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Decent Work in the Home: Affect and Rights Talk

Eileen Boris*

Abstract:

This article analyzes the struggle for decent work in the home by focusing on tactics of representation and the use of emotive discourse. To make caring labors legible, it argues, we call them “work” and to

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make work decent, that is, life-sustaining, we rely upon employment standards forged with the Western and white male industrial worker as the prototype. It first traces the conflation of care workers with domestic workers under the truncated and limited residual welfare state of the United States. It then considers the recognition of domestic workers as workers through the aspirational but limited convention making process of the International Labor Organization, which passed Convention #189, “Decent Work for Domestic,” in 2011. Organizations of domestic, including care, workers, sought to redeploy the ties that bind in seeking social justice and inclusion in labor standards regimes. In the process, these workers have challenged the individual nature of rights, pushing a consideration of interdependency as central for economic life and a just society. Nonetheless, their claims remain haunted by a persistent separation of love and money, which refuses to accept that commodification of carework can produce real care. Domestic workers insist on being treated like all other workers even while underscoring how their location in the home, engagement with intimate labor, and legacy of servitude differentiates them from other labor.

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I. INTRODUCTION

“Respect the work that makes all other work possible,” exhorted Domestic Workers United in lobbying for legislative protection in New York State in the 2000s.¹ “Domestic Work Contributes To Our Society: Work Like Any Other” proclaimed a postcard available for download from the International Labor Organization (ILO) in 2015.² “All the homes that we work in must become a fair home, treat us with respect, recognize that our work is decent work, and decent work needs decent pay,” declared Myrtle Witbooi, the President of the International Domestic Worker Federation (IDWF), a year later.³ In promoting “My Fair Home” and other initiatives, the ILO, the IDWF, and national organizations of domestic, household, and care workers have appealed to the employers of some 67 million laborers, mostly women, who “cook, clean, and care for children and the elderly.”⁴ Such advocates have sought to place those who toil in private homes under legislation to end their exploitation. In doing so, the international movement of household/domestic workers has deployed discourses of fairness, worth, and interdependency similar to those that have framed the struggle of domestic and care workers for recognition in the United States over the last half-century.⁵

This article analyzes the struggle for decent work in the home by focusing on tactics of representation and the use of emotive discourse in two settings: the United States during the 20th century and at the ILO in the last decade. To make caring labors legible, it argues, we call them “work” and to make work decent, that is, life-sustaining, we rely upon employment standards forged with the Western and white male industrial worker as the prototype, as seen in the ILO campaign for “Decent Work for Domesticity” and in the state-level pushes in the United States for domestic worker “bill of rights, as well as earlier debates over labor standards coverage for home care and domestic workers.”⁶ Can such re-definitions improve paid household labor? Can labor standards regimes account for the affect, or social

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1. CLAIRE HOBDEN, WINNING FAIR LABOUR STANDARDS FOR DOMESTIC WORKERS: LESSONS LEARNED FROM THE CAMPAIGN FOR A DOMESTIC WORKER BILL OF RIGHTS IN NEW YORK STATE 20 (International Labour Organization (ILO), 2010).
 2. *Postcard*, INTERNATIONAL LABOR ORGANIZATION, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_325215.pdf (last visited Dec. 8, 2016).
 3. IDWFED, *Global: Let Us Keep on Fighting and Campaigning for Our Rights, Says Myrtle Witbooi*, INTERNATIONAL DOMESTIC WORKERS FEDERATION (June 12, 2016, 1:00 AM), <http://www.idwfed.org/en/updates/global-let-us-keep-on-fighting-and-campaigning-for-our-rights-says-myrtle-witbooi> (last visited Dec. 8, 2016).
 4. “*My Fair Home*” Campaign, INTERNATIONAL DOMESTIC WORKERS FEDERATION, [idwfed.org/myfairhome](http://www.idwfed.org/myfairhome) (last visited Dec. 8, 2016); Rothna Begum, *Global: On International Domestic Workers’ Day, Turn Rights into Reality*, INTERNATIONAL DOMESTIC WORKERS FEDERATION (IDWF) (June 16, 2016, 12:00 AM), <http://www.idwfed.org/en/updates/global-on-international-domestic-workers2019-day-turn-rights-into-reality> (last visited Jan. 5, 2017); there is debate within the movement over terminology, with Latin American groups preferring household and other organizations using domestic, because some of these workers also engage in home care. See RESPECT AND RIGHTS: PROTECTION FOR DOMESTIC/HOUSEHOLD WORKERS! 7 (Celia Mather 2008), http://www.idwfed.org/en/resources/report-of-the-international-conference-respect-and-rights-protection-for-domestic-workers/@@display-file/attachment_1.
 5. For example, compare CELIA MATHER, “YES, WE DID IT!” HOW THE WORLD’S DOMESTIC WORKERS WON THEIR INTERNATIONAL RIGHTS AND RECOGNITION (2013) and the website of the IDWF, <http://idwfed.org/en>, with the website of the National Domestic Worker Alliance (NDWA), <http://www.domesticworkers.org/home>, and AI-JEN POO, THE AGE OF DIGNITY: PREPARING FOR THE ELDER BOOM IN A CHANGING AMERICA (2015) (Poo is the director of the NDWA).
 6. Noah D. Zatz & Eileen Boris, *Seeing Work, Envisioning Citizenship*, EMP. RTS. & EMP. POL’Y J. 95 (2014); *Decent Work for Domestic Workers Begins at Home*, INTERNATIONAL LABOUR ORGANIZATION (June 16, 2015),

