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Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform

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Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform

Keywords

Class, Gender, Race, Agendas of Reform, Household Reform Advocacy

REGULATING PAID HOUSEHOLD WORK: CLASS, GENDER, RACE, AND AGENDAS OF REFORM

PEGGIE R. SMITH*

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INTRODUCTION

Industrially [the domestic's] position is peculiar. She is in the family, but not of it There is neither the clear recognition of mutual responsibility and reciprocal rights and duties which marked the old relation of mistress and servant, nor the equally well-defined relations which in industrial or mercantile employment exist between employer and employe[e]. The domestic has ceased to be a servant as that term was formerly used; she has not yet become an employe[e], as that term is now used in industrial occupations.

Jane Addams¹

Concern with the ideological separation between home and work has been an animating force in feminist legal theory. The separate spheres for men and women have engendered extensive discussions that have explored the legal implications resulting from both the denigration of women-identified work within the private sphere of the family,² and the devaluation of women's paid labor in the public sphere of the market.³ Yet, feminist legal theory has all but ignored the women who stand at the very nexus of the ideological split between home and work—paid household workers.⁴ This Article

1. Jane Addams, *Social Conditions in Domestic Service*, 13 MASS. LAB. BULL. 1, 1-2 (1900).

2. See, e.g., Gillian K. Hadfield, *Households at Work: Beyond Labor Market Policies to Remedy the Gender Gap*, 82 GEO. L.J. 89, 91-98 (1993) (highlighting the implications of male versus female work in the economy and the discounting of household work in the labor market); Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1 (1996) (examining the law's treatment of women's unpaid household work); Reva B. Siegel, *Home as Work: The First Women's Rights Claim Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1081-112 (1994) (exploring the claim of early feminists that women were entitled to joint rights in family assets due to their household labor).

3. See, e.g., Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1197-220 (1989) (addressing workplace issues which have the effect of devaluing women workers, such as sexual harassment and child care needs); Deborah Rhode, *Occupational Inequality*, 1988 DUKE L.J. 1207, 1212-23 (1988) (noting that individual choices and socialization patterns have contributed to unequal pay for women over the last century); Vicki Schultz, *Telling Stories About Women and Work*, 103 HARV. L. REV. 1749, 1799-815 (1990) (examining how the view of women as being well-suited for the domestic sphere has adversely influenced sex discrimination doctrine).

4. There have been a few recent exceptions. See Suzanne Goldberg, *In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws*, 3 YALE J.L. & FEMINISM 63, 67-73 (1990) (examining compliance and enforcement problems leading to the denial of workplace rights to paid domestics); Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51,

focuses on these workers and their “peculiar” position within the law of employment relationships.⁵

Throughout the nineteenth century, the separation of life into opposing spheres⁶ spawned two distinct, yet often overlapping, views of paid household work. On the one hand, the work represented a private, pleasant activity that provided the perfect arena for working-class women to learn the skills demanded of marriage and motherhood.⁷ On the other hand, the work was seen in stark economic terms, as strenuous productive labor that women entered into out of financial necessity.⁸ In this Article, I examine how those competing images shaped the contest among maids, mistresses, and progressive reformers to determine the terms and conditions of the paid household relationship during the Progressive Era and the New Deal. Suffused with notions of property and entitlement, the struggle at its core was for control of the domestic worker herself.⁹ In the process of unraveling that struggle, I offer an account of the relationship between economic justice and concepts of family

55-62 (1997) (exploring racial distinctions in the performance of housework); Silbaugh, *supra* note 2, at 72-79 (discussing the exclusion of domestic service from the National Labor Relations Act and the Occupational Safety and Health Act).

Considerable investigation exists on paid household labor in other disciplines. *See generally* ELIZABETH CLARK-LEWIS, *LIVING IN, LIVING OUT* (1994) (examining the experiences of African-American household workers who migrated from the South to work in Washington, D.C. during the 1910s and 1920s); FAYE E. DUDDEN, *SERVING WOMEN: HOUSEHOLD SERVICE IN NINETEENTH-CENTURY AMERICA* (1983) (exploring domestic service in the antebellum era); EVELYN NAKANO GLENN, *ISSEI, NISEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE-AMERICAN WOMEN IN DOMESTIC SERVICE* (1986) (studying the twentieth-century history of Japanese immigrant and Japanese-American household workers in the San Francisco Bay area); DAVID M. KATZMAN, *SEVEN DAYS A WEEK: WOMEN AND DOMESTIC SERVICE IN INDUSTRIALIZING AMERICA* (1978) (focusing on the changing ethnic and racial composition of household workers from 1870 to 1920); PHYLLIS M. PALMER, *DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES, 1920-1945* (1989) (examining the historical role of wives and household work and the transformation of the American home between 1920 and 1945); JUDITH ROLLINS, *BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS* (1985) (examining the relationships between African-American household workers and their white employers in the Boston area); MARY ROMERO, *MAID IN THE U.S.A.* (1992) (studying Chicana household workers); BONNIE THORNTON-DILL, *ACROSS THE BOUNDARIES OF RACE AND CLASS: AN EXPLORATION OF WORK AND FAMILY AMONG BLACK FEMALE DOMESTIC SERVANTS* (1994) (documenting the experiences of Black women who worked as paid household workers during the 1940s and 1950s); DONNA L. VAN RAAPHORST, *UNION MAIDS NOT WANTED: ORGANIZING DOMESTIC WORKERS 1870-1940*, at 95-185 (1988) (exploring reasons why domestic service was never successfully organized).

5. This Article borrows from Janet Hooks to refer to paid household workers as those individuals who are “engaged in personal service in private homes. They may be housekeepers, laundresses, cooks, chambermaids, children’s nurses, day workers, general workers, and so forth, in private families.” JANET HOOKS, *WOMEN’S BUREAU, U.S. DEPT. OF LABOR, WOMEN’S OCCUPATIONS THROUGH SEVEN DECADES* 23 (1947). The term paid household work is used interchangeably herein with domestic service. This Article focuses exclusively on women since the overwhelming majority of paid household workers within the United States were women during the time period at issue in this Article. *See* KATZMAN, *supra* note 4 (noting that domestic service has been performed traditionally by women).

6. *See* Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 *HARV. L. REV.* 1497, 1499-1500 (1983) (exploring the legal implications of the private/public dichotomy).

7. *See infra* Parts IV.A.1, V.

8. *See infra* Parts II, IV.A.2.

9. *See infra* Parts II.B, V.B.

privacy¹⁰ that builds upon inter-gender analyses of home and work while according centrality to that dichotomy as it has been determined by power dynamics *among* women. Drawing upon historical evidence, I explore the ways in which privileged white women argued both for and against the regulation of domestic service in an effort to maintain their class status and to promote the interests of their families.

The historical background propelling this exploration is one of exclusion. For seven decades, from 1870 to 1940, more wage-earning women worked in the field of “domestic service” than in any other occupation.¹¹ As a group, household workers were some of the most disadvantaged workers in the United States.¹² Yet, with the possible exception of farm workers,¹³ they received the least legal protection of any group of workers in the United States.¹⁴ Excluded from the labor standards regime forged during the Progressive Era and the New Deal,¹⁵ private domestics drifted by the wayside, confined to an occupation often regarded as “a social misfit” and “the stepchild among industries.”¹⁶

To explain the tradition of exclusion, it is tempting to suppose that

10. *See id.*

11. *See* HOOKS, *supra* note 5, at 52.

12. *See infra* notes 95-103 and accompanying text (noting the disadvantages of employment in domestic services).

13. Domestic service workers and farm workers were the two groups most consistently excluded from labor legislation. *See* RONNIE STEINBERG, WAGES AND HOURS: LABOR AND REFORM IN TWENTIETH-CENTURY AMERICA 132 (1982) (documenting enacted protective legislation of workers by industry); *see also* Mark Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1987) (discussing the exclusion of farm work from the Fair Labor Standards Act).

14. *See* STEINBERG, *supra* note 13, at 132 (indicating that domestic service workers as a group received the least amount of legal protection compared to eight other worker industry groups).

15. By 1941, 43 states had passed maximum hour laws covering some segment of female workers, and 25 states had enacted protective minimum wage laws. *See Domestic Workers and Legislation* 1 (1941) [hereinafter *Domestic Workers*] (Watson Papers, Folder 6.19, Catherwood Library, Cornell School of Industrial and Labor Relations) (on file with author). Of the states limiting the hours of female workers, only Washington extended coverage to paid household workers. *See id.* Of those states with minimum-wage laws, Wisconsin stood alone in covering paid household workers. *See id.* At the federal level, paid household workers were explicitly excluded from major New Deal labor legislation. *See* Economic Security Act of 1935, ch. 531, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301-397(f) (1994)); National Labor Relations Act of 1935, ch. 372, 49 Stat. 449 (codified as amended 29 U.S.C. §§ 151-169 (1994)); Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201-219 (1994 and Supp. III 1997)). Although not explicitly excluded from the National Industrial Recovery Act of 1933, ch. 90, 48 Stat. 195 (held unconstitutional in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935)), the National Recovery Administration concluded that domestic service workers were not included within the scope of the Act. *See infra* notes 228-29 and accompanying text (discussing the National Recovery Administration’s treatment of paid household workers).

Women engaged in paid household work were not the only wage workers who went without the protection of employment legislation. Depending on the particular moment in history, the state in question, and the type of law at issue, any number of workers were not covered. *See* STEINBERG, *supra* note 13, at 132 (estimating coverage of certain categories of industry employees under employment laws from 1900 to 1970). As occupational categories, however, domestic service and farm work were the only two fields that were consistently and often explicitly excluded from employment legislation. *See id.* at 133.

16. *Assuaging Mistress and Maid Troubles*, N.Y. SUN, Mar. 12, 1941.

the difficulties associated with domestic service simply went unnoticed because of the job's location within the private sphere of the home. One might reasonably infer that domestic service, hidden behind closed doors, typified the maxim "out of sight, out of mind" and thus failed to attract public attention. Yet, while today's paid household worker rarely enters into the public eye,¹⁷ the "servant problem"¹⁸ that so beleaguered America's middle-class throughout the nineteenth century and well into the first half of the twentieth century, transformed paid domesticity into what one observer termed "the Great American" question.¹⁹

Far from forgotten, 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.²⁰ By the end of the nineteenth century, the pervasiveness of the issue had given birth to a household labor movement which challenged the exclusion of domestic service from the developing labor standards regime.²¹ The outgrowth of a larger campaign to organize domestic service through the application of scientific and management principles,²² household labor reformers believed that the relationship between maid and mistress had to be structured in economic terms, as a modern employment relationship, governed by minimum labor standards.²³ Reformers advocated the inclusion of household workers in the entire panoply of labor

17. The major exception to this observation is the Zoe Baird controversy which occurred in 1993. *See infra* notes 424-33 and accompanying text.

18. *See infra* Part I.B (discussing the servant problem).

19. LUCY MAYNARD SALMON, *DOMESTIC SERVICE* 1 (2d ed. 1901) (examining the historical development of the domestic service industry and discussing its future in an increasingly industrial world).

20. *See* HENRIETTA ROELOFS, *YWCA COMMISSION ON HOUSEHOLD EMPLOYMENT, THE ROAD TO TRAINED SERVICE IN THE HOUSEHOLD* 9 (Bull. No. 2, 1915) (YWCA National Board Archives, New York. Records File Collection, Sophia Smith Collection) [hereinafter *YWCA Papers*] (discussing the potential advantages of treating the paid household relationship as an employer and employee relationship); I.M. Rubinow & Daniel Durant, *The Depth and Breadth of the Servant Problem*, 34 *MCCLURE'S MAG.* 576, 583 (discussing the possibility of an eight-hour day for paid household workers).

21. *See Do Servants Need a Code? A Socratic Dialogue*, 92 *FORUM* 34, 40 (1935) ("[D]o not . . . relationships between household employers and employees involve similar factors of hours, duties, and privileges to those in industry, and hence ought not the basic principles of industrial relationship be adapted to the home?"); Amey E. Watson, *Employer-Employee Relationships in the Home*, 143 *ANNALS AM. ACAD.* 49, 55 (1929) [hereinafter *Employer-Employee Relationships*] (exploring the origins of the movement to reconceptualize domestic service as an economic enterprise). *See generally infra* Part III (detailing the reform campaign to transform domestic service into a regulated employment relationship).

22. *See* JULIE A. MATTHAEI, *AN ECONOMIC HISTORY OF WOMEN IN AMERICA* 157-67 (1982) (describing attempts to view homemaking as a profession and applying current economic and labor theory to the labor involved). *See generally* CHRISTINE MCGAFFEY FREDERICK, *EFFICIENT HOUSEKEEPING, OR, HOUSEHOLD ENGINEERING, SCIENTIFIC MANAGEMENT IN THE HOME* 8 (1925) (maintaining that application of scientific management to housework could reduce work, waste, and costs).

23. *See* HENRIETTA I. GOODRICH, *WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION, A POSSIBLE ALLEVIATION OF PRESENT DIFFICULTIES IN DOMESTIC SERVICE* 1 (1904) (observing that the work of the home had to be organized "so as to give the household employee the same definite hours and personal independence that are enjoyed by the worker in other trades").

policies, including wage protection,²⁴ social security,²⁵ and collective bargaining rights.²⁶ The unbearably long hours that household employers exacted from their workers, however, was the force that galvanized the entire movement.

Although I do not provide an exhaustive history of the movement, its quest to shorten the workday of domestics is integral to my analysis. In examining that quest, I reveal how different perceptions of paid household service aided in the commodification of domestic service workers as vehicles to allow for the actualization of privileged white women and their families. Two interrelated arguments are developed herein to sustain this conclusion. First, while I applaud the movement's efforts to reconceptualize domestic service as a legally defined employment relationship, its primary objective in doing so was not to place the domestic worker on a more equal footing with her employer. Rather, the movement's main objective was to insure the presence of a domestic class to attend to the needs of America's middle-class. Domestics were typically treated as workers deserving of labor benefits insofar as such treatment would advance the interests of employers.²⁷ Even as the movement proclaimed that domestic service should be a regulated relationship between employer and employee, most reformers never fully committed to that vision.²⁸

This problematic agenda must be understood in reference to the movement's core composition. Throughout its existence, the movement was affiliated with a wide array of associations and institutions.²⁹ Organizations led by middle-class female, however, were at the forefront of the campaign.³⁰ These groups worked hand-in-hand with government agencies directed by women³¹ to restructure domestic service. In exploring the gendered assumptions

24. See *infra* note 235 (noting reform efforts to include domestics in state wage and hour laws).

25. Benson Ellis, *Unemployment Insurance for the Household Worker*, 34 J. OF HOME ECON. 161, 161 (1942) (documenting reform efforts to extend coverage of the Social Security Act of 1935 to domestic service workers); see also *infra* note 233 (discussing the exclusion of paid household workers from the Social Security Act of 1935).

26. See *infra* note 199 (surveying attempts to organize domestic service workers and discussing obstacles to the successful organization of domestic service workers).

27. See, e.g., KATZMAN, *supra* note 4, at 263 (observing that "most reformers were more interested in easing the servant shortage than in radically improving the lot of domestics").

28. See *infra* notes 319-29 and accompanying text (discussing the movement's preference for a self-regulatory framework as an expression of the reformers' ambivalence toward fully conceptualizing the domestic service relationship as an employment relationship).

29. See PALMER, *supra* note 4, at 12 (listing organizations affiliated with the reform movement).

30. Such organizations included the Women's Educational and Industrial Union, the Young Women's Christian Association, the National Committee on Household Employment, and the League of Women Voters. See PALMER, *supra* note 4, at 112 (listing the involvement of women's groups in post-World War II era); *Employer-Employee Relationships*, *supra* note 21, at 55 (documenting the involvement of women's groups at the turn of the century).

31. The most notable government agencies that were involved in the household labor movement were the Women's Bureau and the Works Progress Administration ("WPA"). See *infra* notes 201-02 and accompanying text; see also Ellen Woodward, *Household Employment and the WPA*, 28 J. OF HOME ECON. 439 (1936) (outlining the WPA's household training program).

undergirding the creation of the welfare state, feminist historians have analyzed how middle-class women reformers agitated for labor protection on behalf of wage-earning women (who labored in occupations *other than* domestic service) on the basis of women's familial obligations as wives and mothers.³² Similar gendered concerns framed the vision of the women who initiated and led the household labor movement save for one crucial distinction: the family which inspired the crusade to standardize the working conditions of domestic service was not that of the worker but her employer.³³ The typical household reformer, who as a member of the employing class was likely to employ a domestic herself, approached the labor movement as a way "to make it possible for . . . constantly fretting housewives to be supplied with more faithful servants."³⁴

The second argument focuses on the response of household employers who opposed the labor movement. The debate over whether the domestic service relationship should be regulated was fought largely among white middle-class women against a backdrop of legislative disinterest.³⁵ On one side were reformers, who believed that domestic service had to be regulated to insure a domestic labor pool. On the other side were traditionalists, who shared the reformers' goal of increasing the supply of domestics, but who were adamantly resisted the movement's regulation strategy.³⁶ Relying upon their status as keepers of the home and the private character of domestic service, traditionalists claimed a right of unfettered access

32. See generally JUDITH A. BAER, *THE CHAINS OF PROTECTION: THE JUDICIAL RESPONSE TO WOMEN'S LABOR LEGISLATION* (1978) (explaining that the motives of middle-class reformists in lobbying for protective legislation included maintaining the responsibilities of women in the household); EILEEN BORIS, *HOME TO WORK: MOTHERHOOD AND THE POLITICS OF INDUSTRIAL HOMEWORK IN THE UNITED STATES* (1994) (documenting the history, conditions, and regulation of homework); GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917-1942* (1995) (exploring the development of early welfare policies and programs); Barbara J. Nelson, *The Origins of the Two-Channel Welfare State: Workmen's Compensation and Mother's Aid*, in *WOMEN, THE STATE, AND WELFARE* 123 (Linda Gordon ed., 1990) (exploring the legislative origins of women's distinctive relationship to the welfare state).

33. See *infra* Part I (analyzing how concern for the needs of middle-class families led reformers to push for improved working conditions in domestic service).

34. *Novel Plan for Securing Good Girls and Giving Them Pleasant Homes* (n.d.) (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author).

35. Groups of domestics were also involved in the household labor movement. See *infra* notes 230-31 and accompanying text (documenting efforts by paid household workers to gain coverage under the National Industrial Recovery Act of 1933). Apart from the movement, it must be stressed that paid household workers have persistently struggled against the exploitative conditions in domestic service. See, e.g., KATZMAN, *supra* note 4, at 197-98 (commenting on how Black servants purposely worked slowly and poorly, thus using white-held stereotypes to their advantage to cut down on the number of demands made by employers); THORNTON-DILL, *supra* note 4, at 90-96 (discussing tactics used by Black domestics to resist the control of white employers); Tera Hunter, *Domination and Resistance*, 34 *LAB. HIST.* 205 (1993) (documenting the strike of Atlanta washerwomen in 1881); JAQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW* 131-32 (1986).

36. See, e.g., PALMER, *supra* note 4, at 125 (reporting that although housewives desired more domestics, they refused "to countenance the idea that households could be regulated . . . like businesses"); see also, e.g., *infra* Part V.A (discussing the opposition of traditionalists to the reform movement's attempts to regulate domestic service).

to the services of their workers.³⁷

This Article is divided into six parts. Part I explains how forces— allied with the class of household employers—eventually demanded that domestic service be transformed into a regulated employment relationship. The answer to that question is located in the impact that nineteenth-century industrialization had upon the home and in the servant problem of the late-nineteenth and early twentieth centuries. Part II links the movement’s main objective—to shorten domestics’ work day—to the history of slavery and the common law of master and servant. Although legally free laborers, paid household workers remained firmly in the clutches of an anachronistic way of life. Part III draws upon the records of leading reform groups to survey briefly the legal strategies undertaken by the reform movement to improve the conditions in domestic service.

Parts IV and V explore the ways in which competing visions of domestic service informed the movement’s regulatory discourse and fueled opposition to it. Specifically, Part IV examines the limitations of the household labor movement by considering how reformers responded to prevailing conceptions of paid household work, and evaluating the movement’s preference to reform domestic service through a contractually-based, self-regulatory approach. Part V evaluates the merits of the privacy-based claim that a system of regulated hours in domestic service would impede the freedom of employing families and would destroy the integrity of family life. The tenability of such a position, I contend, requires one to accept that household employers were not only entitled to paid domestics, but that the workers themselves were propertied objects.

Although interested in the needs of working-class women only indirectly,³⁸ the movement had almost no interest, indirect or otherwise, in reforming the occupation for the benefit of the many racial-ethnic women who were disproportionately represented in domestic service.³⁹ Both reformers and traditionalists were primarily concerned with persuading white, working-class women to leave positions in the industrial sector for domestic service jobs.⁴⁰ This preoccupation influenced the movement in significant ways, shaping its strategies and undermining its potential effectiveness. Part VI assesses the racial dynamics of the movement.

This inquiry is historical in focus. The implications of the analysis

37. See *infra* Part V (exploring the argument of paid household employers that regulating the hours in domestic service would infringe on family privacy).

38. See KATZMAN, *supra* note 4, at 263 (explaining that the real motivation for improving wages and working conditions was to increase the status of the work and thus attract more women, rather than a concern for the women themselves).

39. See *id.* at 219 (finding that in 1900 in New York City, 81% of all Black women wage earners were servants or laundresses compared to only 30% of white women).

40. See *id.* at 263 (characterizing the self-interest of reformers who pushed for better wages, hours and working conditions to lure more women and girls into service); see also PALMER, *supra* note 4, at 114-16 (documenting the involvement of housewives along with reformers, to attract working women back to domestic service).

presented herein, however, remain applicable to society today. Paid household workers continue to be marginalized by American society generally, and more specifically within the law of employment relationships.⁴¹ On the few occasions they are discussed in the context of labor policies, such conversations are likely to be driven by the interests of the employing class. Society insists on viewing what little social value has been accorded paid household work by way of reference to employing families and not the workers themselves. That tendency is particularly troubling in light of the increased demand for childcare,⁴² the current debate over welfare reform,⁴³ and the growing numbers of undocumented women who are serving as paid household workers.⁴⁴ These issues directly coincide with suggestions to turn paid household work into a form of workfare, so as to lessen some of the pressure on the public coffers and to help alleviate America's childcare concerns.⁴⁵ Although a full exploration of these contemporary issues is beyond the scope of this Article, the concluding section combines the past and the present to assess some of the current legal challenges confronting paid household workers.

I. ORIGINS OF A MOVEMENT

To appreciate how a movement to transform domestic service into a regulated employment relationship originated with the employing class, two related dimensions of middle-class life in the industrial era must be considered. First, it is necessary to survey briefly the profound role that domestics played within the lives of America's middle-class during the late nineteenth and early twentieth centuries.

41. See *infra* notes 420-23 and accompanying text (highlighting contemporary problems facing household workers).

42. See, e.g., Sara J. Buehler, *Child Care Tax Credits, The Child Tax Credit, and the Taxpayer Relief Act of 1997: Congress' Missed Opportunity to Provide Parents Needed Relief from the Astronomical Costs of Child Care*, 9 HASTINGS WOMEN'S L.J. 189 (1998); Ann Collins & Barbara Reisman, *Child Care Under the Family Support Act: Guarantee, Quasi-Entitlement, or Paper Promise*, 11 YALE L. & POL'Y REV. 203 (1993); Jean Baker, *Will Uncle Sam Provide a Comprehensive Solution for American Families?*, 6 CONTEMP. HEALTH L. & POL'Y 239 (1990).

43. See *infra* notes 439-40 and accompanying text.

44. See *infra* notes 437-38 and accompanying text.

45. See D. Potter Eaton, Editorial, *Blame the Liberals*, S.F. CHRON., Feb. 16, 1993, at A14 (blaming the shortage of domestic workers on welfare programs and suggesting that government-sponsored programs to provide child-care workers would help people get off welfare); Robert S. Weil, Editorial, *Not Welfare, But Employment Subsidies*, N.Y. TIMES, Mar. 27, 1994, at 16 (suggesting that government subsidized domestics would help ease the welfare rolls while providing employers with needed childcare); Thomas Sowell, *Serving Is Not Servitude*, FORBES, Mar. 1, 1993, at 86 (blaming the shortage of domestics on welfare programs, unemployment payments, and the characterization of domestic work as menial). While suggestions to transform domestic service into a form of workfare have not yet been realized in the United States, such proposals have been implemented in other countries. See Charles Bremmer, *French Maids Can Serve Tax Breaks for Middle Classes*, TIMES (London), Nov. 5, 1994 (detailing a French scheme which attempts to reduce tax expenditures and unemployment by providing a child-care subsidy to individuals wishing to employ paid household workers; also referencing similar schemes in Denmark, Italy, and Canada); see also Andrew Roberts, *Is It Now Time We Brought Back Servants?*, DAILY MAIL (London), Nov. 3, 1994, at 8 (arguing that Britain should follow in the footsteps of other European countries and implement a tax-incentive plan to promote the hiring of private domestic workers so as to decrease state welfare spending).

From there, an exploration of the “servant problem”—the middle-class preoccupation with locating and keeping “good help”—is required. Gaining prominence in urban areas in the North first, the servant problem stemmed from a shortage of household workers caused by the increased employment opportunities industrialization afforded white working-class women.⁴⁶

A. “*The Elaboration of Needs*”⁴⁷

There will always be the necessity of securing help to make possible the harmonious operation of the private home with its father-mother-child group.⁴⁸

The social and cultural changes that accompanied industrialization and urbanization during the nineteenth century significantly shaped the agenda of the household labor movement. In the wake of industrialization, the demand for domestic service workers dramatically escalated. Families who had previously attended to their own household tasks found themselves, for the first time, in a position to hire domestics.⁴⁹ Access to a domestic served a number of functions; foremost among them was social status.⁵⁰ For the new middle class, a domestic symbolized prestige and prosperity, and legitimated their claim to respectability. As sociologist Judith Rollins has observed, employers used “their domestics to help define their new class identity.”⁵¹

Affordability of a domestic also allowed the middle class to realize fully the type of ideal privacy that bourgeois capitalism demanded. To be a private family in the post-industrial era necessitated a home environment that was both void of economic activity and ideologically opposed to the market.⁵² In contrast to the “highly competitive and often brutal world of commerce and industry”⁵³—symbolizing the public sphere of the market—the private realm of home and family stood as a comforting, nurturing haven.⁵⁴ In order to realize that

46. See *infra* text accompanying notes 79-80 and 122-29 (documenting the movement of working women into the industrial sector and the preference among women for office or factory work over domestic service).

