labor," beginning in the 1970s, through the growth of health care, food service and personal services available outside the home); Roberts, *supra* note 190, at 60–61 (noting that although many traditional domestic tasks have been commodified as services available on the market, e.g., day care centers, maid services, fast food restaurants, and nursing homes, these services, while no longer performed in the home, are performed disproportionately by people of color).

350. Glenn, *supra* note 146, at 1350–51 ("Women of color are disproportionately assigned to do the dirty work: as nurses aides in hospitals, as kitchen workers in restaurants and cafeterias, as maids in hotels, and as cleaners in office buildings. . . . And just as in the household, White women benefit from the 'dirty work' performed by women of color. They get to do more skilled, more fulfilling, less demeaning, and less onerous jobs.").

351. *Id.* at 1352.

reduce domestic workers' risk of exposure to physical abuse, sexual assault and harassment. Recalling the ways in which location and domestic space, living-in, and isolation figured prominently in contemporary domestic workers' accounts of abuse,³⁵² perhaps female workers are safer when they are not isolated in private homes. While female service workers certainly encounter sexual harassment on the job, the mere presence, as well as the possible comfort and support potentially provided by co-workers—many of whom are likely to be women of similar racial and ethnic backgrounds—may make a public reproductive workplace a psychologically and physically less risky place to work than an individual home. Service work in the public reproductive workplace also has the benefit of looking more like work: it is located in an explicit marketplace setting such as a store, restaurant, or hospital.³⁵³ In this setting, employers and employees are much more likely to regard their relationship as that of true employer and employee, rather than a familial relationship, leading to many of the benefits available in a traditional employment context but denied to domestic workers.³⁵⁴ Similarly, in this non-domestic work place the potential for regulatory investigation and enforcement is greater.³⁵⁵ Employees of businesses providing “public reproductive labor,” unlike domestic workers, are covered by protective laws such as OSHA, Title VII, and the NLRA—laws that have the potential, if observed and enforced, to improve the workplace. Particularly paramount is non-domestic workers' NLRA-given right to organize.³⁵⁶ While there are many obstacles to union organizing in all low-wage workplaces, organizing domestic workers has historically proven very daunting due to worker isolation, long hours, multiple employers, worker dispersal, and lack of legal protection for concerted activities.³⁵⁷

352. See *supra* Part III.C.

353. See Glenn, *supra* note 146, at 1350.

354. *Id.* at 1352. Glenn argues that, “although the specific tasks performed in institutional service jobs resemble those performed in private domestic jobs, women of color clearly prefer service work in institutional settings to domestic service in White peoples' homes. The subordination is not so personal, and there are clearer contractual limits to tasks and hours. More explicit rules protect workers to some extent, from arbitrary discipline, and the presence of other workers makes it easier to resist unreasonable demands and demeaning treatment.” *Id.*

355. See HONDAGNEU-SOTELO, *supra* note 7, at 213–216 (discussing institutional mechanisms used to enforce labor laws).

356. National Labor Relations Act § 7, 29 U.S.C. § 157 (2002).

357. See, e.g., PALMER, *supra* note 65, at 126–27 (detailing unsuccessful attempts by domestic workers to organize in the 1930s and 40s); KATZMAN, *supra* note 16, at 193–196 (describing factors hampering attempts at unionization in the late 19th century).

Yet even with these potential protections, the reality of the service sector is not as advantageous as it might first appear. Sociologists' interviews with domestic workers revealed that jobs with cleaning service companies were uniformly considered worse than working for individual households, or working as an independent roving housecleaner, because the cleaning services were found to pay less, impose harsher work paces, and generally treat their employees worse than many private individual employers.³⁵⁸