and cultural feelings, and difficult emotional labor involved in doing care work well?⁷ What are the ideological, political, or representational obstacles to naming “care” as “work” and “work” as “employment”? Recognition of the value of “care” as “work” is historically contingent and dependent on larger systems of state provision, such as the organization of health systems, the sexual division of labor in the family and other workplaces, and gender and racial regimes, amongst other political, social, and cultural factors. Yet household workers worldwide have shared invisibility from laboring in family dwellings removed from public scrutiny and from being placed outside of labor protections.⁸ In the last decade, they have refused such containment.

With care associated with the ties that bind, with the characteristics of the labor subsumed into the identities of the workforce, predominately female, African American, and immigrant in the United States and migrant (rural to urban, less to more prosperous countries elsewhere),⁹ care long has stood apart from work or employment, jobs covered by the labor law. The labor standards that emerged in the United States during the New Deal of the 1930s, as with those promulgated since the 1920s by the ILO, privileged the industrial worker, disproportionately white and male.¹⁰ Nations constructed the occupations of domestic service and home care through policies that excluded these jobs from labor standards.¹¹ In the United States, these jobs became the perfect place to dump “welfare” recipients under workfare programs in which, as a condition of receiving benefits, recipients must labor without

http://www.ilo.org/global/topics/domestic-workers/events-and-training/WCMS_371983/lang-en/index.htm; EILEEN BORIS, MERITA JOKETA, & MEGAN UNDÉN, RESEARCH & POLICY BRIEF, ENFORCEMENT STRATEGIES FOR EMPOWERMENT: MODELS FOR THE CALIFORNIA DOMESTIC WORKER BILL OF RIGHTS (UCLA Institute for Research on Labor and Employment, No. 30, May 2015, http://www.irlu.ucla.edu/publications/documents/Research-Brief_Boris30.pdf).

7. Sarah Ahmed et al., *THE AFFECT THEORY READER* (Melissa Gregg & Gregory Segsworth eds., 2010) (summarizes the nuances of uses of affect across humanities and social science disciplines); Drucilla K. Barker & Susan F. Feiner, *Affect, Race, and Class: An Interpretive Reading of Caring Labor*, 30 *FRONTIERS: A J. OF WOMEN STUD.* 1, 46-49 (2009); Paula England, *Emerging Theories of Care Work*, 31 *ANN. REV. OF SOC.* 381, 381-99 (2005); NANCY FOLBRE, *THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES* (2001); Deborah Stone, *Caring by the Book*, in *CARE WORK: GENDER, LABOR, AND THE WELFARE STATE* 89-111 (Madonna Harrington Meyer ed., 2003); FRANCESCA DEGIULI, *CARING FOR A LIVING: MIGRANT WOMEN, AGING CITIZENS, AND ITALIAN FAMILIES* (Douglas J. Besharov & Neil Gilbert eds., 2016).
8. Judy Fudge, *Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction*, 22 *FEMINIST LEGAL STUD.* 1, 1-23 (2014).
9. INTERNATIONAL LABOUR ORGANIZATION, *DOMESTIC WORKERS ACROSS THE WORLD: GLOBAL AND REGIONAL STATISTICS AND THE EXTENT OF LEGAL PROTECTION* (2013), available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.
10. See generally PREMILLA NADASEN, *HOUSEHOLD WORKERS UNITE: THE UNTOLD STORY OF AFRICAN AMERICAN WOMEN WHO BUILT A MOVEMENT* (2015); Eileen Boris and Susan Zimmermann, *The International Labour Organization and the Gender of Work*, in *HANDBOOK ON GENDER IN WORLD POLITICS* 438- 445 (Jill Steans and Daniela Tepe-Belfrage eds., 2016).
11. See generally EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* (2012).

pay.¹² In reaction, workers joined with employers and those whom they tended, sometimes called consumers, to struggle for quality care and decent work.¹³

However, there were ghosts in the room: cultural understandings that domestic labor is women's work; the expectation that wives, mothers, and daughters will care out of love or obligation; and the association of paid domestic labors in the U.S. case with slavery and servitude, with first African Americans and increasingly with immigrant women of color, a racialization that reinforces the refusal to value such work or understand the skill involved that counter appeals to the significance of the labor for the maintenance of daily life. What happens when those who perform care and household work for pay demand inclusion in a legal system forged to benefit others? Is equal treatment enough to end unequal work when affect interferes with the power of rights?