47. DUDDEN, *supra* note 4, at 104.

48. Sara J. Wardel, *Who'll Wash the Dishes*, 151 *OUTLOOK & INDEPENDENT* 168, 169 (1929).

49. See DUDDEN, *supra* note 4, at 108 (describing the growth of the nineteenth-century economy and the new social status quo); RUSSELL LYNES, *THE DOMESTICATED AMERICANS* 163 (1963).

50. See DUDDEN, *supra* note 4, at 108 (noting that the rise of the American standard of living led to the race to achieve economic rewards, which implied a higher social status).

51. ROLLINS, *supra* note 4, at 35; see also DUDDEN, *supra* note 4, at 109, 112 (reporting the observations of a nineteenth-century author: “Humble as our position in the great world . . . we had a certain status to maintain. We must live in a respectable house, we must dress genteelly at least, and keep a servant too.”) (citation omitted).

52. See Olsen, *supra* note 6, at 1504 (noting that the state may not intrude upon the “private family” since it is the “sanctuary of privacy into which one can retreat”).

53. CHRISTOPHER LASCH, *HAVEN IN A HEARTLESS WORLD: THE FAMILY BESIEGED* 5 (1977).

54. See *id.* at 6 (describing the bourgeois family as “an emotional refuge in a cold and competitive society”); see also NANCY F. COTT, *THE BONDS OF WOMANHOOD: “WOMAN’S SPHERE”*

lofty ideal, families had to comply with an endless list of standards concerning cleanliness, childcare, and cooking.⁵⁵ For almost every standard imaginable—from personal hygiene and silverware polishing to the dangers of house dust—there was an expert on the subject and a manual advising housewives how best to refine the private sphere in conformity with the tenets of capitalist bourgeoisie.⁵⁶

Faithful adherence to the ever-increasing demands of bourgeois domesticity was a difficult and time-consuming responsibility which fell squarely upon the shoulders of the middle-class housewife.⁵⁷ In prosperous families, a significant bulk of that responsibility was shifted onto the shoulders of a domestic, who performed “the tasks beneath, distasteful to, or too demanding for the family members.”⁵⁸ So freed from many of the demands of domesticity, employers could devote their energies to other endeavors such as more lucrative jobs, volunteer and cultural activities, or leisure.⁵⁹

Beyond the benefits bestowed by way of increased liberty and escape from the drudgeries of housework, employment of a domestic was especially advantageous to the white middle-class woman. In addition to attending to the social and emotional well-being of her family, the woman of the house had to cultivate her own image to conform to the notions of purity and delicacy imposed by the ideology of true womanhood.⁶⁰ The fulfillment of that image required middle-class women to avoid soiling their own hands by refraining from various types of housework such as scrubbing floors, washing clothes, making fires, and emptying slop jars.⁶¹ They were able to do so by hiring another woman to assume those household

IN NEW ENGLAND, 1780-1835, at 64 (1977) (quoting a New Hampshire pastor, in an 1827 address on female education, who described the home as where a man “seeks a refuge from the vexations and embarrassments of business”).

55. See DUDDEN, *supra* note 4, at 135-54; PALMER, *supra* note 4, at 46-60. See generally LYDIA RAY BALDERSTON, HOUSEWIFERY: A MANUAL AND TEXT BOOK OF PRACTICAL HOUSEKEEPING 240-317 (1924) (detailing procedures for the cleaning and care of beds, bathroom, and the kitchen; discussing the appropriate use of disinfectants and fumigants; outlining how to clean and renovate various types of household furnishings; and explaining how to control household pests).

56. See BALDERSTON, *supra* note 55, at 240-317.

57. See KATZMAN, *supra* note 4, at 134-35 (noting that it was the mistress of the house that often did the work or was evaluated in society by her ability to manage successfully her servants and the work).

58. *Id.* at 270 (explaining that the domestic did many unsavory tasks which allowed middle-class women to engage in leisure activities).

59. See THORSTEIN VEBLÉN, THE THEORY OF THE LEISURE CLASS 62 (1973) (describing the “need of vicarious leisure, or conspicuous consumption of service, [as] a dominant incentive to the keeping of servants”).

60. See COTT, *supra* note 54, at 200 (noting that women’s values and place in society were based on cultural interpretations of their special female “qualities”); Barbara Welter, *The Cult of True Womanhood: 1820-1860*, 18 AM. Q. 151, 152 (1966).

61. See PALMER, *supra* note 4, at 138 (explaining that in the Western unconsciousness, “good” women were never associated with dirt and that to be associated with dirt meant a diminished social status); CHRISTINE STANSELL, CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860, at 159 (1987) (finding that “being a lady meant *not* doing certain kinds of housework”).

duties associated with filth and degradation.⁶²

White middle-class women also were able to elevate their status within the household because of domestics.⁶³ Historian Faye Dudden has noted that “domesticity’s new view of women’s roles, while implicitly assigning the domestic to drudge work, called employers to ‘higher’ tasks and to supervision.”⁶⁴ By supervising the work of domestics, many housewives strove to achieve a position of managerial authority similar to that held by men in the world of business.⁶⁵ “Like her husband’s occupation in running a shop or managing a factory, a middle-class housewife’s job was to maintain and direct a well-run house.”⁶⁶ Indeed, as discussed later in this Article, household reformers tapped into that comparison in an effort to persuade employing women that domestic service had to be transformed into a regulated employment relationship.

During the early twentieth century and following the attainment of women’s suffrage in 1920, domestics enabled some white middle-class women to concentrate on employment outside of the home.⁶⁷ Hiring a domestic allowed middle-class women to pursue paid occupational interests, while drastically minimizing the burden of a double day.⁶⁸ Having a domestic helped to insure that the private realm would not slip into a state of disrepair because the designated keeper of the home was working for wages outside of the home.⁶⁹

Throughout the late nineteenth and early twentieth centuries, these social and cultural forces resulted in more members of the middle class turning to domestic service for help attending to their private affairs. But as demand rose, the number of working-class women willing to cater to the many needs of the middle class plummeted.⁷⁰ The next section briefly outlines the parameters of that exodus, which was concentrated in industrial areas that offered white working-class women alternative employment opportunities.

62. See PALMER, *supra* note 4, at 138 (arguing that middle-class white women were able to create and maintain a pure and pristine image by hiring domestic help to do the “dirty” work).

63. See DUDDEN, *supra* note 4, at 163-71 (describing the impact that men’s supervisory and entrepreneurial skills had on women: the women would imitate the men’s experiences, tones, moods, and skills and at times find themselves more successful at supervision).

64. *Id.* at 155 (remarking on the new power middle-class women in the home found with their ability to fulfill their various roles as wife, mother and housekeeper—all with the help of a domestic worker whom they supervised).

65. *Id.* at 156 (“[Housewives] who supervised domestics often found it a role that offered flattering parallels to the work of entrepreneurial or managerial men.”).

66. THERESA MCBRIDE, *THE DOMESTIC REVOLUTION: THE MODERNIZATION OF HOUSEHOLD SERVICE IN ENGLAND AND FRANCE, 1820-1920*, 27 (1976).

67. See KATZMAN, *supra* note 4, at 269-70 (noting that having a domestic allowed middle-class women time to pursue occupations outside of the home); PALMER, *supra* note 4, at 63 (same).

68. See KATZMAN, *supra* note 4, at 269-70.

69. See *id.*

70. See *infra* note 79 (documenting the decline in the supply of paid household workers).

B. *The Servant Problem*

The servant girl is disappearing.⁷¹

The increased reliance on paid domestics inevitably heightened the tension between those on either end of the domestic service relationship. Throughout the nineteenth century, complaints about domestics flourished in women's magazines, scholarly books and journals, newspapers, periodicals, and domestic manuals.⁷² "To the helped, the 'help' were inefficient, imperious, rude, independent, and insolent."⁷³ Lucy Salmon's *Domestic Service*, a classic in the domestic service field, refers to the servant problem as the "great American question."⁷⁴

By the beginning of the nineteenth century, the tenor of discussions regarding the servant problem had shifted noticeably. While concerns about quality persisted, the crux of the problem was viewed increasingly as a labor dilemma—an expanding middle class was simply unable to locate sufficient help.⁷⁵ Although the supply of

71. Rubinow & Durant, *supra* note 20, at 576 (recognizing that when given any opportunity, servants will flee from domestic service, leaving their employers hopeless).

72. See KATZMAN, *supra* note 4, at 223 (recalling that the servant problem was the "bread and butter" of women's magazines between the Civil War and World War I); LYNES, *supra* note 49, at 168-72 (commenting on the pool of publications attempting to reform the American household).

73. LYNES, *supra* note 49, at 161.

74. SALMON, *supra* note 19, at 1.

75. See, e.g., Rubinow & Durant, *supra* note 20, at 585 (defining the servant problem as a "scarcity of skilled houseworkers"); see also Susan M. Strasser, *Mistress and Maid, Employer and Employee: Domestic Service Reform in the United States, 1897-1920*, MARXIST PERSP., Winter 1978, at 53 (noting that by the turn of the nineteenth century the servant problem had become an issue of quantity). Defined as a labor problem, the servant problem was a national phenomenon, but one with perceptible geographical distinctions, particularly between the North and the South. In the South, there was a "plethora of servants." KATZMAN, *supra* note 4, at 227. The majority of Southern domestics were Black women who had few alternative occupational choices available. See JONES, *supra* note 35, at 128. Thus, the claimed shortage of domestics in the South was not attributable to women making inroads into other occupations. Instead, when Southern white housewives fretted that they were going servantless, they were most often expressing three concerns. First, the Civil War had led to the disappearance of "Mammy," the ideological construct of the plantation's faithful household servant and the South's most perfect slave. See DEBORAH GRAY WHITE, AIN'T I A WOMAN? FEMALE SLAVES IN THE ANTEBELLUM SOUTH 227-56 (1979) (discussing the perceptions surrounding the "mammy"); BELL HOOKS, AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM 84-85 (1981) (discussing the roots and rationales underlying the creation of the Black mammy figure by Southern whites); K. SUE JEWELL, FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES AND THE SHAPING OF U.S. SOCIAL POLICY 37-42 (1993) (explaining why the image of "mammy" is important to understanding American culture). As whites saw it, mammy had been replaced by trifling young Black women who were shirking their responsibility as domestics. See HOWARD N. RABINOWITZ, RACE RELATIONS IN THE URBAN SOUTH, 1865-1890, at 74 (1978) (observing that Southern white society "had been troubled by the unreliability of Negro domestic help since emancipation"). The sentiment was aptly expressed by "Mrs. Ward" in her testimony before an 1885 Senate Committee:

No matter how much [Black domestics] may be needed in the house, no matter how important the occasion may be . . . whether you have a wedding in the house, or sickness, or whatever you may have, they will just leave the cooking-stove and the housework and everything else and go off . . .

U.S. SENATE COMM. ON EDUCATION AND LABOR, 48TH CONG., REPORT UPON THE RELATION BETWEEN LABOR AND CAPITAL, vol. IV, at 328 (1885); see also KATZMAN, *supra* note 4, at 193-94 (commenting that Southern white women considered Black servant excursions to be the "greatest annoyance" in the system of Black subservience); SALMON, *supra* note 19, at 174 n.1

domestics almost doubled between 1870 and 1910,⁷⁶ the demand for household workers greatly exceeded the supply.⁷⁷ What particularly troubled the middle-class regarding such a market imbalance—and fueled the household labor movement—was that fewer women were entering household service relative to the total number of women in the paid workforce. From 1870 to 1940, domestic service was the predominate occupation of all gainfully employed women.⁷⁸ Beginning in 1870, however, the proportion of private household workers to the total population of employed women declined steadily, save for an occasional rebound.⁷⁹ As industrialization increased employment opportunities for working-class women, many women who might otherwise have entered domestic service instead chose factory or office work.⁸⁰

Of course, not all women had the same prospects to gain entrance into occupations other than paid household work during the late nineteenth and early twentieth centuries. Work in the expanding industrial sector was mainly available to white women⁸¹ as discrimination drastically limited the employment opportunities for

(providing comments on the servant problem in the South during the late-nineteenth century); Grace Robinson, *My Maid—Impossible Female*, LIBERTY, Mar. 22, 1930, at 52 (referencing complaints among Southern employers that Black domestics “‘must have part of the day off to attend . . . funerals, and many mornings are late on account of staying up all night at the wakes’”). The second aspect of the servant problem in the South was that a shortage of domestic workers in the North was creating scarcity in the South as northern household employment agencies actively recruited Black women from the South. See TERESA AMOTT & JULIE MATTHAEI, RACE, GENDER AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES 168 (1991) (recalling that thousands of Black women, recruited by employment agencies, migrated North to work as domestic servants); KATZMAN, *supra* note 4, at 227, 257. Finally, during the aftermath of the depression, white southerners complained frequently that they were losing their supply of paid household workers as a result of government relief. See JO ANN E. ARGERSINGER, TOWARD A NEW DEAL IN BALTIMORE: PEOPLE AND GOVERNMENT IN THE GREAT DEPRESSION 76 (1988) (“Baltimore housewives complained of inadequately trained servants and criticized the federal government for placing their domestics in work-relief programs.”).

76. See Allyson Sherman Grossman, *Women in Domestic Work: Yesterday and Today*, MONTHLY LAB. REV., Aug. 1980, at 17 (asserting that from 1870 to 1910, the number of private household workers increased from 960,000 to 1.8 million); see also SALMON, *supra* note 19, at 62-64 (providing a general overview of the political and social changes that gave rise to the increase in the number of immigrants working as domestics during 1870 to 1910).

77. See KATZMAN, *supra* note 4, at 228 (“In 1870[,] there were 127 household workers per thousand families; in 1930, sixty-seven per thousand.”); GEORGE J. STIGLER, DOMESTIC SERVANTS IN THE UNITED STATES, 1900-1940, at 4 (National Bur. of Econ. Research Occasional Paper No. 24, 1946) (reporting that in 1900, the ratio of paid houseworkers to families was 94.3 domestics per 1000 families; by 1940, that ratio had declined to 60.2 domestics per 1000 families); Rubinow & Durant, *supra* note 20, at 576 (reporting that in 1870, there was one paid household worker for every eight families; in 1900 only one for every 12 families).

78. See HOOKS, *supra* note 5, at 52.

79. In 1870, domestic service accounted for 52.3% of all employed women. See Grossman, *supra* note 76, at 18. By 1900, that number had dropped to 28.7%, and two decades later, had plummeted to 15.9%. See *id.* Over the next ten years, between 1920 and 1930, the number of domestic workers experienced a temporary rebound as immigration accelerated. See *id.* By 1950, however, domestic workers represented only 8.4% of all employed women. See *id.*

80. See *infra* text accompanying notes 121-29 (documenting the preference of women to work in occupations other than domestic service); see also KATZMAN, *supra* note 4, at 228 (noting that women took jobs in areas other than domestic service when industrialization created new job openings).

81. See, e.g., JONES, *supra* note 35, at 132 (noting the availability of factory jobs for working-class white women and their preference for such jobs over domestic service).

ethnic women.⁸² The reality of discrimination raises a critical point: employing classes, outside of the South, who complained about an inability to locate domestics because of competition with industry for workers, were usually bemoaning the lack of white women, native-born white women in particular.⁸³ Consequently, efforts to recruit women from industrial jobs into domestic service focused on white women.⁸⁴ As will become evident, this race-specific focus influenced the household labor movement in crucial respects.⁸⁵

The gradual disinclination of working-class women to “serve” led white middle-class housewives to lament endlessly about the difficulty of finding and keeping domestics.⁸⁶ Concern over the growing shortage of domestics began in industrial regions, most notably in the Northeast.⁸⁷ While most pronounced in urban areas, the servant problem extended into areas throughout the United States by the time of the New Deal.⁸⁸ The debate over the shortage of domestics spurred an untold number of proposed solutions.⁸⁹ At the turn of the

82. See AMOTT & MATTHAEI, *supra* note 75, at Part II (discussing the histories of minority women, including American Indian, Chicana-American, European-American, African-American, and Asian-American women).

83. See KATZMAN, *supra* note 4, at 226-27 (observing that household employers complained about the scarcity of domestics, “especially white native-born domestics”).

84. In describing the workers that they hoped to attract back to domestic service, reformers rarely mentioned race. However, constant references to such workers as women, who were increasingly finding jobs in industrial occupations, leave little doubt that the movement hoped to appeal to white women. See, e.g., School of Housekeeping (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author) (observing that the aim of the Boston-based Domestic Reform League is to “draw back to [domestic service] the class of young women who of late years have preferred to work in shop, factory, office, etc.”); *Would Insure Domestic Help*, N.Y. TIMES, Feb. 8, 1942, at 4D (observing that “[t]rained young women now going into other fields of service will be more content to remain in domestic service if they are not excluded from compensation benefits enjoyed by other workers”); Mary T. Waggaman, *Efforts to Standardize the Working Day for Domestic Service*, MONTHLY LAB. REV., Aug. 1919, at 207-08 (observing that if housewives were to locate domestics, the workers would have to come from stores, offices, and factories or from individuals seeking part-time employment); Ellen S. Woodward, *W.P.A. Household Workers’ Training and the United States Employment Service*, 3 EMPLOYMENT SERVICES NEWS 11, 12 (“Few American-born girls have chosen [paid housework] in preference to factory, mill, or office work”). Because of discrimination, few Black women were able to locate employment in the industrial sector. See Jones, *supra* note 35, at 136-38, 178-79 (documenting the difficulties that Black women confronted trying to gain access to industrial jobs). Instead, many were laboring in domestic service already. See, e.g., PALMER, *supra* note 4, at 12 (noting that Black women accounted for 46% of all domestics in 1920, 53% in 1930, and 60% in 1980).

85. See *infra* Part IV.A.1.b (discussing the impact the movement’s focus on white women had on the perception that domestic service workers did not require labor protection); *infra* Part VI (examining the racial dynamics of the movement).

86. A contributor to *Harper’s Bazaar* in 1908 described the servant problem as dividing the middle class into two classes: “Those who have servants and those who are trying to find them. You’ll know the first by their apprehension, and the second by their agony.” LYNES, *supra* note 49, at 166-67 (internal quotation omitted).

87. See KATZMAN, *supra* note 4, at 225-26 (noting that attempts to address the servant problem occurred in New York as early as 1825); *Announcement*, BULL. INTER-MUNICIPAL COMM. ON HOUSEHOLD RES., Nov. 1904, at 1 [hereinafter *Announcement*] (noting early efforts to tackle the servant problem by organizations in New York City, Boston, and Philadelphia).

88. The records of the household labor movement indicate that by the 1930s, organizations tackling the servant problem were located in cities such as Denver, Colorado and Red Wing, Minnesota. See, e.g., *The Joint Job in the Home*, 28 WOMAN’S PRESS 252 (1934) (reporting on movement activities in Tulsa, Chicago, Buffalo, Madison, Detroit, Seattle, Minneapolis, and Houston).

89. See, e.g., Elizabeth M. Rhodes, *Substitutes for the Present Household Worker*, BULL. INTER-

century, most of these proposals were rooted in the belief that the servant problem reflected the unprofessional, un-business-like, and unsystematized character of domestic service.⁹⁰ This assessment prompted a number of recommendations, including one suggesting that the servant problem be approached as part of the larger question of capital and labor.⁹¹

Building on this suggestion, progressive organizations within the household labor movement focused on the relationship between mistress and maid.⁹² The movement's first mission was to discover why "intelligent, ambitious, wage-earning young women [were] choosing the factory, the office, the schoolroom, the store, rather than domestic employment."⁹³ From a contemporary perspective, choosing other occupations over domestic service may appear obvious. Yet, framed against the gendered conventions of the nineteenth century, the choice was perplexing. It "seem[ed] so palpably true that a girl would be better off in a clean, warm, well-lighted kitchen than in an ill-ventilated and crowded workroom. . . ."⁹⁴

II. TO BE FREE

"[T]he hours are the root of the difficulty, and until they have been brought under regulation, until the idea that the worker's

MUNICIPAL COMM. ON HOUSEHOLD RES., Jan. 1905, at 5-6 (reporting on experiments to attract men into domestic service, to train young women for domestic service and to supply domestics by the hour or the day); Henrietta I. Goodrich, *A Possible Alleviation of Present Difficulties in Domestic Service* (Women's Educational and Industrial Union, 1904) (discussing two experiments, the Laboratory Kitchen and the Food Supply Company, to remove preparation of food from the home). See generally SALMON, *supra* note 19, at 212-62 (suggesting various possible remedies to the domestic shortage including profit-sharing, the specialization of household employment, and educating worker and employer in household affairs).

90. See, e.g., C. HÉLÈNE BARKER, WANTED A YOUNG WOMAN TO DO HOUSEWORK: BUSINESS PRINCIPLES APPLIED TO HOUSEWORK 27-88 (1917) (discussing various strategies involved in the application of business principles to housework); *Household Employment and the Business Basis*, 2 BULL. INTER-MUNICIPAL COMM. ON HOUSEHOLD RES. 8 (1905) (discussing efforts to resolve the servant problem by placing the relationship between household employer and employee on a business basis); KATZMAN, *supra* note 4, at 250-51 (observing that most advice offered on the servant problem by the turn of the century emphasized principles of scientific management).

91. See SALMON, *supra* note 19, at 2 (recognizing that economic principles warrant inclusion in the domestic servant discussion, despite often being ignored because the occupation does not require a large amount of capital on the part of the employer or employee; therefore, it is often excluded from discussions of labor, capital and wages). Other recommendations that emphasized the need to professionalize domestic service included the establishment of training schools for domestics and the creation of cooperative housekeeping programs. See *id.* at 186. In Boston and New York City, reformers established organizations to supply trained workers by the hour. See Rhodes, *supra* note 89, at 6 (reporting on the Household Aid Company of Boston).

92. See KATZMAN, *supra* note 4, at 146 ("What set domestic service apart from other occupations was the mistress/servant relationship, a highly personalized one in which the worker herself was hired rather than just her labor.").

93. FIRST REPORT OF THE COMMISSION ON HOUSEHOLD EMPLOYMENT 7 (1915) (presented at the 5th National Convention of the Young Women's Christian Association, May 5 to May 11, 1915) [hereinafter YWCA FIRST REPORT] (investigating the servant problem from the viewpoint of the wage-earning young woman).

94. *Food with Love in It* (n.d.) (Re Boston School) (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author) (describing a training school for servant girls).

whole time . . . belongs to her employer is relinquished, the household can not hope to compete for workers on equal terms with the factory, the store, and the office.”⁹⁵

The dissatisfaction with paid household service was felt, not only among employing households, but domestics as well.⁹⁶ In the eyes of the latter, caring for a home and a family not their own was riddled with disadvantages.⁹⁷ Paid domesticity often meant a life of isolation and loneliness⁹⁸ spent in uncomfortable living quarters.⁹⁹ These and other grievances created a constant source of dissatisfaction with the job.¹⁰⁰ In the late nineteenth and early twentieth centuries, investigations by household reformers consistently revealed that the most troubling condition of housework for pay—causing working-class women to shun the kitchens of the middle class—was a lack of freedom and independence.¹⁰¹ Centered on the length of the workday and the indefiniteness of the hours of service,¹⁰² this primary concern served as the cornerstone of the movement’s crusade to restructure domestic service into a modern employment relationship.¹⁰³

Part II explores the ways in which domestic service represented a form of unfree labor. First, this section surveys reform investigations of the workday of paid household workers. Second, the discussion situates the treatment of household workers within the common law of master and servant. Finally, this section considers how the construction of domestic service as a form of wage slavery influenced

95. *Domestic Service: Its Advantages and Drawbacks as a Wage-Earning Occupation*, 4 MONTHLY REV. OF U.S. BUREAU OF LAB. STATISTICS 352, 358 (1917).

96. See, e.g., KATZMAN, *supra* note 4, at 3-43 (reciting the “voices of domestics” depicting the pros and cons of domestic service in their own words).

97. See *id.* at 13-23 (describing some of the disadvantages such as the stigma of inferiority, isolation, frequent employer suspicion, employer distrust, and boredom).

98. See *id.* at 15 (“Even those who worked in homes with more than one servant complained of isolation.”); GAIL LAUGHLIN, DOMESTIC SERVICE: A REPORT PREPARED UNDER THE DIRECTION OF THE INDUSTRIAL COMMISSION 739, 758 (1901) (noting the difficulty domestics faced in making contact with others); YWCA FIRST REPORT, *supra* note 93, at 11 (“[T]here is no place where one is more lonely than to be alone *with people*, and that is what working in a house means to so many.”) (internal quotation omitted).

99. See LAUGHLIN, *supra* note 98, at 757 (reporting that servants were forced to sleep in closets without lights or fresh air); YWCA FIRST REPORT, *supra* note 93, at 8 (stating that the accommodations afforded to live-in domestics included bathroom floors, and “cheerless, cold, dark, attic” rooms which lacked heat or proper ventilation).

100. See DUDDEN, *supra* note 4, at 215-16 (asserting that the list of undesirable conditions also included sexual overtures from male members of the household).

101. See *infra* Part II.A (describing the all-consuming nature of domestic service which left workers little time for themselves).

102. See HELOISE EDWINA HERSEY, HISTORY OF THE DOMESTIC REFORM LEAGUE 4 (1903) (“The consideration which more than anything else leads women to prefer factory, shop or restaurant work to housework appears to be the greater independence enjoyed in those employments.”); YWCA FIRST REPORT, *supra* note 93, at 9 (“[T]he matter of time is the disadvantage which overshadows and dwarfs every other one.”); Robinson, *supra* note 75, at 54 (“Perhaps the greatest drawback of all to domestic service is the custom of having long and indefinite hours of service.”); see also *infra* notes 110-15 and accompanying text (documenting the long hours in domestic employment).

103. See *infra* text accompanying notes 210, 222 (documenting the movement’s emphasis on regulating hours in domestic service).

the decision of working-class women to boycott the job.

