International
Labour
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Geneva

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CONDITIONS OF WORK AND EMPLOYMENT SERIES No. 58

INWORK

Conditions of Work and Employment Series No. 58

Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

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ILO Cataloguing in Publication Data

Goldberg, Harmony

The long journey home : the contested exclusion and inclusion of domestic workers from federal wage and hour protections in the United States / Harmony Goldberg ; International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch. - Geneva: ILO, 2015 (Conditions of work and employment series ; No. 58)

International Labour Office Inclusive Labour Markets, Labour Relations and Working Conditions Branch.

domestic worker / working conditions / minimum wage / overtime / wage determination / history / USA

13.11.6

First published 2015

Cover: DTP/Design Unit, ILO

Printed by the International Labour Office, Geneva, Switzerland

Abstract

This paper covers the historical trajectory of domestic workers' contested relationship with minimum wage and overtime protections in the United States. It begins with a brief snapshot of the current coverage of domestic workers in federal-level minimum wage and hour protections, followed by a description of the wage-setting tradition in the United States. It then traces the initial exclusion of domestic workers from foundational minimum wage and overtime protections in the 1930s through their partial inclusion in the 1970s and the on-going struggles for full inclusion today. In the current moment, special attention is given to recent state-level struggles for the full inclusion of privately paid domestic workers and a recent victory that won the full inclusion of publicly paid homecare workers. The narrative concludes with cross-cutting lessons from these histories, offered in the hopes of supporting the efforts of advocates in other nations to win minimum wage protections for domestic workers.

Acknowledgements

Hae-young Yoon and Cathy Ruckelhaus - both advocates from the National Employment Law Project - provided me with valuable insight about recent campaigns and the current coverage of domestic workers in minimum wage and overtime protections in the United States. The historical sections draw heavily on the work of Peggie Smith, Phyllis Palmer and Premilla Nadasen. I am indebted to all these women for their research, advocacy and deep knowledge of these issues.

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Introduction

The journey towards the inclusion of domestic workers in minimum wage and overtime protections in the United States has been long and complicated. In 1938, when legislators passed the Fair Labor Standards Act (FLSA), establishing the nation's first federal minimum wage and overtime protections, domestic workers were excluded by name. They remained excluded from protections until 1974, when legislators passed an amendment to bring certain categories of domestic workers under the reach of the Fair Labor Standards Act, primarily full-time nannies and housecleaners. However, large number of domestic workers remained excluded, some by the explicit provisions of the amendment and others by regulatory interpretations of the legislation. At the turn of the 21st century, a wave of new organizing efforts emerged among domestic workers around the country that have challenged these remaining exclusions. Their efforts have gained traction over the last several years, suggesting the emergent possibility that domestic workers will soon be fully included in the minimum wage and overtime protections that are provided to almost all other workers in the United States. This paper will trace the historical development of these struggles, beginning with the initial exclusions in the 1930s and moving through the struggles over inclusion in the 1970s and today. I will explore both the technical considerations and the socio-political dynamics that were at play in each of these moments of contestation. Before I begin that historical exploration, I will provide a few different pieces of context: the current size of the domestic workforce, the current state of minimum wage and overtime coverage for those workers and the legal and political framework of minimum wage protections in the United States.

A Quick Snapshot: Domestic Workers and the Minimum Wage in the United States

The U.S. Department of Labor defines domestic workers as those workers who "provide services of a household nature in or about a private home," a category which includes "companions, babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, caretakers, handymen, gardeners, home health aides, personal care aides, and family chauffeurs" (Department of Labor, 2013a). It is difficult to identify the number of domestic workers in the United States with any certainty. In 2010, the American Community Survey assessed that there were 726,437 nannies, housecleaners and caregivers who were privately employed and who worked in private households (Burnham and Theodor, 2012).[1] Additionally, the Department of Labor estimates that there are 1,878,700 home health and personal care aides who provide care for elderly people and people with disabilities (Bureau of Labor Statistics, 2012a), who generally work in private homes and are paid through public sources of funding like Medicare and Medicaid. Together, these estimations place the current size of the domestic

[1] According to Burnham and Theodore (2012), it is almost certain that a significant number of workers are not counted in this estimation, given the challenges of documenting work in informal industries and the Census Bureau's record of undercounting undocumented immigrants. There are a number of other limits with this statistic as well, such as the complicated classifications in the industry, which place domestic workers who are employed through agencies or who work for cleaning companies outside of these categories. But these statistics remain the closest systematic estimation we have for the number of privately paid domestic workers in the United States.

workforce at around 2,605,137 workers, giving it approximately a 1.7% share of the workforce. While this percentage is quite small, the domestic workforce is growing in an era of slow economic growth in the country as a whole. The privately paid sections of the workforce grew by 10% between 2004 and 2010, a period of general stagnation in job growth. Home health and personal care aides are among the fastest growing occupations in the United States; this sector of the industry is expected to grow by 70% over the next ten years (Bureau of Labor Statistics, 2012b). A recent study conducted by the National Domestic Workers Alliance (Burnham and Theodor 2012) found that 95% of domestic workers in the United States are women, 54% were non-white, 46% were immigrants and 35% were non-citizens.

Due to recent regulatory changes which will be outlined later in this paper, the majority of domestic workers are now fully included in federal minimum wage and overtime protections. The current federal minimum wage is $7.25 per hour, and employers are required to pay an overtime rate of one-and-a-half times the worker's standard hourly rate for any hours worked above 40 hours per week. Under federal law, wages can include the reasonable cost of providing food and lodging. Employers are required to limit deductions for food and lodging to "the reasonable cost or fair value" (29 CFR Part 531), and to keep detailed records of those deductions that demonstrate their "reasonable cost" (29 CFR Part 516.27). These deductions may bring the take-home pay below the established minimum wage. Stand-by time - referred to as "on call" time in the United States - must be calculated into hours worked, based on the assumption that - when workers are "on call" - they are not able to use the time effectively for their own purposes so therefore that time is controlled by their employer. Live-out workers who work overnight shifts but who work for less than 24 hours are legally considered to be working the entire time they are on-site, even if they spend part of that time sleeping or engaging in personal activities. If live-out workers work shifts longer than 24 hours, they can negotiate with their employer to exclude up to eight hours of sleep time from their working hours. If they are interrupted during those hours in order to fulfill work duties, the interrupted time must be counted as working hours. If they are unable to get at least five hours of uninterrupted sleep because of work duties, then all of their sleep hours must be counted as working hours (Department of Labor, 2008). If live-in workers are expected to be "on duty" for their employers or charges even when sleeping, then they are supposed to be paid for those hours. If there are defined times when live-in workers are considered "off duty" and can use their free time as they wish - for example, to sleep, run errands or engage in social activities - then they need not be paid for those hours, even if they are doing those activities in the employers' home (Department of Labor, 2013b). When workers are required to travel between work sites by their employers, that travel time is considered work time that must be reimbursed. It is important to note here that these laws are frequently not enforced, leaving many domestic workers excluded from minimum wage and overtime protections in fact, if not by the letter of the law. These challenges with enforcement in the domestic work industry will be explored in greater detail later in this paper.

There are several remaining sub-sets of workers who are still excluded by name from these protections under federal law. Nannies, housecleaners and caregivers for the elderly or disabled who are paid by private employers and who live in their employers' homes are included in minimum wage protections, but

they remain excluded from the right to overtime pay if they work more than forty hours per week. While these workers are excluded under the federal regime, they may have coverage under state law, dependent on where they live. Live-in domestic workers are included in state-level overtime protections in Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York and North Dakota.[2] Additionally, casual babysitters are excluded from both minimum wage and overtime protections at the federal level. While "casual" is not clearly defined in the law, it is intended to refer to babysitters who sporadically provide childcare services, rather than to part-time nannies. "Companions" who provide social fellowship to elderly people and people with disabilities are also excluded from minimum wage and overtime protections at the federal level (Department of Labor 2013c); there has been significant struggle over the definition of "companions" since 1974, focused on how large of a cross-section of the workers who provide care for the elderly and people with disabilities will be defined as companions and therefore excluded from protections. As will be explored later, recent regulatory changes have radically narrowed the reach of this exclusion, resulting in the inclusion of most home care workers in minimum wage and overtime protections.

The Wage-Setting Tradition in the United States

In 1938, the U.S. Congress passed the Fair Labor Standards Act (FLSA), establishing the nation's first federal minimum wage rate and overtime protections. FLSA established a statutory minimum wage rate of 25 cents per hour at the time of its passage and required employers to pay workers one-and-a-half times their regular pay when they work more than forty hours per week. These rates provided a universal floor for the group of workers who were included within its initial provisions, but that group of protected workers has been limited in significant ways over the last seventy-five years.

Following is a detailed description of the structure of minimum wage legislation in the United States and of the political processes by which it was shaped. This level of detail is provided because the particular structures and limits of minimum wage rights profoundly shape the contemporary struggles of domestic workers for full inclusion in and enforcement of these foundational protections: the exclusion of many domestic workers from minimum protections, the variation of wage and overtime protections between states, the poverty level of the contemporary minimum wage, the absence of a systematic mechanism for raising the minimum wage above the poverty level or at least to keep pace with inflation and the challenges with enforcement.

Political Forces Shaping Minimum Wage Legislation

In the United States, the 1930s were characterized by the economic crisis known as the Great Depression and by widespread social unrest: waves of strikes in factories around the country, massive demonstrations of unemployed people and more. Promising to provide the American people with a "New Deal" that would provide them with rights, relief and stronger governmental regulation of the

[2] Minnesota and North Dakota, there are provisions that stipulate the night-time hours during which the worker is "on call" (that is, available to work) but does not actually do so do not need to be compensated as working hours (NELP, 2011a).

market, Franklin Delano Roosevelt (FDR) was elected President in 1933. During his Presidency, FDR led the process of crafting a package of progressive legislation that established the basic social safety net in the United States: Social Security, welfare, unemployment insurance, union rights and more. The Fair Labor Standards Act was an important component of the New Deal, reflecting the demands emerging out of the social movements of the time and requiring a significant degree of struggle on both legislative and judicial fronts.