2. Getting Real: The Necessity of Domestic Work

Proposals for the abolition of domestic work encounter a deeply practical problem. Simply put, the need of many American families for outside domestic help is greater than ever because American families are working more than ever.³⁵⁹ Over the last 20 years, the average worker has added 164 hours—an entire month of work—to his or her work year.³⁶⁰ This means that women's efforts to reallocate household burdens within the family may be stymied not simply by men's sexist refusals, but by the demands of work on both sexes.³⁶¹ For example, research on employees at a Fortune 500 company found that management and peers put pressure on workers to work long hours.³⁶² Professional women in traditionally male-dominated sectors seemed to feel particular pressure not to take advantage of flexible or part-time work options in order to fit in and ward off male resentment about hiring women into upper management.³⁶³ While worker advocates and some feminists have tried to bring attention to the need for Americans to work less, these efforts have been largely unsuccessful in the face of powerful business interests

358. HONDANGNEU-SOTELO, *supra* note 7, at 164.

359. *See generally*, ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* (1997) (exploring the problems faced by individuals and families as they find themselves working increasingly longer hours).

360. *Id.* at 6.

361. *Id.* ("I had examined the tensions that arise at home in two-job marriages when working women do the lion's share of the childcare and housework. Such marriages were far less strained, I found, when men committed themselves to sharing what I came to call 'the second shift,' the care of children and home. But even with the work shared out, there seemed to be less and less time for the second shift, not to mention relaxed family life.")

362. *Id.* at 56.

363. *Id.* at 32–33, 108–09.

that enjoy having employees, particularly salaried ones, work well beyond the eight-hour day.³⁶⁴

Financial realities also play a role in the increased time spent out of the home. With the widening of a wage gap between the highest paid and lowest paid workers³⁶⁵ and the increase of temporary, part-time and other contingent work arrangements offering lower pay and fewer benefits,³⁶⁶ many American workers find it necessary to work more than one job just to make ends meet.³⁶⁷ Finally, many Americans, increasingly burdened with consumer debt, may seek extra jobs and lucrative overtime assignments in order to attain and maintain the material lifestyle they desire.³⁶⁸

Furthermore, the desire to spend more time outside of the home may not be attributable to simple economics or the pressures of the modern workplace. We also must wrestle with Hochschild's uncomfortable finding that many women and men *like* to work long hours outside the home, because they view work as a needed escape from the pressures of home life.³⁶⁹ For women experiencing domestic violence, work may be important both psychologically and economically as a tool of escape.³⁷⁰

Domestic workers' services go far beyond providing employers with a luxurious lifestyle; these services help people meet their basic daily needs. Although most employers of domestic workers are college-educated, middle- and upper-class white women, it is not just the wealthiest Americans who rely on hired domestic help. Hondagneu-Sotelo's recent study of Los Angeles domestic workers suggests that in some areas heavily populated by a low-wage immigrant workforce, non-traditional employers such as single mothers, fixed-income elderly, and even domestic workers themselves, sometimes hire domestic workers to assist them with household labor.³⁷¹

364. *See id.*

365. *Income Equity Nosedives: The Rich vs. Everyone Else*, at <http://www.aflcio.org/articles/gap/index.htm>.

366. *Statement of John J. Sweeney, AFL-CIO President on the New GAO Report Shows Contingent Worker Incomes and Benefits Lag*, at <http://www.aflcio.org/publ/press2000/pr0726.htm>, July 26, 2000.

367. *See* EHRENREICH, *supra* note 136, at 197.

368. *See* Ehrenreich, *supra* note 322, at 68.

369. HOCHSCHILD, *supra* note 359, at 37-40, 180-81.

370. *Id.* at 170-71 (noting an interview with a worker for whom work outside the home was a relief from domestic violence in the home).

371. HONDAGNEU-SOTELO, *supra* note 7, at 8-9.

One subdivision of domestic work, caretaking, exemplifies how needed this work is by many employers. While men and women can conceivably make lifestyle choices to work less and take on more domestic work to lessen dependency on private household workers, it would be difficult for even the most organized and committed working family to fully perform caretaking work. The very young, sick, elderly, or disabled may need constant care. This reality suggests that while it may be valuable to undertake a rethinking of caretaking labor that strives to remove that labor from the home, it is also worth considering how to restructure private homes as safer, fairer workplaces for domestic employees.