A. *This Day Never Ends*

In an era where a shorter workday was viewed as crucial to attaining freedom—and as such, constituted the labor movement’s preeminent objective¹⁰⁴—the records of the household labor movement reveal that paid domestics were anything but free. While hours varied widely among households, studies indicated that the working day of paid household workers exceeded that of other working women.¹⁰⁵

One of the earliest investigations on the subject occurred in Massachusetts under the direction of the Women’s Educational and Industrial Union (“WEIU”).¹⁰⁶ Conducted in 1898 and 1900, the two-part study compared the working day of domestics with female workers in factories, mills, and shops.¹⁰⁷ Mary E. Trueblood, the primary investigator, concluded that paid household workers typically labored “about two complete days of work per week more than other women.”¹⁰⁸

In 1901, Gail Laughlin led the first federal investigation into the conditions of paid household work.¹⁰⁹ Finding that domestics averaged a thirteen-hour workday,¹¹⁰ Laughlin’s report mirrored the results of the WEIU.¹¹¹ As increasing numbers of states passed protective maximum-hour laws¹¹² consistently excluding domestic service, the disparity between the hours of labor in domestic service and the general average of female-dominated occupations widened.¹¹³ Thus, the average work week in the manufacturing industry declined

104. See DANIEL T. RODGERS, *THE WORK ETHIC IN INDUSTRIAL AMERICA, 1850-1920*, at 156-60 (1974) (“[C]rusades [for shorter hours were] unsurpassed . . . by any other of the era’s labor issues.”); Martin Shefter, *Trade Unions and Political Machines: The Organization and Disorganization of the American Working Class in the Late Nineteenth Century*, in *WORKING-CLASS FORMATION 197-276* (Ira Katznelson & Aristide R. Zolberg eds., 1986) (noting that the eight-hour day “was the central demand of the American labor movement during the half-century following the Civil War”).

105. See BARKER, *supra* note 90, at 22 (“In domestic labor[,] the hours of work are longer than in any other form of employment, for they are unlimited.”); LAUGHLIN, *supra* note 98, at 757 (“As compared with hours of labor in most other occupations, it appears that the hours in domestic service . . . are relatively long.”); STIGLER, *supra* note 77, at 19-20 (concluding that the hours in domestic service were absolutely longer than in other jobs open to women).

106. See KATZMAN, *supra* note 4, at 141 (citing research by Mary E. Trueblood completed in 1900 under the sponsorship of the Boston-based WEIU).

107. See *id.* at 141-42.

108. See *id.* at 143.

109. See LAUGHLIN, *supra* note 98, at 743 (investigating the employment of domestic workers and the conditions surrounding that employment).

110. See *id.* at 756; see also KATZMAN, *supra* note 4, at 111 (“Nearly all domestics in the nineteenth century worked at least ten hours a day, with a full working day averaging eleven to twelve hours.”).

111. See *supra* notes 106-08 and accompanying text (discussing the WEIU and its conclusions).

112. By 1908, 21 states had passed maximum-hour laws for women. See BAER, *supra* note 32, at 31.

113. See *Domestic Workers*, *supra* note 15, at 1 (noting that of the 43 states with maximum-hour laws, only one—Washington—applied to paid household workers); see also STIGLER, *supra* note 77, at 20 (“The widening gap between hours in domestic service and the general average of female employment is due in large part to social legislation which has never covered servants.”).

from fifty-nine hours around 1900 to fifty by 1925, whereas domestic service workers continued to endure work weeks of seventy-two to eighty-four hours on a regular basis.¹¹⁴ This pattern of long hours continued to characterize domestic service into the 1930s.¹¹⁵

Opposition to the long hours in paid household work hinged both on the number of hours actually spent working and the full-time, live-in character of domestic service, the most common pattern of domestic service prior to World War II.¹¹⁶ In her article, *The Industrial Position of Women*,¹¹⁷ Dr. Emily Blackwell described the life of the live-in domestic:

She abandons family life, having no daily intercourse with her relatives as do out-door workers living in their own homes. She loses her personal freedom, for she is always under the authority of the employer. She can never leave the house without permission; there is no hour of the day in which she is not at the bidding of her mistress; there is no time in her life, except [a] few . . . seasons of absence, for which she may not be called to account.¹¹⁸

Thus, the live-in worker rarely enjoyed any separation between work and non-work life. Even during her free time, she had to be prepared to forgo personal plans in the event of last-minute demands from her employer.¹¹⁹ To borrow from Lewis Coser, domestic service was a “greedy institution,” one that did not “rest content with claiming a segment of the time, commitment, and energy of the servant” but demanded “full-time allegiance.”¹²⁰

Reformers thus concluded that it was no surprise that middle-class women were losing out to the world of business in the fight for workers:

Business hours are frequently long, but they are limited, and after the day’s work is over, the remainder of the twenty-four hours is at the disposal of the employees, who can still enjoy the happiness and freedom associated with the life of their own social circle. . . .

114. See PALMER, *supra* note 4, at 115 (citing STEINBERG, *supra* note 13, at 73 tbl. 3.6).

115. See *infra* note 134 (detailing reports of the workweek in paid household service during the 1930s).

116. See GLENN, *supra* note 4, at 141 (noting that live-in service was the most common pattern of domestic service prior to World War I).

117. Emily Blackwell, *The Industrial Position of Women*, 23 POPULAR SCI. MONTHLY 380 (1883).

118. *Id.* at 391; see also KATZMAN, *supra* note 4, at 112-13 (“When she wasn’t asleep, a live-in domestic was at the beck and call of her mistress.”); LAUGHLIN, *supra* note 98, at 760 (observing that live-in workers were expected to be on call for the requests of the employer at all times); Erna Magnus, *The Social, Economic, and Legal Conditions of Domestic Servants*, 30 INT’L LAB. REV. 190, 196 (1934) (“[T]he duties of a [live-in] servant are indefinite.”).

119. See Isabel Eaton, *Special Report on Negro Domestic Service in the Seventh Ward Philadelphia*, in W.E.B. DUBOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* 424, 463 (1996) (“The private domestic, even when given . . . liberty and free time . . . must always hold [her]self in readiness to answer any call at a moment’s notice.”).

120. Lewis A. Coser, *Servants: The Obsolescence of an Occupational Role*, 52 SOC. FORCES 31, 32 (1973). See generally LEWIS A. COSER, *GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT* (1974) (discussing various institutions whereby a person’s desire for wholeness leads to a commitment to a “greedy institution,” resulting in the obliteration of that person’s individuality).

With housework it is very different.¹²¹

The movement supported its findings with ample testimonies from working-class women who pointedly expressed a preference for the freedom of shop or factory work. In 1915, for example, the YWCA asked female factory workers for advice to give a friend or younger sister who was contemplating whether to pursue work in domestic service or in a factory, store, or office.¹²² In response, seventy-six percent indicated that they would not recommend domestic service.¹²³ The response of one woman, who had worked previously as a domestic, was typical:

At half past four [my] day's work is finished and I feel as free as a bird after that. A domestic worker is kept busy until close to eight, and sometimes after. I have all day Sunday, and as a rule attend church twice that day. Not half of the domestic workers have a chance to get near a church Sunday morning.¹²⁴

Women expressed similar sentiments in response to Salmon's 1897 study of domestic service.¹²⁵ Replied one: "You are mistress of no time of your own; other occupations have well-defined hours, after which one can do as she pleases without asking any one."¹²⁶ Another commented that, "The reason for dislike of housework is the want of liberty."¹²⁷ When the YWCA study asked women to "suggest any way in which more fine girls can be persuaded to enter domestic service," few words were needed: "Regulate the hours and treat them as fine girls."¹²⁸ From the perspective of these women, other jobs—while perhaps more arduous and less financially rewarding than domestic work¹²⁹—gave them a chance to pursue autonomous lives and to claim a social space where they could use their energies to an end other than the fulfillment of an employer's needs and desires.

121. BARKER, *supra* note 90, at 20.

122. See YWCA FIRST REPORT, *supra* note 93, at 27 (comparing the advantages and disadvantages of factory, store, and office work with those of household work).

123. See *id.* at 27 ("Of the 149 girls who answered this question, 114 would advise their sisters to enter the store, office and factory, as the case might be; 23 would advise household employment.").

124. *Id.* at 29.

125. See SALMON, *supra* note 19, at 146.

126. *Id.* at 145 n.1.

127. *Id.* at 147 n.2.

128. YWCA FIRST REPORT, *supra* note 93, at 12.

129. Investigators consistently reported that the wages in paid household work were far better than those in other occupations available to women. See LAUGHLIN, *supra* note 98, at 757 (noting that "the wages paid in domestic service are relatively high," as compared to non-domestic employment); YWCA FIRST REPORT, *supra* note 93, at 15 (comparing income of \$2.98 after expenses earned by women in factories to \$4.52 earned by domestics with no room and board costs, and noting that domestics admitted the economic advantages over factory workers); Robinson, *supra* note 75, at 52 (noting that many servant problems stem from servants wanting more free time, rather than there being a general lack of servants). *But cf.* Bettina Berch, "The Sphinx in the Household": *A New Look at the History of Household Workers*, 16 REV. RADICAL POL. ECON. 105, 106 (1984). Berch argues that these findings were flawed because "the longer hours of labor in service were left out of the real wage computations, as only weekly wages were compared. Thus, social scientists could end up with the still surprising conclusion that wages in domestic service were 'competitive.'" *Id.* at 106; see also DUDDEN, *supra* note 4, at 219 (questioning the conclusion that wages in domestic service compared favorably with wages in other occupations available to women).

Beginning in the 1920s, increasing numbers of paid household workers made the shift from live-in resident service to either live-out service or day work.¹³⁰ These trends gave workers more opportunities to interact socially with family and friends.¹³¹ In particular, day work allowed some workers to limit their hours in a manner similar to many industrial workers.¹³² Yet despite the trend away from residential service, the norm in favor of full-time service—live-out or live-in—persisted,¹³³ and domestics continued to endure unbearably long hours of service throughout the 1920s and 1930s.¹³⁴

The constant demands of paid household work made it virtually impossible for a domestic to attend to the endless tasks involved in caring for someone else's home as well as to devote time to her own concerns and interests. As Palmer explains, “[s]ince most domestics were women, . . . doing a good job taking care of someone else's home required the worker to sacrifice her hopes for a home of her own or to compromise care for her family and social life with her friends.”¹³⁵ Such sacrifices had to be made as it was common for the

130. See KATZMAN, *supra* note 4, at 177 (stating that the movement away from live-in service occurred at about the time of World War I). As a day worker, a domestic typically did housework for several different families, often reporting to each family once or twice a week. See *id.* at 91; see also CLARK-LEWIS, *supra* note 4, at 21 (commenting on the significance of the shift to day work: “[t]he women saw the change as a step toward autonomy and independence, and away from the dependency and indignity of live-in work”); ROMERO, *supra* note 4, at 64 (“Day work changed the structure of domestic service by placing boundaries on the labor arrangement, increasing autonomy, providing the means to leave oppressive working conditions, and establishing a trend toward an eight hour day.”). The transition to day work has been traced to the growing number of Black women among the ranks of the domestic worker population. See PALMER, *supra* note 4, at 68.

131. See generally KATZMAN, *supra* note 4, at 177-79 (describing the servants' fight to gain more control of their life and mistress' fight to keep control); PALMER, *supra* note 4, at 68 (commenting that day work allowed domestics “time for social connections with friends and kin, especially participation in neighborhood churches”).

132. See PALMER, *supra* note 4, at 69 (observing that day workers were able to “establish[] for themselves an eight hour day and a wage commensurate with that in many lines of industry”).

133. See KATZMAN, *supra* note 4, at 177-78 (documenting the resistance of household employers to live-out service); PALMER, *supra* note 4, at 71 (noting that housewives were “[u]nwillling to accept the transformation of household service into more regularized, live-out, daily employment with hourly wages and limited hours” and were able to “uphold the full-time norm”).

134. In 1939, the National Woman's Trade Union League reported that the majority of all domestic service workers labored from 70 to 80 hours a week. See CLARA COOK, HELP WANTED! 1, 4 (Women's Trade Union League, 1939). Investigations from across the country underscored that finding. For example, a 1938 YWCA survey conducted in northern Illinois reported that the workweek of domestics ranged from 75 hours to 92 hours and averaged 84 hours. See PALMER, *supra* note 4, at 75; see also JEAN BROWN, BRIEF ON HOUSEHOLD EMPLOYMENT IN RELATION TO TRADE UNION ORGANIZATION 6 (1938) (reporting on a Connecticut study which found that “[w]orking hours for the typical domestic were longer than the legal maximum for women in other occupations, averaging 60 to 70 hours per week and 10 hours per day”); BLACK WORKER: A DOCUMENTARY HISTORY FROM COLONIAL TIMES TO THE PRESENT 186 (Philip S. Foner & Ronald L. Lewis eds., 1981) (noting that a 1937 survey of household employment in Lynchburg, Virginia found that domestics typically worked 72 hours a week, with workers spending as much as 80 to 90 hours a week performing household work); Hazel Kyrk, *A Fine Art—An Undesired Job*, LIFE & LAB. BULL., Dec. 1931, at 1 (reporting on a 1927 YWCA study which found that the median working day of domestics in Chicago was 11.5 hours); *Problems of Household Workers*, WOMAN WORKER, JULY 1939, at 7 [hereinafter *Problems of Household Workers*] (noting that more than half of the domestics, participating in a late 1930s household work study in Houston worked 80 hours or more a week).

135. PALMER, *supra* note 4, at 66; see also JONES, *supra* note 35, at 128 (“Household

household employer to strive to maintain her family, but then respond with indifference to the familial needs of her worker.¹³⁶ That indifference reflected a belief that “[d]omestic workers’ families were not assumed to need care or to engage in the same relationships as their employers.”¹³⁷

Domestic workers who resisted the demands of employers were, in a very real sense, fighting to be free, to control not only their labor but their very persons.¹³⁸ To be sure, domestics were free laborers and thus legally autonomous.¹³⁹ As Jane Addams observed, however, the domestic was in a “peculiar” position, trapped in legal limbo, not

employees suffered from internal conflict and stress as a result of working very long hours for white families and spending proportionately less time caring for their own.”); Evelyn Nakano Glenn, *Cleaning Up/Kept Down: A Historical Perspective on Racial Inequality in “Women’s Work,”* 43 STAN. L. REV. 1333, 1342 (1991) (“For the domestic worker, performing labor for a White family meant not being able to perform these duties for her own family.”).

136. See, e.g., Jane Addams, *A Belated Industry*, 1 AM. J. OF SOC. 536, 543 (1896) (remarking that “[t]he employer of household labor, in her zeal to preserve her family life intact and free from intrusion, acts inconsistently and grants to her cook, for instance, but once or twice a week such opportunity for untrammelled association with her relatives as the employers’ family claims constantly”); *id.* at 540 (noting “[t]he selfishness of a modern mistress, who, in her narrow social ethics, insists that those who minister to the comforts of her family . . . shall not only be celibate, but shall be cut off more or less from their natural social ties.”); PALMER, *supra* note 4, at 74 (reporting a letter sent from a paid household worker to Mrs. Franklin D. Roosevelt: “I ask the lady whom I work for to grant me a few hours to care for some real business and bills that had to be seen after and I was sorry I spoke about it. I was answered with such grievous [sic] words”).

As a group, household employers did not acknowledge that paid household workers entered domestic service out of intense economic need, to care first and foremost not for the employers’ family, but to provide for their own loved ones and for self. Workers expressed the failure of household employers to grasp that basic concept by referring to the job as “they job,” meaning that of the employing family. As the expression went, “They job was for them, not your life.” See CLARK-LEWIS, *supra* note 4, at 124; see *infra* Part IV.A.1.b (noting that some paid household workers were unmarried and did not have responsibilities as mothers or wives and discussing how the youthful image of paid household workers was a factor in the argument against regulating the hours in domestic service).

Some household relationships were characterized by genuine affection and concern, and in those instances employers occasionally granted workers time-off when needed, provided privileges such as use of the family library, and gave gifts of clothing. See, e.g., ROLLINS, *supra* note 4, at 174 (depicting a long-term relationship where the domestic was made to believe she was one of the family and was given old clothes and furniture in addition to her wage); Addams, *supra*, at 544 (“There are suburban employers of household labor who make heroic efforts to supply domestic and social life to their employees, who take the domestic employe[e] to drive, arrange to have her invited out occasionally, who supply her with books and papers and companionship”). Without doubting the sincerity of such acts, however, we must query as to why it has been acceptable to force the paid household worker to rely upon individual acts of kindness and goodwill for her health and well-being. Moreover, employer acts of *noblesse oblige*—by way of gift giving or the granting of special privileges—often reinforce the hierarchy between employer and employee, and create a sense of obligation on the part of employees. As Romero writes, “[w]hen employers grant favors, make promises, and give gifts, the employee becomes ensnared in a web of debt and obligation that masks considerations of the employers’ rights.” ROMERO, *supra* note 4, at 130-31; see also GLENN, *supra* note 4, at 156-57 (noting that gift-giving by the employer promotes the asymmetrical nature of the paid household employment relationship).

137. PALMER, *supra* note 4, at 87.

138. See KATZMAN, *supra* note 4, at 176-79 (discussing the power struggle for control between servant and mistress).

139. Domestics were free laborers in the sense that they were employees at will, able to terminate the employment relationship when they so desired without fear of being legally compelled to work for their employer for an entire year. See generally Jay M. Feinman, *The Development of the Employment at Will Rule*, 20 AM. J. LEGAL HIST. 118 (1976) (providing an excellent overview of the employment-at-will relationship).

quite a servant of old but not yet an employee.¹⁴⁰ She was in that peculiar position because the oppressive expectations and demands of employing households had essentially halted her evolution from status to contract.¹⁴¹ In the eyes of employers, domestics were still menial servants who had no claim to autonomy and freedom.¹⁴²

B. *Blackstone's Forgotten Servant*

“[T]he American who declared and won his independence of the European caste system . . . still retains the caste system in his home and persistently assumes that the domestic worker is a *menial*.”¹⁴³

Blackstone identified the three great relations in private life as those between husband and wife, parent and child, and master and servant.¹⁴⁴ Although contemporary commentators tend to refer to servants generally, Steinfeld’s *The Invention of Free Labor* explains that menials and apprentices—the so-called “resident” servants—stood apart from other servants.¹⁴⁵ Unlike laborers and artificers,¹⁴⁶ who occupied social niches apart from their masters, menials and apprentices resided with their masters.¹⁴⁷ This distinction led H.G. Wood to argue in 1881 that the term “servant,” in its strictest sense, applied only to menial servants—those employed for “domestic purposes . . . to serve about the master’s house and to attend upon him personally.”¹⁴⁸

Commentators who invoked the image of the menial¹⁴⁹ to help explain the intense lack of freedom enjoyed by paid household

140. See *supra* note 1 and accompanying text.

141. See HENRY SUMNER MAINE, *ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* 70, 164-65 (1861) (“[T]he movement of the progressive societies has hitherto been a movement from Status to Contract.”). Maine believed that in progressive societies, relationships are increasingly defined by the free will of individuals as expressed through contract. Such relationships represent an evolutionary shift from a point when the rights and obligations of individuals were determined largely by their status as married women or as members of a caste, class, or ethnic group. *Id.*

142. See *infra* notes 143, 150-61 and accompanying text (discussing parallels between the treatment of domestics and menials).

143. *The Servant Problem*, 17 *FORTUNE* 81, 116 (1938).

144. See 1 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 410 (stating that the master and servant relationship is based on convenience “whereby a man is directed to call in the assistance of others, where his own skill and labor will not be sufficient to answer the cares incumbent upon him”).

145. See ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR* 19 (1991) (explaining that the term “servant” was used in a narrow sense, meaning only a wage worker residing with and serving a master, rather than a wage worker more generally).

146. The non-resident servants included both “common” servants, such as laborers and artificers, as well as “higher” servants—“stewards, factors, and bailiffs.” See *id.* at 18.

147. See *id.* at 19.

148. H.G. WOOD, *TREATISE ON THE LAW OF MASTER AND SERVANT* 3 (1877) (noting that the term menial generally described “the domestics living within the walls of the house”).

149. To understand the personal restriction imposed upon the freedom of paid domestic workers, reformers also compared domestic service with the institutions of villenage and slavery. See, e.g., Sophronisba Breckinridge, *Housewife and Maid at Law*, 2 *BULL. INTER-MUNICIPAL COMM. ON HOUSEHOLD RES.*, Feb. 1906, at 7, 8 (“[A]n indeterminate and uncertain amount of service could be demanded of the villein by the lord, of the slave by the owner, as of the domestic by the employer.”).

workers were tapping into certain obvious parallels: namely that both paid household workers and menial servants performed domestic tasks and often resided with the employing household.¹⁵⁰ The crucial resemblance between the two groups, however, hinged on the period of service worked.¹⁵¹ Servants such as laborers and artificers worked on a casual basis—the day, week, or task.¹⁵² At the end of the day or week, or upon completion of a prescribed task, these servants were “legally at their own disposal,” free to pursue their own interests.¹⁵³ In contrast, menial servants, who typically labored by the year,¹⁵⁴ were understood to have “turned themselves over to their masters completely,” placing themselves at their master’s constant disposal.¹⁵⁵

The expectation of household employers to have constant access to the services of their workers was reminiscent of the master’s uninterrupted property right in the person of the menial for the entire term of the labor relationship. This marked similarity between the treatment of domestics and menials boldly challenged the mid-eighteenth-century observation of Henry Williams¹⁵⁶ that in modern societies, “‘employment is simply a contract between parties having equal rights. The operative agrees to perform a certain amount of work in consideration of receiving a certain amount of money. . . .”¹⁵⁷ Domestics did agree to receive a certain amount of money,¹⁵⁸ but rarely was it in consideration for the performance of a specified quantity of work.¹⁵⁹ “[I]n domestic service the contract [was], usually, for the entire time of the laborer. . . .”¹⁶⁰ Thus, while the paid household worker was technically a free laborer, her labor relationship comported more with notions of status than contract.¹⁶¹

150. See STEINFELD, *supra* note 145, at 27 (comparing the statuses of servants and apprentices).

151. See *id.* (stating that a servant usually served a year term while an apprentice served a multi-year term).

152. See *id.*

153. See *id.* at 40.

154. See *id.* at 27.

155. See *id.* at 40.

156. See STEINFELD, *supra* note 145, at 15-16.

157. *Id.* at 15 (quoting OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN STATE CONVENTION ASSEMBLED MAY 4th, 1853 TO REVISE AND AMEND THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS 1:550).

158. In addition, paid household workers often received part of their compensation through in-kind benefits such as housing and food. See I.M. Rubinow, *The Problem of Domestic Service*, 2 J. POL. ECON. 506, 515-16 (1905) (arguing against the practice among employing households to compensate domestics through meals).

159. See LAUGHLIN, *supra* note 98, at 759 (observing that in other occupations, workers were contracted to perform specified services but that in domestic service, workers were expected to perform whatever services were required by the employer).

160. *Id.* at 759 (explaining that in addition to the agreed-upon tasks, a domestic essentially was required “to be on call at *all* times subject to the call and direction of the employer”).

161. See *id.* at 760 (stating that the relationship of the household employer and employee became one of “superior and inferior, rather than a contract between equals”).

C. *To Be White and Free*

“I am no *sarvant*; none but *negers* are *sarvants*.”¹⁶²

The antiquated image of the domestic service relationship must be seen both in terms of the job’s connection with menials of old, as well as the history of slavery.¹⁶³ Described as a “‘despised calling’”¹⁶⁴ and “‘the lowest rung of legitimate employment,’”¹⁶⁵ domestic service bore an indelible badge of racial inferiority. It was stigmatized as “‘nigger’s work,’”¹⁶⁶ a form of voluntary slavery or wage slavery that was incompatible with the values of democracy.¹⁶⁷

In *The Wages of Whiteness*, David Roediger argues that “[w]hite workers . . . defin[ed] and accept[ed] their class positions by fashioning their identities as ‘not slaves’ and as ‘not Blacks.’”¹⁶⁸ Native-born, working-class white women, especially those in New England, who labored in domestic service, powerfully illustrate Roediger’s assertion.¹⁶⁹ In the aftermath of the Revolution,¹⁷⁰ these women consciously distanced themselves from the negative racial connotations associated with domestic service by fashioning themselves as “help” instead of “servants.”¹⁷¹ The label was more than mere semantics.¹⁷² Construed as helpers, white women “identif[ied] their freedom and their dignity” in opposition to Blacks, both

162. This quotation was the answer given by a white domestic at the beginning of the nineteenth century in response to a query from a guest who was calling at the home of her “master.” See DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 47-49 (1991) (providing an account of the full exchange).

163. See, e.g., *id.* at 145-46 (exploring the connection between the history of slavery and the treatment of paid household workers); ROLLINS, *supra* note 4, at 49-51 (same).

164. ROLLINS, *supra* note 4, at 51 (citation omitted).

165. GLENN, *supra* note 4, at 165 (citation omitted).

166. ROLLINS, *supra* note 4, at 51 (citation omitted); see also ROEDIGER, *supra* note 162, at 144 (1991) (referencing domestic service as “nigger’s work,” defined as “synonymous with hard, drudging labor”).

167. See ROEDIGER, *supra* note 162, at 71-74 (discussing terms, such as “wage slavery,” “slavery of wages”, and “white slavery” to draw comparisons between white workers and slaves).

168. *Id.* at 13; see also SALMON, *supra* note 19, at 58 (explaining “the avoidance of the term ‘servant’ by the fact that slaves were called servants by the English, who having fled from tyranny at home were shy of calling others slaves”).

169. See DUDDEN, *supra* note 4, at 23 (describing “Martha,” a young domestic depicted in the 1835 novel *Home* and her preference to be called help: “Serving most assiduously, [Martha] had an antipathy to the word *servant*. Was she not right? *Help* may have a ludicrous and alarming sound to unaccustomed ears; but is there a word in the English language more descriptive of the service rendered by a New England domestic; truly a ‘republican independent dependent,’ and the very best servant.”); ROEDIGER, *supra* note 162, at 48-49 (observing that in post-revolutionary America, “[w]hite female household workers in particular ‘resisted’ the designation *servant*, in favor of ‘helps, helpers or hands’”) (emphasis in original).

170. Writing in 1897, Salmon identified three distinct phases of paid household service in the United States. “The first [phase] extends from the early colonization to the time of the Revolution; the second, from the Revolution to about 1850; the third, from 1850 to the present time.” SALMON, *supra* note 19, at 16. Extending that analysis, Rollins marks the end of the third period at World War I, and defines a fourth, modern, period from the post-World War I to the present day. See ROLLINS, *supra* note 4, at 48-49.

171. See SALMON, *supra* note 19, at 69 (asserting that prior to the Revolution, “no odium was in any way attached to the word [servant]”).