This article compares two cases that have led to these questions. It first traces the conflation of care workers with domestic workers under the truncated and limited residual welfare state of the United States. It then considers the recognition of domestic workers as workers through the aspirational but limited convention making process of the ILO, which passed Convention #189, "Decent Work for Domestic," in 2011. Organizations of domestic, including care, workers, sought to redeploy the ties that bind in seeking social justice and inclusion in labor standards regimes. In the process, these workers have challenged the individual nature of rights, pushing a consideration of interdependency as central for economic life and a just society. Nonetheless, their claims remain haunted by a persistent separation of love and money, which refuses to accept that commodification of carework can produce real care.¹⁴ Moreover, domestic workers insist on being treated like all other workers even while underscoring how their location in the home, engagement with intimate labor, and legacy of servitude differentiates them from other labor.¹⁵

II. THE PROBLEM OF HOME

The (de)valuing of domestic and care labor as work, while not restricted to the United States, nonetheless encountered fewer countervailing structures there. Indeed, the notion that a man's home is his castle curtailed regulation of multiple forms of home labor in Europe and Latin America as well as in the United States.¹⁶ From the late nineteenth century, courts have generally upheld the privacy of the

12. EVA BERTRAM, *THE WORKFARE STATE: PUBLIC ASSISTANCE POLITICS FROM THE NEW DEAL TO THE NEW DEMOCRATS* 73 (2015).

13. See BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11; see also MERIKE BLOFIELD, *CARE WORK AND CLASS: DOMESTIC WORKERS' STRUGGLE FOR EQUAL RIGHTS IN LATIN AMERICA* (2012).

14. See generally VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* (2005).

15. See Celia Mather, *Domestic Workers of the World Unite: the Founding Congress of the IDWF, Uruguay, October 2013* (May 2014), INTERNATIONAL DOMESTIC WORKERS FEDERATION, http://idwfed.org/en/resources/domestic-workers-of-the-world-unite/@@display-file/attachment_1.

16. See generally EILEEN BORIS, *HOME TO WORK: MOTHERHOOD AND THE POLITICS OF INDUSTRIAL HOMEWORK IN THE UNITED STATES* (1994); see BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11; Paula Lucía Aguilar, *El Hogar como Problema y como Solución: Una Mirada Genealógica de la Domesticidad a Través de las Políticas Sociales. Argentina 1890-1940*, BUENOS AIRES: EDICIONES DEL CCC (2014) available at <http://polsocytrabiigg.sociales.uba.ar/files/2014/10/Paula-Aguilar-El-hogar-como-problema-y-como-soluci%C3%B3n.pdf>.

home as a sphere cordoned off from inspection.¹⁷ The illusion was that the home existed apart from the market. As one state court in the U.S. proclaimed in 1939, home “is a sacred palace for people to go and be quiet and at rest and not be bothered with the turmoil of industry.”¹⁸ As Supreme Court Justice John Marshall Harlan explained in 1961, “the sweep of the Court’s decisions . . . amply shows that the Constitution protects the privacy of the home against all unreasonable intrusion of whatever character.”¹⁹

With the Court understanding the home to be “a place of family and personal relationships,” the presence of employment therein posed a conundrum. The understanding of a man’s possessions extended not only to his family and objects, but also to those who labored for him. Waged labor was both out of place at home but so was state regulation therein. At stake in legal battles were freedom of contract and the sanctity of private property.²⁰ This state of things obscured household laborers as “workers”—as did the stigmatization that has stuck to the labor as a legacy of slavery and servitude.²¹

Those who seek to organize care and other forms of household work have had to confront historic legacies. These include the exceptional place of the home in representations and ideologies, the racialization of the labor, and structures forged during the twentieth century within a male breadwinner regime and a Fordist mode of industrial organization. The devaluation of care work then persisted under neoliberalism, the political economy that embraces the market and substitutes private enterprise and charity for government regulation and social welfare.²² Even intimate labors, such as care and sex, have taken on market forms, or become commodified, moving from unwaged offerings, associated with women, into forms of income generation.²³ To gain recognition or legibility that is, legitimacy, care workers continue to demand to be treated and classified like all other workers.