Constitutional Issues

Previous to the FLSA, minimum wage protections had been ruled to be an unconstitutional over-reach of government into the economic realm. Workplaces had been considered individual property, governed by individual rights over which the legislature had little to no say. One of the most significant political shifts that occurred during the New Deal era was the expansion of the federal government's authority to regulate economic relations based on the "inter-state commerce clause." Previous interpretations of the inter-state commerce clause had only given the federal government a narrow power to regulate the *transport of goods* across state lines, along with the work related to that transport. But in 1937, under pressure from popular opinion and the Roosevelt administration, the Supreme Court expanded the inter-state commerce clause to include the *production, manufacturing and mining of goods* that were traded across state lines. This shift radically expanded the ability of the federal government to intervene in the economy, bringing economic and workplace rights into the realm of social citizenship in the United States. But this expansion did not give the federal government the authority to regulate conditions in *all* workplaces. Locally-based industries - for example, workplaces that produced goods for intra-state consumption, service workplaces and private home - remained beyond the reach of the federal government.

Political Struggle

Once the hurdle of constitutional limits was cleared, debate over the FLSA began in earnest. At the beginning of the legislative process, FLSA was quite expansive in its reach, its provisions and its approach to setting wages and enforcement. But over the course of legislative debates and political struggles, it was radically curtailed: large numbers of workers came to be excluded, the wage was set at a low level and wage-setting and enforcement functions were limited in significant ways. These changes were due to the lobbying of an unlikely coalition of forces which included the Southern Democrats and large sections of the organized labor movement, both of whom were crucial to the New Deal coalition.

Southern Democrats were a significant bloc in the Democratic Party in the 1930s. While they supported a number of Roosevelt's New Deal programs, Southern legislators were deeply opposed to any type of federal social legislation that mandated equality and - in so doing - threatened the inequitable racial order of the South which relied on the hyper-exploitation of Black agricultural and domestic labor. Even though - following the precedent set by previous New Deal Legislation - FLSA mandated the explicit exclusion of farm workers and domestic workers and maintained state-level authority over many other workers of color and women workers who were engaged in intra-state industries, many Southern

lawmakers were still actively opposed to the idea that federal laws would govern the wages of any workers in their states. They objected to the fact that this kind of social legislation empowered the federal government to establish basic social standards, believing that it would set a precedent that would eventually threaten the political and economic structure of the South that required an inequality of rights between Black and white people. In recognition of their opposition, several key compromises were made to the Act that narrowed its reach and dropped its bar. Southern legislators' opposition was one of the reasons for the reduction of the minimum wage rate to a near-poverty level (Katznelson, 2005).

The labor movement also played a complicated role in debates over FLSA. Different sectors of the labor movement took different positions towards the passage of the FLSA. The Congress of Industrial Organizations (CIO) - which represented industrial workers, many of whom were immigrants, Black workers and women - supported the FLSA with some reservations, but the American Federation of Labor (AFL) - which represented relatively privileged skilled white native-born male workers - actively opposed it and helped to slow its passage and weaken its provisions. The AFL was - by and large - opposed to the idea of government social programs or protections in the workplace because they believed that these types of benefits should be won through unionization and collective bargaining. If benefits were freely available to all workers regardless of their union membership, workers would be less motivated to organize through their unions.[3] During its 1937 Convention, which took place in the midst of the FLSA debates, the AFL declared that it intended to "safeguard collective bargaining and limit the scope of government regulation to those fields wherein collective bargaining machinery is ineffective or difficult of functioning and only until collective bargaining has substantially covered the field" (as quoted in Horowitz, 1978, p. 187). The CIO - on the other hand - believed that the government could be pressured to help working people, and they believed that government programs could benefit working people and strengthen their hand in workplace-based organizing. While the new federation still saw collective bargaining as the main engine for improving workers lives, they believed that government standards - like the minimum wage - set a floor on which collective bargaining could build. John Lewis described the Fair Labor Standards Act as "the beginning of an industrial bill of rights for workers as against industry," (as quoted in Hart, 1994, p. 159) pointing towards future plans to expand the realm of state labor rights and protections.[4]

[3] This position had a gendered inflection. While the AFL was moderately supportive of the then-common approach of providing state-based protections - like minimum wage and maximum hours laws - for women and children based on the belief that women were weaker and less likely to organize (Hart, 1994), the federation strongly advocated for men to win their gains through collective bargaining. They believed that government programs would encourage dependency and weakness among men, rather than developing the independence and strength that workers could acquire through engaging in independent struggle and collective bargaining. According to Kessler-Harris (2001), this orientation was connected to "a uniquely American version of manhood" which was "closely tied to American notions of self-sufficiency and upward mobility." (p. 68)

[4] Within the CIO, it was the unions based among immigrant women workers who labored in garment and textile sweatshops - the Amalgamated Clothing Workers of America (ACWA) and the International Ladies Garment Workers Union (ILGWU) - that worked most actively for the passage of the Fair Labor Standards Act. Their members were some of the only workers who were simultaneously covered through its restriction to covering interstate commerce *and* whose wages were actually low enough to benefit from its relatively low floor of protections, since most other industrial workers already received wages above the minimum (Hart, 1994; Mettler, 1998).

Together, these political forces shaped the framework of minimum wage legislation in significant ways. The support of the CIO was decisive in helping the FLSA to pass, but the opposition of the AFL - together with the racialized opposition of Southern legislators - helped to ensure that the minimum wage floor would be set at near-poverty levels and that the reach of state-mandated worker protections would remain limited.

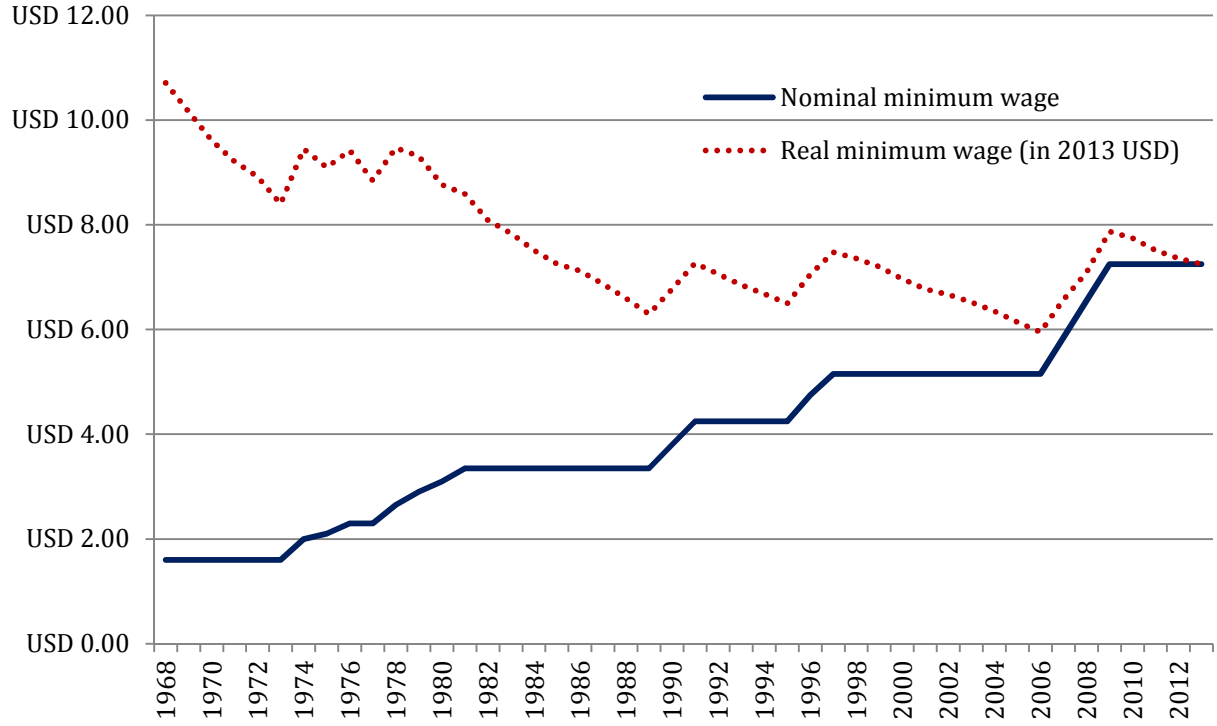
Minimum Wage as a Poverty Wage

Southern legislators demanded that the wage rate be dropped, and the AFL only ended their opposition to the FLSA after the wage rate was reduced so significantly - to 25 cents per hour, a rate which was to be raised to 40 cents per hour after seven years - so as not to impact industries in which unions were strong and where workers had acquired higher wages through collective bargaining (Hart, 1994; Kessler-Harris, 2001). While there have been moments when political struggles have been able to pressure the legislature to raise the minimum wage to a relatively decent standard, long-standing stagnation in the minimum wage means that it currently ensures only a poverty-level existence to full-time minimum wage workers (Department of Labor, 1996)

Wage-Setting Mechanism

Although the original Fair Labor Standards Act legislation that was introduced to Congress contained a provision for a quasi-judicial "Fair Labor Standards Board" that would regularly make adjustments in the minimum wage rate to respond to changes in the cost of living, that mechanism was cut during legislative negotiations; it would also have had the authority to set industry-specific minimum wage rates that went above the minimum wage and which reflected prevailing wage rates in those industries. The Fair Labor Standards Board proposal was cut from the FLSA due largely to the objections of organized labor, which was concerned about increasing the power of the government to set wages and thereby presumably diminish unions' abilities to set wages through collective bargaining. The FLSA, as it was adopted, did not establish any regular process or formal criteria for raising the minimum wage rate to adjust for inflation, leaving future processes of raising the minimum wage up to cumbersome process of legislative amendments and political struggle (O'Brien, 2001). Congress made regular adjustments to the minimum wage to keep pace with the rising cost of living for about five decades without significant debate or controversy, reflecting widespread bipartisan support for minimum wage protections. Starting in the late 1970s, employer associations - primarily the Chamber of Commerce and the National Restaurant Association - began actively lobbying against minimum wage increases. Employer groups have argued that minimum wage increases will lead to increased joblessness; this assertion is not validated by economic research. As a result of their lobbying, although raising the minimum wage continues to garner widespread popular support, legislative adjustments have slowed down so significantly that the real value of the minimum wage has stagnated. When adjusted for inflation, the minimum wage rate has in fact declined significantly since 1968 (See Figure 1). For example, in 1968 the hourly minimum wage was worth nearly 11 USD per hour (in 2013 terms). In contrast, in 2013 it is worth 7.25 USD per hour.