172. See ROEDIGER, *supra* note 162, at 47 (recounting a statement by Frances Trollope: “[i]t is more than petty treason to the republic to call a free citizen a *servant*”).

enslaved and free.¹⁷³ By eschewing the term servant, these women demanded and received recognition as the juridical and social equals of the families for whom they worked.¹⁷⁴

Over the course of the nineteenth century, however, the peculiarly Northern distinction between help and servant gradually disappeared in part because of the changing racial and ethnic composition of paid household workers.¹⁷⁵ Notably, increasing numbers of immigrants and emancipated African-Americans entered paid service.¹⁷⁶ In the eyes of household employers, women who were racially and ethnically disdained¹⁷⁷ did not merit democratic treatment nor did they deserve to be called “helpers.”¹⁷⁸ By the end of the nineteenth century, “servant” was used to describe all who did housework for pay,

173. See *id.* at 49. Reported by a European while visiting America, the following exchange highlights the resentment that white Americans felt, particularly those performing household work for pay, about being referred to as a “servant”:

Having called one day at the house of a gentleman of my acquaintance, on knocking at the door, it was opened by a servant-maid, whom I had never before seen, as she had not been long in his family. The following is the dialogue . . . which took place on this occasion:—‘Is your master at home?’—‘I have no master.’—‘Don’t you live here?’—‘I stay here.’—‘And who are you then?’—‘Why, I am Mr. —’s help. I’d have you to know, *man*, that I am no *sarvant*; none but *negers* are *sarvants*.’

Albert Matthews, *Hired Man and Help*, in THE COLONIAL SOCIETY OF MASSACHUSETTS 225, 250 (Mar. 1898) (quoting C.W. JANSON, THE STRANGER IN AMERICA 87 (1807)) (emphasis in original).

174. See Matthews, *supra* note 173, at 251 (“*Help* is the word by which servants reconcile their pride with their interest, or employment, as it denotes, that though the assistants, they are the equals of their employers.”) (quoting S.G. GOODRICH, SYSTEM OF UNIVERSAL GEOGRAPHY 104 (1832)) (emphasis in original). The sense of equality that existed between “helpers” and the families for whom they worked was not simply perceived. As Dudden explains, helpers “shared the conditions of the family in which they worked. The girl suffered no indignities of exclusion. She sat down and at with the family, sharing their table and their food.” *Id.* at 36.

175. See SALMON, *supra* note 19, at 71 (observing that with the “introduction of foreign labor,” the term “servant” displaced “help”). The shift from “help” to “servant” also reflected the impact of industrialization on the household. As Dudden observes, in the aftermath of industrialization, “the homes of the new middle-classes were explicitly domestic, private realms.” DUDDEN, *supra* note 4, at 47. “Helpers” were often hired to assist employing families in economic activities such as the production of textiles for market sale. *Id.* at 12-14. By contrast, “servants” were employed to perform domestic tasks necessary for the creation and maintenance of the middle-class lifestyle. *Id.* at 46-47; see also David Chaplin, *Domestic Service and Industrialization*, 1 COMP. STUD. IN SOC. 97, 99 (1978) (observing that most household workers were “primarily concerned with the production of goods until the industrial revolution. They eventually became specialized in those personal services which resist packaging and mechanization”).

176. Salmon attributes the transition in the racial and ethnic composition of domestic service to four important political changes occurring between 1850 and 1870: (1) the Irish famine of 1846; (2) the German Revolution of 1848; (3) the establishment of treaty relations between the United States and China in 1844; and (4) the abolition of slavery in the United States in 1863. See SALMON, *supra* note 19, at 62-65.

177. See ROLLINS, *supra* note 4, at 51-52 (“All immigrant servants were considered inferior to native white Americans, but the Irish were particularly despised As with blacks in the South, class prejudice, ethnic prejudice, and the degradation of menial labor interplayed to reinforce anti-Irish and anti-servitude sentiments: ‘The Irish seemed more lower class because they were in domestic labor, and the work seemed more menial because the Irish dominated it.’”); see also ROEDIGER, *supra* note 162, at 145-46 (discussing Irish entrance into domestic jobs and consequently the reassociation of these jobs with slavery).

178. See DUDDEN, *supra* note 4, at 33 (“The Negro is not a help; he is emphatically a servant.”) (citation omitted); see also ROLLINS, *supra* note 4, at 50-51 (observing that household employers did not think it appropriate to extend to immigrants the type of democratic treatment extended to native-born whites); *id.* at 51-52 (observing that “[a]ll immigrant servants were considered inferior to native white Americans,” especially the Irish).

regardless of race.¹⁷⁹ In contrast to the “faintly drawn” class line between employer and helper, the line between employer and servant was a deeply colored “caste line.”¹⁸⁰

The movement of immigrant women, particularly Irish women, along with African-American women into domestic service was a precipitating factor in the departure of native-born white women in the North from service work during the nineteenth century.¹⁸¹ In time, the Irish too would seek to distance themselves from the negative connotations associated with domestic work, especially its characterization as “nigger’s work.” As Roediger explains, in order to become Americanized and to develop a “white identity”—an identity giving one claim to the promises of the Revolution¹⁸²—immigrant workers had to establish themselves as superior to Blacks.¹⁸³ For Irish female workers, achieving such a status often necessitated following in the footsteps of their native-born counterparts and leaving behind domestic service with its unsavory racial taint.¹⁸⁴

179. See SALMON, *supra* note 19, at 62. “Servant” was used synonymously with “domestic servant” during this period, and even when the term “domestic” was used, it implied “servant.” See DUDDEN, *supra* note 4, at 44; ROEDIGER, *supra* note 162, at 146.

180. SALMON, *supra* note 19, at 65. Through the use of the term “caste,” Salmon expressed a sentiment shared by both reformers and domestics—the belief that social hierarchy was a defining characteristic of the paid household relationship. For example, Rubinow and Durant observed that the domestic experiences a “loss of caste” because she “loses her family name, assumes cap and apron, becomes a drudge, a slave, a thing.” Rubinow & Durant *supra* note 20, at 579; see also STIGLER, *supra* note 77, at 1 (observing that “a distinct line of social caste separates the ‘house girl’ from other female workers”) and Alice MacDonald, *Do You Know Your Place?*, JUNIOR LEAGUE MAG. 28, 28 (1941) (noting that “household employment is shunned like the plague, and those who enter it lose social caste”); see also Margaret Livingston Chandler, *Domestic Service*, BULL. INTER-MUNICIPAL COMM. ON HOUSEHOLD RES., Apr. 1905, at 8 (observing that the equality that once resided in the domestic service relationship dissipated owing to the “influx of races from countries where rank was acknowledged as part of an order both natural and divine”); KATZMAN, *supra* note 4, at 269 (“Within society, paid household labor carried a stigma that separated household workers from other laborers. . . . [I]t left a mark of inferiority and servility.”).

181. See HASIA R. DINER, *ERIN’S DAUGHTER’S IN AMERICA: IRISH IMMIGRANT WOMEN IN THE NINETEENTH CENTURY* 81 (1983) (“[A]s more and more Irish women . . . flooded the ranks of domestic servants, American girls became even more adamant in refusing it, because now it . . . bore the Irish label and as such was something no American girl would touch. . . .”); Eleanor Roosevelt, *Servants*, 83 FORUM 24, 25 (1930) (attributing the loss of dignity in domestic service to the influx of “different nationalities”). Diner regards the movement of European immigrant women, particularly Irish women, into domestic service as the critical factor causing native-born white women in the North to depart from service work during the nineteenth century. *Id.* Yet, as the Irish were conflated frequently with Blacks, and degraded as “white niggers,” such departures must be understood as an attempt on the part of native-born, white women to dissociate themselves, not only from the taint of the Irish, but also from the subordinated status of Blacks. See ROEDIGER, *supra* note 162, at 144-45 (“‘White niggers’ were white workers in arduous unskilled jobs or in subservient positions.”); see also *id.* at 55 (suggesting that many white native-born Americans had abandoned domestic service by the 1830s in part to avoid comparison with enslaved Blacks and a connection with blackness).

182. See ROEDIGER, *supra* note 162, at 40-45 (asserting that a “common whiteness” overcame political and social division).

183. See *id.* at 148-50, 154 (explaining that a disassociation from Blacks and the embracement of white supremacy were critical in the formation of a white identity for Irish workers); see also Herbert Hill, *Race and Ethnicity in Organized Labor*, 12 J. INTERGROUP REL. 5, 7-8 (1984) (“[T]he embrace of white supremacy as ideology and as practice was a strategy for assimilation by European working class immigrants.”).

184. See ROEDIGER, *supra* note 162, at 144; see also Hill, *supra* note 183, at 7-8 (explaining that immigrants followed the white workers and joined unions, and noting that non-whites were not allowed in unions, which created a separation in status).

Against this background, the household labor movement's task was to restructure the domestic service relationship to appeal to the democratic spirit of white women, both native-born and foreign-born.¹⁸⁵ As long as the conditions in domestic service continued to impose "an exceptional restriction of the worker's personal liberty,"¹⁸⁶ the job would retain a pre-capitalist character that was sorely out of step with the tenets of free labor.¹⁸⁷ The departure of white women from domestic jobs convinced reformers that treating domestics as menials or slaves was simply unacceptable.¹⁸⁸ As reformers explained, the persistence of such treatment was ultimately rooted in the "medievalism of the home"¹⁸⁹—labor relationships within the home had remained static while the rest of industrialized society had advanced beyond treating workers as property.¹⁹⁰ Thus, resolution of the servant problem depended upon the transformation of the relationship between maid and mistress from "a position of status to one of contract."¹⁹¹ This change could be achieved by providing

185. See, e.g., BARKER, *supra* note 90, at 15 ("The spirit of independence has so deeply entered into the lives of women of all classes, that until housework be regulated in such a way as to give to those engaged in it the same rights and privileges as are granted to them in other forms of labor, the best workers will naturally seek employment elsewhere."); Mary Anderson, *Domestic Service in the United States*, 20 J. HOME ECON. 7, 7 (1928) ("The principle that all men are born free and equal is largely responsible for the eschewing by many citizens of a form of service with which [is] associated subserviency and social stigma."); KATZMAN, *supra* note 4, at 240 ("[T]he subordinate role of servant—one which extended around the clock among live-in servants was incompatible with the egalitarianism of American life."); *id.* at 240 ("American born girls breathe in at their birth a desire to be independent.") (citation omitted); *Household Employment*, 23 J. HOME ECON. 649, 650 (1931) (observing that as immigrants came to regard America "the land of equality," they "came soon to look down on anything like personal service").

186. I.M. Rubinow, *Household Service as a Labor Problem*, 3 J. HOME ECON. 131, 132 (1911).

187. See, e.g., Strasser *supra* note 75, at 54 ("Under nineteenth-century conditions domestic service shared many of the attributes of precapitalist work; Servants lived with their employers; they rarely had contracts; they were on call at all times rather than working definitive hours; and they were paid partly in kind rather than solely in money.")

188. See Amey E. Watson, *The Responsibility of the Home Economist for Improving Employer-Employee Relationships in the Home*, 31 J. HOME ECON. 88, 89 (1939) (observing that reformers believed that the failure of the paid household relationship to pass beyond the master-servant relationship was "not acceptable to the worker in a democratic society such as America").

189. Rubinow & Durant, *supra* note 20, at 580; see also, Rubinow, *supra* note 186, at 132 (viewing the servant problem in terms of the "backwardness of the home").

190. Reformers seemed to be suggesting that the treatment of paid household workers was explained by lag theory. See Olsen, *supra* note 6, at 1513. As summarized by Olsen, the theory states that:

[T]he family is moving away from feudalism more slowly than the market is; the market has seemed to be the more progressive institution, leading the way toward modernization, while the family has followed a slower but parallel development. According to this "lag theory," changes in the family reproduce but lag behind those in the market.

Id.

191. Amey E. Watson, *The Reorganization of Household Work*, 160 ANNALS AM. ACAD. 165, 167 (1932). Watson continues:

Many studies have been made at various times in the effort to improve the conditions of this industry, and all point to the same conclusion; namely, that the main hope for remedying the present discomfort in this occupation lies in systematizing the work and regulating the hours in such a manner as to give the workers an opportunity to live an independent, self-governed life apart from their work. It has also been said that domestic service must become a self-respecting occupation rather than a state of servitude.

workers with an opportunity to be their own persons.¹⁹² For reformers, such a shift was about restructuring domestic service in explicitly economic terms that conformed with modern industry, thus enabling middle-class households to compete successfully for workers.

III. THE BUSINESS OF REGULATING PRIVILEGE

Is there not at least a running chance that the new relationship of employer and employee is a possible one [that] will bring order out of chaos, strengthening the home life? . . . When employers adopt for their households a business basis, systemizing the work, regulating hours, granting the worker sufficient time and freedom to live a normal life among her own people, then . . . girls will be more than glad to do their part in meeting the demand for trained service.¹⁹³

As reformers saw it, the middle-class housewife who wished to insure the peace and comfort of the home had no choice but to fashion domestic service as a business and treat her domestic as an employee, as someone entitled to certain benefits.¹⁹⁴ In 1915, Clara Barker bluntly assessed the situation: “Either the housewife must adopt business principles in ruling her household, or she will find before many years elapse that there will be no longer any woman willing to place her neck under the domestic yoke.”¹⁹⁵ Two legal strategies took center stage in the plan to apply business principles to the domestic service relationship.¹⁹⁶ First, reformers encouraged household employers to regulate the job themselves through the use of voluntary, standardized labor contracts.¹⁹⁷ Second, they lobbied for the passage of labor legislation applicable to domestic service.¹⁹⁸ Part III surveys the movement’s activities with respect to both of these strategies, focusing on the issue of hours.¹⁹⁹

Id.; see also Oliver Lyman, *The Legal Status of Servant Girls*, 22 POPULAR SCI. MONTHLY 803, 806 (1883) (stressing the contractual nature of the relationship between mistress and servant: “one is to work, and the other to pay”).

192. See Watson, *supra* note 191, at 167.

193. YWCA Papers, *supra* note 20 at 9.

194. See, e.g., Watson, *supra* note 191, at 167 (suggesting that a household employer would benefit from a business relationship with her household employee and reassuring household employers that this business relationship would not corrupt the home).

195. BARKER, *supra* note 90, at 7.

196. See *infra* Parts III.A–B (discussing how reformers sought to apply business principles, specifically hour regulations, to domestic service).

197. See *infra* Part III.A (explaining the self-regulatory strategy as an attempt by reformers to apply business principles to the household employee-employer relationship through the use of voluntary contracts).

198. See *infra* Part III.B (elucidating how reformers worked to enact legislation to govern the domestic service employment relationship).

199. Throughout the 1920s and 1930s, there were also efforts to organize paid household workers, often spearheaded by workers themselves. See BRENDA CLEGG GRAY, BLACK FEMALE DOMESTICS DURING THE DEPRESSION IN NEW YORK CITY, 1930-40, at 104-05 (1993) (finding that during the Depression efforts to organize domestic workers increased). For example, in 1936, workers in New York City formed the Domestic Workers Alliance with the support of the

A. *Self Regulation: The Contract Solution*

While the servant problem had long been a national issue,²⁰⁰ the household labor movement does not appear to have gained national prominence until 1928 with the convening of a National Conference on Employer-Employee Relations in the Home.²⁰¹ Organized by the YWCA, the Women's Bureau of the Department of Labor, the Federal Board of Vocational Education, and the Bureau of Home Economics, the Conference attested to the enormity of the servant problem in

National Negro Congress. *See id.* at 105 (identifying various efforts by Black domestic workers to unionize). In Washington, D.C., where the 1930 Census indicated that 85% of all domestics were Black, workers organized in 1936, forming the Domestic Worker's Union. *See* 6 THE BLACK WORKER: A DOCUMENTARY HISTORY FROM COLONIAL TIMES TO THE PRESENT 184-85 (Philip S. Foner & Ronald L. Lewis eds., 1981) (discussing the goals of the Domestic Worker's Union); *see also* *Why Is the Household Employee So Heavily Out-Weighed in the Scale of Security?*, HOUSEHOLD OCCUPATION IN THE DISTRICT OF COLUMBIA, at 8 (Washington League of Women Shoppers, Washington, D.C., n.d.) [hereinafter HOUSEHOLD OCCUPATION] (Watson Papers, Folder 6.40, Catherwood Library, Cornell School of Industrial and Labor Relations) (documenting the presence of domestic worker unions in Chicago, Milwaukee, and Houston); VAN RAAPHORST, *supra* note 4, at 186-216 (examining organizing efforts among paid household workers in the late nineteenth and early twentieth centuries). Jane Street led one of the more effective organizing efforts during the Progressive Era in Denver, Colorado. *See* MEREDITH TAX, THE RISING OF WOMEN: FEMALE SOLIDARITY & CLASS CONFLICTS, 1880-1917, at 134-38 (1980) (explaining how one woman was able to create an effective local domestic workers union). Street organized paid household workers as part of the Industrial Workers of the World in 1916. *See id.* at 134. Once organized, the union quickly set about the task of "teaching their employers to look upon the hands that feed them and wash for them, and scrub for them with respect or fear and humility." *Id.* at 134-35 (quoting Jane Street, *Denver's Rebel Housemaids*, SOLIDARITY, Apr. 1, 1916). To improve working conditions, workers established an employment office and members responded to hundreds of "Help Wanted" newspaper listings. *See id.* at 136 (detailing how the union grew as it began to function as an employment agency). Street offered the following account of how this strategy worked:

For a number of housegirls to simply own, collectively, a telephone and to use it systematically is to raise wages all over a city. For instance, if you want to raise a job from \$20 to \$30. You can have a dozen girls answer an ad and demand \$30—even if they do not want work at all. Or, it can be done in an easier way. Call up the woman and tell her you will accept the position at \$20, that you will be sure to be out. Then she will not run her ad the next day. Don't go. Call up the next day and ask for \$25, and promise to go and do the same thing over again. On the third day she will say, Come [sic] on out and we will talk the matter over. You can get not only the wages, but shortened hours and lightened labor as well.

Letter from Jane Street to Mrs. Elmer F. Buse (1917), *reprinted in* Daniel Hobby, *We Have Got Results: A Document on the Organization of Domestics in the Progressive Era*, 17 LAB. HIST. 103, 105 (1976).

Most domestic unions had short life spans due in part to inadequate funding and limited administrative support. *See* GRAY, *supra*, at 107. The most difficult problem that such unions confronted, however, was organizing paid household workers. *See* Jean Collier Brown, *Domestic Workers and Unions*, AM. FEDERATIONIST, May 1938, at 1 (Watson Papers, Folder 4.32 Catherwood Library, Cornell School of Industrial and Labor Relations). As Brown observed: "Working apart from one another, each dealing with his or her own separate employer, it is difficult for [domestics] to contact each other as workers in large factories can do." *Id.*

200. *See* Watson, *supra* note 191, at 168 (explaining how the industrial revolution and developments in women's education contributed to the domestic problem).

201. *See* BENJAMIN ANDREWS, ECONOMICS OF THE HOUSEHOLD 501 (1935) (discussing the National Conference on Employer-Employee Relations in the Home and the suggestions favored and endorsed by the Conference); Mathilde Hader, *Conference on Employer-Employee Relationships in the Home*, 23 J. HOME ECON. 640-41 (1931) (observing that representatives from the American Home Economics Association, welfare organizations and government agencies all attended the conference); Dorothy P. Wells, *Raising Standards of Household Employment*, EMPLOYMENT SERVICE NEWS, Aug. 1935, at 10, 11 (examining the National Committee on Household Employment's attempts to reconcile the employer's needs with those of household employees by promoting voluntary contracts).

middle-class America.²⁰² The purpose of the Conference was simple: to determine ways for housewives to compete for laborers in light of “inducements offered by industrial and business organizations” and laws passed by state legislatures.²⁰³ By the time the Conference convened, forty states had passed protective hour and wage legislation on behalf of women workers,²⁰⁴ many of which explicitly excluded domestic service workers.²⁰⁵

Determined to place domestic service on par with other occupations, Conference participants committed themselves to formulating “working contracts by groups of employers and employees which [would] include minimum standards [and] individual contracts between employers and employees which [would] not undercut these standards”²⁰⁶ To realize these goals, a permanent National Committee on Household Employment (“NCHE”) was established, with Eleanor Roosevelt appointed as honorary president.²⁰⁷

At its second national Conference in 1931, the NCHE began the task of drafting a set of labor standards to govern the paid household-help relationship.²⁰⁸ Comprehensive in scope, the “Suggested Minimum Standards for the Full Time General Houseworker” included provisions governing wages, vacation time, living conditions, accident protection, and termination notice.²⁰⁹ The central feature of the proposed standards concerned hours, and provided that:

[t]he maximum length of the working time of the worker living in should not exceed fifty-four hours a week, and the worker living

202. See ANDREWS, *supra* note 201, at 501 (identifying the organizations that initiated the Conference and advocated a permanent committee to address the problems surrounding household employment). In addition to its sponsors, attendees at the conference included representatives of private social service organizations, employment bureaus, and household employers. See Hader, *supra* note 201, at 640-41 (identifying conference attendees and members of the committee).

203. See *Employer-Employee Relationships*, *supra* note 21, at 49.

204. See STEINBERG, *supra* note 13, at 132-33 (presenting a table demonstrating which industries benefited from labor legislation). See generally BAER, *supra* note 32, at 51-66 (evaluating how the judiciary reacted to protective legislation regulating female workers).

205. See Catherine B. Allen, *Legislation for Household Workers*, in FAIR AND CLEAR IN THE HOME 56, 58-59 (Carol Biba & Dorothy P. Wells eds., 1936) (discussing the rejection of domestic service regulations by several state legislatures and noting that one of the prime reasons these regulations failed was that “women do not want interference in the management of their homes”).

206. *Id.* at 49.

207. Originally called the Committee on Employer-Employee Relations in the Home, the permanent committee was renamed the NCHE in 1934. See ANDREWS, *supra* note 201, at 502. In 1940, the committee was renamed again to the National Council on Household Employment. See Amey E. Watson, *Household Employment in Outline*, 34 WOMAN'S PRESS 21, 21 (1940).

208. See ANDREWS, *supra* note 201, at 502.

209. See Watson, *supra* note 191, at 175-76 (detailing the suggested standards and explaining their purpose); see also ANDREWS, *supra* note 201, at 502-03 (providing the “Proposals for a Voluntary Agreement in Household Employment” which incorporated the “minimum standards”); COOK, *supra* note 134, at 6, 7, 22 (advocating the use of voluntary agreements and discussing the benefits to household employers and employees); *Do Servants Need a Code? A Socratic Dialog*, FORUM, July 1934, at 34, 35 [hereinafter *Do Servants Need a Code?*] (describing a dinner party discussion of the domestic service problem and outlining the NCHE’s proposed standards).

out, forty-eight hours. Two hours on call should be considered equivalent to one hour of working time One whole day per week . . . or two half days a week . . . should be free.²¹⁰

Throughout the 1930s and 1940s, reform organizations disseminated model contracts incorporating these standards to household employers across the country.²¹¹

Although the self-regulatory approach to domestic service peaked during the 1930s under the leadership of the NCHE, it was rooted in the Progressive Era, which saw the first wave of household labor reformers.²¹² Based largely in the Northeast at the time, organizations in New York City, Boston, and Philadelphia collaborated through the Inter-Municipal Committee on Household Research (“ICHR”), a loose, umbrella organization formed at the turn of the century.²¹³ The most active organization associated with the ICHR was the Women’s Educational and Industrial Union of Boston (“WEIU”), the group responsible for some of the initial investigations into the conditions of domestic service.²¹⁴

In 1897, the WEIU initiated its plan for transforming domestic service from a private, personal enterprise into a regulated economic venture with the establishment of a Domestic Reform League.²¹⁵ Through the League, the WEIU operated an employment agency for paid household workers.²¹⁶ In order to use the agency, each prospective employer and employee had to sign a written contract of employment.²¹⁷ Though simple in form,²¹⁸ the contract represented an important ideological milestone in the transformation of the

210. Watson, *supra* note 191, at 175.

211. See PALMER, *supra* note 4, at 124-26 (discussing various reform groups’ efforts to introduce voluntary contracts into their local communities).

212. See *Employer-Employee Relationships*, *supra* note 21, at 55-56 (describing early domestic service reform efforts undertaken by groups such as the Household Aid Company, the Domestic Reform League of the Woman’s Educational and Industrial Union, and the YWCA).

213. See *Announcement*, *supra* note 87, at 1 (announcing the formation of and providing background information on the ICHR). The representative organizations were the Women’s Educational and Industrial Union of Boston, the New York Association for Household Research, and the Civic Club, in cooperation with the Housekeepers’ Alliance, of Philadelphia. See *id.*

214. See *supra* notes 106-08 and accompanying text (discussing the WEIU’s investigation into the hours of domestic service workers).

215. See HERSEY, *supra* note 102, at 2.

216. *Id.*

217. See *id.* at 3 (providing a copy of the contract). In addition to the written contracts, the Union also established a School of Housekeeping to train employers and employees in the business of housekeeping. See generally Henrietta Goodrich, *The School of Housekeeping*, 3 J. HOME ECON. 366 (1911) (observing that the School of Housekeeping initially focused its curriculum on training maids but eventually catered to the increasing interest of young homemakers in learning to manage their homes); Mary Esther Trueblood, *The Boston School of Housekeeping*, 30 GOOD HOUSEKEEPING 174 (1900) (noting that the school of housekeeping “stands as a recognition of the fact that housekeeping is a profession which demands scientific training” and explaining that the aim of the school is to “train the homemaker” and “to elevate the houseworker by making her a skilled laborer”).

218. The contract specified the wages to be paid and identified the capacity for which the domestic was to be hired, i.e., as a cook or a general domestic. The contract also included a payment provision in case of dismissal by the employer or desertion by the employee. See Hersey, *supra* note 102, at 2-3 (reproducing a typical employment contract and crediting contracts with reducing conflicts and job turnover when used by members of the league).

household relationship into a modern employment relationship. It was a first step toward encouraging maids and mistresses to recognize that “the relation between the employer and employed is a business one, involving responsibilities on both sides”²¹⁹ To domestics, the contract approach was presented as an assurance that they would receive “good conditions and fair wages . . . in exchange for intelligent and faithful service.”²²⁰ To mistresses, the contract idea was offered as a means of “attract[ing] the intelligent wage earner from overcrowded shops and factories to the inadequately supplied homes.”²²¹

B. *The Legislative Campaign*

As for the movement’s activities on the legislative front, historical records disclose that scattered attempts were made to secure labor legislation to shorten the workday of domestics as early as 1914.²²² It was not until the New Deal, however, that the movement began to focus seriously on the inclusion of domestic service within the scope of labor legislation.²²³ By then, it seems likely that reformers could no longer ignore the dismissive response toward the self-regulatory strategy expressed by household employers.²²⁴

The legislative campaign to restructure domestic service began in earnest with the National Industrial Recovery Act of 1933 (“NIRA”).²²⁵

219. *WEIU Reform Announcement* (n.d.) (n.p.) (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author).