III. LABORS OF LOVE?

Central to understanding the politics of home laborers are the affects circulating around such work and its location. Emotive discourses about race, family, womanhood, and motherhood stick to public policy, as queer theorist Sara Ahmed might say, and thus influence how the state organizes domestic labor and how activists seek to organize home-based workers. Marxist feminist theorist Rosemary Hennessy defines affect “as an integral component of the cultural forms and social relations through which needs are met.” Within discussions of care and domestic work, multiple types of affective emotion rub against each other, generating wounds: the affect of care for one’s own, the social needs to

17. See BORIS, HOME TO WORK, *supra* note 16.

18. State v. Cooper, 285 N.W. 903, 905 (1939).

19. Poe v. Ullman, 367 U.S. 497, 550 (1961) (Harlan, J., dissenting).

20. See generally GRETCHEN RITTER, THE CONSTITUTION AS SOCIAL DESIGN: GENDER AND CIVIC MEMBERSHIP IN THE AMERICAN CONSTITUTIONAL ORDER 270, 286-287 (2006); see generally VIVIANA A. ZELIZER, THE PURCHASE OF INTIMACY (2005).

21. See generally EVELYN NAKANO GLENN, FORCED TO CARE: COERCION AND CAREGIVING IN AMERICA (2010).

22. See generally DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2007).

23. See generally INTIMATE LABORS: CULTURES, TECHNOLOGIES, AND THE POLITICS OF CARE (Eileen Boris and Rhacel Parreñas, eds, 2010).

care for those who cannot care for themselves, and the responsibility to reward those who do the work of care.²⁴

Struggles during the last decades created a paradox: the affects deployed in public debates to win legal inclusion circulate the emotions that stick to care, including the practice of love that has justified classifying care apart from work. At the same time, employment based on the employer-employee relationship is undergoing a profound unsettling. As the fissured workplace has replaced the standard employment contract and as contingent labor and part-time work have expanded, work for all now resembles work for women in being part-time, intermittent, and low-paid, located in the very informal economy that care and domestic workers have dwelled. In short, in seeking to become like all other workers, care workers are actually becoming the model for others as more workers drop out of labor standards coverage into the shadow economy. Their precarity has become our precarity. We are they.²⁵

To claim care worker exceptionalism, even in exclusion from labor laws, tends to reinforce the separation between love/money, care/work, female/male, which denial of rights and fair compensation depend upon. Care workers do not stand alone in their non-recognition. “Workers,” by definition, can only be free men. Accordingly, the unfree—the indentured, the enslaved, inmate, or convict/prisoner—are legally dead as “workers.” The independent yeoman farmer, the mythic figure of independence, devolved into the industrial wage earner. But sharecroppers, farm hands, and migrant pickers long stood outside the law, as did white collar, sales, and public employees.²⁶

Similarly, the woman worker was an aberration, an impossibility, when the embodiment of the worker was male.²⁷ Over the last hundred and fifty years, the very naming of the female worker denigrated her: women in factories and offices were “mill girls,” “typewriters,” “office wives,” “Girl Fridays,” or “Kelly Girls.”²⁸ Women went to work for pin money, were temporary or part-time workers, and would get married and return home to have babies. Referred to as the sex, they appeared as mothers, but not “workers.”²⁹

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24. Sara Ahmed, *Affective Economies*, 79 *SOCIAL TEXT* 117, 117-39 (2004); ROSEMARY HENNESSY, FIRES ON THE BORDER: THE PASSIONATE POLITICS OF LABOR ORGANIZING ON THE MEXICAN FRONTERA xviii, ch. 2 (2013).
 25. See generally LEAH F. VOSKO, *MANAGING THE MARGINS: GENDER, CITIZENSHIP, AND THE INTERNATIONAL REGULATION OF PRECARIOUS EMPLOYMENT* (2010); see generally DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* (2014).
 26. Eileen Boris, *Labor's Welfare State: Defining Workers, Constructing Citizens*, in *THE CAMBRIDGE HISTORY OF LAW IN AMERICAN* 319-358 (Michael Grossberg and Christopher Tomlins ed., 2008).
 27. See generally ALICE KESSLER-HARRIS, *OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN* (1982).
 28. See generally THOMAS DUBLIN, *WOMEN AT WORK: THE TRANSFORMATION OF WORK AND COMMUNITY IN LOWELL, MASSACHUSETTS, 1826-1860* (1979); see generally MARGERY DAVIES, *A WOMAN'S PLACE IS AT THE TYPEWRITER: OFFICE WORK AND OFFICE WORKERS, 1870-1930* (1982); see generally ERIN HATTON, *THE TEMP ECONOMY: FROM KELLY GIRLS TO PERMATemps IN POSTWAR AMERICA* (2011).
 29. KESSLER-HARRIS, *supra* note 27.