Figure 1. Nominal and real value of the hourly minimum wage, 1968-2013



Source: ILO Estimates using data from the United States Department of Labor Wage and Hour Division and the Bureau of Labor Statistics.

Limited Reach and Federalism

Only 20% of workers were covered by the FLSA at the time of its passage. There were a number of occupations - including domestic workers and farm workers - who were excluded from FLSA, exclusions explored later in this paper. There were other structural reasons for the limited reach of the FLSA, central among which was the restriction of the FLSA to cover workers who were engaged in "inter-state commerce." This division between the regulation of inter- and intra-state commerce is a reflection of the federalist structure of U.S. law, in which authority over inter-state issues is delegated to the federal government while intra-state issues remain in the hands of state governments. This federalist division of labor facilitated regional differentiation in the form and content of the laws governing these segments of the economy and, thus, in the conditions of work and employment in different states (Mettler, 1998). Feminist scholars have pointed out that the restriction of FLSA to the regulation of inter-state commerce effectively excluded most women workers and workers of color - who tended to be employed in locally based service and production industries - from federal rights and protections and thus from the expansive form of economic citizenship that was established during the New Deal. Indeed, the Fair Labor Standards Act only covered only 14% of working women and almost completely excluded black workers of both genders, many of whom were domestic workers or farm laborers. (Hart, 1994; Mettler, 1998). The reach of the FLSA has radically expanded over the years, transcending the limits of the inter-state commerce clause and covering a much larger proportion of workers in the United States. But federalism

continues to shape contemporary minimum wage law. Some states have laws that established minimum wages and overtime protections above the federal floor and that were more inclusive of different working populations. This has led to a patchwork of minimum wage protections for workers in different states, a dynamic which has encouraged today's domestic worker organizers to focus on winning full inclusion for domestic workers in minimum wage and overtime protections at the state level.

Enforcement

The originally proposed version of the FLSA would have established an approach to enforcement that would have enabled unions to serve as partners with the government in enforcement efforts, more closely reflecting the more effective tripartite approach to enforcement that was adopted by most other industrial nations at the time. However, the final version of the Act located all standard-setting powers in the hands of the legislature and placed enforcement in the hands of the Department of Labor (O'Brien, 2001). This limited the influence of workers organizations over the enforcement process. The FLSA as adopted established a weak mechanism for enforcement of minimum wage and overtimes violations, relying on injunctions and relatively low-level fines for employers found in violation (Fine and Gordon, 2010). This limited model for enforcement has decreased in efficacy over time, due in part to decreased funding for the labor inspectorate and in part to the growing mismatch with contemporary economic conditions (Weil, 2007).

Each of these structural aspects of the minimum wage framework in the United States has implications for the struggles of domestic workers, implications explored in the following sections. I will begin with a description of the political process by which domestic workers came to be excluded from the Fair Labor Standards Act in 1938.

1930s: Domestic Workers Excluded from the Fair Labor Standards Act

Building on an exclusionary precedent established by the National Recovery Administration, the Social Security Act and National Labor Relations Act, domestic workers - among a number of other sectors of workers - were explicitly excluded from Fair Labor Standards Act. The occupational exclusion of domestic workers and farm workers was a racialized and gendered exclusion. There were approximately 2 million domestic workers in the United States in 1940. Almost all domestic workers at the time were women, and nearly 20 percent of employed women in this period labored as domestic workers (Katzman, 1978). Domestic work was an industry that was heavily populated by African American workers at the time, particularly in the Southern United States. Nationally, a full half of employed African American women at the time worked in domestic service (Glenn, 1992).

Workers and Employers Mobilize

Domestic workers were mobilizing to improve the working conditions in the domestic work industry in the 1920s and 1930s, long before the passage of the Fair Labor Standards Act. Many of their efforts focused on limiting their hours of

work, which averaged between 60 per 80 hours per week. The employers of domestic workers were also mobilizing, concerned less about workers' rights than they were about the "servant problem," that is, the exodus of many white working class women - the preferred constituency for many white employer families - from domestic work. As other employment opportunities opened up for white women in factories and shops, they left domestic work in large numbers, preferring jobs with defined hours, greater independence and less social degradation. Employer advocates realized that they would need to address workers' concerns if they were to maintain their desired labor pool. These employers established organizations like the National Committee on Household Employment to advocate to improve conditions in the domestic work industry (Palmer, 1989; Smith, 1998). Much of their efforts focused on educating employers and promoting voluntary codes to set standards in the industry, but they exerted significant efforts to win inclusion for domestic workers in the early years of the New Deal.

Precedents of Exclusion

In order to understand their exclusion from the wage and hour protections of the FLSA, we have to look at the debates that took place and the precedents that were set earlier in the New Deal, during the formation of the National Recovery Administration, the Social Security Act and the National Labor Relations Act. The exclusion of domestic workers from this package of rights and protections was primarily due to two factors: (1) the convergence of the racial interests of Southern legislators who sought to exclude Black domestic workers from federal protections and (2) gendered conceptions about "real work" and the sanctity of the private home that inclined legislators against providing protections for workers who cooked, cleaned and cared for people in private homes. Unlike other sectors - like farm workers or retail workers - whose restricted rights can be attributed, at least in part, to the political action of their employers, there has rarely been an organized opposition by employers advocating for limitations on domestic workers' rights. Instead, these limitations have, in many ways, been the product of racialized and gendered social norms about women workers, the home and the labor of care (Hart, 1994; Glenn, 2010).

Defining Domestic Work Outside of the Realm of "Real Work"

The exclusion of domestic work from the definition of "real work" relied on the ideological contrast between women's reproductive work in the home and the "real work" done in the realms of production and commerce. In 1934, an economist explained the reasons why domestic workers were largely excluded from New Deal worker rights and protections, writing "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." (as quoted in Smith, 2006). This definition of real work manifested in a number of sites in New Deal rights and protections, perhaps most significantly in the New Deal's restriction of labor rights and protections to the realm of "inter-state commerce." But even before the "inter-state" commerce clause became the basis of expanded federal intervention into the economy, government officials defined domestic work outside of the realm of recognized and protected work. The National Recovery Administration (NRA), which was established in 1933, preceded both the NLRA and FLSA. It

was designed to set up industry specific agreements establishing codes on minimum wages and working hours. The majority of efforts to win inclusion in minimum wage and overtime protections during the 1930s focused on winning recognition from the NRA. Domestic workers organizations, women's groups and civil rights organizations lobbied the NRA to develop a code for domestic workers, conducting surveys to demonstrate the long hours and low pay of domestic workers and sponsoring a national letter-writing campaign. These advocates faced opposition from "traditionalist" employers who wanted to maintain their overwhelming authority over the working hours of their employees; the views of these women were articulated in both political debates and in popular forums like women's magazines. Domestic workers employment agencies also played a role in lobbying to oppose wage and hour regulation in the industry.

Advocates were not able to succeed in pressuring the NRA to develop codes for domestic workers; NRA administrators asserted that they did not consider domestic work a proper trade or industry (Smith, 1998). The definition of the "real workplace" was another site where cultural assumptions shaped labor law. The fact that domestic work is located in the home was one of the primary explanations for its exclusion from labor rights and protections. Although the Supreme Court had expanded the reach of the federal government into the workplace, that reach ended at the door of the home, which was considered a sacrosanct realm of privacy. Policymakers and legislators alike did not believe that the federal government had the right or the capacity to enforce its standards in private homes. The home was seen as a "rights-free enclave," in the words of Vivien Hart (1994). For example, the office of Hugh Johnson, head of the National Recovery Administration, responded to requests for the protection of domestic workers by writing, "The homes of individual citizens cannot be made the subject of regulations or restrictions and even if this were feasible, the question of enforcement would be virtually impossible" (as quoted in Palmer, 1989, p. 120). Thus, the NRA's restrictive legal definitions of "real work" corresponded with the common cultural tropes that described domestic workers not as employees but as "part of the family" (Rollins, 1985).

Although the NRA was ruled unconstitutional in 1935,[5] its exclusion of domestic workers set a precedent for the development of all future New Deal legislation. These norms provided many of the implicit assumptions that shaped the framework of worker rights and protections during the New Deal, but that framework was not only shaped by vague and abstract social norms. Legislators often referenced questions and concerns that emerged from their own employment of domestic workers during policy debates, bringing their own self-interest into policy debates. For example, a report by the Amalgamated Clothing Workers of America on its lobbying for the FLSA stated that, "One $10,000 a year Congressman told a delegate that he would not vote for the bill because it might make him pay his maid $15.00 a week" (as quoted in Mettler, 1998, p. 194). As employers themselves, legislators have often constituted a *de facto* opposition

[5] The NRA was deemed unconstitutional because it was considered an over-reach of the authority of the federal government from its permitted role in the regulation of the conditions of "inter-state commerce" into the realm of "intra-state commerce." This decision was reversed by the Supreme Court in 1937, paving the way for the passage of the Fair Labor Standards Act. For a more thorough description of these issues, please refer to the description on the way in which the federal government's role in regulating inter-state commerce shifted during the New Deal in the section on "Constitutional Issues" on page 4.

group to domestic workers rights, drawing on their own self-interest and gendered assumptions to restrict the rights of domestic workers.

Race and the Fears of "Racial Legislation"

Continuing the dynamics established during slavery in the United States, the South's predominantly agricultural economy continued to be based on the poorly paid labor of African American sharecroppers, and white Southern families across the class spectrum employed African American women to clean their homes, do their laundry and raise their children. Excluding domestic workers and farm workers from these foundational rights and protections maintained the racially stratified form of citizenship and labor rights established during slavery (Kessler-Harris, 2001; Lichtenstein 2002). But explicit exclusions did not come to pass through the efforts of Southern legislators alone; Northern policymakers also played a significant role advocating for exclusion.