220. *See id.*

221. *See id.*

222. Writing in 1919, Mary Waggaman reports that a bill to limit the hours of domestic workers to 10 hours a day had been introduced in the California legislature in approximately 1914. *See* Waggaman, *supra* note 84, at 206, 212 (identifying the problematic aspects of domestic work and workers and various proposed solutions to the domestic labor shortage). According to Waggaman, the bill was defeated in the Assembly and a companion bill, while passing both houses, ultimately received a pocket veto. *See id.* Reviewing early legislative efforts in this area, Catherine Allen notes that, in approximately 1916, a Joint Legislative Committee of Women’s Organizations prompted the introduction of a bill in the Idaho legislature to provide a nine-hour day for women that included household workers. According to Allen, “[w]omen employers of the state so objected that the clause affecting household help was eliminated.” Allen, *supra* note 205, at 58-59; *see infra* Part V (examining the reactions of middle-class employers to the campaign to shorten the workday of domestics).

223. *See infra* notes 228-31 and accompanying text (documenting the reform movement’s campaign to extend coverage of the National Recovery Act of 1933 to paid household workers); *see also* Anne Petersen, *Industry Cuts Nation’s Total of Housemaids*, N.Y. TIMES, Feb. 2, 1941, at 4D (observing that the National Council on Household Employment—a leading reform organization—was beginning to focus on legislation “[a]s its latest effort to modernize conditions” for paid household workers).

224. *See* Allen, *supra* note 205, at 56 (suggesting in 1936 that the time had arrived to pursue state laws to regulate household employment because while “[v]oluntary agreements . . . work very well with certain types of [household] employers, . . . they are usually the ones who do not need them”); PALMER, *supra* note 4, at 117 (suggesting that as “hopes for voluntary improvement of standards faded . . . demands for government regulation rose”); Anne Petersen, *Training of Household Workers Urged to Solve Labor Problem*, N.Y. TIMES, May 8, 1938, at D5, (observing that the voluntary household agreements “have not proved to be entirely successful, nor widely adopted”); *see* Dudden, *infra* note 244, at 445-46 (observing that various reform proposals, including the use of voluntary contracts, had limited appeal among employers).

225. *See* National Industrial Recovery Act of 1933, ch. 90, 48 Stat. 195 (codified as amended at 15 U.S.C. § 701).

Before the Supreme Court ruled the Act unconstitutional in 1935,²²⁶ individual household workers as well as organized groups presented numerous proposals to the Roosevelt administration regarding the regulation of domestic service.²²⁷ In 1933, the National Recovery Administration (“NRA”), the agency responsible for implementing the NIRA, announced that domestic service did not qualify for coverage under the Act.²²⁸ In a letter to the Chair of the NCHE, an NRA official explained the Administration’s position:

Insofar as household employment or domestic service is a trade or industry, it is subject to the National Industrial Recovery Act. It is the present opinion of the Legal Division that ordinarily this would not be the case and we do not expect a code to be filed for them.²²⁹

Considering that the NRA codes discriminated against both women and African Americans generally, the response was not completely unexpected.²³⁰ Nevertheless, it represented a crushing defeat, particularly for the many domestics who had begun to participate in

226. *See* Schechter Poultry Corp. v. United States, 295 U.S. 495, 550 (1935) (asserting that although establishing industry business and wage practice regulations could have beneficial social effects, the Act unconstitutionally: (1) delegated legislative authority to the executive branch; and (2) overextended Congress’ authority to govern interstate commerce).

Enacted in 1933, the NIRA enabled industries to establish, with approval from the government, codes of fair competition to regulate the wages and hours of workers in those industries. *See* IRVING BERNSTEIN, *A CARING SOCIETY* 117-45 (1985) (describing the purpose and treatment of the NIRA and subsequent legislation and Supreme Court rulings). Despite its short life-span, the Act left a lasting mark on American labor policy. *See id.* The codes, which eventually covered 90% of all industrial workers, paved the way for the 40-hour work week. *See id.*

227. Headquartered in Mississippi, the National Association for Domestic Workers (“NADW”), proposed a 48-hour work week. *See* PALMER, *supra* note 4, at 120; *see also* Letter from Lucy Carner, Executive, National Services Division, to Mary Anderson, Women’s Bureau, U.S. Department of Labor (Aug. 2, 1933) (Watson Papers, Folder 1.24, Catherwood Library, Cornell School of Industrial and Labor Relations) (establishing a procedure for collecting “statements of conditions [in domestic service] from girls all over the country” to be directed to the Roosevelt Administration in support of a code).

228. *See* PALMER, *supra* note 4, at 120.

229. Letter from Allen Bennett Forsberg, Control Division, National Recovery Administration, to Benjamin Andrews, Professor of Household Economics, Teachers College, Columbia University (Sept. 13, 1933) (Watson Papers, Folder 1.24, Catherwood Library, Cornell School of Industrial and Labor Relations) (on file with author).

230. One fourth of all NRA codes established permitted discrimination on the basis of sex. *See* LOIS SCHARF, *TO WORK AND TO WED: FEMALE EMPLOYMENT, FEMINISM, AND THE GREAT DEPRESSION* 112 (1980) (highlighting the protest to gender-based code differentials by female organizations); *see also* WINIFRED D. WANDERSEE, *WOMEN’S WORK AND FAMILY VALUES, 1920-1940*, at 98 (1981) (“By September 1, 1934, when 233 NRA codes had been approved, 135 of these codes fixed the minimum rates for women in some forms of production work lower than the rates for men.”). The codes also discriminated against Blacks by permitting “Southern employers to pay their workers a lower minimum wage than that allowed in the rest of the nation.” HARVARD SITKOFF, *A NEW DEAL FOR BLACKS* 54 (1978) (illuminating the racial inequalities codified by NRA provisions). In addition, jobs dominated by Blacks were classified such that they did not fall under the coverage of the NRA. *See id.* When the codes did apply to jobs held by Blacks, companies in the South often blatantly disregarded the wages set by the codes, openly discriminating against Black workers. *See* RAYMOND WOLTERS, *NEGROES AND THE GREAT DEPRESSION: THE PROBLEM OF ECONOMIC RECOVERY* 115 (1970) (discussing methods of displacing Black workers after the NRA instituted codes, as employers refused to pay Black workers a higher wage and hired white workers instead); John P. Davis, *NRA Codifies Wage Slavery*, 41 *CRISIS* 298, 299 (1934) (noting that in the South laundry workers were predominantly Black female laborers and that the NRA imposed a \$.14 an hour wage code that was inadequate and rarely enforced).

the reform movement, and who had been actively involved in drafting proposed codes. In a letter to President Roosevelt, a domestic worker cynically expressed her disappointment: “when you mention a code for Domestic, they arrogantly tell you it will and can never be done. I wonder why it is that the same God made us made the rest of mankind and yet when it comes to hours and wages there is such a difference.”²³¹

In the aftermath of the NRA ruling, reformers refocused their energies and continued the crusade to persuade members of the middle class that the voluntary contracts really were in their best interest.²³² The movement apparently did not actively seek inclusion of domestic service in the Social Security Act of 1935²³³ or the Fair Labor Standards Act (“FLSA”) of 1938,²³⁴ both of which excluded paid household workers. Following passage of the FLSA, however,

231. *Id.* at 231 (citation omitted) (quoting a letter sent by a paid domestic to President Roosevelt).

232. *See* PALMER, *supra* note 4, at 121-22 (asserting that reformers, after an unsuccessful campaign to regulate domestic workers, returned to the voluntary contracts campaign).

233. *See* Social Security Act of 1935, ch. 531, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301-397(f) (1994)). The Social Security Board explained the exclusion of paid household workers by stressing that they presented technical difficulties too cumbersome to resolve while the system was in its infancy. *See* THIRD ANNUAL REPORT OF THE SOCIAL SECURITY BOARD 23 (1938) (reiterating the Board’s intentions to cover excluded industries as soon as practical) [hereinafter THIRD ANNUAL REPORT]. Juxtaposed against a system that was conceived and designed with large businesses in mind, household employment understandably posed some administrative challenges. *See id.* at 21 (stating that old-age insurance was designed for industry and commerce workers). At the same time, however, that explanation must be evaluated with some skepticism. By the time the United States undertook a national social security system, numerous other countries had led the way and most of them had included domestic service workers within their old-age plans. *See* A. J. Altmeyer, *Social Security for Domestic Workers*, 8 SOC. SECURITY BULL., Jan. 1945, at 10 (1945) (providing a list of countries that had social security plans which included domestic service workers). Building on the plans of those countries, commentators stressed that “[i]t would be comparatively simple to provide old-age protection for . . . domestic servants . . .” *See* MAXWELL S. STEWART, SOCIAL SECURITY 241 (1937). In short, while details remained to be mapped out, the wheel had been invented. *See id.* Indeed, as early as 1938, the Social Security Board conceded that there were “no insurmountable difficulties involved in the extension of coverage” to domestic workers, and subsequently recommended to President Roosevelt that Social Security benefits be extended to household workers. *See* THIRD ANNUAL REPORT, *supra*, at 40 (aspiring to broaden old-age insurance coverage without a significant increase in administrative costs). Despite that recommendation and the introduction of bills to amend the Act to include household workers, Congress steadfastly refused and did not extend Social Security coverage to domestics until 1950. *See* EDWARD D. BERKOWITZ, AMERICA’S WELFARE STATE 58-60 (1991) (discussing the process of incorporating domestics into Social Security); PALMER, *supra* note 4, at 133 (contending that the uncertain economic climate combined with the perceived administrative difficulties of incorporating domestic workers ensured their exclusion). The problem for domestic service workers was trying to convince government officials that their work had economic value even though it was located within the home and outside the parameters of industry. *See* BERKOWITZ, *supra*, at 25. Compounding that problem was the fact that “[d]omestic servants . . . suffered from the popular stereotype that they . . . received many benefits, such as food and spare clothes, in kind.” *Id.* at 25 (observing that the analysts developing the old-age insurance system were reluctant to bother housewives with tedious record-keeping requirements). Hence, some officials questioned whether domestics in fact required Social Security. *See id.*; *see also* JILL QUADAGNO, THE TRANSFORMATION OF OLD AGE SECURITY 115-16 (1988) (suggesting that the exclusion of domestic service workers hinged critically on a southern agenda bent on excluding African Americans).

234. *See* Fair Labor Standards Act (“FLSA”) of 1938, ch. 676, 52 Stat. 1060 (1938) (codified as amended at 29 U.S.C. §§ 201-219 (1994)). Paid household workers were finally brought under coverage of the FLSA in 1974. *See* Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 7(b) (1), 88 Stat. 55, 62 (codified as amended at 29 U.S.C. § 206(f) (1) (1994)).

household reformers turned their attention to state legislatures, promoting several campaigns to include paid household workers within the scope of state wage and hour laws.²³⁵

IV. THE LIMITATIONS OF HOUSEHOLD REFORM ADVOCACY

Against a popular view that considered it “unusual to think of any question of law as between the housewife and the lady who condescends to do her cooking and general work,”²³⁶ the movement dared to imagine the unimaginable—the legal treatment of paid household work as a legitimate form of employment. Unfortunately, the movement’s legal strategies ultimately would produce few tangible victories.²³⁷ Household employers responded with defiant opposition,²³⁸ and legislatures seemed to take it for granted that domestic service should be exempted from all labor standards.²³⁹ By 1940, Washington²⁴⁰ was the only state with a law limiting the hours of paid household workers.²⁴¹ Five years later, the movement’s umbrella

235. During the 1939 state legislative sessions, for example, bills to extend wage and hour coverage to domestic service workers were introduced in eight states. See Letter from Mrs. Smith, United States Department of Labor, to Mrs. Beyer (Apr. 24, 1939) (Watson Papers, Folder 3.44, Catherwood Library, Cornell School of Industrial and Labor Relations); *Problems of Household Workers*, *supra* note 134, at 8 (providing an overview of existing state legislation which applied to paid household workers and surveying proposed legislation seeking to include paid household workers); see also GRAY, *supra* note 199, at 97-98 (identifying efforts to legislate domestic service in New York).

236. *The Law and the Lady*, BOSTON J., Jan. 28, 1905 (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author).

237. See *Domestic Workers*, *supra* note 15, at 5 (“To date the recommendations of State and Federal officials in 1938 and 1939 relating to the coverage of domestic workers by labor laws have had no concrete results . . .”).

238. See discussion *infra* Part V (explaining how employers opposed reformers’ efforts to transform domestic service into an employment relationship with regulated hours).

239. See generally E.H. DOWNEY, HISTORY OF LABOR LEGISLATION IN IOWA 114 (1910) (noting that neither agricultural work nor domestic service “has ever been supposed to require special restrictive legislation”); *Domestic Workers*, *supra* note 15, at 1 (exposing state legislatures’ failure to incorporate domestics into labor legislation); Rae L. Needleman, *Are Domestic Workers Coming of Age*, 46 Am. Labor Legis. Rev. 1070, 1070 (1939) (observing that the “exclusion of domestic workers from social and labor legislation has been the rule rather than the exception”).

240. See *Household Employment in Seattle* 77 (1937) (Watson Papers, Folder 4.92, Catherwood Library, Cornell School of Industrial and Labor Relations) (reproducing chapter 129 of the session laws of 1937). The law provided that “[n]o male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations.” *Id.*; see also COOK, *supra* note 134, at 18 (identifying legislation proposed by the Women’s Trade Union League, which was modeled after Washington’s 60 hour per week domestic worker legislation).

241. See GRAY, *supra* note 199, at 96 (“As late as 1939 . . . Washington State, an area with few blacks, was the only state that had regulated hours for domestic and only 8 states had minimum wage laws pertaining to them.”). Paid household workers had not fared much better with respect to minimum-wage laws or worker’s compensation systems. Of the 26 states with minimum wage laws in 1940, only Wisconsin had enacted a specific minimum wage order applicable to paid household workers. See HOUSEHOLD OCCUPATION, *supra* note 199, at 16 (providing a summary of state legislation regulating domestic employees). As for worker’s compensation, California and Connecticut were the only two states to require coverage of domestic workers by 1940. See Allison Gordon, *What Should We Do About Household Employment?*, Oct. 1940, at 13 (Watson Papers, Folder 4.81, Catherwood Library, Cornell School of Industrial and Labor Relations) (observing that to trigger the coverage, California required the domestic to work at least a 52-hour week, while Connecticut required at least five employees per

organization, the NCHE, fell apart.²⁴²

In important ways, the movement failed paid household workers. Reformers seemed uniformly confident in the belief that domestic service had to be approached as an employment relationship based on contract—money in exchange for a limited amount of work.²⁴³ Yet, notwithstanding this commitment to the idea of an independent paid household worker, many reformers were ambivalent about according paid household workers the status of rights-bearing employees.²⁴⁴ In order to convince both legislatures and employing families to treat domestic service as a regulated employment relationship between employer and employee, the movement confronted an ideological challenge. The movement had to characterize domestic service as something other than a pleasant activity; it had to foster an image of domestic service that could fit within, or at the very least contest, the dominant cultural understanding of work as arduous labor performed within the market place.²⁴⁵ An exploration of how reformers approached this task is the

household).

242. See PALMER, *supra* note 4, at 116 (noting that the NCHE was created in 1928 and defunct by 1945).

243. See *supra* text accompanying notes 206-10 (detailing the promotion of voluntary employment contracts that identified expectations for the work to be performed and hourly wage); see also LAUGHLIN, *supra* note 98, at 760 (observing that there had to be “definiteness as to the work required” in the paid household relationship); MacDonald, *supra* note 180, at 62 (arguing that the employing housewife had to understand that “she has not purchased anyone’s *time*. She has purchased a certain number of *skills*, which she should define, *for a certain number of hours*, which she likewise should define”) (emphasis in original).

244. See Faye E. Dudden, *Experts and Servants: The NCHE and the Decline of Domestic Service in the 20th Century*, in 4 A HISTORY OF WOMEN IN THE UNITED STATES 443, 448 (Nancy Cott ed., 1992) (describing the YWCA’s efforts to promote private voluntary arrangements between employer and employee to govern work relationships).

245. As a form of unpaid labor, housework has been devalued as “real” work by referring to it as a “labor of love.” See ROMERO, *supra* note 4, at 21. This characterization reflects the fact that unpaid housework is

private, it is self-defined and its outlines are blurred by its integration in a whole complex of domestic, family-based roles which define the situation of women as well as the situation of the housewife. Housework is an activity performed by housewives within their own homes. The home is the workplace, and its boundaries are also the boundaries of family life.

Id. at 27 (quoting ANN OAKLEY, WOMEN’S WORK: THE HOUSEWIFE, PAST AND PRESENT 6-7 (1976)); see also Silbaugh, *supra* note 2 (exploring the legal dimensions resulting from the conception of unpaid household work as a “labor of love”).

Although paid household worker is performed by a non-family member, its location within the setting of the home has served to set it apart from other forms of wage labor. See PALMER, *supra* note 4, at 149 (suggesting that, in order for domestic service to be treated as work, and for domestic service workers to be treated as other workers, it was necessary to foster an image of the home as a worksite, not “the place connected with sensuality and repression”); see also *infra* notes 267-69 and accompanying text (concluding that the setting of the home argued against the inclusion of paid household workers within the scope of labor legislation). The task of defining domestic service as “real” work also hinged on reformers’ ability to portray it as work that women performed out of economic necessity. As one reformer explained, domestic service often was regarded as casual, make-shift work which women preferred intermittently. See Needleman, *supra* note 239, at 1071; see also *infra* note 266 and accompanying text (examining the perception of domestic service as a training ground for marriage).

Conceptualizing domestic service as a form of legitimate work was complicated further by describing it as unskilled, menial work. See Brown, *supra* note 199, at 220. For Jean Collier Brown, a former domestic, that description had no basis in reality. As she explained, it was obvious that “a far greater amount of ability and intelligence is required to care for a home

focus of this Part. It examines the ways in which reformers contemplated the issue of household regulation and considers what led them to embrace the strategies that they adopted.²⁴⁶

A. *Conceptions of Paid Household Work and Responses from Reformers*

It is no surprise that state officials did not include domestic service workers in the initial wave of maximum-hour legislation passed in this country. Developed in the wake of the industrial revolution, society viewed maximum-hour standards as benefiting individuals who labored in industrial settings and who contributed to the production of capital.²⁴⁷ At the turn of the century, this view readily invoked an image of men mining for coal or women operating the mills of textile factories, occupations that smacked of industrialism and posed a clear threat to the health of workers.²⁴⁸ Early protective maximum-hour laws thus applied mainly to women workers in factory settings, bypassing not only domestic service but all other types of employment

than to carry out a single operation in a factory, a laundry, a store, or in any of a myriad of jobs where hours are normally shorter and pay higher.” Jean Collier Brown, *Household Employees Join the CIO*, 35 J. HOME ECON. 265, 266 (1943).

246. The goal of this section is not to offer a definitive explanation of why domestic service workers never received the benefits of legal protection during the movement’s existence. Had the movement been fully committed to the interests of the workers, and less focused on the needs of middle-class families, it is likely that it still would not have been able to overcome the many obstacles that operated to deny paid household workers the entitlements that so many other waged workers were beginning to take for granted. Importantly, various organizations opposed the movement, including private household employment agencies concerned that regulation would curtail their profits and potentially displace them altogether. In New York City, for example, agencies actively campaigned against reformers, distributing leaflets to employers that cast the debate as a choice between “HOME CONTROL VS. LABOR UNIONISM,” and warned against “labor dictation as to hours of service.” See COOK, *supra* note 134, at 13; see also GRAY, *supra* note 199, at 97 (referencing opposition of employment agencies in New York). In some instances, labor leaders who were vocal adversaries worried that “if domestic workers were included in a bill affecting other women workers the bill would not pass.” Allen, *supra* note 205, at 59 (suggesting reasons why domestic service reform legislation was unpopular and unsuccessful). Southern racism also proved to be an overwhelming obstacle, particularly with respect to efforts to include domestic workers within the scope of New Deal legislation. Dominating the congressional leadership throughout the 1930s, white Southern politicians fought hard to ensure that New Deal initiatives did not interfere with the ability of Southern states to dictate race relations. See JILL QUADAGNO, *THE COLOR OF WELFARE* 20-22 (1994) (suggesting that President Roosevelt was dependent on Southern Congressmen for the passage of his legislative agenda, allowing them an opportunity to influence and amend the legislation); SITKOFF, *supra* note 230, at 112-18 (discussing how Southern politicians opposed Roosevelt’s New Deal programs). While most household workers seemingly favored regulation, there were those who openly challenged the quest to reform the occupation. See COOK, *supra* note 134, at 12 (noting that the magazine, *STAFF*—the voice piece of domestic workers of the New York elite—advised its readers to oppose hour legislation observing that there was “little to complain of”). In the final analysis, paid household workers, as a class of unorganized poor women who lacked political influence, simply were unable to convince legislatures or household employers that their job deserved to be given the status of an employment relationship.

247. See JOHN R. COMMONS & JOHN B. ANDREWS, *PRINCIPLES OF LABOR LEGISLATION* 100-04 (1936) (noting that most early hour legislation applied to factory workers); see STEINBERG, *supra* note 13, at 122 (concluding that “the right to[labor] protection was gradually extended to employees according to which occupations were subjectively defined as part of the industrial sector”).

248. See *id.* at 103 (“The number of employments covered by hour legislation in America appears to depend largely on what occupations public opinion considers dangerous to the health of women.”).

that were not factory-oriented.²⁴⁹ By the 1920s, however, hour legislation had been extended to apply to a range of job settings, including telephone and telegraph offices, theaters, hotels, and business offices.²⁵⁰ Yet domestic service remained a targeted outcast.²⁵¹

There are many possible explanations for the exclusion of paid household workers from the scope of labor legislation, but the history of hour legislation points to two in particular that demand attention. First, according to popular belief, paid household domestics did not encounter the types of problems experienced by other workers; thus, they did not require protection from long hours of work.²⁵² Second, society did not regard domestic service as a legitimate occupation because it supposedly lacked productive value.²⁵³

1. *The no-problem rationale*

“[O]n account of woman’s physical structure and maternal functions her health, and that of her offspring, was subject to be injuriously affected by requiring her to perform long hours of labor.”²⁵⁴

a. *Housework: Good for a woman’s health*

Protection of health was foremost among the various justifications for hour legislation.²⁵⁵ Although domestics worked inordinately long hours, conventional wisdom held that household work was not detrimental to the health of working women.²⁵⁶ Protective hour legislation rightly exempted domestic service, concluded labor leaders John Common and John Andrews, because the occupation

249. *See id.* (discussing a law enacted by Ohio in 1852 that established a 10-hour day for women who worked in a factory, workshop, or other place used for mechanical or manufacturing purposes). In 1874, early protective hour legislation enacted in Massachusetts also limited the reach of the law to women employed in factory settings. *See id.* at 104. The protective labor laws represented the struggles of factory operatives who toiled in textile mills throughout the Northeast. *See id.* at 103-04 (discussing early efforts to pass maximum hour legislation to protect female industrial workers).

250. *See id.* at 104-05 (reviewing the extension of protective hour legislation from standard manufacturing establishments to a broader field of employment, including hotels and the telephone and telegraph industry).

251. *See infra* Parts IV.A.1, IV.A.2 (asserting that society did not perceive domestic labor as injurious to a woman’s health or as a form of productive labor, and thus household employees did not benefit from the rationales behind early labor legislation).

252. *See infra* Part IV.A.1 (discussing the no-problem rationale).

253. *See infra* Part IV.A.2 (discussing the no-product rationale).

254. *State v. Elerding*, 98 N.E. 982, 984 (Ill. 1912) (holding that prohibiting the employment of females in any hotel longer than 10 hours was not unconstitutionally discriminatory).

255. *See* COMMONS & ANDREWS, *supra* note 248, at 233 (discussing how worker health declined under the strain of a 10- or 12-hour day in modern industry because workers did not have time to rest and recover from the excessive fatigue); Frank De Vyer, *Regulation of Wages and Hours Prior to 1938*, 6 LAW & CONTEMP. SOC. PROBS. 323, 323 (1939) (arguing that the legal reduction of weekly hours from 60 to 50 can be classed as a way to protect health).

256. Far from being detrimental, paid housework was viewed as beneficial to the health of working women. *See infra* notes 275-78 and accompanying text.

“in no way endanger[s] health.”²⁵⁷ Yet why was performing housework any less dangerous to a woman’s health than selling clothes or operating a telephone switch desk, occupations that were routinely covered under hour laws by the second decade of the twentieth century?²⁵⁸ Assuming legislators engaged that question, it likely never occurred to them that “sweeping and beating carpets might be included among the dusty trades” or that “bending over steaming washtubs and almost immediately afterwards going out into the frosty air might be harmful to throat and lung.”²⁵⁹

As the paradigmatic form of woman’s work, society viewed domestic service as easy, stress-free work that required minimal exertion. Instead of taxing the body, it supposedly provided pleasure and untold opportunities.²⁶⁰ There was, according to popular opinion, no “better calling, . . . none more apt to elevate the mind and improve the health, and to add to the experience and knowledge of young women, than the privilege of assisting in the affairs of the home of cultured men and women.”²⁶¹ Visualizing domestic service in such advantageous terms allayed concerns about the ill-effects of long work days.²⁶²

In justifying protective hour legislation, legislatures and courts often focused on women’s roles as wives and mothers to reason that the long hours exacted by work outside the home rendered them physically unfit to attend to the demands of home life, particularly child care.²⁶³ This legislative and judicial focus served to justify state limitations on the hours that a woman could work and to ensure that she could fulfill her social responsibilities as child bearer and rearer.²⁶⁴ State officials would not have seen such protection as

257. See COMMONS & ANDREWS, *supra* note 248, at 103 (noting that the types of jobs covered by hour legislation in America appeared to depend largely on what occupations public opinion considered dangerous to the health of women); see also E.H. DOWNEY, HISTORY OF LABOR LEGISLATION IN IOWA 114 (1910) (observing that neither agricultural work or domestic service “has ever been supposed to require special restrictive legislation”).

258. See COMMONS & ANDREWS, *supra* note 248, at 230-305 (documenting extension of protective hour legislation over time).

259. Rubinow, *supra* note 186, at 139.

260. See *id.* at 133 (arguing that domestic workers received special privileges, including single rooms, medical care, access to daily newspapers, books, and magazines, use of a bathroom and a sewing machine, a seat in church, and concert and theatre tickets); cf. KATZMAN, *supra* note 4, at 233 (noting that the domestic worker’s living environment included long, irregular hours, an inadequate diet, and a paucity of amenities).