Conversely, the “worker” was the brawny mechanic, craftsman, miner, steel puddler and auto assembler, a man’s man. In this representational hierarchy, white-collar employees of all sorts were suspect as being feminized organizational men, bureaucrats, not workers.³⁰ Race, ethnicity, and citizenship status inflected all of these categories, as did corresponding notions of dependence and independence. Such constructions entered into the laws that would protect workers, setting wages and hours, health and safety requirements, and rules for collective organization. Law and policy both reinforced and reflected conceptions of the worker.

IV. THE U.S. CASE

Care work as employment has lacked legal regulation as work. In the 1930s, the home aide emerged as a distinct occupation.³¹ In the 1950s, there were scattered attempts by social workers to make home care into a good job, that is, one with regular hours, benefits, and at least the minimum wage.³² In spite of the War on Poverty, emphasis on service provision and career ladders during the 1960s, the work became confused with both domestic service and routine family maintenance.³³ Consumers, their families and other care professionals continued to misrecognize the non-relative home care worker as a “cleaning lady,”³⁴ while government agencies still disregarded the labor of relatives who work as personal attendants as more than “just moms.” Such associations, along with the home location, contributed to the low status, lack of training, poor working conditions, and inadequate pay of home care workers. These obfuscations operated nationally and in each of the states.³⁵ Into the twenty-first century, states with very different political economies, like Oregon and North Carolina, could agree in classifying home care workers as domestic workers, placing them at the bottom of the care worker hierarchy.³⁶

30. Ava Baron, *Masculinity, the Embodied Male Worker, and the Historian’s Gaze*, 69 INT’L LAB. & WORKING CLASS HIST. 143, 143-60 (2016); see generally DANIEL BENDER, *SWEATED WORK, WEAK BODIES: ANTI-SWEATSHOP CAMPAIGNS AND LANGUAGES OF LABOR* (2004); see generally MIRIAM FRANK, *OUT IN THE UNION: A LABOR HISTORY OF QUEER AMERICA* (2014).

31. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 19-39.

32. *Id.* at 40-67.

33. *Id.* at 68-93.

34. Shelia M. Neysmith and Jane Aronson, *Home Care Workers Discuss Their Work: The Skills Required to ‘Use Your Common Sense,’* 10 J. OF AGING STUD. 1, 8 (1996).

35. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 94-209.

36. *Nurses Registry: Aide I and II Classification*, N. CAROLINA BD. OF NURSING, <http://www.ncbon.com/dcp/i/licensurelisting-nurse-aide-ii-na-ii-na-ii-listing-requirements> (last visited Dec. 8, 2016); Susan Harmuth, *The Direct Care Workforce Crisis in Long-Term Care*, 63(2) N.C. MED. J. 87, 89-91 (2002); Thomas Konrad, *Where Have All the Nurse Aides Gone?*, N.C. INST. ON AGING, 2-4 (2002); Oregon Bureau of Labor and Industries, Wages Division 20, Procedural Rules, 839-020-0004, 411-050-0040-41, 0442, http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx (last visited Dec. 8, 2016).

Policymakers offered conflicting signals about the characteristics of the home care worker. Some sought to distinguish homemaker from housekeeping services, the visiting homemaker from the domestic servant.³⁷ Uniforms would mark the care worker from the maid just as Registered Nurses reinforced a nursing hierarchy through uniform type and color. The New Deal called for a professional dress code for visiting housekeepers, but only cleanliness for maids.³⁸ In the 1960s, the National Council for Homemaker Services, an association of private and public family and welfare agencies, suggested special emblems.³⁹ In 1964, Dr. Ellen Winston, U.S. Commissioner of Welfare, explained, “the homemaker is not a domestic servant; yet she does light housecleaning and laundry. She is not a nurse; but she can follow directions of a doctor or nurse in simple health care of the patient.”⁴⁰

When policymakers and commentators disassociated the care worker from the maid, she became a substitute mother. At a time when most homemaking services addressed problems of child welfare, advocates portrayed the homemaker as “a mature woman who is skilled in home management and in caring for children.”⁴¹ According to the National Council on Homemaker Services, the job required “warmth, concern for people, tolerance, emotional maturity” and an “inherent ability to give of one’s self in helping others.”⁴² She would facilitate the move from dependency to independence or independent living. This description contained its subaltern other: the domestic help signified pure labor, rather than motherhood and care. The home aide undertook both the menial and “spiritual” tasks of care work.⁴³ But her association with the maternal had its own underside: the act of caring out of love or obligation undermined the status of worker.