3. Reforming the Relationship: Toward Real Employer-Employee Relations

Recognizing domestic work as work and domestic workers as rights-bearing employees is crucial to any reform of domestic labor relations. For many scholars of domestic work, inclusion in basic labor, employment, and discrimination laws is a prerequisite to improved status for domestic workers.³⁷² In addition, however, formalization of the employment relationship through the creation of institutions that mediate the relationship between employers and domestic workers is important. One potential mediating institution is the employment agency. Employment agencies potentially provide a valuable service to work-seeking domestic workers by trying to screen out potentially abusive or unreasonable employers.³⁷³ In addition, agencies sometimes make employers put in writing the tasks for which they are hiring the domestic worker, which the domestic worker could theoretically use to set limits should employers try to add work *ex post*.³⁷⁴ Interestingly, some agency representatives recognize the danger of sexual assault inherent in domestic workers entering unfamiliar homes and intimated that their screening activities might help guard against this danger.³⁷⁵ The agencies' primary motive, however, is profit through successful placements of domestic workers, not the welfare of those workers.³⁷⁶

372. See generally Goldberg, *supra* note 113; HONDAGNEU-SOTELO, *supra* note 7; ROMERO, *supra* note 120, (all arguing that labor, employment, and anti-discrimination laws should fully include domestic workers).

373. HONDAGNEU-SOTELO, *supra* note 7, at 103–08.

374. *Id.* at 102.

375. *Id.* at 97.

376. *Id.* at 103–08.

One possible alternative mediating institution is a hiring hall system controlled by domestic workers themselves. In making this suggestion, I use as a model the hiring hall system established by waitress unions in early twentieth century America. To combat depressed wages and working conditions, waitress unions established a hiring hall system that benefited waitresses and their employers.³⁷⁷ Union waitresses found work through the hiring halls, which only matched job-seeking waitresses with employers that pledged to pay the union wage and provide standardized conditions of employment.³⁷⁸ In exchange, the hiring halls promised employers reliable workers who were pre-screened, trained by the union, and met union standards for expert waitressing.³⁷⁹ Through its dues, the union funded assistance to waitresses who were unemployed or dealing with life crises.³⁸⁰ Applied to the domestic work context, a hiring hall system might improve working conditions, provide financial and moral support to domestic workers in need—such as those who abruptly left a job because of abuse—while providing employers with trained, professional domestic employees.

Legal inclusion, formalization, and mediation of the employment relationship, however, do not alone direct us as to how the *relationships between women* that constitute domestic work—relationships with the potential to be unusually personal and intimate—might be reconfigured. Although many academics writing about domestic work have tended to advocate completely de-personalizing the domestic employer-employee relationship, there is some indication that total businesslike detachment might be neither practical nor desirable. Some domestic workers appear to want some sort of personal relationship with their employers. “[F]or the most part, Latina housecleaners and nanny/housekeepers see cold, impersonal employer-employee relations as blatant reminders of the low regard in which society holds them.”³⁸¹ This account exposes some of the ways in which status inequalities may be reinforced even though the tone or “feel” of the employer-employee relationship may have morphed from the overly patronizing and personal to the cold and uninterested. Reconfiguring the employer and domestic worker relationship as a true employer-employee relationship, yet one that offers warmth and personalism, may be a desirable yet

377. See DOROTHY SUE COBBLE, *DISHING IT OUT: WAITRESSES AND THEIR UNIONS IN THE TWENTIETH CENTURY* 138–47 (1991).

378. See *id.*

379. See *id.*

380. See *id.*

381. HONDAGNEU-SOTELO, *supra* note 7, at 208.

complex undertaking. Thus, re-conceptualizing domestic work may challenge feminists not only to re-conceive domestic work legally, but also to explore possibilities for a humane employment relationship that treats employer and employee as social equals.