There were a number of different opinions within the Roosevelt administration as to whether domestic workers and farm workers should be included in federal rights and protections. This played out most clearly in the debates leading up to the passage of the Social Security Act. While President Roosevelt and Secretary of Labor Frances Perkins seem to have supported their inclusion, many of the policy architects of New Deal legislation believed that including domestic workers and farm workers was both administratively ineffective and politically inexpedient. At Roosevelt's urging, the original Act that was presented to Congress did, in fact, include domestic workers and farm workers in UI and OAI, but the administration made it clear to its congressional allies that inclusion of these two populations should be considered expendable bargaining chips in the legislative process (Mettler, 1998). The Act made it through the Senate with the inclusion of farm workers and domestic workers intact, but when it came before the House Ways and Means committee - which was predominantly composed of Southern New Deal Democrats - these workers came to be excluded. The lobbying of Secretary of the Treasury, Henry Morgenthau, was decisive in advancing these exclusions. Morgenthau - himself the owner of a farm in New York State - argued that it was administratively impracticable to include these workers in the Act, given their low wages relative to the administrative costs of collecting their payments to these contributory insurance programs (Poole, 2006). This pragmatic argument was adopted by the Southern leaders of the Ways and Means committee members in defending the exclusion on the House floor.[6]

Historians have debated whether these exclusions, in fact, represented racism on the part of policymakers, given that their primary arguments seem to have been pragmatic in nature (Davies and Dertick, 1997; DeWitt 2010). Other nations had included domestic workers in their old age insurance programs in this era, offering models that demonstrated the feasibility of their inclusion. Simple

[6] For example, Fred Vinson, Democratic Representative from Kentucky, defended the exclusion by saying,

> Taking as a basis the total wage of the domestic servants ... you would not have money in the account sufficient to purchase a substantial annuity. You would have a nuisance feature, such as a person being paid [a] $1 wage and taking out 1 penny and having at the end of the road a small sum that would purchase a very small annuity. The same thing applies to agriculture and the same thing applies to other occupations. (as quoted in DeWitt, 2010)

administrative arguments are therefore insufficient to help us understand the exclusion of domestic workers, giving socio-political dynamics more weight in explaining these developments (Smith, 1998). It seems that these legislators knew that explicitly racialized arguments would have been found to be in violation of the fourteenth amendment, so they spoke in more coded language.[7] It is also important to note that - while these policymakers' advocacy for exclusion was not based on explicitly racist political arguments but on pragmatic ones - that pragmatism was based on an assessment and acceptance of the state of racial politics in Congress and of the low wages earned by workers in these racially degraded industries (Quadagno, 1994; Lieberman 1998; Poole 2006).

These exclusions were incorporated into the Social Security Act with very little debate on the House floor, setting the precedent for similar exclusions in the National Labor Relations Act and the Fair Labor Standards Act. Thus, the legacy of African slavery was embedded in federal labor legislation seventy years after its formal abolition. Even though domestic workers were excluded from the FLSA by name, the Act's establishment of a minimum wage and standard working week raised new fears of an empowered domestic workforce, both among legislators and in popular opinion in the South.[8] Rumors swirled about the South that the FLSA would require domestic employers to "pay your negro girl eleven dollars a week," prompting a response from President Roosevelt himself that "no law ever suggested intended a minimum wage and hour bill to apply to domestic help" (as quoted in Hart, 1994, p. 166).

Because domestic workers were excluded from each of these earlier pieces of legislation, the exclusion of domestic workers was assumed rather than openly discussed by the time the FLSA was up for legislative debate. Indeed, it seems that domestic worker advocates did not even invest any significant resources in lobbying for their inclusion in the FLSA because - by that point in history - it seemed to be a waste of time and resources.

Domestic Workers and Employers Organize After the Fair Labor Standards Act

In the wake of their defeat at winning inclusion in New Deal protections, domestic worker organizations and employer advocates turned instead towards promoting voluntary codes between workers and employers, a strategy which

[7] This masking of racial agendas played out in an exchange between the explicitly segregationist Virginia Representative, Howard Smith, and Ohio Representation Thomas Jenkins over whether states could differentiate between different classes of people in their provision of old age benefits:

> *Mr. Smith.* Of course, in the South we have a great many colored people, and they are largely of the laboring class.
>
> *Mr. Jenkins.* That is what I thought the gentleman had in mind. I should like to ask the gentleman, and also any member of this committee, whether in this law it is contemplated that there be any loophole by which any state could discriminate against any class of people?
>
> *Mr. Smith.* No, sir; I do not think so, and you will not find in my remarks any suggestion to that effect. It just so happens that that race is in our State very much of the laboring class and farm laboring class. But you will find no suggestion in my remarks of any suggested amendment that would be unconstitutional, if I may use that expression (as quoted in Lieberman, 1998, pp. 52-53).

[8] These labor rights and protections were seen as "racial legislation" because "what is prescribed for one race must be prescribed for the others, and you cannot prescribe the same wages for the black man as for the white man," in the words of Martin Dies from Texas. (as quoted in Katznelson, 2005, p. 60).

seemed to have had limited impact even though it received national attention due to Eleanor Roosevelt's active participation in the campaign. There were also a series of campaigns for state-level legislation focused on establishing maximum hours laws protecting domestic workers,[9] only one of which succeeded (Palmer, 1989). While 43 states had maximum hours laws to protect women workers by 1941, only Washington's laws covered domestic workers. Similarly, while 26 states had their own minimum wage laws by 1940, only Wisconsin's included domestic workers (Smith, 2006). Most domestic work organizing and advocacy efforts had dissolved by the 1950s, leaving the next stage of struggle for the improving conditions in the domestic work industry and for winning the inclusion of domestic workers in federal wage and hour protections up to a future generation of domestic worker organizers.

1970s: Partial Inclusion of Domestic Workers In Wage and Hour Protections

The domestic work industry declined in size between the 1930s and the 1970s, dropping from a workforce of 2 million to 1.5 million. As more and more women entered the workforce, domestic work came to make up a smaller of the overall female workforce. Only 5 percent of women workers were employed in domestic work by 1970 (Rollins, 1985). This decline is often attributed to the expanding number of alternative employment opportunities that were opening up for women of all races, declining family size and technological advances. As soon as there were other options, women escaped the poor working conditions and the racialized stigma of servitude that characterized the industry.

Political Context

We cannot understand the struggle for the inclusion of domestic workers in the FLSA in the 1970s without attending to the social movements that gave those efforts inspiration and power. The development of the Civil Rights Movement - a movement that primarily focused on overcoming legal forms of racism and segregation in the Southern United States - changed the terrain of U.S. politics. It opened up a larger national dialogue about racial inequality and the degradation of Black life and labor in the United States, and it helped to shift progressive political discourse towards an emphasis on rights and equality. The women's movement emerged out of that same moment of political ferment, calling for the social revaluing of women's work in the home and for equal rights for women in the workplace. These streams of struggle converged in a number of struggles for equal inclusion in federal wage and hour protections, and domestic workers entered the struggle to win inclusion alongside a number of other women workers and workers of color who were also advocating for inclusion in and transformation of the FLSA. Retail workers, teachers, nurses, nursing home workers, farm workers[10] and most public sector employees advocated for and won inclusion in the Fair Labor Standards Act; women's organizations fought for and

[9] Previous to the establishment of the Fair Labor Standards Act, most overtime protections tended to be "maximum hours" laws that were adopted at the state level. They were generally restricted to women and children based on "maternalist" arguments that the state needed to protect these presumptively weaker workers form the hardships of industrial production. Domestic workers were systematically excluded from most of these laws, in part because their work was considered less dangerous than industrial production and in part because of the racialized degradation and gendered devaluation of domestic work (Hart, 1994).

[10] Farmworkers remained excluded from overtime protections.

passed the 1963 "Equal Pay Act" amendment to FLSA which prohibited wage discrimination on the basis of sex, requiring employers to provide "equal pay for equal work." These struggles provided a hospitable context in which domestic workers could advocate for their inclusion in the Fair Labor Standards Act. Domestic workers' struggle for inclusion represented an effort to simultaneously overcome the racialized exclusion of a key sector of Black workers from standard worker rights and protections *and* to bring social recognition and value to women's work in the home (Nadasen, 2012).

The National Council on Household Employment had survived the 1950s, but it had transitioned from being an organization focused on employers to being one focused on domestic workers themselves. Meanwhile, over the course of the 1960s, a number of grassroots domestic worker organizations had emerged out of the Civil Rights Movement, based among African American workers. The best-known among these is the National Domestic Workers Union, founded by Dorothy Bolden in Atlanta in 1968. In 1971, NCHE brought these local domestic worker organizations together to form the Household Technicians of America (HTA), and they took up the struggle to win inclusion of domestic workers in federal wage and hour protections (Nadasen, 2012).

Legislative Debate

The legislative debate over the inclusion of domestic worker in the FLSA was primarily framed around gender and the social value of women's work.[11] While supportive legislators spoke largely in the terms of gender rights and equality, opposing legislators expressed concerns that including domestic workers in wage and hour protections would require a governmental over-reach into the supposedly sanctified realm of the private home. Several legislators argued that, "Because some domestic workers are poorly paid, is no reason to bring the Federal bureaucracy into the kitchen of the American housewife." (as quoted in Palmer, 1995, p. 431) They also expressed concern that - on the one hand - protections for domestic workers might anger housewives who would find their power and authority limited and - on the other hand - that housewives may take the empowerment of domestic workers as an inspiration to make demands on their husbands and society for greater gender equality. In a dialogue with a senator about the challenges of recognizing domestic workers under the law, Secretary of Labor Brennan went so far as to say,

> Yes . . . you open the door to a lot of trouble. Your wife will want to get paid. I think we are going to be in trouble here because, as we say in here, there are many cases the wife cannot afford it; she will have to do it herself or someone in the family will have to. That means that you or I or we have to pay her. So we have to be very careful unless we are ready to do dishes. (as quoted in Nadasen, 2012, p. 82)

A number of legislators also argued that these protections would make domestic work unaffordable for many families, and they particularly highlighted concerns over the ability of low- and middle-income seniors to pay people who

[11] Premilla Nadasen (2012) argues that, in so doing, "They used the cloak of gender to dismiss the class and race politics that were central to the exclusion of domestic workers from labor legislation."

provided them with social support. The minority report to the 1974 FLSA Amendment captured this position, saying that these "social companions who might perform infrequent tasks for a household might be asked to leave for economic reasons. It is certainly a sorry state of affairs when the Government forces such lifelong loyal employees and friends from households in their senior years." (as quoted in Glenn, 2010, p. 142) Again, these statements demonstrate the significant role that policymakers' and legislators' personal gender, racial and class concerns had in shaping their positions on the inclusion of domestic workers in federal wage and hour protections.