Care workers could not fully escape conflation with servants. In part, demographics brought the two together: New Deal visiting housekeepers were disproportionately African American, and unemployed domestic workers at that.⁴⁴ The law reinforced such perceptions. Domestic workers fell outside of the Wagner Act and the Fair Labor Standards Act.⁴⁵ So when courts classified nurse-companions and other in-home care workers hired directly by clients as domestic servants, they too became ineligible for old age insurance, unemployment, collective bargaining, minimum wages, maximum hours, or other labor laws.⁴⁶ Courts distinguished such workers from those protected by labor laws by emphasizing the characteristic of intimacy or personalism that distinguished workers associated with the

37. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 33-34.

38. *Id.*

39. VIRGINIA R. DOSCHER, REPORT OF THE 1964 NATIONAL CONFERENCE ON HOMEMAKER SERVICES 22 (1964).

40. U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, HOMEMAKER SERVICES IN PUBLIC WELFARE 4-5 (April 1964).

41. *Social Security Act Amendments of 1949: Hearings on H.R. 6000 Before the Subcomm. on Finance, 81st Cong. pt. I*, at 422 (1950) (statement of Katharine F. Lenroot, Chief, Children’s Bureau).

42. DOSCHER, *supra* note 39, at 14-17.

43. Dorothy Roberts, *Spiritual and Menial Housework*, 9 *YALE J.L. & FEMINISM* 51-80 (1997).

44. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 24.

45. Boris, *Labor’s Welfare State*, *supra* note 26.

46. Mary Poole, *Securing Race and Ensuring Difference: The Social Security Act of 1935*, 131 (2001) (unpublished Ph.D. dissertation, Department of History, Rutgers University).

home and family. Courts also presumed a familial or protective relation within a patriarchal household.⁴⁷ When states like California and Illinois would allow family members to be paid for home care, such legal exclusion overdetermined the mingling of tasks performed as part of family labor with those paid for as employment.⁴⁸ To the extent domestic workers came under the fiction of being “like one of the family,” they fell under such reasoning that family members were not subject to labor standards.⁴⁹

V. POST WWII DEBATES

Post-WWII policy debates reflected both the disassociation of home labor with employment—as seen in the exclusion of those with “full-time housekeeping responsibilities” from the right to a job under the proposed Full Employment Act of 1945⁵⁰—and attempts to elevate paid household labor as a worthy occupation. For example, business opponents of disability insurance envisioned homemakers tempted by the promise of benefits because of a “backache’ or ‘nervous condition’” to claim workmen’s disability when “we all know that many women are not regular members of our working force.”⁵¹ Yet, despite supporting their own dependents, domestics appeared as “casual workers and day workers,”⁵² unable to labor at “more demanding employments” even though their work served “an adjunct to the proper maintenance of many homes.”⁵³

In arguing for including household workers in Social Security, women’s organizations and the U.S. Women’s Bureau inadvertently exposed the affect surrounding such labor. The National Federation of Business and Professional Women’s Clubs argued in 1949 for valuing women’s family labor and by extension the domestic worker: “if we are to be equitable, there must be some standard established whereby the intangible contributions as a wife, homemaker, and mother can be evaluated.”⁵⁴ As the American Home Economics Association explained, “Others have a low regard for her job, and that stigma against ‘domestic service’ prevents many who would really enjoy the work from going into it. Her general feeling of insecurity, of being at the mercy of her employer’s whim is bad for her psychologically.”⁵⁵ Claiming equal protections for household workers, a spokeswoman for the United States Section of the Women’s International League for Peace and Freedom evoked well-being in declaring,

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47. GLENN, *supra* note 21, at 88-120, 128-138; *North Whittier Heights Citrus Association v. NLRB*, 109 F.2d. 76, 88 (1940).
 48. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 189-192.
 49. PREMILLA NADASEN, *DOMESTIC WORKERS UNITE: THE UNTOLD STORY OF AFRICAN AMERICAN WOMEN WHO BUILT A MOVEMENT* 8 (2016).
 50. STEPHEN KEMP BAILEY, *CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946* 243 (1950) (Sec. 2, (b), “The Full Employment Bill as Originally Introduced,” reprinted as Appendix A.).
 51. *Social Security Act Amendments of 1949: Hearings Before the Comm. on Ways & Means H.R.*, 81st Cong. pt. 2, 2388 (1949) (statement of James J. Ewens).
 52. *Id.* at 1506-7 (1949) (statement of Elmer W. Henderson).
 53. *Social Security Act Amendments of 1949: Hearings on H.R. 6000 Before the Subcomm. on Finance*, 81st Cong. 2nd Sess. pt. 3, 2167 (1950) (statement of Maurice J. Tobin).
 54. *Social Security Act*, *supra* note 51, at 1594-1600 (statement of Olive H. Huston, with Genevieve Quatters).
 55. *Amendments to Social Security Act: Hearings on Social Security Legislation Before the H. Comm. on Ways & Means*, 79th Cong. 2nd Sess. pt. 3, 343-5 (1946) (statement of Helen Hostetter).