*C. A Broader Movement for Domestic Change:
De-Privatizing Caretaking Labor*

A third area of suggested reform looks beyond abolition or individual remaking of the employer-domestic relationship to urge a collective, social policy approach to the burdens of reproductive labor. Advocates for domestic workers have asserted that the model of hiring private household workers who work in the employer's home—and may also live there—has overwhelmingly served the interests of privileged female employers, not those of the domestic workers.³⁸² These female employers exact their convenience at a price to domestic workers. This trade-off seems particularly unfair when domestic workers' well-being is compromised by the isolation of live-in work, which poses a greater risk of sexual harassment and abuse, routine invasions of privacy, low pay, and lack of firm barriers between work and non-work hours.³⁸³

This model often places the psychological and social burdens of being the primary employer of domestic workers squarely on female heads-of-households. The burdens of bad treatment of domestic workers and guilt over career and family choices fall particularly hard on professional feminists who hire domestic workers:

To some extent, the feminist carries a double burden. Our society holds her to a higher moral standard—than her husband . . . if she decides to pursue her own professional interests. Advocates for domestic workers hold the feminist accountable for oppressing the woman who takes on “her” domestic role, just as the workers themselves blame the woman, not the male breadwinner, for their poor salaries.³⁸⁴

Caregiving is often characterized as the personal responsibility of women, and thus so is the delegation of that care. Mary Romero argues

382. Romero, *Immigration*, *supra* note 187, at 1061–62 (noting that women who can afford in-home child care prefer it because of the convenience).

383. See *supra* Parts I–III.

384. Banks, *supra* note 119, at 43 (quoting Maria Laurino, “I’m Nobody’s Girl”: *New York’s New Indentured Servants*, VILLAGE VOICE, Oct. 14, 1986, at 21).

that “the designation of caretaking responsibilities as mere personal problems that must be resolved through the unpaid labor of women family members or the underpaid labor of women—usually women of color and immigrants.”³⁸⁵ Romero rails against “a society that still considers caretaking a personal matter, one that can and should be addressed within the private space of the family.”³⁸⁶

Advocates for domestic workers have often suggested that child care is an area around which women of many different classes could mobilize to improve availability and quality.³⁸⁷ Indeed, some privileged women are less than happy with their childcare options, and less privileged women suffer as the workers in these arrangements. Further, less privileged women are themselves denied childcare options altogether. Thus, it is urged that these women can join together to press for a system of publicly-funded universal childcare. To work, this strategy would require that privileged women be willing to give up the advantages of privately provided in-home care and surrender their children to publicly-funded centers. It remains to be seen whether women can be mobilized accordingly; some feminists have noted that the Clinton-era “Nannygate” scandals marked a missed opportunity for cross-class organizing to press for better childcare options for women of all classes.³⁸⁸ The Congressional “solutions” cobbled together in the aftermath of Nannygate focused solely on simplifying the tax structure so as to make it less confusing for privileged women to hire private child care workers.³⁸⁹ However, many feminists concerned about the privatized view of caretaking work have insisted that women of different classes have intertwined interests and thus should ally themselves to press for a better system of caretaking work.³⁹⁰ As Romero argues:

The social construction of responsibility cannot be limited to individuals as family members, but must include individuals as employees. Myths of independence, autonomy, and self cannot be dismantled for women whose unpaid labor as family mem-

385. Romero, *supra* note 188, at 180.

386. *Id.*

387. *See id.* at 192; Banks, *supra* note 119, at 43–44 (stating that feminists should band together to press for structural reforms and raise the value of household work). *See also* Deborah Stone, *Why We Need a Care Movement*, THE NATION, March 13, 2000, at 13 (advocating coalition-building to lobby for more public funding to create more caregiving resources and improve caregiver pay).

388. Banks, *supra* note 119, at 43–44.

389. *Id.* at 11–18.