There was also some organized external opposition, primarily from business associations that were generally opposed to the minimum wage and were concerned about further expanding its reach. The Southern States Industrial Council, a segregationist business council, testified about the hardships that families of elderly people would face if they had to pay domestic workers minimum wage and overtime, while the National Restaurant Association argued that female employees would not be able to afford to pay the minimum wage for child care and would have to leave their jobs (Boris and Klein, 2012).

Domestic worker advocates challenged these arguments on several grounds. Challenging this assertion that low-wage women workers would not be able to pay domestic workers minimum wage and overtime protections, they argued for increasing women's wages across the board (Boris and Klein, 2012). They made broad political arguments about the legitimacy of domestic work as real work, about the value of women's labor in the home and about the need for equality under the law. They also made practical arguments about the need to establish basic standards in the domestic work industry in order to combat poverty (Smith, 1998; Nadasen, 2012).

In these struggles over gender relations, domestic worker advocates built coalitions with feminist organizations - like the National Organization of Women and the National Women's Political Caucus - that were primarily based among white middle class women, the same base of women who tended to employ domestic workers.[12] These professional women used their access to Congress to lobby legislators for the inclusion of domestic workers in the FLSA. The reasons for their support were multi-layered, reflecting both solidarity in their shared struggle to bring social value to women's labor and their own employment needs. Growing numbers of middle-class women were leaving full-time housework for waged employment, and the demand for domestic workers was growing. At the same time, many women were leaving the industry because of its poor conditions and social degradation. Just as employers had argued in the 1930s, these

[12] In the early 1970s, these middle class women's organizations were also engaged in a legislative struggle over the Fair Labor Standards Act, a struggle which placed them in relationship with the domestic workers who were also struggling for inclusion in the Act. As already described, the Equal Pay Act - which prohibited employers from paying their female employees lower wages than their male counterparts who were doing equal types of work - was enacted as an amendment to FLSA, rather than being passed as an independent piece of legislation. Because FLSA excludes executive and professional workers from its protections, these professional women were not able to access the protections of the Equal Pay Act in order to combat the wage discrimination they were facing. The feminist organizations that were primarily rooted in these professional constituencies ran a campaign for inclusion in the Equal Pay Act, a fight they won in 1972. This laid the groundwork for their active participation in the struggle for domestic workers inclusion in FLSA.

professional women in the 1970s argued that women would only be willing to stay in domestic work if the work was better-paid and protected (Nadasen 2012; Palmer 1995). These women's organizations were joined by leaders from the union movement, who argued for the inclusion of domestic workers. For example, representatives from the Service Employees International Union, which represented janitors, challenged the contradiction between the FLSA's inclusion of "the tens of thousands of women who clean the boss's office, and whom we represent" and the exclusion of "the women who clean the boss's home." (as quoted in Palmer, 1995, p. 428)

These collective efforts succeeded in convincing legislators to pass an amendment to the FLSA that included most domestic workers in federal wage and hour protections in 1974. Significantly, this vote took place as the Southern Democratic legislative bloc transitioned from being composed of white "Dixiecrats" who opposed the inclusion of domestic workers in employment legislation to being a multi-racial delegation that was actively supportive of low-wage workers' rights. This transition - the result of the efforts of the Civil Rights Movement to win electoral rights for African American votes in the South, provided a supportive political context which facilitated domestic workers' successes (Palmer, 1995).

There were, however, several significant limits and exceptions embedded in the 1974 amendment. First, it included both live-in and live-out workers in minimum wage protections, but it left live-in workers excluded from overtime protections. A committee report explained legislators' reasoning behind this exclusion, saying, "Ordinarily such an employee engages in normal private pursuits such as eating, sleeping and entertaining, and has other periods of complete freedom. In such a case, it would be difficult to determine the exact hours worked." (as quoted in Glenn, 2010, p. 142) Second, the amendment carved out presumptively "casual" domestic workers from inclusion in these rights, naming both casual babysitters and companions to the elderly and disabled in this "casual" category. Legislators articulated these categories as an attempt to provide FLSA protections only to workers "whose vocation is domestic work" as opposed to casual workers who periodically perform care and companionship and who "are not regular breadwinners or responsible for their families support," in the words of a U.S. Senate report on the amendment (as quoted in National Employment Law Project, 2011a). For example, the "casual babysitter" distinction was intended to separate out the full-time nanny who needed wage and hour protections in order to be able to support herself and her family, for example, from the neighborhood girl whom a family might periodically hire as a babysitter on a Friday night and for whom such protections would not be as significant. While the law does not clearly define "casual babysitter," this has not proven to be a major source of difficulty for significant numbers of domestic workers in their efforts to access wage and hour protections (H. Yoon, personal communication, October 21, 2013).

It was the exemption of "companions" that would come to be a much more socially significant provision of the 1974 legislation. Like the casual babysitter exemption, the companionship exemption was intended to exempt people who periodically provided low-level social support to elderly people in their families or communities. Legislators specified that this exempted "companionship" work

should not include substantive household cleaning, personal care or medical care work. However, when the Department of Labor developed its regulatory agenda for the 1974 amendment, policymakers interpreted the companionship exemption broadly to include almost all workers who provided not only social support but also personal care and household services to the elderly and disabled. That is, they effectively excluded home health care and personal care aides, some of whom were paid by private individuals but many of whom were paid by government programs like Medicare and Medicaid. The Department of Labor also extended the exemption to include workers who were employed by third parties like homecare agencies, workers who had already been included in wage and hour protections before the passage of the 1974 amendment. This represented a contraction of rights for many domestic workers, as opposed to the expansion of rights that had motivated the amendment. This exclusion was particularly significant because home health care and personal care aides - who are commonly referred to as "homecare workers" - have been one of the fast growing occupations in the United States over the last several decades. These regulatory interpretations thus led to the exclusion of hundreds of thousands of domestic workers from basic wage and hour protections (National Employment Law Project 2011a).

The 1970s was a complicated moment for domestic workers and their advocates. The inclusion of many domestic workers in minimum wage and overtime protections was a significant step forward for equality, and it offered domestic workers a new tool with which to improve their conditions. But many domestic workers in the United States - particularly live-in workers, home health care workers and personal care aides - remained excluded from these foundational rights. And for those workers who were included, their rights were often not strongly enforced. Government enforcement methods were poorly tailored to regulate conditions in hundreds of thousands of private homes. Several years after the passage of the 1974 amendment, domestic worker organizations reflected on the need for grassroots-led enforcement efforts, but there is limited evidence that either governmental or grassroots enforcement efforts had much effect in making these newly-won rights a reality in the lives of domestic workers (Nadasen, 2012). And, as had been true in the 1930s, this generation of domestic worker organizations was not able to survive beyond this singular moment of struggle. It was not until the turn of the 21st century that a new generation of domestic worker organizations would emerge and take up the work to complete the long journey towards full inclusion.

2000s: The Struggle for Full Inclusion Continues

Between 1974 and the turn of the 21st century, a number of states passed laws that expanded the reach of minimum wage and overtime protections to the domestic workers who remained excluded from protections at the federal level.[13]

[13] Previous to the developments described in this section, homecare workers were included in minimum wage and overtime protections - with variable different terms for live-in workers - in a number of states including: Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, Nevada, Pennsylvania, Washington, and Wisconsin. Homecare workers were included in minimum wage protections but not overtime in a number of other states, including: Arizona, California, Nebraska, North Dakota, Ohio, and South Dakota (PHI, 2013a). A number of states - including Massachusetts and New York among others - included live-in workers in overtime protections, albeit it sometimes at lower rates. For example,

But in the majority of states, live-in domestic workers remained excluded from overtime protections, and home care workers remained excluded from both the minimum wage and overtime protections. A new generation of worker advocates and organizers, including both unions and locally-based worker organizations, took up the banner of the fight for full inclusion. The struggle for the full inclusion of domestic workers in minimum wage and overtime protections manifested on two different but overlapping fronts in this period:

(1) State-level struggles to pass legislation establishing the full inclusion of privately-paid nannies, housecleaners and elder care providers in protections including - among others - overtime, anti-discrimination and occupational safety and health protections. The state-level struggles for the full inclusion of privately paid domestic workers were led by a number of local organizations based among privately-paid nannies, housecleaners and elder care providers that emerged in cities around the country over the 1990s and early 2000s. Often called "worker centers," these organizations developed independently of the traditional union movement, and they primarily used service provision and advocacy in order to improve the lives of domestic workers. In 2007, these locally-based organizations federated into the National Domestic Workers Alliance (NDWA) in order to take their organizing work to a national level. NDWA now has 45 affiliated organizations in 18 cities.

(2) A federal-level struggle to change the Departments of Labor's regulations that designated home care workers as "companions" and thereby excluded them from the Fair Labor Standards Act. This work was largely led by worker advocacy organizations, but unions also played a significant role in these efforts. Service Employees International Union (SEIU) had been organizing homecare workers since the 1980s. SEIU's efforts represented the first serious investment in organizing domestic workers by the union movement in the United States. Rather than trying to organize the entire domestic work industry, SEIU focused on organizing home care workers, the segment of domestic workers who were funded through government programs, based on the premise that it was more feasible for these domestic workers to engage in collective bargaining because their funding came from a common public source. The American Federation of State, County and Municipal Employees (AFSCME) has also done significant organizing among home care workers in the United States.

The first state-level campaign for full inclusion started in New York State in 2003, led by Domestic Workers United (DWU), an organization of Caribbean, Latina, African and Asian domestic workers. DWU led a six-year organizing campaign to pressure the New York State legislature to adopt a "Domestic Worker Bill of Rights." The Bill of Rights was designed to win inclusion of all domestic workers in New York State in minimum wage, overtime and anti-discrimination protections and to win a number of additional protections that are not normally guaranteed to workers through the standard package of worker rights in the United States: health insurance, paid sick days, vacation time, notice of

before the passage of the Domestic Worker Bill of Rights, New York State provided overtime protections for live-in workers after *44* hours of work (rather than after 40) at a rate of time-and-a-half the minimum wage rate (rather than time-and-a-half their normal wage rate).

termination and severance and more.[14] While many of these more expansive provisions were cut from the Bill during legislative negotiations,[15] Domestic Workers United was able to win several significant victories for inclusion when the Bill passed in 2010: live-in workers in New York State gained the right to overtime pay if they worked more than 44 hours of work in a week;[16]companions for the elderly were also included in overtime protections; and domestic workers were to be included in protection from harassment based on race, gender, national origin and religion.[17] This, by and large, ended the exclusion of privately-paid domestic workers from minimum wage and overtime protections in New York. A similar legislative fight emerged in California. Although domestic workers had won inclusion in minimum wage protections in California in 2001, live-in workers remained excluded from overtime protections. In 2006, domestic worker organizations in the state took up their own Bill of Rights campaign; similarly to the New York experience, they demanded both full inclusion in overtime protections *and* a number of more expansive protections like the right to uninterrupted sleep and the right to decent sleeping conditions for live-in workers. The California Domestic Worker Bill of Rights passed in 2013. Following the pattern that began in New York, domestic workers organizers were able to win full inclusion in overtime protections, but the more expansive protections were cut from the final version of the Bill of Rights. Significantly, however, they won a more expansive approach to overtime protections, shifting it from a weekly overtime rate to a daily one. That is, if a worker worked more than nine hours in a day (or 45 hours in a week), she was entitled to overtime pay at the rate of one-and-a-half times her regular rate. The California Bill is set to sunset in three years, leaving advocates with a clear next front of struggle: to ensure the Bill's re-adoption and expansion in 2016.