“No worker should be penalized because she chooses to earn her living by those activities in the home which contribute so largely to the comfort of us all.”⁵⁶

Activist household workers dramatized a more complex calculation. For example, an immigrant from Germany who had labored as a domestic in Washington, D.C. for fifteen years highlighted the symbolic importance of Social Security coverage when she proclaimed that Social Security inclusion would make her “occupation . . . more of a career than just work to support one’s body.”⁵⁷ Labor standards, in short, conferred status along with standing in society, generating pride amongst the laborers.

Lucille Lewis, a member of the African American Domestic Workers Union from Washington, DC, testified on behalf of the National Board of the Young Women’s Christian Association, a leader in inter-racial efforts and a major advocate for improving domestic work in the U.S. and through its World organization:

[I]f there were social security for household workers, the employers as well as the employees, would feel secure. . . . first, public assistance is not enough to survive on, and secondly, most people do not want public assistance. It is embarrassing to most people to receive something that they have not had a chance to contribute to; and also they feel that they have lost citizenship I feel that no household worker would object to a small amount being taken from his or her salary if they know that at a certain time they will be rewarded instead by living in dire need and possibly with no roof over their head.⁵⁸

Such a statement relied on affective language: “secure,” “embarrassing,” “lost” and “dire.” It reflects the successful linkage of Social Security to the concept of insurance, contribution to citizenship, assistance to shame, dignity to that which is valued and recognized as labor and thus worthy of Social Security.

VI. FLSA

Debate over inclusion of domestic care workers as a class covered by the federal Fair Labor Standards Act (FLSA) in the early 1970s illuminates the ways that affect intertwined with self-interest to keep down wages and conflate domestic work with homemaking and welfare, associated with laziness and immorality in the U.S.⁵⁹ The refusal to see value in the care worker’s labor prolonged the political work of inclusion into labor standards, which the opposition of Southern Democrats had blocked since the late 1930s.⁶⁰

The new feminism, which claimed housework as work, cleared the way for finally placing domestic work under labor law. The sending of the Equal Rights Amendment to the states for ratification led Senator Harrison Williams (D-New Jersey), the main proponent of these amendments, to claim, “it would be hypocritical . . . to deny an appreciable segment of the female work force, earning low wages,

56. *Social Security Act*, *supra* note 51, at 2, 2227 (statement of Gertrude Bussey).

57. *Amendments to Social Security*, *supra* note 55, at 359 (statement of Gertaud Bakonyi).

58. *Social Security Act Amendments of 1949: Hearings Before the Comm. on Ways & Means H.R.*, 81st Cong. pt. 2, 2184-85 (1949) (statement of Velma T. McEwen and Lucille Lewis).

59. ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* (2004).

60. See GLENN, *supra* note 21, at 138-144 (for another discussion that compliments my own).

an opportunity to share in the rewards of more meaningful employment.” During 1973 hearings, Edith Barksdale-Sloan of the National Committee on Household Employment, then a multi-racial coalition of domestic workers and middle class employers, cited increased demand, including the need for homemakers to aid invalid elderly people, to justify coverage of domestic workers under the law. Decent wages would bring “willing workers, skilled workers and respect and self respect” for “a demanding occupation requiring a variety of skills,” she argued.⁶¹

As historian Phyllis Palmer has explained, professional women allied themselves with civil rights and trade unionists to fight for amendments to FLSA in the early 1970s.⁶² These women were seeking their own coverage to gain access to relatively new equal pay provisions. President Richard Nixon vetoed initial efforts, but in 1972, the professional exemption ended and two years later in 1974, this labor-liberal-civil rights-feminist coalition brought household workers under FLSA.⁶³

The figure of the housewife hovered over Congressional discussions on extending minimum wage and overtime coverage. As Labor Secretary Peter Brennan, a conservative craft unionist, testified before Congress,

Domestic service is in some aspects unique from other forms of employment. A householder who hires a maid typically has just so much budgeted for that purpose with no more available. She also has no opportunity to pass on any higher wage cost. If it comes down to it, the housewife can substitute her labor and that of other family members for the domestic. Few employers in other fields can do so.⁶⁴

Senator Williams underscored the abjection that this exceptionalism elicited:

The lack of respect accorded domestics is in many ways an unfortunate reflection of the value we place on the traditional role of women in our society.

The housewife’s job has always been considered of secondary importance, even though it is the housewife who is entrusted with our most valuable resources and our most valuable material possession, our children and our home.