390. *Id.* at 26–40.

bers fulfills caregiving needs, unless the analysis also includes the impact on employees who are hired as paid caregivers.³⁹¹

Not all caregiving, however, can be moved outside the home. While most child care and some elder care can conceivably be moved to group centers without undue inconvenience, the same cannot be said for the care of some sick and disabled persons. Although home health aide systems may meet the needs of housebound elderly and disabled persons, the women who work as home health aides are poorly paid and may also suffer the bad treatment and abuse that too often marks the experience of private household workers.³⁹² Since many of the problems of abuse and manipulation may result from the personal nature of the employer-employee relationship in a domestic worker situation, it may be better for women who provide home health work to be explicitly employed by a central entity outside individuals' homes, ideally the state.³⁹³ The benefit of being a state employee was recognized by home health aides in Los Angeles County, predominantly women of color workers paid with state funds to provide home health care to low-income elderly and disabled persons.³⁹⁴ With the financial and organizational backing of the Service Employees' International Union, the home health aides successfully lobbied the state legislature to pass a bill declaring them to be employees of the state.³⁹⁵ Following passage of the 1992 bill, the 74,000 home health workers won the right to unionize in 1999, and began negotiations for better wages and working conditions.³⁹⁶

A centralized employer enables workers to receive the benefits of public reproductive labor employment—a chance for concerted action

391. Romero, *supra* note 188, at 188–89.

392. See Steven Greenhouse, *In Biggest Drive Since 1937, Union Gains a Victory*, N.Y. TIMES, Feb. 26, 1999, at A1 (noting that before unionizing, LA country home care workers earned \$5.75 an hour); Stone, *supra* note 387, at 13 (noting the minimum wages and lack of benefits for home health care workers). There is evidence that home health aides may suffer sexual harassment and other abuses at the hands of those for whom they work. See *Health Worker Can't Sue Over Behavior of Patient*, NATIONAL LAW JOURNAL, Apr. 30, 2001, at B6 (describing case where an elderly patient propositioned home health worker for sex and called her offensive names); *Hylton v. Norrell Health Care of New York*, 53 F. Supp. 2d 613, 616 (S.D.N.Y. 1999) (home health aide alleging that elderly patient's son sexually harassed and assaulted her).

393. *But see* discussion of domestic workers' complex views on the personalism of the employer-domestic employment relationship, *supra* Part VI.B.

394. Greenhouse, *supra* note 392, at A18.

395. *Id.*

396. *Id.*

by workers to change their conditions, a contract which an employer is bound to abide by, an opportunity to press grievances for sexual harassment or racial discrimination, and even a means to sue for the failures to take reasonable precautions to protect employees from physical or sexual abuse in the workplace.³⁹⁷ However, for caretakers to achieve the rights and advantages accorded by employment with a large, centralized, public employer, privileged women will need to relinquish the control of the current, private employer-employee relationship and throw their support behind legislation to create and institutionalize public caretaking. The hope is that in exchange for a relinquishment of power, women's considerable burden of being those charged with management of caretaking will also fall away.

CONCLUSION

This article has sought to explore the enduring problem of abuse suffered by women who perform paid domestic work in private homes. The problem of abuse is compounded by the legal and societal marginalization of the low-income, immigrant women of color who typically perform paid domestic work. This abuse is also inextricably linked to societal and legal treatment of the domestic sphere as a site of privacy, gendered hierarchy, and unregulated prerogatives. Viewed through these lenses, the dynamics of on-the-job violence and harassment suffered by domestic workers share many characteristics associated with "traditional" domestic violence between intimates. On this account, violence against domestic workers emerges as a type of domestic violence, and thus a focal point for grassroots feminist organizing, as well as policy change in the form of increased state regulation and intervention. Moreover, just as political, community, and even individual norms surrounding "traditional" domestic violence have been radically reconsidered in the past 30 years, individual women—particularly the relatively privileged women who employ domestic workers—should similarly interrogate the personal, community, and political norms surrounding household labor that foster poor treatment of domestic workers. A radical rethinking of domestic work might involve abolishing private domestic employment, re-conceiving the relationship between employer and domestic worker,

397. These benefits would arise from the central employer being subject to federal and state labor laws from which domestic workers are currently excluded, such as the NLRA and Title VII.

de-privatizing caretaking work, or ideally, some combination of these three approaches. Through an understanding of on-the-job abuse suffered by domestic workers as a type of domestic violence, feminists and the public at large can better comprehend the ways in which any victim of domestic violence is not “just one of the family,” but a full, rights-bearing human being. ♣