The strategies used by domestic worker organizations were similar in both New York and California. The central methodology of the campaign was based on domestic workers sharing their personal stories of care and hardship in the industry. These women's powerful stories were used to lobby legislators, to win over allies and to promote their message in the media. Drawing on these stories, domestic workers made two different kinds of moral and political arguments. First, they framed their work as a struggle for equality, as an effort to overcome the legacy of slavery that survived in these racialized exclusions from the law. Second, they made arguments about the moral and social significance of the labor

[14] For most workers in the United States, these more expansive protections are normally provided to workers through unionization and collectively bargaining contracts. Because domestic workers are explicitly excluded from the right to organize and collectively bargain through the National Labor Relations Act, they are limited to bargaining for higher wages and benefits through individual contract negotiations. Because workers are often not able to leverage significant enough power in these individualized negotiations, their conditions are left up to the good will of the employer. Therefore, worker advocates have argued that the government should be required to ensure these protections to workers. This was a controversial argument to legislators who did not want to provide these more expansive protections to domestic workers, out of a concern that it would set a precedent and that other workers would then start to make demands for these more expansive protections.

[15] The Bill which passed did include a provision for three paid "days of rest" annually. This is significant because paid sick days are not a common right assured to workers by state protections. The fight for government-mandated paid sick days is an emerging front of workers struggle in the United States.

[16] Previously, New York State law had included live-in domestic workers in overtime protections after 44 hours of work, but only at a rate of one-and-a-half times the minimum wage, rather than one-and-a-half times their regular hourly rate.

[17] Domestic workers had previously been *de facto* excluded from these protections because they were only assured to workers who labored in larger workplaces with a larger number of employees.

of care: speaking about the deep relationships of love and affection that they had for the people in their care, challenging the historical invisibilization of women's work in the home and pointing out the fact that their work enabled hundreds of thousands of urban professionals to fully participate in the labor market.

These Bill of Rights campaigns also relied on building strong coalitions with the employers of domestic workers who spoke about how important domestic workers were in their personal and professional lives. In both campaigns, progressive activists who were supportive of domestic worker organizing initiated new organizing among employers in order to build support for the Bill of Rights, rather than connecting with pre-existing organizations of employers. These newly organized employers testified in support of the Bills, arguing that they needed clearer guidelines from the state in order to promote better working relationships.

The traditional union movement brought their significant political influence to bear in these campaigns. National labor leaders made public appearances at state legislatures during domestic worker lobby days, and local union leaders engaged in behind-the-scenes lobbying to help the Bills advance through the legislative process. This support challenged the decades-long pattern of the marginalization of domestic workers in the trade union movement (Jackson, 1940). Beyond a general commitment to worker-to-worker solidarity, there were two other significant reasons for labor's support for domestic worker rights. The first was personal; many labor leaders spoke of the fact that their mothers had worked as domestic workers when they were growing up. They often spoke about their support as a way to honor the struggle of their mothers. The second reason was more historical. As the trade union movement has struggled with increasing employer pressure, public criticism and a significant decline in membership, it has become increasingly aware of the need to build relationships with the growing population of low-wage immigrant workers. Public support of domestic workers rights was one way to demonstrate their commitment to that process of relationship-building.

These two victories have inspired an upsurge in efforts for state-level legislation to win the full inclusion of domestic workers in minimum wage and overtime protections and to expand the rights and benefits of domestic workers beyond the established minimum. A Domestic Workers Bill of Rights passed in Hawaii in 2013, including privately-paid nannies and housecleaners in the state's minimum wage and overtime protections.[18] This Bill was initiated and passed based on the efforts of a legislator, rather than through active organizing among domestic workers. Domestic worker organizations in Illinois are beginning a Bill of Rights campaign for full inclusion of domestic workers in minimum wage and overtime protections and for more expansive rights including paid time off, meal breaks and days of rest. In Massachusetts, domestic workers are already included in the state's minimum wage and overtime protections, so domestic workers advocates are initiating a Bill of Rights campaign calling for paid time off, rest breaks, notice of termination and severance pay.

Meanwhile, efforts to revise the Department of Labor's regulations that excluded home care workers from minimum wage and overtime protections were

[18] Privately-paid elder care providers remained excluded from these protections

underway. In 2002, a Jamaican home care worker, Evelyn Coke, sued her employer, Long Island Care at Home, for failure to pay her minimum wage or overtime. Her attorneys argued that Ms. Coke had the right to minimum wage and overtime protections because the Department of Labor's regulations violated the original intent of the 1974 Amendment. The case made it all the way to the Supreme Court, which ruled unanimously against Ms. Coke in 2007 and upheld the Department of Labor's regulations. While this decision was a setback, it focused advocates attention on the Department of Labor as the target for future pressure for reform. Near the end of his term, President Bill Clinton initiated a process of using his executive authority over the Department of Labor to end the exclusion of homecare workers from the Fair Labor Standards Act, but he faced objections from advocates for seniors and people with disabilities. He did not complete the regulatory change before his term ended, and the incoming administration of the next President, George W. Bush, reversed those efforts, leaving homecare workers without a pathway for inclusion (National Employment Law Project, 2011a). When Barack Obama was running for the office of the President, under the encouragement of SEIU, he spent a well-publicized day shadowing a home health care worker. President Obama expressed his intention to end the exclusion of home care workers from the FLSA once he was in office. With this new political space open, advocates - particularly worker advocates at the National Employment Law Project (NELP) and the Paraprofessional Healthcare Institute (PHI) - once again stepped up their efforts to lobby the administration to exercise its executive powers to end this exclusion. Labor unions - particularly SEIU and AFSCME - brought important political clout to these efforts, lobbying the White House administration, Congress and the Department of Labor to prioritize these regulatory changes.

In 2011, President Obama announced that he intended to have the Department of Labor revise its regulations in order to undo the long-standing exclusion of home care workers from minimum wage and overtime protections. The Department of Labor opened up an extended period for public commentary on this proposal. Advocates mobilized constituents and allies to submit commentary, and the overwhelming majority of comments that they received were in support of an inclusionary revision of these regulations. Advocates made a number of different arguments. They argued that the regulations violated the original intent of the 1974 amendment, narrowing the scope of included workers while the amendment's intent was to expand the reach of the Fair Labor Standards Act (NELP, 2011a). They further argued that raising working standards in the industry would improve the quality of homecare jobs (PHI, 2011), resulting in the provision of higher quality care and in a net savings due to a reduction in employee turnover (PHI, 2012). This connected to a broader moral and political argument about the social and moral significance of the labor of care and the inter-dependence between care workers and the people for whom they provide care.

Organizations representing care recipients were split on the regulatory changes. Most organizations representing seniors - most centrally the AARP, the largest membership organization in the United States - were by and large supportive of the regulatory changes. Noting the rising demand for long-term in-home care for the nation's aging population, AARP argued for improving wage and working conditions for home care workers in their 2012 comment letter to the

Department of Labor, "Unless these workers are adequately compensated and given training and other career opportunities, it will be difficult to attract and retain a competent, stable workforce on which consumers and family caregivers can rely." In contrast, organizations representing people with people with disabilities strongly objected to the regulatory changes. Bruce Darling, a leading member of a disability advocacy organization, ADAPT, captured the general themes of these organizations' objections to the regulatory changes during at a 2013 hearing session organized by the Department of Labor, "Increasing the cost of home and community based services by requiring overtime pay, without increasing the Medicaid rates or raising the Medicaid caps for available funding, will result in a reduction in hours of personal assistance, forcing some people with disabilities into unwanted institutionalization."[19] These organizations lobbied the Department of Labor through traditional methods, such as submitting comment letters on the proposed changes and attending listening sessions, and they also used non-traditional methods of confrontation, including blockading the Department of Labor's office in protest (Davenport, 2013).

These objections had a significant level of moral power, and they also raised significant legal implications for the regulatory changes. The Supreme Court held in *Olmstead vs L.C.* (1999) that the Americans with Disabilities Act should be interpreted as prohibiting government agencies from setting policies that would increase institutionalization of people with disabilities, defining the undue institutionalization of people with disabilities to be a form of unlawful discrimination. That is, the Department of Labor was legally bound to consider the argument of disability advocates that including homecare workers in minimum wage and overtime protections may increase rates of institutionalization. According to Cathy Ruckelhaus from the National Employment Law Project (personal communication, October 28, 2013), the advocacy of organizations representing people with disabilities who spoke out in support of the regulatory changes proved crucial in shifting the terms of this particularly heated debate. Members of Hand in Hand, an emerging national organization of employers of domestic workers and homecare workers,[20] lobbied the Department and put forward arguments about equality, fairness and interdependence. They also spoke to their own self-interests, arguing that adequately compensating workers in order would help to develop a stable quality workforce. For example, Hand in Hand member Lateef McLeod wrote, "These [poor working] conditions contribute to high turnover rates, making it difficult for many people in search of home care to find and keep the workers we need to remain in our own homes and communities, living as independently as possible. That's another reason why it's in the best interests of people like me -- not just the workers themselves -- for home care workers to be paid fairly" (MacLeod, 2012).

Over the course of the campaign, a coalition developed between worker advocacy organizations, unions, the National Domestic Workers Alliance and organizations representing seniors and people with disabilities. Together, they

[19] Advocates believe that private homecare agencies were playing behind-the-scenes, pressuring policymakers against changing the regulations and funding the opposition. But these forces did not play a public role, so it would be difficult to decisively explore their role in these debates.