261. See HELEN ARTHUR & GEORGE ENGLEHARD, LEGAL AID SOC’Y, DOMESTIC EMPLOYMENT 6 (1908); see also KATZMAN, *supra* note 4, at 229 (observing that women’s magazines sought to induce women into domestic service by quoting physicians who recommended the health benefits of housework).

262. See PALMER, *supra* note 4, at 85 (asserting that viewing housework as a life stage instead of lifetime employment mitigated concern about the lack of regulation of the job).

263. See generally BAER, *supra* note 32, at 10 (asserting that the courts and proponents of protective legislation have assumed that women’s interests are either included in or subordinate to those of others).

264. See *id.* at 53 (describing how the legislature deemed employment to some extent dangerous to one’s health). The courts also upheld legislation prohibiting women from certain occupations such as bartending. See *id.* (asserting that in *In re Considine* the Washington Federal District Court upheld legislation restricting women from bartending in order to avoid the commingling of the sexes where alcohol is present).

necessary for the domestic service worker, however, because her depiction as a young unmarried girl implied that she had neither a home of her own nor a family that required attention.²⁶⁵ Unlike industrial work, where a woman had to be protected lest it destroy her health and in turn her family, society portrayed domestic service as the perfect vehicle for providing a young woman with the knowledge necessary to fulfill her destiny as child bearer and rearer.²⁶⁶

The setting in which domestic service was performed also helped to sustain the view that domestic service did not pose a threat to the health of paid household workers. The vision of the home as a relaxing, comforting sphere where personal relationships radiated with kindness stood in sharp contrast to the impersonal forces that typified industrial life.²⁶⁷ Unlike the strain associated with working in the industrial sector, the home was thought to provide paid household workers with “a safe, moral, healthful environment in which to work” and to “require[] a less tense type of activity than industry.”²⁶⁸ Given that image, it was easy to assume that the home shielded paid household workers from the ills associated with industrial life.²⁶⁹

b. Reformers respond: On race, domesticity, and health

Although the movement had well documented the long hours that prevailed in domestic service, the potential impact of that information was frequently compromised. Reformers shared the conventional sentiment that domestic work, as women’s work, was naturally a healthy occupation.²⁷⁰ Such a view, however, was class

265. Although state officials refused to protect the health of domestics by including them within the scope of hour legislation, they occasionally did pass laws requiring domestics to submit to health examinations to ensure that they did not contaminate the homes of middle-class families. See *Servant Health Is League Topic*, N.Y. Times, Mar. 3, 1940, at D6 (Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College) (on file with author) (reporting that the New York City League of Women Voters had convened to consider pressing for legislation to require domestics to have health certificates and noting that such legislation was already in effect in Newark, New Jersey). The fear of contamination from paid household workers had long consumed household employers in the South who worried that domestics were “spreading tuberculosis through the food they cooked, the houses they cleaned, and the clothes they washed.” Tera W. Hunter, *Domination and Resistance: The Politics of Wage Household Labor in New South Atlanta*, 34 LAB. HIST. 205, 211 (1993) (discussing the role of Black women in domestic labor). By the 1930s, similar concerns were driving groups of household employers in the North. See *Servant Health Is League Topic*, *supra*, at D6. See generally G.E. Batchelder, *Healthy Help*, PARENT’S MAG., Mar. 1935, at 26 (warning that ailing servants are a health threat to the family).

266. See HELEN HOERLE, THE GIRL AND THE JOB 109-10 (1919) (“Every girl, no matter what her station in life, hopes in her heart, some day to have a home of her own . . . [I]f she expects to do so, what better way is there to train for it than by working in another home first?”).

267. See Olsen, *supra* note 6, at 1499 (highlighting the ideological dichotomy between the home and the market).

268. Leila Doman, *Legislation in the Field of Household Employment*, 31 J. HOME ECON. 90, 93 (1939).

269. See PALMER, *supra* note 4, at 85 (asserting that viewing housework as a life stage instead of lifetime employment mitigated concern about the lack of regulation of the job).

270. See, e.g., Selma Robinson, *Maid in America*, READERS DIG., Sept. 1936, at 25 (“[H]ousehold work offers women work which most of them enjoy, since psychologically they

specific because medical authorities warned middle-class women to avoid physically demanding tasks such as housework.²⁷¹ In sharp contrast to that admonition, the movement touted domestic service as an occupation particularly “conducive to good health”²⁷² in an effort to entice working-class women back into service. Some working women lent support to that view: As a factory worker explained, “You can keep in good health in domestic service, because you can have more ventilation and pure air. In a factory you don’t have no fresh air at all.”²⁷³ Interestingly, however, such testimonials often appeared as an expression of the worker’s belief that domestic service *could be* a healthy occupation if other conditions were improved.²⁷⁴

In fact, however, evidence indicated that the long hours of grueling work took their toll not only on the worker’s sense of freedom but also on her physical well-being.²⁷⁵ As evidenced by activities like scrubbing and waxing floors on hands and knees and doing laundry by hand, domestic service was demanding, backbreaking labor.²⁷⁶ It was no wonder that many former paid household workers included physical exhaustion among their reasons for quitting.²⁷⁷ That reformers often placed such accounts aside, opting instead to emphasize the supposed health benefits of domestic service,²⁷⁸ underscores the fault line separating the goals of the movement from the needs of workers.

In the process of trying to lure white women back into domestic service,²⁷⁹ reformers also legitimated the image of the domestic service worker as a young, unattached woman, without family responsibilities.²⁸⁰ Although numerous domestic workers were young,

are suited to it.”); Rubinow & Durant, *supra* note 20, at 577 (“Housework is, by all tradition, woman’s work—wholesome, congenial, natural; factory work, on the other hand, is admittedly unwholesome and unnatural.”).

271. KATZMAN, *supra* note 4, at 149.

272. SALMON, *supra* note 19, at 132 (explaining the benefits of domestic service).

273. YWCA First Report, *supra* note 93, at 17 (reporting that 51 out of 191 girls believe household workers have better health than factory workers); *see also* SALMON, *supra* note 19, at 132 (quoting a domestic worker as saying, “We are not as closely confined as girls who work in stores and are usually more healthy”).

274. Many working-class women appeared to be of two minds when praising the health benefits of domestic work. Even as they proclaimed that paid housework offered women a healthy environment, they simultaneously criticized the work because it was all-consuming. *See supra* notes 122-29 and accompanying text. In the end, the emphasis that workers placed on a desire for independence and autonomy seems to have counteracted their view that domestic service was a healthy occupation.

275. *See* KATZMAN, *supra* note 4, at 8-9 (describing how some domestic workers were forced to seek other work because some tasks were too difficult for them, such as sweeping, scrubbing, lifting tubs, and turning mattresses).

276. *See* PALMER, *supra* note 4, at 82-83 (describing sores and infections from cleaning agents such as lye, oxalic acid, gasoline, benzene, kerosene, and turpentine).

277. *See* DUDDEN, *supra* note 4, at 194 (adding that women needed “robust good health” to be domestic workers).

278. *See supra* notes 270, 272-73 and accompanying text (discussing the popular view that domestic service was beneficial to the health of working women).

279. *See supra* note 84 and accompanying text.

280. *See, e.g.*, BARKER, *supra* note 90, at 25 (observing that domestic service will enable a woman to prepare herself for her “natural sphere of life: that of the homemaker”); Rubinow & Durant, *supra* note 20, at 579 (“[S]ervice provides a certain training for home life that an

single women for whom domestic service was a transitional occupation until marriage,²⁸¹ reformers ultimately overstated the perception of carefree youth. First, while statistical data on the age and marital status of paid household workers are sketchy, evidence suggests that as a class they were no younger than their industrial counterparts.²⁸² Second, the portrayal of domestics as young women passing time until marriage was racially specific and rarely applied to the many African-American domestics.²⁸³ Like Black women wage earners generally,²⁸⁴ Black domestics were significantly more likely to have familial obligations as mothers and wives than were white women in the workforce.²⁸⁵ The significance of that reality often went by the wayside, however, given the focus of the movement on attracting white women back into service.²⁸⁶

2. *The no-product rationale*

“The [legal] status of domestic servants is . . . largely determined by the opinion in which domestic work is held. Domestic work—work in the service of consumption—is not regarded as productive work in the current sense of the term.”²⁸⁷

The observations of Erna Magnus, a researcher with the Women’s

intelligent girl contemplating marriage can, and often does, utilize.”); Watson, *supra* note 191, at 168 (“While the average girl today as always is looking forward to marriage and family life as her ideal goal, yet she is not fitting herself seriously for this as a life work . . .”); See Woodward, *supra* note 31, at 440 (noting that the work “can offer [an] opportunity to learn the proper care of children and to acquire efficiency as housekeepers—excellent preparation for marriage and homemaking”).

281. See KATZMAN, *supra* note 4, at 81 (noting that “as soon as white women reached marrying age, they tended to stop working”); see also DUDDEN, *supra* note 4, at 210 (stating that “[y]oung women who entered domestic service regularly left it for marriage”); PALMER, *supra* note 4, at 85 (noting that “domestic workers were generally depicted as young women who took housework jobs in the interlude before marriage”).

282. See, e.g., Needleman, *supra* note 239, at 1072 (reporting that based on 1930 census there were larger proportions of domestic service workers in the older age brackets than among all wage-earners and salaried employees); Amey Watson, *Household Employment in Philadelphia*, WOMEN’S BULL. (no. 93) 11 (1932) (describing data from a Philadelphia study which found that domestic workers were “not a young group”). The average age of domestic workers no doubt increased as Black women came to dominate domestic service. On average, Black women workers were significantly older than their white counterparts. See *infra* note 284.

283. See KATZMAN, *supra* note 4, at 82 (describing domestic work as a temporary station between adolescence or early adulthood for white women and a way of life for most Black women).

284. See JONES, *supra* note 35, at 182 (discussing the prevalence of Black married women in the paid labor force). See generally PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 48, 232 (1984) (reporting that by 1940, one Black woman in three over the age of 14 was in the work force, compared to one in five of white women). AMOTT & MATTHAEI, *supra* note 75, at 300 (comparing the labor force participation rates of married women across racial-ethnic groups for the 1920s and finding that married African-American women were more likely to participate in paid work).

285. See *Domestic Workers in Baltimore*, 20 MONTHLY LAB. REV. at 7-8 (reporting on a 1925 Baltimore study which found that 64.9% of Black domestics were or had been married compared with 46.5% of white domestics); see also KATZMAN, *supra* note 4, at 81 (“[w]hile domestic service was a transitional period for white women, a larger proportion of black women would continue working after marriage.”); PALMER, *supra* note 4, at 86 (reporting that more than half of Black domestic workers had dependents to support).

286. See *supra* notes 83-84 and accompanying text.

287. Magnus, *supra* note 118, at 198.

Bureau, offer a second explanation for the lack of hour protection extended to paid household workers: the conception of domestic work as unproductive.²⁸⁸ So construed, domestic service did not qualify as a form of “real” work, and accordingly, was excluded from the entire range of employment protections.²⁸⁹ This section examines the economic invisibility of domestic service.

a. The economic devaluation of paid housework

The close association between paid housework and women’s unpaid housework contributed to the conception of the former as a non-market activity.²⁹⁰ Although unpaid housework advances the welfare of the family and society, it is regarded as unproductive.²⁹¹ That perception reflects a belief that the services performed—caring for children, washing clothes, cooking—do not contribute to the economy as a whole by way of producing surplus value for capital.²⁹² Paid housework has been similarly devalued despite the fact that it involves a wage relationship. Situated within the family sphere and outside the purview of capital, paid household labor, similar to unpaid household labor,²⁹³ was understood to involve the creation of simple use-values, i.e., those values that the employing family consumed immediately and thus were thought never to enrich capital.²⁹⁴ As a 1930 court opinion derisively put it: “[T]here is no

288. *Id.*

289. See *supra* note 251.

290. See ROMERO, *supra* note 4, at 11-16 (exploring the connection between women’s paid and unpaid household work).

291. See Caroline Freeman, *When is a Wage Not a Wage*, in THE POLITICS OF HOUSEWORK (Ellen Malos ed.) at 202 (1980) (defending the Marxist concept of housework as unproductive).

292. The theory of “surplus value” posits that the capitalist compels the worker to labor to the limit of her energy, and then expropriates the value of the labor created in excess of that necessary to provide for the worker’s subsistence. Thus, labor is said to produce surplus-value when it creates more value than it possesses. See KARL MARX, THE COMMUNIST MANIFESTO (1848), reprinted in THE MARX-ENGELS READER 291, 331-62 (Robert C. Tucker ed., 1974) (reprinting of the COMMUNIST MANIFESTO); KARL MARX, 1 THEORIES OF SURPLUS VALUE 45 (1969). There are several feminist critiques of Marx-Engels theory. See, e.g., CATHERINE MACKINNON, TOWARDS A FEMINIST THEORY OF THE STATE 13-36 (1989) (arguing that Marx shared a liberal theory view that women naturally belong where they are socially placed); Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in WOMEN AND REVOLUTION 2 (Lydia Sargent ed., 1981) (asserting that recent attempts to “marry” marxism and feminism are unsatisfactory to feminists because they subsume the feminist struggle into the larger struggle against capital).

293. See HARRY BRAVERMAN, LABOR AND MONOPOLY CAPITAL 282-83 (1974) (observing that “[t]he goods and services produced by unpaid labor in the home are not reckoned at all From a capitalist point of view . . . such reckoning makes sense. The work of the housewife . . . is outside the purview of capital”). See generally Margaret Benston, *The Political Economy of Women’s Liberation*, MONTHLY REV., Sept. 1969, at 13 (giving a feminist analysis of housework and its relationship to the productive process); Margaret Coulson et al., *The Housewife and Her Labour Under Capitalism—a Critique*, 89 NEW LEFT REV. 59, 60 (1975) (arguing that “the central feature of women’s position under capitalism is not their role simply as domestic workers, but rather the fact that they are both domestic and wage labourers”); Nancy Folbre, *The Unproductive Housewife: Her Evolution in Nineteenth Century Economic Thought*, 16 SIGNS 463 (1991) (providing an historical account of the conception of housework as unproductive).

294. See BRAVERMAN, *supra* note 293, at 411-12 (“Nor is the servant a productive worker, even though employed by the capitalist, because the labor of the servant is exchanged not against capital but against *revenue*. The capitalist who hires servants is not making profits, but

tangible, commercial product of domestic service, it ministers only to the necessity, comfort, and convenience of the employer.”²⁹⁵ Rendered economically invisible, domestic service stood as an illegitimate form of labor, even though it provided a source of income for more wage-earning women than any other occupation.²⁹⁶

b. Reformers respond: Lessons from Amey Watson of the NCHE

Reformers recognized that society had not always regarded the activities of the household as lacking in economic value.²⁹⁷ In the pre-industrial era, agrarian-centered households served as the primary site of economic activity, encompassing a diverse range of tasks from the making of bread and the spinning of textiles for clothes, to the harvesting of food items and the transformation of leather into shoes.²⁹⁸ With the advent of industrialization, however, those varied functions increasingly became commercialized, and factories gradually replaced households as the primary sites of economic production.²⁹⁹ While the workplace became the domain of male wage earners, the home evolved into a distinctly domestic, non-economic sphere that was deemed particularly appropriate for women.³⁰⁰ Home and workplace, once the same, became sharply divided.³⁰¹ In the process, unpaid work performed by women within the home was devalued as it was removed from any direct relation to capital development.³⁰²

In an effort to reconnect “home and workplace,” reformers dedicated themselves to fostering an ideological understanding of domestic service as labor that enriched the economy. A belief in the economic value and social importance of paid household labor was a critical premise of household reform advocacy.³⁰³ Amey Watson, who

spending them.”) (emphasis in original).

295. *Tunnichliff v. Bettendorf*, 214 N.W. 516, 518 (Iowa 1927) (holding that a chauffeur who was killed while repairing a machine owned by his employer not for the purpose of the employer’s business or trade was a domestic or household servant and thus his death was not covered under the Worker’s Compensation Act).

296. See *supra* notes 76-77 and accompanying text (documenting percentage of wage-earning women working in domestic service).

297. See, e.g., *Employer-Employee Relationships*, *supra* note 21, at 52 (recognizing that “[h]istorically, the household was long the sole productive agent, and until the Industrial Revolution, the central agent in all production”).

298. See JEANNE BOYDSTON, *HOME AND WORK: HOUSEWORK, WAGES, AND THE IDEOLOGY OF LABOR IN THE EARLY REPUBLIC* 5-8, 31-74 (1990) (tracing the development of the status of house work during the Revolutionary War period); COTT, *supra* note 54, at 24 (describing the basic developments hastening economic productivity and economic organization in New England).

299. See BOYDSTON, *supra* note 298, at 31-32 (arguing that wartime expansion occurred in areas outside of the home, including expansion of plants producing steel, salt, paper, glass, pottery, and ironware).

300. See *id.* at 31 (arguing that men were associated with wage earning and the health of the economy, while women were given the narrower responsibility of child-rearing).

301. See COTT, *supra* notes 54, at 64-70.

302. See BOYDSTON, *supra* note 298 at 47 (asserting that the ideological separation of women’s non-market-based labor from “productive” labor evolved from the 1790s to the 1830s).

303. See, e.g., SALMON, *supra* note 19, at 199-201 (concluding that the economist had to include domestic service in his discussions of the labor question to effectuate change); see also BARKER, *supra* note 90, at 1-3 (suggesting that women had to develop a greater appreciation of

served as the first director of the NCHE, provided the movement's most incisive challenge to traditional economic devaluations of paid household work.³⁰⁴ But while insightful, her analysis fell short of conceptualizing domestic workers as legitimate laborers who were entitled to be on an equal level with other workers.

Writing in the *Annals of the American Academy*, Watson articulated an account of housework that emphasized the duality of domestic service.³⁰⁵ She called upon her readers to think of the home as “a unit of production as well as a unit of consumption.”³⁰⁶ Conceived in terms of the former, she readily admitted that the home yielded “less tangible things, such as health, happiness, mental progress and social value.”³⁰⁷ But, she argued, the end product achieved—“a joyous, satisfying and efficient American home”³⁰⁸—was surely as valuable to the national economy as a factory widget. To conclude otherwise, she implied, had less to do with the setting in which the product was produced and more to do with the gender of the producer.³⁰⁹ But who exactly was the producer in this analysis? Was it the domestic, the employing household, or both?

Although she acknowledged the contributions of paid household workers to the national economy, Watson's ultimate focus was on the employing housewife. As she saw it, the conception of domestic service as an essentially non-economic activity was fundamentally flawed because it failed to recognize that when housewives directed the work of the home, they were themselves producers.³¹⁰ As a producer, an employing housewife transformed the family's money income into real or useable income through the purchase and utilization of goods and services in a way that enriched the satisfaction of individual family members.³¹¹ According to Watson, the housewife who secured such a result performed as “distinctly an economic function as does the one whom we call technically a producer.”³¹² So conceived, the productive quality of domestic service flows largely from the organizational skills of the housewife and not from the work performed by the domestic. Watson regarded the housewife as a producer of wealth for two reasons: First, because

the social and economic importance of domestic service); PALMER, *supra* note 4, at 114 (“[T]he National Women's Trade Union League] will do all in its power to secure . . . recognition of the social and economic value of the work of women in the home and appreciation of the fact that the millions of women so occupied are a very important part of the labor world.”).

304. See Watson, *supra* note 191; *Employer-Employee Relationships*, *supra* note 21.

305. See *id.* at 169 (arguing that a fundamental reorganization of the work life of the home was necessary).

306. *Id.*

307. *Id.* at 167-68 (quoting MATA ROMAN FRIEND, *EARNING AND SPENDING THE FAMILY INCOME: A TEXTBOOK IN HOME ECONOMICS* 67 (1930)).

308. *Employer-Employee relationships*, *supra* note 21, at 51.

309. See *id.*

310. See *id.* at 83.

311. Watson, *supra* note 191, at 169 (quoting Edward T. Devine, *The Economic Function of Women*, *TCHRS. C. BULL.*, Oct. 8, 1910, at 9-10).

312. See *id.*

she personally performed housework; and second, because she functioned, in a supervisory capacity vis-a-vis the domestic, as a director of wealth consumption, a task that Watson described as “an act of production, not of consumption.”³¹³

Watson’s failure to evaluate fully the domestic employment relationship as a productive one from the standpoint of the worker, as well as the employer, is both telling and troubling. Her analytical focus on the housewife reflected the movement’s preoccupation with the concerns of the middle-class and more specifically with the interests of middle-class women.³¹⁴ Indeed, Watson made it clear that her efforts to reconceptualize paid household work as economically valuable had more to do with achieving a greater measure of gender equality for middle-class women than it did with obtaining economic justice for household workers:

[T]he woman who manages her home intelligently and wisely is just as much a producer of wealth as the man who manages wisely his office or factory The home becomes . . . comparable to an industrial plant, and the man and woman who form a partnership and formulate the policies of the administration and management of such a home are the executives of such a plant.³¹⁵

As Watson saw it, the introduction of labor standards into the household relationship would attest to that partnership, according middle-class wives due credit for their productive contributions to the household unit and the economy.³¹⁶

As for the household worker, the measure of her economic worth

313. *Employer-Employee Relationships*, *supra* note 21, at 83.

314. *See supra* Parts I.A. and I.B (concluding that the household reform movement grew out of a desire to supply domestics to middle-class women); *see also* BARKER, *supra* note 90, at 14 (stating that “[I]t is more for the sake of the housewife than for her employee that a reform is to be desired” since the “latter is solving her problem by finding work outside of the home”); ELIZABETH BELCHER, HOUSEHOLD EMPLOYMENT (1940) (Watson Papers, Folder 4.25, Catherwood Library, Cornell School of Industrial and Labor Relations) (quoting recommendation of the Fifth National Conference on Labor Legislation: “[S]pecial efforts must be made to overcome the opposition to extending the Labor Laws to domestic service, and . . . these efforts must take the form of educating employers, particularly women, to the advantage of seeing standards for household help, as one of the means of attracting a more efficient labor supply”).

315. *Employer-Employee Relationships*, *supra* note 21, at 53.

316. *See* Watson, *supra* note 191, at 170-71 (describing the home as a partnership with each spouse as a co-equal partner).

was to be determined by the extent to which her services elevated the status of her employer, i.e. the wife of the house. Her claim to be treated as a rights-bearing employee was to be evaluated by reference to the interests of the employing family. It thus made sense that “[w]hen the domestic worker sought to defend her time and energies for her own home life, . . . she appealed to an image that justified her labor in another’s home but not her protection as a worker.”³¹⁷ For all of her well-intentioned impulses toward paid household workers, Watson, like so many household reform advocates, saw them primarily as useful household commodities first and workers second.

B. The Choice Between Self-Regulation and Government Regulation

“Down with the voluntary agreement! We’re ag[ainst] it! . . . It’s inadequate! . . . What’s to stop employers from violating it?”³¹⁸

Perhaps the strongest indicator of the movement’s ambivalent and often contradictory stance toward its own stated mission of transforming domestic service into a regulated employment relationship can be found in its strategy of choice. While various organizations affiliated with the movement endorsed protective legislation on behalf of women workers generally, when it came to domestic service, legislation was treated as a last-ditch effort.³¹⁹ The preferred solution was to convince household employers to improve the conditions of domestic service voluntarily through the use of standardized contracts.³²⁰ The preference raises the question: Why did the movement seek to regulate paid housework in the particular manner it did? Why did it give its primary endorsement to a system of regulation that ensured household workers would receive labor protections not as a matter of legislative right but according to the willingness of individual employers to comply with the proposed

317. PALMER, *supra* note 4, at 87.

318. *Household Employees Consider Problems at Convention*, YWCA NEWSLETTER, June 1936, at 1 (Young Women’s Christian Association, San Diego, CA). The Negro Worker’s Council was extremely critical of the self-regulatory strategy.

“[T]he employer approach is inadequate because any wage and work hours agreement which is formulated by an employer’s committee (or a committee which is dominated by employers) does not represent a real bargaining process between employers and employees [A] fair compromise must be arrived at through continuous bargaining—a bargaining based upon the employer’s control of the pocketbook, on the one hand, and the worker’s control of the labor supply, on the other hand. This is the democratic and American method of bargaining. . . .”

Jean Collier Brown, Brief on Household Employment in Relation to Trade Union Organization at 12 (1938) (Watson Papers, Folder 92.5, Catherwood Library, Cornell School of Industrial and Labor Relations) (citation omitted).

319. See Doman, *supra* note 268, at 93 (discussing barriers to passing legislation to regulate domestic service).

320. For an account of reform efforts to encourage household employers to accept voluntary codes of employment standards, see Editorial, *Standards for Women as Household Employers*, 24 J. HOME ECON. 350, 350-51 (1932) (quoting Mary Anderson, Chief, Women’s Bureau of the U.S.D.A.); Benjamin Andrews, *New York Symposium on Household Employment*, 32 J. HOME ECON. 98 (1940); *Do Servants Need A Code?*, *supra* note 209, at 34.

voluntary contracts?

Because labor legislation was so frequently attacked upon freedom of contract grounds,³²¹ one might logically speculate that reformers' inclination toward a self-regulatory mode of reform was a legally pragmatic choice. Perhaps reformers were reacting to employing families' objections to state interference with their ability to contract freely as to the length of the work day. Though plausible, this explanation ignores two points. First, maximum-hour laws withstood constitutional attack from substantive due process challenges as early as 1908,³²² long before the movement committed itself to regulating the hours of domestic service workers.³²³ Second, while laissez-faire ideology dominated discussions of labor laws generally, the records of the household labor movement suggest that it rarely surfaced in the debate over whether to, or how to, regulate domestic service.³²⁴

How, then, can the movement's self-regulatory strategy be explained? To some extent, the inclination appears to have been an expression of the class sensibilities of the reformers. On the one hand, reformers were committed to elevating, and professionalizing, paid domestic service.³²⁵ On the other hand, because that commitment was first and foremost about the needs and demands of white middle-class families, reformers tailored their strategies accordingly.³²⁶ Compelled to help household workers secure a greater degree of independence from their employers, reformers sought to do so in a fashion that respected the employer's claim to superiority.³²⁷ As between self-regulation and legislation, the former would least likely disturb the power dynamics between mistress and

321. See generally MORTON HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870-1960*, at 33-36 (1992) (discussing freedom of contract ideology and its acceptance within the judiciary to impede the adoption of labor laws).

322. See *Muller v. Oregon*, 208 U.S. 412, 423 (1908) (upholding the constitutionality of an Oregon statute limiting women's work hours to ten per day).