[20] Hand in Hand was founded by activists who had organized employers as allies to workers in the fight for the Domestic Worker Bill of Rights in New York. Recognizing the powerful role that employers had played in that campaign, these activists decided to take the employer organizing to a national level.

challenged the idea that the relationship between home care worker and disabled people was a zero-sum game; they argued that improving working conditions for home care workers would improve the stability and quality of their care. They also conducted research to demonstrate that inclusion would not lead to significantly increased costs for home care or to institutionalization, showing that states which had already included homecare workers in minimum wage and overtime protections did not experience higher rates of institutionalization (PHI, 2013b). There were also a number of sympathetic home care agencies and cooperatives that played a helpful role in advocating for inclusion; located in states that already provided minimum wage and overtime protections, these agencies used their own business experiences to prove that it was possible to simultaneously provide these protections to workers, to provide quality care to recipients *and* to run a successful business (Cathy Ruckelhaus, personal communication, October 28, 2013).

In 2013, the Department of Labor announced that it was changing its regulations to include the majority of homecare workers in minimum wage and overtime protections. Specifically, all live-out homecare workers were included in minimum wage and overtime protections, as were all live-in homecare workers who are employed by agencies and funded by government programs. This was accomplished by more clearly narrowly defining the category of workers whose labor fits into the excluded category of "companions."[21] The Department of Labor's final ruling on the regulations addressed the arguments raised by all the affected parties: workers, senior and people with disabilities. They concluded that, "The Department does not believe, as some commenters have suggested, that the rule will interfere with the growth of home- and community-based care-giving programs and thereby lead to increased institutionalization." The Department assessed that the increased costs of including homecare workers in these protections would be minimal, approximately $321.8 million, because most workers already received the minimum wage and overtime costs would be relatively minor. The arguments of workers advocates showed up in the Department's explanation of its position. "Many states require the payment of minimum wage and often overtime to direct care workers, and the detrimental effects on the home care industry some commenters predict have not occurred in those states. To the contrary, the Department believes that ensuring minimum wage and overtime compensation will not only benefit direct care workers but also consumers because supporting and stabilizing the direct care workforce will

[21] While the old regulations defined "companionship services" broadly to include the much of the labor of house cleaning and medical care done during the course of providing home care, the new regulations define "companionship services" much more narrowly. Specifically, they define it as providing "fellowship" (i.e. engaging the person in "social, physical, and mental activities") and "protection" (i.e. to be present with and to "monitor the person's safety and well-being"). If workers spend more than 20 percent of their time providing "care" (i.e. the activities of daily living like dressing, bathing, cooking, running errands, cleaning or assistance with medication) to the person for whom they provide care, then they are included in minimum wage and overtime protections. If they provide household services - like cooking or cleaning - for the entire household where they work, rather than strictly for the person in their care, then they are no longer considered a "companion" and are covered by minimum wage and overtime protections. Finally, if they perform medical care that normally requires medical training - such as working with catheters, repositioning patients and dealing with bedsores - then they are also to be included in minimum wage and overtime protections. Together, these changes radically narrow the range of workers who are considered to be "companions" and who are therefore excluded from protections. While it still remains to be seen how these new regulations will be applied in practice, advocates are generally satisfied with these new, more stringent definitions (Department of Labor 2013c).

result in better qualified employees, lower turnover, and a higher quality of care" (Wage and Hour Division, 2013).

The Department of Labor's authority was limited to interpreting the original amendment, and they were not empowered to end the exclusion of live-in workers from overtime protections, which remains in the federal statute. Therefore, live-in homecare workers who are privately funded by their employers are still excluded from overtime protections (Department of Labor, 2013b). While advocates would still like to eliminate the exclusions of privately-paid live-in workers, the broad domestic workers movement is thrilled with this significant step toward more inclusion of domestic workers in federal minimum wage and overtime protections. The Department of Labor estimates that this regulatory change will provide almost 2 million workers with minimum wage and overtime protections (Department of Labor, 2013c).[22] As a result of these regulatory changes, home care workers in 29 states[23] will have minimum wage and overtime protections for the first time, while workers in 6 states[24] will have overtime protections for the first time. Additionally, home care workers in 13 states[25] will be covered by state minimum wage that is higher than the federal minimum wage because those states have a higher minimum wage rate, and their laws are structured to reflected changes that take place at the federal level (National Employment Law Project, 2013).

These recent developments indicate growing momentum towards the complete inclusion of domestic workers in minimum wage and overtime protections in the United States, but a number of significant challenges still loom large. There are significant structural challenges with minimum wage laws in the United States, specifically that it has long ensured workers only a poverty-level wage and that it can only be raised by the difficult process of legislative mandate. As a result, winning inclusion in the minimum wage does not assure a living wage to domestic workers.

Also, even when domestic workers are included in these protections, they are rarely enforced. This is due to a combination of factors: the lack of funding providing to the labor inspectorate in the United States, the structural mismatch between the standard approach to enforcement and the decentralized structure of the domestic work industry and the challenges facing undocumented immigrants in accessing the Department of Labor. *Broken Laws, Unprotected Workers*, a 2009 national survey of employment law violations in cities in the United States, found that 41.5% of private household workers had experienced minimum wage violations and that 88.6% had faced overtime violations.[26] To use New York as an

[22] This estimate may be complicated by the fact that many states already included home care workers in their state-level minimum wage and overtime protections.

[23] These states include: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Mississippi, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia and Wyoming.

[24] These states include: Arizona, California, Nebraska, North Dakota, Ohio and South Dakota (National Employment Law Project, 2013).

[25] These states include: Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine Massachusetts, Michigan, Missouri, Nevada, Ohio and Washington (National Employment Law Project, 2013).

[26] Undocumented workers experienced higher wage and hour violations than U.S.-born workers and documented workers. Immigrant women experience higher violations than immigrant men (NELP, 2011b).

example, in the year after the Bill of Rights victory in New York State, the New York State Department of Labor worked to educate the workers, employers and the broader public on the Bill's new protections, developing outreach materials in a number of different languages. But regardless of these educational efforts, it seems that non-compliance is still widespread. Many employers remained either ignorant of the Bill's provisions or willfully non-compliant. Park Slope Parents, a popular website utilized by many Brooklyn employers, conducted a survey of employers in 2011, asking what they knew about domestic workers' rights and whether or not they upheld them. They found that only 37% of employers in Park Slope knew about the Bill and believed themselves to be in compliance. About 22% of employers reported that they had never heard about the Bill, while about 41% said that they had heard about the Bill but they either didn't think it applied to them or didn't think they were in compliance.[27] This willful non-compliance was reflected in reports from domestic workers who had informed their employers about the new law. Members of Domestic Workers United reported stories like, "My boss heard about the law and said, 'I don't care.' People are still having to work 12 hours without getting paid any overtime." And, "My boss said that the law only applied to people who were making $7.25 an hour. He learned the truth, and now he's paying me overtime, but it's scary. I'm worried that he's going to fire me and hire someone who's willing to be paid less than me." Legal prosecution of violating employers was limited in the first year after the Bill's passage. In a state where the domestic workforce numbers in the tens of thousands, the Department of Labor reported only having thirteen open investigations, none of which had been completed in the first year after the Bill's passage. Department officials attributed these low numbers and the delay to the large backlog of complaints that were in the Department's queue before the Bill of Rights and the limited number of investigators who were available to process the cases. In response to these dynamics, domestic worker organizations in New York and California are beginning to work towards the development of a grassroots enforcement agenda, but the outlines of that work are far from clear.

At a federal level, the majority of the Department of Labor's efforts to enforce the regulatory changes will focus on the development of educational materials targeted at workers and employers. The Department has already launched a comprehensive website explaining the changes and providing resources for workers, families and employers. It is not likely that there will be widespread proactive enforcement efforts in the industry, given the Department's limited funds and their model of relying on worker complaints to identify employer violations. Indeed, it is likely that the recent inclusion of home care workers in FLSA protections will open up a wave of private litigation to challenge minimum wage and overtime violations; these private efforts are more viable in the home care industry - where the existence of central employers make it possible for workers to band together in class action suits - rather than engaging in the kinds of individual litigation that would be necessary in other segments of the domestic work industry and that tend to be time-intensive and costly processes (Cathy Ruckelhaus, personal communication, October 28, 2013). This difference in the potential for private litigation-based enforcement makes it likely that the enforcement of the Department of Labor's regulatory revisions will be more

[27] These statistics were self-reported by employers, and they not confirmed by Park Slope Parents. The actual statistics may - in fact - be much worse.

effective than the enforcement of the state-based Domestic Worker Bills of Rights.

Concluding Reflections

There are a number of lessons that can be drawn out of this history of the struggle over the exclusion of domestic workers from foundational minimum wage and overtime protections in the United States.

The first lesson is that struggles over broader cultural and socio-political dynamics have generally been more significant than arguments over technical policy matters in determining the inclusion or exclusion of domestic workers from minimum wage and overtime protections. In the 1930s, the racial interests of Southern legislators and the gendered assumptions of legislators and the established union movement shaped the limits of the United States' first wage and hour protections. Those limits could only be challenged once the Civil Rights Movement transformed the terrain of politics in the United States so that equality became an undeniably important principle for government policy. Technical debates over policy reflected these broader socio-political struggles, rather than fundamentally shaping the terms of those struggles. This reflects Phyllis Palmer's (1995) observation that struggles over the rights and protections afforded to domestic workers do not necessarily manifest in the realm of interest group power struggles or legal frameworks alone (although these are indeed important); they must also necessarily incorporate efforts to "reconstruct cultural ideas of work and of gender and race capacities." (p. 418) Since the Civil Rights Movement and the women's movements of the 1960s and 1970s changed the political discourse in the United States, the most powerful arguments deployed by domestic workers have reflected two related themes: the argument for equality and the argument over the social significance of women's labor in the home.

In every case when domestic worker advocates succeeded in winning legislative or regulatory changes that expanded domestic workers access to minimum wage and overtime protections, their success relied on a coalition that brought domestic workers together with domestic employers, the union movement and other social justice organizations. Successful coalitions with employers were built based on a shared perspective about interdependence between domestic workers and their employers and on a shared commitment to recognizing the social significance of women's work and of the labor of care.

The existence of organizations of employers that were actively supportive of domestic workers' rights was decisive in every victory for the inclusion of domestic workers in minimum wage and overtime protections: professional women's organizations in the 1970s, domestic worker employers in the Domestic Workers Bill of Rights campaigns and home care employers from the disability community during the campaign to revise the Department of Labor's regulations. In the recent cases, the employer organizations did not pre-exist the given campaigns; they emerged out of a dialogue with domestic worker organizing.

While domestic workers organizations were able to leverage an impressive amount of public attention through the deployment of the powerful individual stories of domestic worker advocates and through public protests, they still lack

sufficient political capital to be able to move legislative processes on their own. Trade unions have a significant amount of political capital that can be brought to bear in these efforts. In these campaigns, trade unions were willing to deploy that political capital in support of domestic workers for a number of reasons: a standing commitment to worker-to-worker solidarity, personal connections to the industry and an interest in building relationships with emerging organizations based among domestic workers and other low-wage workers.

State-based struggles for the inclusion of domestic workers in minimum wage and overtime protections help to lay the groundwork for federal legislative and regulatory changes. In the case of homecare workers, the evidence provided by the states that had previously included domestic workers in minimum wage and overtime protections was decisive in demonstrating that federal-level inclusion of workers would not increase the rates of institutionalization of seniors and people with disabilities. In the case of privately paid domestic workers, after the initial victory of the Domestic Workers Bill of Rights in New York State, state level legislative campaigns have emerged in a number of other states around the country. These state-level struggles are raising awareness of domestic workers' issues on a national level.

Struggles for inclusion in the minimum wage and overtime protection have exposed the limits of those rights as they are realized in the United States. The struggles for the Domestic Worker Bills of Rights and for regulatory revisions at the Department of Labor succeeded in winning inclusion in minimum standards, but they have not been able to significantly expand those rights in order to assure a living wage for domestic workers. It is becoming increasingly clear that - while the struggle for inclusion in the minimum standards is an important victory for democratic rights - the work to improve the lives and conditions of domestic workers in the United States is not expanding into the work to transform and expand those standards.

Struggles for inclusion in the minimum wage and overtime protections are not likely to be materially significant in workers' lives if they are not attached to struggles for the reform and expansion of the enforcement regime in the United States. While it is unclear whether those reforms will manifest in demands for expanded governmental enforcement or in the development of grassroots models of enforcement, the need to develop new models for enforcement is increasingly clear.

References

AARP. (2012). *Comment Letter on the Companionship Exemption.* Retrieved from: http://www.aarp.org/content/dam/aarp/politics/advocacy/2012-06/01/comment-letter-companionship-exemption-aarp.pdf

Application of the Fair Labor Standards Act to Domestic Service, 29 CFR 552.100 (1995).

Bernhardt et al. (2009). *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities.* New York: NELP.

Boris, Eileen, and Jennifer Klein. (2012). *Caring for America: Home Health Workers in the Shadow of the Welfare State*. New York: Oxford University Press.

Bureau of Labor Statistics, U.S. Department of Labor. (2012a). Home Health and Personal Care Aides. In *Occupational Outlook Handbook, 2012-13 Edition*. Retrieved from: http://www.bls.gov/ooh/healthcare/home-health-and-personal-care-aides.htm

_____. (2012b). Occupations with the Largest Job Growth. In *Employment Projections.* Retrieved From: http://www.bls.gov/emp/ep_table_104.htm

Burnham, Linda and Theodore, Nik. (2012). *Home Economics: The Invisible and Unregulated World of Domestic Work.* New York: National Domestic Workers Alliance.

Darling, Bruce. (2013). *Testimony of Bruce Darling on behalf of ADAPT at the August 22 DOL Listening Session.* Retrieved from: http://www.tksmall.com/2013/09/24/testimony-of-bruce-darling-on-behalf-of-adapt-at-the-august-22-dol-listening-session/

Davenport, Reid. (2013). ADAPT Keeps DOL Employees Put. *Disability Frontline.* Retrieved from: http://disabilityfrontline.com/?p=328

Davies, Gareth, and Martha Derthick. (1997). Race and Social Welfare Policy: The Social Security Act of 1935. *Political Science Quarterly*, 112(2), 217-235.

Department of Labor. (1996). *Making Work Pay: The Case for Raising the Minimum Wage.* Retrieved from: http://www.dol.gov/dol/aboutdol/history/reich/reports/pay.htm

_____. (2008). *Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA).* Retrieved from: http://www.dol.gov/whd/regs/compliance/whdfs22.htm

_____. (2013a). *Private Homes and Domestic Service Employment Under the Fair Labor Standards Act* [Fact Sheet]. Retrieved from: http://www.dol.gov/whd/regs/compliance/whdfs79.htm

_____. (2013b). *Fact Sheet # 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA)*

_____. (2013c). *Fact Sheet # 79A: Companionship Services Under the Fair Labor Standards Act (FLSA).* Retrieved from: http://www.dol.gov/whd/regs/compliance/whdfs79a.htm

_____. (2013d). *Minimum Wage, Overtime Protections Extended to Direct Care Workers by US Labor Department.* Retrieved from: http://www.dol.gov/opa/media/press/whd/WHD20131922.htm

DeWitt, Larry. (2010). *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act.* Social Security Bulletin, 70(4). Retrieved from: http://www.ssa.gov/policy/docs/ssb/v70n4/v70n4p49.html

Economic Policy Institute. (2013). State of Working America Preview: The Declining Value of Minimum Wage. Retrieved from: http://www.epi.org/publication/state_of_working_america_preview_the_declining_value_of_minimum_wage/

Fine, Janice, and Jennifer Gordon. (2010). Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations. *Politics & Society,* 38(4), 552-585.

Glenn, Evelyn Nakano. (1992). From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor. *Signs,* 18(1), 1-43.
_____.2000. Creating a Caring Society. *Contemporary Sociology,* 29(1), 84-94.
_____.2010. *Forced to Care: Coercion and Caregiving in America.* Cambridge, Mass.: Harvard University Press.

Hart, Vivien. (1994). *Bound by our Constitution: Women, Workers, and the Minimum Wage.* Princeton, N.J.: Princeton University Press.

Hill Collins, Patricia. (1990). *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. Boston: Unwin Hyman.

Horowitz, Ruth L. (1978). *Political Ideologies of Organized Labor: The New Deal Era.* New Brunswick, N.J.: Transaction Books.

Jackson, Esther Cooper. (1940). *The Negro Woman Domestic Worker in Relation to Trade Unionism.*

Katzman, David M. (1978). *Seven Days a Week: Women and Domestic Service in Industrializing America.* New York: Oxford University Press.

Katznelson, Ira. (2005). *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-century America*. New York: W.W. Norton.

Kessler-Harris, Alice. (2001). *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-century America*. Oxford ; New York: Oxford University Press.

Lieberman, Robert C. (1998). *Shifting the Color Line: Race and the American Welfare State.* Cambridge, Mass.: Harvard University Press.

MacLeod, Lateef. (2012). Let's Not Make Home Care Workers Wait Any Longer for Their Rights. *Huffington Post.* Retrieved from: http://www.huffingtonpost.com/lateef-mcleod/home-care-workers-rights_b_1847709.html

Mettler, Suzanne. (1998). *Dividing Citizens: Gender and Federalism in New Deal Public Policy.* Ithaca, N.Y.: Cornell University Press.

Nadasen, Premilla. (2012). Citizenship Rights, Domestic Work, and the Fair Labor Standards Act. *Journal of Policy History,* 24(01), 74-94.

National Employment Law Project. (2011a). *Fair Pay for Home Care Workers; Reforming the U.S. Department of Labor's Companionship Regulations Under the Fair Labor Standards Act*. New York: NELP.
_____. (2011b). Workplace Violations, Immigration Status, and Gender. Retrieved from: http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1
_____. (2013). *Home Care Worker Rights in the States After the Federal Companionship Rule Change*. New York: NELP.

O'Brien, Ruth (2001). "A Sweat Shop of the Whole Nation": The Fair Labor Standard Act and the Failure of Regulatory Unionism. *Studies in American Political Development,* 15(01), 33-52.

Olmstead vs L.C. 527 U.S. 581 (1999).

Palmer, Phyllis M. (1989). *Domesticity and Dirt: Housewives and Domestic Servants in the United States, 1920-1945*. Philadelphia: Temple University Press.

Palmer, Phyllis (1995). Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act. *Journal of Policy History*, 7, 416-440.

PHI. (2011). Fixing the "Companionship Exemption" Will Improve Jobs. *Value the Care: Minimum Wage and Overtime for Home Care Aides, 3.* Retrieved from: http://phinational.org/sites/phinational.org/files/policy/wp-content/uploads/phi-value-the-care-02.pdf

_____. (2012). Fixing the "Companionship Exemption" Will Not Make Care Too Expensive. *Value the Care: Minimum Wage and Overtime for Home Care Aides, 3.* Retrieved from: http://phinational.org/sites/phinational.org/files/policy/wp-content/uploads/phi-value-the-care-03.pdf

_____. (2013a). Expansion of Labor Protections by State. Retrieved from: http://phinational.org/policy/take-action/campaign-fair-pay/map-expansion-labor-protections-state

_____. (2013b). Data Brief: Institutionalization Rates in States that Extend Minimum Wage and Overtime Protection to Home Care Workers. Retrieved from: http://phinational.org/sites/phinational.org/files/research-report/institutionalization-data-brief.pdf

Poole, Mary. (2006). *The Segregated Origins of Social Security: African Americans and the Welfare State*. Chapel Hill: University of North Carolina Press.

Quadagno, Jill S. (1994). *The Color of Welfare: How Racism Undermined the War on Poverty*. New York: Oxford University Press.

Rollins, Judith. (1985). *Between Women: Domestics and their Employers*. Philadelphia: Temple University Press.

Smith, Peggie. (1998). Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform. *American University Law Review*, 48(4), 851-923.

_____. (2006). Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century. *Iowa Law Review*, 92, 1835.

Wage and Hour Division. (2013). Final Rule: Application of the Fair Labor Standards Act to Domestic Service. (to be codified at 29 C.F.R. pt.552). Retrieved from: http://www.dol.gov/whd/homecare/final_rule.pdf

Weil, David. (2007). Crafting a Progressive Workplace Regulatory Policy: Why Enforcement Matters. *Comparative Labor Law & Policy Journal*, *28*(2).

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