323. See *supra* Part III (discussing the historical progression of the movement to regulate domestic service).

324. This does not imply, however, that household employers were not troubled by the possibility of state intervention in the household employment relationship. As discussed in Part V, the specter of the state dictating the terms and conditions of that relationship left employers extremely uneasy. See *infra* Part V. That uneasiness, however, was out of concern for the private family, not the private market. See *infra* Part V.A (describing how household employers conceptualized proposals to regulate domestic service as intrusions into family privacy). Because employers were worried about the intrusion into the family sphere posed both by self-regulation as well as government regulation, this concern does not adequately explain the movement's preference for one approach over the other.

325. See, e.g., ROELOFS, *supra* note 20, at 7-8 (outlining suggestions for the elevation of paid household employment); Margaret M. Burnet, *The Legal Relation of Mistress and Maid, with Some Comment Thereon*, BULL. OF THE INTER-MUNICIPAL COMM. ON HOUSEHOLD RESEARCH 8 (Dec. 1905) (observing that "[t]he elevating of the standard of domestic work is one of the hopeful tendencies of the times"); COOK, *supra* note 134, at 1 (calling for the elevation of domestic service through training, the establishment of voluntary agreements between household employer and employee, the enactment of labor legislation applicable to domestic service, and the organization of household employees).

326. See *supra* Part II (documenting the process by which the reform movement came to focus on the needs of the middle class).

327. See generally *infra* Part V.B (discussing class concerns in the domestic service reform movement).

maid. It would allow reformers to restructure the job without having to entertain seriously the possibility of relinquishing some control to paid household workers.³²⁸ As Katzman points out, reformers likely regarded such a prospect as “anathema, because most agreed that housewives *were* superior to servants”³²⁹

Gender conventions were also a factor in the movement’s preference to persuade employing households to utilize the voluntary agreements. Many reformers seemed reluctant to accept the possibility that state intervention into the paid household relationship was required to prevent household employers, understood as a class of women, from exploiting domestic workers. Although they pushed to define domestic service as a business and encouraged middle-class women to think of themselves as “employers,” reformers were disinclined to equate household employers with the world of employers at large. Against the masculine image of an unscrupulous sweatshop owner whose unabashed greed for profits drove women until they literally dropped from exhaustion,³³⁰ the power of the state was surely required. But was the use of state power appropriate in the context of middle-class women and their workers? Apparently unable to accept that middle-class women could be ruthless within their own right, reformers reasoned that employer mistreatment of household workers had less to do with cupidity than with a lack of household know-how on the part of both worker and employer.³³¹

So framed, resolution of the servant problem hinged not on legislation but education. Workers required training in basic household techniques to increase their efficiency, and employers had to become versed in household management principles so as to get “the best service out of those who are in their employ.”³³² Reformers theorized that once domestics were well-trained and employers well-informed, the former would accomplish more household tasks within a shorter time span and the latter would inevitably come to appreciate the value of adhering, voluntarily, to labor standards.³³³ Essentially, reformers believed that, while the state looked after

328. *See generally id.*

329. KATZMAN, *supra* note 4, at 263 (emphasis added).

330. *See* Brief for Defendant in Error at 28-55, *Muller v. Oregon*, 208 U.S. 412 (1908) (No. 107), *reprinted in* 16 LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW 63, 93-120 (Philip B. Kurland & Gerhard Casper eds., 1975) (documenting the harsh conditions facing female factory workers and the social costs of such strenuous labor in Brandeis’ brief for the state of Oregon).

331. *See* KATZMAN, *supra* note 4, at 253-58 (discussing education efforts to improve the quality of domestic service).

332. *Id.* at 251; *see also* Mary Robinson, *Why Workers Object to Household Employment*, LAB. INFO. BULL., Oct. 1937, at 7 (1937) (stating the conclusion reached by the Domestic Efficiency Association of Baltimore about the servant problem: “[T]he solution lies in training for *both* servant and housekeeper.”); Watson, *supra* note 191, at 170-73 (stressing the need for trained and experienced domestics and the necessary application of management principles within the home).

333. *See* Watson, *supra* note 191, at 176-77 (concluding that education and voluntary labor standards would solve the problems with domestic service).

working-class women in “industrial occupations” and unions protected the rights of men, it was up to middle-class women to safeguard the interests of paid household workers.³³⁴ With the right instruction, reformers hoped that middle-class women could perform that role effectively, thus eliminating the need for legislative regulation.³³⁵ As Part V reveals, however, most employing women had a completely different perspective on the issue.

V. A NEW TWIST ON THE CONCEPT OF FAMILY PRIVACY

When compared with the modernizing, progressive tendencies of those household employers who were reformers, the average household employer can best be described as a traditionalist; she shared the movement’s commitment to increasing the supply of paid household workers, but she adamantly resisted shortening the workday to achieve that goal.³³⁶ For traditionalists, the thought of the “servant girl . . . quit[ting] work at a given hour, exactly like the butcher and baker and candlestick-maker” was “hyper-ludicrous.”³³⁷ The very thought triggered “wit and caricature,” exploding the “national funny-bone.”³³⁸

Among the arguments raised by traditionalists in opposition of the movement lurked a strong suggestion that a regulated relationship with their workers, especially with respect to hours, would constitute an unacceptable interference in family privacy.³³⁹ This connection that middle-class employers were seeking to establish between family privacy and labor standards was not immediately obvious. Although household service was situated within the private domain of the home to be sure, the notion that regulating the job would somehow disturb the cloak of privacy draped over the family remains somewhat obscure. Indeed, one reasonably might conclude that setting maximum-hour standards by limiting the presence of domestics within employing households, would enable families to enjoy a

334. See *Employer-Employee Relationships*, *supra* note 21, at 89-90 (emphasizing the role of women in reforming domestic service); see also *The Servant Problem*, *supra* note 143, at 120 (“By and large men are not suited to managing the home, and it can be said with certainty that the solution to the servant problem will not be found by men”).

335. See Doman, *supra* note 268, at 93 (noting that the perception that the home was different from factories undermined legislative efforts to reform domestic service).

336. Household employers opposed legislative efforts in a variety of ways. See GRAY, *supra* note 199, at 97 (noting that “irate employers” undermined a bill to include household workers under maximum-hour coverage); Allen, *supra* 205, at 59 (reporting household employers’ opposition to efforts to pass hour legislation for workers; summarizing reason for failure of legislation by observing that “[w]omen do not want interference in the management of their homes”); *Domestic Workers*, *supra* note 15, at 1 (observing that obtaining legislation for paid household workers has been difficult in part because of opposition posed by women’s organizations).

337. Rubinow & Durant, *supra* note 20, at 583.

338. *Id.*

339. While discussions of privacy in the context of labor standards generally reference the issue of state involvement in the market, such discussions referred to the issue of state interference in the family when raised in the debate over regulating domestic service. See OLSEN, *supra* note 6, at 1504, 1528.

greater measure of privacy.³⁴⁰ This suggestion raises the following question: How would a requirement—either by legislation or adherence to a voluntary standard—that limited the number of hours that domestics could work each day intrude upon the privacy of employing families?³⁴¹ Answering this question is the focus of Part V.

The opposition raised by traditionalists drew upon two related notions of privacy: the ideological distinction between the private family and the public market,³⁴² and the view that privacy is personal and self-regarding.³⁴³ Section A explores the complex manner in which household employers incorporated both of these views to place their privacy interests as families ahead of the economic interests of household workers.³⁴⁴ Section B discusses the implications that these views had on society's notion of domestic service workers. Specifically, I argue that the idea that regulating the hours of domestics would interfere with a family's private life was anchored firmly to an understanding of the worker as a form of property.

A. *In the Name of the Private Family*

Understanding how traditionalists conceptualized the issue of hour regulation for domestics as a matter of family privacy requires an appreciation of the importance that they attached to maintaining flexibility within family life.³⁴⁵ In opposing proposals to shorten the workday in domestic service, traditionalists repeatedly stressed the need for reformers to recognize that the indeterminate nature of family life made it “impossible to squeeze all housework within the

340. Cf. Rubinow & Durant, *supra* note 20, at 582 (suggesting that family privacy increases when maids serving meals are replaced with electric warmers).

341. Legislation mandating a shorter workday for paid household workers implicates concerns about family privacy far more deeply than would compliance with a self-regulatory scheme. For purposes of this Article, they are discussed together because traditionalists relied upon privacy-based arguments to counter both strategies. For references to privacy-based arguments raised in the context of suggestions to legislate the hours of domestic service, see Allen, *supra* note 205, at 58-59 (concluding that legislation to regulate domestic service failed because household employers saw the household relationship as personal and objected to having “the management of their homes interfered with”); Doman, *supra* note 268, at 93, 94 (noting employer hostility to legislative measures to regulate the hours in domestic service based on the perception that such measures “would intrude[] upon the concept of the home as a place of sanctity and privacy”); COOK, *supra* note 134, at 11-12 (observing the tendency of some employers to oppose legislating domestic service for fear of “regimenting the home” and “bringing the state into the kitchen”) (internal quotations omitted). For accounts of privacy-based arguments raised to counter the movement's self-regulatory strategy, see, for example, PALMER, *supra* note 4, at 117 (noting that some household employers expressed concern about voluntary labor standards because of a fear that such standards would undermine the personal character of the paid household relationship); *infra* note 352 (listing sources detailing employer opposition to suggestions to limit the hours in domestic service).

342. See Olsen, *supra* note 6, at 1499-528 (discussing ideological constructions of the family and the market); see also SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 110-33 (1989) (challenging the traditional notion of the public/private dichotomy).

343. See Ruth Gavison, *Feminism and the Public/Private Distinction*, 45 STAN. L. REV. 1, 6 (1992) (defining “private” as personal); *Symposium on the Public/Private Distinction*, 130 U. PA. L. REV. 1289 (1982) (using “private” in reference to subjects that lie beyond government regulation).

344. See *infra* Part V.A.

345. See *infra* notes 351-52 and accompanying text.

compass of eight hours.”³⁴⁶ The significance of that observation centered on whether the domestic, or the employing family, should attend to the various emergencies and unpredictable situations that occurred on a day-to-day basis. Writing in 1931, Hazel Kyrk outlined the many facets of the question:

If there is more work than the employee can do in a fair working day who should do it—a member of the family or the hired worker? If an unusual situation develops [such] as illness, or guests, which prolongs the working week, should the extra burden fall on the family or on the worker? If the worker’s free time in the evening is curtailed by a late dinner, should the family take the responsibility or the worker?³⁴⁷

By supporting the basic idea of a system of regulated hours, reform leaders took the position that the employing family was ultimately responsible for handling the many unexpected occurrences that transpired within the household.³⁴⁸ They attempted to persuade middle-class employers that such a system, while it would not necessarily accommodate every exigent circumstance, could allow for the completion of essential household tasks if both housewives and domestics were trained better in their respective duties.³⁴⁹ The housewife had to become a more efficient manager within the home, while the domestic had to be trained better in the performance of housework.³⁵⁰

Although traditionalists supported training, they reasoned that too much planning would detract from the fluidity and “the spontaneity of family life.”³⁵¹ It was a line of thought that implied that employing

346. See Isaac M. Rubinow, *Discussion*, 14 AM. J. SOC. 614, 616 (1909); see also *Do Servants Need a Code?*, *supra* note 209, at 41.

347. Kyrk, *supra* note 134, at 2.

348. There was a general consensus within the movement that paid household workers had to be afforded a system of regulated hours in order to transform the occupation, but not all reformers were in agreement. See Needleman, *supra* note 239, at 1073 (contending that hours were too difficult to regulate; calling upon her readers to “[p]icture your maid stopping work when the clock strikes seven or even eight, leaving the dishes unfinished, or dinner partly served”).

349. See *supra* notes 331-33 (discussing reformers’ emphasis on training for housewives and domestics).

350. See ISABELL K. WHITING, COMMISSION ON HOUSEHOLD EMPLOYMENT (Records File, Sophia Smith Collection, YWCA National Board Archives, New York) 4 (Bull. No. 4). The movement illustrated its point by offering examples of household employers who had successfully experimented with a system of regulated hours. See *id.*; see also BARKER, *supra* note 90, at 47, 56-57 (stressing that if employed women became better managers, it would be possible to limit the number of hours required of paid household help).

351. See THE WOMAN IN THE HOUSE: STORIES OF HOUSEHOLD EMPLOYMENT 32 (Ruth Sergel ed., 1938) (suggesting that the line separating traditionalists and reformers revolved around the following question: “Is planned household activity desirable or does it interfere with the spontaneity of family life?”). The following scenario was constructed by Sergel to illustrate the point:

At four o’clock in the afternoon my employer announced that it was her husband’s birthday and she was going to call some friends to come in and have a surprise party. She asked me to bake cakes, prepare salad, order the makings of cocktails and dust the living room. While I was finishing the dinner dishes she said, “You won’t mind staying up to serve, will you? You can sleep late in the morning.”

Id. at 33.

families had to be completely unfettered, not only to decide matters such as what to serve for dinner, but to have their household workers forever present in the event that dinner had to be served on a moment's notice.³⁵² This insistence upon the need for family life to

352. See LAUGHLIN, *supra* note 98, at 760 ("The objection usually advanced to such a system [of fixed hours] is that at all times it is necessary for someone to be ready to answer the doorbell, and that, therefore, the employee must be at all times on duty for this purpose."); see also LINDA MARTIN & KERRY SEGRAVE, *THE SERVANT PROBLEM: DOMESTIC WORKERS IN NORTH AMERICA* 42 (1985) (noting that in response to the NCHE recommendation of a 60-hour workweek for domestics, employers pointed out that "homes can't be run on a schedule. What happens when . . . Aunt Mary pays a visit?"); Robinson, *supra* note 332, at 12 ("Although the worker is expected to arrive at a set time in the morning, her hour for leaving in many homes is uncertain. She may when she finishes her work, but all sorts of unexpected things may happen to delay her departure, such as company for dinner, or the tardiness of members of the family in partaking of the evening meal.").

be versatile and readily adaptable provided the foundation for traditionalist assertions that a system of regulated hours for household workers would encroach upon family privacy.

1. *Maintaining the ideological divide between the family and the market*

A home cannot be managed too systematically and remain a home in the true sense of the word³⁵³

For traditionalists, flexibility was critical if the family was to fulfill its role as a comforting private sphere that offered shelter from the mayhem of public life.³⁵⁴ A contributor to the *Woman's Press* explained why the well-being of the family required that the status quo of unregulated hours be maintained:

After more than three years of experience with having a maid in the house I still do not quite see how it would be possible to keep the true spirit of the home and still have perfectly standardized working hours for the maid. The members of the household who are working on schedule surely need the relaxation that comes from lack of schedule pressure when they get home. And so I have never reached the place where I have said to the maid: your hours are from seven in the morning until one, and from five o'clock in the evening until seven-thirty, and it is your privilege to stop at one and at seven-thirty whether the work is finished or not.³⁵⁵

The appeal of this observation hinged critically on the power of the ideological divide between the family and the market.³⁵⁶ The nurturing vision of the home as a place of relaxation provided a soothing counterpoint to the public arena of impersonal market transactions.³⁵⁷ 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."³⁵⁸ In order "to keep the true spirit of the home,"³⁵⁹ the family sphere had to remain untainted by the rules and standards associated with the market.³⁶⁰

Attempts by household reformers to convince employers that the

353. Doman, *supra* note 268, at 94.

354. The conception of privacy that traditionalists were invoking in this section was that between the market, considered public, and the family, considered private. See Olsen, *supra* note 6, at 1498.

355. *What One Home-Maker Thinks*, 22 WOMAN'S PRESS 83 (1928), quoted in PALMER, *supra* note 4, at 115.

356. See Olsen, *supra* note 6, at 1498 (discussing the distinction between the public market and the private family).

357. See LASCH, *supra* note 53, at 5 (describing the nurturing home and the brutal market).

358. See Amey Watson, *The Lady of the House Is at Home*, 28 WOMAN'S PRESS 22, 22 (1934).

359. *What One Home-Maker Thinks*, *supra* note 355, at 83, quoted in PALMER, *supra* note 4, at 115.

360. See PALMER, *supra* note 4, at 115 (suggesting that housewives believed cutting household workers' hours would adversely affect the service received).

home could be organized “in such a way that sound business principles may be applied *without* injuring the social or spiritual values of family life” failed.³⁶¹ As one traditionalist explained, the whole proposition was flawed: “[H]uman relationships inside the home cannot be happily set to rule” for “the home is the last place where anyone could reasonably expect [a] lock-step system to work.”³⁶² Reformers had to appreciate, argued another, that “housework was different” and that “the sacredness of the home demanded that the relations therein be based on something finer and more subtle than reason and the ethics of business.”³⁶³

2. *Domestic service as personal*

The nature of the service rendered . . . is largely personal; it is believed therefore that all questions involved in the subject can be considered and settled from the personal point of view.³⁶⁴

The belief among traditionalists that a regulated household relationship would jeopardize the integrity of their families also reflected an underlying apprehension about the propriety of “outside” involvement in a matter which many regarded as personal.³⁶⁵ In describing domestic service as “personal,” employers underscored its secluded nature within the home and its connection with the intimacies of family life.³⁶⁶ 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.”³⁶⁷ Appraised in terms of the employing family’s interest, the movement’s quest to limit the hours of domestic service workers was deemed unacceptable because it would infringe on the freedom of families to satisfy their personal needs as they judged most appropriate. As expressed by one traditionalist: “People feel *rightly* that a home should be arranged to give the *maximum* of freedom to each member of the household”³⁶⁸ Apparently such freedom required constant access to the services of a paid household worker.³⁶⁹

361. Watson, *supra* note 191, at 176 (emphasis added).

362. Mary Everett, *Can Domestic Service Be Standardized? Industrial Regulation Versus Human Values in Household Employment*, 30 J. AM. ASS’N U. WOMEN 90, 91 (1937).

363. *The Distaff Side: Letters from Household Employers*, 28 THE WOMAN’S PRESS, Dec. 1934, at 556. Such arguments find support in contemporary analyses of the fears associated with the ideology of the private family. See Olsen, *supra* note 6, at 1567 (“People who support the market/family dichotomy argue that life will be impoverished if all of it ‘falls under a single set of terms.’”) (quoting J. ELSHTAIN, PUBLIC MAN, PRIVATE WOMAN 335 (1981)).

364. SALMON, *supra* note 19, at 4.

365. See *id.* at 3-5 (describing how domestic service had not been part of the national dialogue on labor, nor had it been the topic of scholarly study).

366. See *id.* at 5 (discussing household service as an entity particular to the family and home, and therefore not subject to government regulation).

367. *Id.*

368. Ruth Frankel, *When We Consider the Servant Problem—From the Point of View of the Housewife*, 9 PRACT. HOME ECON. 134, 177 (1930) (Watson Papers, Folder 4.79, Catherwood Library, Cornell School of Industrial and Labor Relations).

369. See *supra* Part II.A (highlighting the full-time allegiance that paid household work

Positioning herself as mediator between the movement and traditionalists, Amey Watson sought to offer a more philosophical account of middle-class hostility toward the establishment of standardized hours for domestics:

One of the most important characteristics of American culture has been the doctrine of “rugged individualism,” the emphasis on the importance of freedom for every individual to express himself, and to have his own “say” in regard to his personal affairs. This is particularly true in regard to home life. Every man and woman likes to think of his or her home as a place where he can express his own individuality, his castle where he has the right to have his own way and to do as he pleases.³⁷⁰

Watson’s analysis joined together the traditionalist preoccupation with maintaining the distinction between the comfort of the private family and the callousness of the public market on the one hand, and their concept of paid domesticity as an “affair of the individual” on the other. In order to protect family life and ensure that it did not duplicate the rigidity of the market, each family had to be free to dictate the terms of the paid household relationship and the hours of employment in particular.

Concerns about individual freedom and personal expression within the boundaries of family life are legitimate privacy issues.³⁷¹ Yet when intermingled with the servant problem, they pose a disturbing question: how was it that middle-class Americans could presume to stake their claim of privacy onto the labor, indeed the very lives, of working-class women? I explore this question in the next section.

B. Propertied Entitlements

Part II concluded with the idea that reformers regarded the lack of freedom for paid household workers as a byproduct of the “medievalism of the home,” of the failure of the home to keep in sync with developments in other areas of society.³⁷² The opposition posed by the traditionalists suggests, however, that the exploitation of domestics was part and parcel of a prevailing culture in which the home, far from being static, had been transformed from an economic sphere into an explicitly private, domestic sphere.³⁷³ The hierarchical

demanded).

370. Watson, *supra* note 358, at 22; *see also* Chandler, *supra* note 180, at 8 (observing that employers’ attitude toward regulated hours was “My house is my castle; I make what rules I like.”).

371. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (acknowledging a “private realm of family life where the state cannot enter”); Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (recognizing the liberty of parents to direct their child’s upbringing); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (recognizing the liberty to establish a home and raise children).

372. *See supra* notes 190-91 and accompanying text.

373. *See* DUDDEN, *supra* note 4, at 6-7 (“According to one of the central conceits of nineteenth-century popular thought, the home, woman’s special sphere, remained a stable anchor in the increasingly stormy seas of social change. *Yet the home and family life did change . . .*”) (emphasis added).

order that the movement threatened to undermine, although deeply grounded in antiquated feudal institutions, was a byproduct of the middle-class lifestyle that emerged during the nineteenth century.³⁷⁴ When household employers rejected proposals to regulate the hours in domestic service, they were less concerned with abandoning an old way of life than with protecting their ability, as members of the middle class, to adhere to the many behavioral norms associated with privileged respectability discussed in Part I.³⁷⁵ Invoking the rhetoric of privacy to trump the movement proved to be an effective means for employers to ensure their continued participation in modern bourgeois society.

In predicating such participation on virtually unlimited access to the services of a domestic, it became necessary (although not inevitably so)³⁷⁶ for household employers to maintain a proprietary relationship with their workers.³⁷⁷ As between reformers and traditionalists, the question of access depended on one's understanding of the labor contract for domestic service. Both groups deemed domestic workers essential to the stability of middle-class America.³⁷⁸ Yet, whereas reformers had concluded that treating domestics as hired property was no longer in the best interest of middle-class families,³⁷⁹ traditionalists persisted in viewing domestics as propertied objects. Traditionalists believed employment of a domestic involved the actual purchase of the domestic, who then could be utilized in various occupationally-appropriate capacities.³⁸⁰

Laughlin captured this underlying sense of ownership in her 1910 investigation of domestic service.³⁸¹ In order to gauge the receptivity of employers to establishing maximum-hour standards for domestics, she asked them the following question:

What is your opinion of the practicability and desirability of so regulating household work that domestic servants . . . shall have definite hours for work on each day, and on each day shall have a

374. See Watson, *supra* note 191, at 167 (discussing the evolution of domestic workers, from slaves to servants).

375. See *supra* Part I.A (highlighting the domestic norms that attended to middle-class life).

376. Household employers could have had constant access to the services of a domestic by hiring several workers to work in shifts. They probably did not because of the added cost that would have been involved. The typical household employer had just one domestic, and compensated her at a flat weekly or daily rate, irrespective of the amount of work that she performed. Employment of one worker thus allowed household employers to minimize cost while maximizing productivity. See Berch, *supra* note 129, at 112-14 (examining the wages paid to domestic service workers relative to the amount of work performed).

377. See *infra* Part II.A (detailing the long hours in domestic service); see also *supra* notes 355, 368-70 and accompanying text (highlighting household employers' expectation to constant access to the services of their workers).

378. See *infra* Part I.A (documenting the importance that domestics played in middle-class life).

379. See *supra* notes 184-203 and accompanying text; *supra* Part III.

380. See LAUGHLIN, *supra* note 98, at 759 ("[I]n domestic service it is the person who is hired and not, distinctively, the labor of the person. In all other occupations it is the labor which is contracted for; in domestic service . . . the contract is, usually, for the entire time of the laborer. . . .").

381. See *id.* at 758-60.

reasonable amount of time absolutely under their own control?³⁸²

The question was met with brusque responses: “[I]f you have a girl you want her when you want her and no matter what time.”³⁸³ Another employer responded, “My servant is hired to do whatever she is told to do and to be at any time subject to command.”³⁸⁴

The typical household employer reasoned that as long as she had a domestic in her employ, she was *entitled* to expect around-the-clock service.³⁸⁵ Of course, as a free laborer, the domestic could always terminate the relationship. While the relationship was in effect, though, the prevailing sentiment held that she should be, at virtually all times, accessible to the employer.³⁸⁶ Her 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.

In refusing to extend legislative protection to paid household workers, the state reinforced their commodification as useful appendages of middle-class society, leaving them to fend for themselves or hope for benevolence. This choice was navigable for many working-class white women who gladly submitted to the harsh realities of industrial life rather than slave countless hours for a life not their own.³⁸⁷ But what about the many racial-ethnic women who were left behind? Part VI assesses the racial dynamics of the household labor movement.

VI. REFLECTIONS UPON THE RACIAL DYNAMICS OF THE HOUSEHOLD LABOR MOVEMENT

Although the domestic labor movement began with a desire to attract working-class white women back into domestic service, inevitably it became clear that they were not going to return in any sizeable numbers on a permanent basis. Thousands of working-class white women did return during the Depression,³⁸⁸ but they soon left again when the economy improved.³⁸⁹ By 1940, five years before the NCHE disbanded, only eleven percent of all wage-earning white women were employed as paid household workers, down from sixty-

382. *Id.* at 760.

383. *Id.*

384. *Id.* at 759.

385. *See supra* notes 383-84 and accompanying text.

386. *See* LAUGHLIN, *supra* note 98, at 759 (noting that most people expected domestic workers to be available for any job at any time).

387. *See* ROBERT W. SMUTS, *WOMEN AND WORK IN AMERICA* 139 (1959) (citing the growth of industry as an alternative to marriage and motherhood and a salvation for otherwise idle women).

388. *See Depression Ends Servant Problem*, N.Y. TIMES, Nov. 25, 1932, at 20. *See* SCHARF, *supra* note 230, at 115-16 (noting that during the Depression white women replaced many Black women as paid household workers).

389. *See* LYNES, *supra* note 49, at 171 (noting that while “the crash of 1929 spoiled the fun . . . it did not reverse the seemingly inexorable decline of the domestic supply”).

four percent in 1900.³⁹⁰

Throughout the latter part of the 1930s, reformers continued to focus on attracting white women back into service,³⁹¹ but they seemed somewhat resigned to the fact that for the then foreseeable future, the majority of all domestics were going to be disenfranchised women of color, and Black women in particular.³⁹² Domestic service was becoming increasingly synonymous with Black women.³⁹³ The identification of domestic service with Black women had mixed effects within the movement. On the one hand, it appears to have attracted to the movement a growing number of individuals and organizations which sincerely seemed interested in the needs of workers.³⁹⁴ On the other hand, it appears to have complicated further an already monumental task.³⁹⁵ The harsh reality was that there was little political impetus to restructure a job dominated by Black women.

The movement had been packaged around the idea that transforming domestic service into an employment relationship, and providing paid household workers with the benefits of labor standards, was essential to induce white women back into service.³⁹⁶ But of course there was no need to reform domestic service to lure Black women into the job, because most had no other employment opportunities. State-sanctioned discrimination not only precluded them from making inroads into an increasing number of occupations available to white women³⁹⁷ but also routed them into domestic service.³⁹⁸

390. See STIGLER, *supra* note 77, at 7 (discussing the racial composition of the female servant population in the United States).

391. See Anne Petersen, *Industry Cuts Nation's Total of Housemaids*, N.Y. TIMES, Feb. 2, 1941, at D4 (noting the national effort to bring more maids into the industry: “[h]ousewives in the market for a new maid are facing stronger competition than ever as the opportunities for young women in industrial jobs increase”).

392. By 1930, almost one-half of all paid household workers were Black women. See STIGLER, *supra* note 77, at 7. While that number represented only a slight increase from the previous decade, the more telling statistic is that by 1930, over one-half of all Black women wage-earners were paid household workers, an increase of more than 10% from the previous decade. See *id.*

393. See *supra* note 392 and accompanying text.

394. See GRAY, *supra* note 199, at 97-98 (detailing the activities of the New York Women's Trade Union League and the Urban League to push for legislation to benefit Black domestics in New York City).

395. See *id.* at 102-03 (noting that the voluntary agreements were most successful in the states that had few Blacks).

396. See *supra* notes 187-91 and accompanying text; *supra* Part III.

397. See generally GIDDINGS, *supra* note 284, at 146-47, 237 (1984) (discussing the exclusion of Black women from occupations open to white women); JONES, *supra* note 35, at 136-38, 178-79 (same).

398. See, e.g., ARGERSINGER, *supra* note 75, at 74-75 (discussing acts of local government officials who “assumed that it was the destiny of black women to be servants . . . and recruited young black girls attending high school for WPA-sponsored domestic-training classes”); MINK, *supra* note 32, at 184 (commenting on educational policies in the South: “White officials who controlled public funds thought that people of African descent should be trained only for agricultural or domestic work, and therefore needed but a few years of basic education.”); PALMER, *supra* note 4, at 97-99 (discussing government educational programs that targeted Black women to train as domestics).

Sustaining a reform agenda that stood to disproportionately benefit Black women also was hampered by a racial ideology that questioned whether Blacks were entitled to the principles of equality that figured so prominently in the movement's advocacy.³⁹⁹ State officials who felt that Black domestics were "accustomed to inadequate wages, low status, and poor working conditions" had no incentive to support a legislative campaign to elevate domestic service.⁴⁰⁰ Additionally, middle-class white families, already thoroughly vexed by a desire for independence among working-class white women, were even less inclined to favor measures that would provide greater freedom to Black women.⁴⁰¹ Finally, reformers never challenged the cultural assumptions that cast Black women as appropriate caretakers of the homes and families of middle-class white women.⁴⁰²

Ultimately, the household labor movement was incapable of representing the interests of paid household workers, Black or white. Despite efforts to arrive at an equitable mediation between household workers and employing families, many reformers could not see beyond their own interests.⁴⁰³ In approaching the servant problem from the standpoint of middle-class families, the movement

399. For an analysis of how the ideology of white supremacy functioned to deny Blacks the fruits of egalitarian ideals within the labor movement, see generally ROEDIGER, *supra* note 162 (exploring the formation of working-class racism), and Hill, *supra* note 183 (examining the institutionalization of racism within organized labor).

400. See ARGERSINGER, *supra* note 75, at 80 (referencing the attitudes of New Deal leaders toward providing improved working opportunities for Black women). More generally, the presence of a large class of Black domestics helped to fuel white Southern congressional leaders' opposition to the inclusion of paid household workers within New Deal measures. See QUADAGNO, *supra* note 233, at 115-16 (suggesting that the exclusion of domestic service workers from the Social Security Act of 1935 hinged critically on a Southern agenda which excluded African-Americans).

401. See ARGERSINGER, *supra* note 75, at 76-77 (describing the preference of Black women in Baltimore in the late 1930s to work as nurses, waitresses, kitchen helpers, or in the WPA sewing rooms as opposed to working as domestic servants for white families because of the low pay and long hours). White families complained about the lack of trained domestics and those sympathetic sought to ensure a steady supply of servants by setting quotas for participation of Black domestic servants in the WPA. See *id.* at 76.

402. See PALMER, *supra* note 4, at 110 (observing that New Deal educational and work-relief programs, including domestic service programs led by reformers, failed to challenge "gender beliefs that women's greatest contribution to social well-being came through sacrificial care of children and homes, or racial beliefs that the position of women of color was to service white women in this responsibility"); see also DUDDEN, *supra* note 244, at 451 (noting that reformers associated with the NCHE were unable to represent effectively the interests of workers in part because they ignored issues of race and were sometimes guilty of racial bias themselves). The ideological construction of Black women as domestics has been thoroughly investigated elsewhere. See generally JEWELL, *supra* note 75, at 37-44 (discussing the images of both "mammy" and "Aunt Jemima" as pervasive care-taking stereotypes of Black women); PATRICIA MORTON, *DISFIGURED IMAGES: THE HISTORICAL ASSAULT ON AFRO-AMERICAN WOMEN* 6 (1991) (examining myths of Black womanhood, including the view of Black women as mammies who are destined to perform menial service labor); WHITE, *supra* note 75, at 224-56 (considering the antebellum perceptions of the plantation mammy).

403. See *supra* Part IV.A.2.b (examining the movement's self-interest in attempts to conceptualize paid domestic work as productive labor); see also *supra* notes 325-29 and accompanying text (suggesting that the movement's privileging of a self-regulatory approach reflected a desire to insure that control of the domestic service relationship remained with the employing class).

never developed an account of the domestic service relationship that fully captured the realities of the workers.⁴⁰⁴

CONCLUSION: LESSONS FOR THE PRESENT

[F]eminist policymakers have called for expanding services to assist employed mothers in such areas as child care and elderly care. We need to ask, Who [sic] is going to do the work? Who will benefit from increased services?

Evelyn Nakano Glenn⁴⁰⁵

In the late 1960s and early 1970s, commentators predicted that the steady decline in the number of paid household workers would lead to their disappearance in modern societies.⁴⁰⁶ Yet evidence suggests that domestic service is experiencing a resurgence in the United States.⁴⁰⁷ For the many women who currently labor as paid household workers in the U.S.,⁴⁰⁸ the themes that dominated the household labor movement continue to inform whether society treats them as employees who are entitled to certain rights within the law of employment relationships.⁴⁰⁹ Importantly, there remains a societal tendency to view paid domesticity not as an occupation undertaken by working-class women to benefit themselves and their own families,

404. See *supra* Part IV.A.1.b (discussing how the movement's construction of domestic service held little significance for many workers).

405. Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, 18 *SIGNS* 1, 36 (Autumn 1992).

406. See, e.g., ESTER BOSERUP, *WOMAN'S ROLE IN ECONOMIC DEVELOPMENT* 194-95 (1970) (citing a series of studies regarding the deleterious effects on domestic service of women entering the job market); Coser, *supra* note 120, at 37-39 (arguing that the servant role is obsolete in today's society).

407. Official census figures for 1995 report the number of private household workers who are domestic service workers at 821,000, a drop from the 980,000 reported in 1983. See U.S. Bureau of Labor Statistics. Yet as Rollins points out, census figures are misleading because underreporting is so widespread. See ROLLINS, *supra* note 4, at 56. Given the expansion of the underground economy, and the increased movement of immigrant workers into areas such as paid household work, it is highly likely that the total number of workers doing domestic work has increased. See *id.* at 56-57; see also Barbara Vobejda, *America's Homes Hide an Underground Economy; U.S. Is Forced to Confront Pervasive Hiring Violations*, WASH. POST, Feb. 14, 1993, at A1 (observing that "Americans illegally employ more than 2 million undocumented workers, many for household work."); *infra* note 437 (noting prevalence of undocumented domestic workers in New York and California). A resurgence in domestic service has also been reported in other countries. See, e.g., Sedef Arat-Koc, *In the Privacy of Our Own Home: Foreign Domestic Workers as Solution to the Crisis in the Domestic Sphere in Canada*, *STUD. POL. ECON.*, Spring 1989, at 33, 33-36 (documenting an increase of paid household workers in Canada).

408. As of 1992, there were officially 1.13 million women working as paid domestic workers. See *Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers: Hearings Before the Subcomm. on Social Security and the Subcomm. on Human Resources, House Ways and Means Comm.*, 103d Cong. 4, 38 (1993) [hereinafter *Hearings*].

409. See *infra* notes 424-31 (discussing the significance of the "Zoe Baird problem").

but rather as work performed to advance the interests of household employers. These concluding remarks assess the significance of that historical continuity on today's paid household workers.

The revival of domestic service is no surprise. Increasing numbers of women entering the paid work force are confronted with the age-old, work-family conflict.⁴¹⁰ Even as women participate in the paid labor force, they remain culturally and socially responsible for childcare and household maintenance.⁴¹¹ In the absence of both supportive legislative initiatives⁴¹² and greater male involvement in childcare⁴¹³ some women find domestic service a viable solution to help balance the demands of their work lives with "their" domestic responsibilities.⁴¹⁴

For today's paid household workers, various structural changes in domestic service have enabled them to gain a greater measure of autonomy and independence. Live-in service, while still prevalent among some groups of workers, has virtually disappeared.⁴¹⁵ In addition, some household workers have been able to exercise more control over their job by performing housework during times when employers are working.⁴¹⁶ The movement of the employing wife into

410. See *supra* note 42.

411. See BARBARA R. BERGMANN, *THE ECONOMIC EMERGENCE OF WOMEN* 261-69 (1986) (exploring differences in the amount of time men and women spend performing household and childcare tasks); FRANCINE BLAU & RONALD EHRENBERG, *GENDER & FAMILY ISSUES IN THE WORKPLACE* 5 (1997) (discussing factors that impede women's progress in the workplace); DAPHNE SPAIN & SUZANNE M. BIANCHI, *BALANCING ACT: MOTHERHOOD, MARRIAGE, AND EMPLOYMENT AMONG AMERICAN WOMEN* 167-92 (1996) (discussing the arrangements women adopt to combine successfully family and employment obligations).

412. See, e.g., Buehler, *supra* note 42 (noting the lack of adequate childcare policies and recommending child care tax incentives to address the problem); Baker, *supra* note 42, at 240-44 (criticizing the lack of a comprehensive governmental approach to child care policies and programs); Mary Heen, *Welfare Reform, Child Care Costs, and Taxes: Delivering Increased Work-Related Child Care Benefits to Low-Income Families*, 13 *YALE L. & POL'Y REV.* 173 (1995) (exploring the lack of supportive child care measures in the context of mandatory work requirements imposed by welfare reform); Edward J. McCaffrey, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 *UCLA L. REV.* 983, 1032-33 (1993) (examining the disincentive tax policies, including inadequate child care provisions that influence the employment decisions of women).

413. See SPAIN & BIANCHI, *supra* note 411, at 169-71 (noting gender differences in the time spent performing housework and childcare).

414. While dual-career couples probably rely upon domestic service more than others, they are not the only ones currently utilizing the services of paid household workers. The contemporary domestic service market is two-tiered. One tier consists of dual-career couples along with "single, elite professionals." See Leslie Salzinger, *A Maid by Any Other Name: The Transformation of "Dirty Work" by Central American Immigrants*, in *ETHNOGRAPHY UNBOUND: POWER AND RESISTANCE IN THE MODERN METROPOLIS* 150 (Michael Burawoy et al. eds., 1991) *supra* note 410, at 150. Salzinger explains that the other tier includes a "rising number of elderly people living alone on fixed incomes, . . . two-earner working-class families, and . . . single mothers who need cheap child care in order to work at all." *Id.*

415. See PALMER, *supra* note 4, at xiii (noting the "virtual disappearance" of live-in domestic service after 1945). Live-in service, however, remains prevalent among undocumented workers. See Shellee Colen, *Housekeeping for the Green Card: West Indian Household Workers, the State, and Stratified Reproduction in New York*, in *AT WORK IN HOMES: HOUSEHOLD WORKERS IN WORLD PERSPECTIVE* 89-111, 46, 50 (Roger Sanjek & Shellee Colen eds., 1990) (documenting prevalence of undocumented West Indian women among live-in domestics in New York).

416. See ROMERO, *supra* note 4, at 149 (discussing the ideal labor arrangement between domestic and employer which provides for both autonomy and independence in performing the work).

the paid labor force has also meant that employers no longer expect to have constant, uninterrupted access to the services of a paid household worker. The bottom-line is that today, hiring domestics is less about status and prestige and more about alleviating the working woman's burden of a double day.⁴¹⁷ Important developments on the legislative front also have contributed to a greater contractual definition of domestic work. Most notably, domestic service has been brought within the aegis of both the Fair Labor Standards Act⁴¹⁸ and the Social Security Act.⁴¹⁹

Despite these advances, however, society still regards domestic service as a second-class occupation, as a form of work that does not merit treatment as a legitimate employment activity.⁴²⁰ Household employers consistently fail to regard themselves as employers or to perceive of their homes as a workplace.⁴²¹ In addition, the private nature of domestic service continues to exacerbate these attitudes, leading some to question the appropriateness of government intervention in the household employment relationship.⁴²² In the end, many employers freely disregard their legal obligations to their household workers and often do so with little fear of reprisal.⁴²³

The 1993 controversy surrounding the infamous "Zoe Baird problem" highlights the ongoing legal ambiguity confronting paid household workers in this country and illustrates employers' continuing failure to think about domestic service as an employment relationship. Baird, who at the time was President Clinton's nominee for the post of U.S. Attorney General, became the center of a national controversy when the media revealed that she and her husband had failed to pay social security taxes on behalf of their domestic employees.⁴²⁴ In her defense, Baird explained that she was

417. See Salzinger, *supra* note 414, at 142-43, 151-52 (discussing the trend toward hiring someone to clean periodically rather than full-time and how the movement of women into the workforce has led to the commodification of household help in the form of cleaning agencies rather than live-in full-time help).

418. See *supra* note 234.

419. See *supra* note 233.

420. This attitude continues to be reflected within the law of employment relationships as paid household workers have yet to gain inclusion within a number of federal labor laws, most notably the National Labor Relations Act. See 29 U.S.C. § 152(3) (1998) (defining employee to exclude those persons who work in domestic service). Paid household workers likewise are excluded explicitly from most state collective bargaining statutes. See, e.g., N.D. CENT. CODE § 34-12-01(2) (1997) (excluding domestic workers from the definition of employee); OR. REV. STAT. § 653.020(2) (1997) (same); UTAH CODE ANN. § 34-20-2(4)(b) (Lexis Supp. 1998) (same). In addition, the Occupational Safety and Health Act explicitly exempts paid household workers. See 29 C.F.R. § 1975.6 (1998).

421. This attitude was reported repeatedly in the context of the "Zoe Baird problem" of 1993 discussed below. See *infra* notes 424-31 and accompanying text.

422. See David Lerner, *Illegal Help? The Law Is the Cheat*, NEWSDAY, Feb. 9, 1993, at 89 (contending that when the government intervenes in the household employment relationship, it oversteps its bounds into family privacy).

423. See *Hearings*, *supra* note 408, at 39-40 (noting the factors that contribute to noncompliance with employment taxes by domestic workers).

424. See David Johnson, *Clinton's Choice for Justice Dept. Hired Illegal Aliens for Household*, N.Y. TIMES, Jan. 14, 1993, at A1 (reporting that Baird employed two Peruvians living illegally in the United States). As the worker was undocumented, Baird also violated the Immigration Reform

unaware of her legal obligations.⁴²⁵ Not since America's obsession with the "servant problem" have paid domestic workers occasioned such concerted public debate.⁴²⁶

For sometime it appeared that the Baird debate might prompt legislative measures to ensure that domestics receive the benefits to which they are entitled by law.⁴²⁷ Clearly, some action was necessary because Baird was not alone: conservative estimates indicated that significantly less than twenty-five percent of all household employers were complying with applicable provisions of the Social Security Act on behalf of their workers.⁴²⁸ Yet while commentators approached

and Control Act of 1986. See Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at 1324a (1994)) (controlling unlawful employment of aliens).

425. See *Hearings, supra* note 408, at 18 (statement of Rep. Meek) (observing in the context of the Zoe Baird problem that "many people who hire domestic help do not see themselves as employers"); see also *id.* at 36 (statement of Mary Ann Wyrsh, Director, Unemployment Insurance Service) ("[Household] employers in many cases do not view themselves as traditional employers in the labor market.").

426. See, e.g., Lawrence E. Harrison, *If Domestic Work Paid Well . . .*, N.Y. TIMES, Jan. 31, 1993, at 11 (arguing that qualified citizens would not opt to perform domestic work because of the low wages); Douglas Martin, *After Wood and Baird, Illegal-Nanny Anxiety Creeps Across Many Homes*, N.Y. TIMES, Feb. 15, 1993, at A13 (discussing the pros and cons of illegally hiring a nanny); Jeffrey Rosen, *Baird: Scapegoat for Deeper Problem*, SAN DIEGO UNION-TRIB., Feb. 3, 1993, at B-9 (discussing an INS directive stating that it would not target private households); Jeffrey Rosen, *Good Help: Race, Immigration and Nannies*, 208 NEW REPUBLIC, Feb. 15, 1993, at 12-15 (discussing the threatened sanctions against employers of domestic workers under the liberal Simpson-Mizzoli law); Claudia Wallis, *The Lessons of Nannygate*, TIME, Feb. 22, 1993, at 76 (discussing the Clinton Administration's hiring policy, which now requires applying the Zoe Baird litmus test to both male and female future appointees).

427. Under the law at that time, a paid household worker was entitled to have her wages credited to her social security earnings record if she earned \$50 or more in cash in any calendar quarter. If the \$50 test was met, the household employer was responsible for social security and Medicare taxes. See 42 U.S.C. § 409(a)(6)(B); see also *Hearings, supra* note 408, at 42 (citing *Marshall v. Washburn*, which explains the social security regulations applicable to paid household workers).

428. See *Hearings, supra* note 408, at 38 (citing *Marshall v. Washburn*, Compliance 2000 Executive, Internal Revenue Service). *Washburn* continues:

[E]ach year the IRS receives about 1.4 million quarterly forms 942. Since taxpayers who employ household workers on a regular basis would have to file four forms 942 for the year, the 1.4 million 942s we receive would suggest that only about one-half million households report household wages. Occupational data from the Bureau of Labor Statistics for 1992 indicates that there are about 1.13 million workers employed in private homes. This is in addition to workers employed through agencies and commercial services. Many of these 1.13 million employees work for two or more household employers during a given time period. . . . Based on this estimate, we estimate that there are several million households that should be reporting to the IRS.

Id.

The noncompliance on the part of household employers is compounded by the fact that some paid household workers are opposed to paying part of their wages into the social security system. Similar to many low-wage workers, domestic workers often lead a hand-to-mouth, paycheck-to-paycheck existence. See ROMERO, *supra* note 4, at 148 (describing erroneous and illegal tax avoidance efforts by domestics). Given their often fragile economic position, many domestics prefer to retain an extra dollar now as opposed to investing it in the Social Security system and recouping the benefits years later. *Id.* In addition, domestics often resist having their wages reported, preferring under-the-table payment arrangements instead, because they do not want to file an income tax return. See Martha Shirk, *Cashing in on Domestic Help*, ST. LOUIS POST-DISPATCH, Feb. 15, 1993, at 1C (stating that employers do not pay Social Security for domestic workers because either they do not know that it is required or the workers request that they do not pay it). Evidence suggests, however, that the disinclination among household workers to report their wages, either for purposes of Social Security or filing an income tax return, often results from misinformation. For example, given the low wages received by paid household workers, many of them would not owe any taxes and could qualify for the Earned

the issue from a number of angles, ranging from childcare⁴²⁹ to the confirmation process,⁴³⁰ there was “[b]arely a mention, let alone careful analysis” of the Zoe Baird problem as a matter of worker protection.⁴³¹

Despite initial outrage over the actions of Baird and other household employers, Congress readily sacrificed the employment rights of paid household workers⁴³² “to make life a little easier for those citizens who employ household domestic help.”⁴³³ The undeniable question is, what about the women who labor as paid household workers and their families? Why is society willing to subjugate their economic interests to the needs of the families for whom they work?

I suspect that the answer has an historical particularity. It likely hinges in part on the ongoing notion of domestic service as “exceptional” and in part on the presence of a large, unstable workforce of paid household workers who are disproportionately

Income Credit. See, e.g., Tamar Lewin, *The Household Employee and the Benefits Dilemma*, N.Y. TIMES, Mar. 22, 1984, at C1 (stating that domestic workers with low incomes may owe no taxes and thus have nothing to lose by seeking retirement benefits); Shirk, *supra*, at 1C (stating that domestic workers who are paid in cash probably do not file taxes and therefore do not benefit from the Earned Income Credit).

429. See Christine Bertelson, *Domestic Underground Suddenly in Spotlight*, ST. LOUIS POST-DISPATCH, Feb. 14, 1993, at 1A (asserting that the nanny debate should focus on childcare, not taxes).

430. See generally STEPHEN L. CARTER, *THE CONFIRMATION MESS: CLEANING UP THE FEDERAL APPOINTMENTS PROCESS* (1994) 179-82 (arguing that application of Social Security laws to the paid household relationship represents an unconstitutional infringement on the privacy of employing families).

431. See MICHAEL SCHUDSON, *THE POWER OF NEWS* 8 (1995) (observing that the media’s response to the Zoe Baird problem failed to discuss the point of view of domestic workers).

432. See The Social Security Domestic Employment Reform Act of 1994, 26 U.S.C.A. § 3121 (1998). The law effected several key modifications in the provisions for paying taxes on the earnings of private household employees. First, the Act eliminates the need for employers to pay Social Security taxes on wages paid to domestic workers on a quarterly basis, allowing them instead to pay the taxes annually on their IRS tax forms. See H.R. REP. NO. 103-842, at 2 (1994) (amending § 3102(e)). Second, it exempts wages paid to domestic workers under age 18 from Social Security taxes. See *id.* (amending § 3102(b)). Third, the Act raises the threshold that triggers liability for Social Security taxes from \$50 quarterly to \$1000 annually. See *id.* (amending § 3102(a)). The first and second of these changes represent practical and useful improvements in the law. The first change responds to concerns that many household employers failed to pay the required taxes because the process was too time-consuming and complicated. See *Conference Report on H.R. 4278, Social Security Domestic Employment Reform Act of 1994*, 140 CONG. REC. H11,014, 11,014-15 (daily ed. Oct. 6, 1994) (statement of Rep. Bunning). The second change was intended to “exempt[] wages paid to the teenager who is the occasional babysitter or who mows the neighbor’s lawn.” *The Social Security Domestic Employment Reform Act of 1994*, 140 CONG. REC. S14,396, S14,397 (daily ed. Oct. 6, 1994) (statement of Sen. Moynihan). The third change, however, works to the clear disadvantage of paid household workers and was predicted to result in 80,000 to 115,000 domestic workers losing some social security coverage each year. See *Social Security Taxes Wage Threshold To Be Raised in Proposal*, 139 CONG. REC. H9879, H9880 (daily ed. May 12, 1993) (statement of Rep. Meek) (stating that the current proposal by the Ways and Means Committee will harm low-income workers). Such concerns were confirmed in 1995, the first year that the new law took effect. The number of household employers who paid the tax for the year was just below 300,000 compared with 500,000 in 1994. See David Cay Johnston, *Despite an Easing of Rules, Millions Evade ‘Nanny Tax’*, N.Y. TIMES, Apr. 5, 1998, at 1.

433. *Nanny Tax-Protection for Farmers*, 140 CONG. REC. S14,392, S14,392 (daily ed. Oct. 6, 1994) (statement of Sen. McConnell).

women of color.⁴³⁴ In many respects, today's domestic workers resemble the Black women who dominated domestic service at the end of the household labor movement.⁴³⁵ Poor, politically powerless, and with few employment alternatives available,⁴³⁶ they have become America's latest solution to the servant problem. The fact that today's domestic workers are likely to be undocumented workers has made it that much easier to dismiss their legal rights as employees.⁴³⁷ Undocumented domestics, like undocumented immigrants generally, "often are vulnerable to abuse because they are the 'most hungry'—willing to work for low wages and put up with poor conditions out of desperation."⁴³⁸

Of course, the presence of undocumented domestics, while a relief to many families, has by no means alleviated the pressing need for childcare in this country. As policymakers continue, in the twenty-first century, to restructure "welfare as we know it,"⁴³⁹ "[t]he needs of employed middle-class women and women on welfare for services might thus be thought to coincide: the needs of the former for services might be met by employing the latter to provide the services."⁴⁴⁰ But if the history of the household labor movement has but one lesson to offer for the future, it is this: it is time to stop concentrating on the ability of poor women to improve the lives of others and begin to consider how to help them improve their own lives.

434. Seventeen and a half percent of all domestics are Black women, and 25.4% are Hispanic women. See Glenn, *supra* note 405, at 19-22 (examining the racial division of labor in public settings).

435. See *supra* notes 90-93 and accompanying text.

436. See *Hearings, supra* note 408, at 6-9 (statement of Rep. Meeks).

437. There are no reliable estimates of the number of undocumented house workers, but one can get a sense of the underground workforce in domestic service from a few statistics. In New York City, 1989 figures estimated that there were between 250,000 and 450,000 undocumented immigrants working as private household workers. See Merle English, *Caribbeans' Fight to Breathe Free*, *NEWSDAY*, July 19, 1989, at 8. In California, 1990 figures suggested that one in three domestics were undocumented. See Stuart Silverstein, *Domestics: Hiring the Illegal Hits Home*, *L.A. TIMES*, Oct. 28, 1994, at A1.

438. Tracy Wilkinson, *To Protect Those Who Must Serve*, *L.A. TIMES*, Feb. 12, 1992, at A1 (citing David Sickler, West Coast Director of the AFL-CIO).

439. See generally JOEL HANDLER, *THE POVERTY OF WELFARE REFORM 1* (1995) (arguing that welfare policy has moved to the right, even under the Clinton Administration's new programs).

440. Glenn, *supra* note 405, at 36.