In hiring a domestic, most employers expect her to accept many of the responsibilities of the homemaker, thereby creating a situation in which a dollar value is being placed on her everyday duties.⁶⁵

The assumption here was that the domestic worker substituted for the labor of the married woman, whose responsibility was to manage the home. Michigan Representative Martha Griffith (D), an equal rights feminist, also linked women with housework even as she countered those who refused to include paid household workers in the labor law. She explained, “What the gentleman really is saying is what that woman does in a home is of no worth. I should like to differ with him. What she does

61. S. Comm. on Labor of the Comm. On Labor and Pub. Welfare, *Legislative History of the Fair Labor Standards Amendments of 1974*, Pub. L. No. 93-259, 94th Cong. 1820 (1976) (statement of Senator Williams); *Fair Labor Standards Amendments of 1973*, 93rd Cong. 208 (1976) (statement of Edith Sloan).

62. See Phyllis Palmer, *Outside the Law: Agricultural and Domestic Workers under the Fair Labor Standards Act*, 7 J. POL’Y HIST. 416, 416-40 (1995).

63. *Id.*

64. See S. Comm. *supra* note 61, at 1814 (statement of Secretary Brennan).

65. See *id.* at 1818 (statement of Senator Williams).

in that home is a thing that makes life livable.”⁶⁶ New York’s feminist Congresswoman Bella Abzug (D-NY) further linked the low wages of the domestic worker to the unpaid labor of the housewife: she lambasted the assumption behind excluding live-in workers from overtime—“that they’re ‘part of the family’—but even if the ‘lady of the house’ works a 20-hour day for free, she should not expect her helper to do so. (This is one of the belated realizations that dawn on us women as the concept of our sisterhood grows.)”⁶⁷

Male legislators, like Republican Senators Peter Dominick of Arizona and Mr. Conservative Robert Taft of Ohio, expressed disdain for housework and for those who undertook its myriad tasks. They made their feelings palpable both in displaying paternalism toward housewives and describing household workers with contempt. They pictured home aides and domestic workers as sitting around, drinking cokes, and generally enjoying themselves with the family.⁶⁸

Supporters of the amendments, like New York’s “liberal” Republican Senator Jacob Javitz, also judged the labor as being stigmatizing. They portrayed domestic workers as women who “consider themselves demeaned, consider themselves servants, and that they are not entitled to the protection of the laws covering other workers.”⁶⁹ Provided treatment like any other worker, Jarvitz predicted, they would exhibit the same “pride” that his housekeeper did when she came under Social Security two decades before.⁷⁰ Similarly, the Director of the National Federation of Business and Professional Women’s Clubs supported coverage of domestic workers but not without offering a dose of maternalism: “A servant status with all its connotations and paternalistic attitudes persists in this occupations,” she observed.⁷¹ “The people who fill these jobs are the least able—financially and educationally—to urge for themselves this needed change.”⁷²

Household workers themselves made claims on the basis of human rights, citizenship, and the worth of their labor. They spoke with anger, demanding respect. They appreciated support but, following civil rights impact on their consciousness, insisted that they were not victims. New York leader Carolyn Reed later explained to the *New York Times*, “The reason that we have not gotten our rights as a paid person in the labor force is because men think they can get their wives or girlfriends to do the job without pay.”⁷³

66. *Fair Labor Standards Amendments of 1973: Congressional Record*, 93rd Cong. 282 (1976) (statement of Martha Griffith).

67. *Fair Labor Standards Amendments of 1973: Hearing on 93 H.R. 2831 and 93 H.R. 4757 Before the Gen. Subcomm. on Labor of the H. Comm. on Education and Labor*, 93rd Cong. 86-87 (1973) (statement of Bella Abzug, Representative D-NY).

68. See Dominick statement, *Congressional Record*—Senate, July 19, 1973, FLSA Amendments of 1973 (Washington: GPO, 1973), 951.

69. *Legislative History of the Fair Labor Standards Amendments of 1974*, 1792 (statement of Jacob Jarvitz).

70. *Id.* at 1702.

71. *Fair Labor Standards Amendments of 1971: Hearing on 92 S. 1861 and 92 S. 2259 Before the Subcomm. on Labor of the Comm. on Labor and Public Welfare*, 92nd Cong. 282 (1971) (statement of Lucille Shriver, Director, National Federation of Business and Professional Women’s Clubs).

72. *Id.*

73. Nadine Brozan, *Bargaining Legislation for Domestic May Have Wide Impact*, N.Y. TIMES (Apr. 28, 1975), available at <http://www.nytimes.com/1975/04/28/archives/bargaining-legislation-for-domestics-may-have-wide-impact.html>.

As historian Premilla Nadasen has shown, household workers argued for dignity and recognition because of their inherent worthiness.⁷⁴ “We are tired of being called by our first names and referred to as ‘girl.’ We don’t want to be asked all sorts of personal questions,” testified Geneva Reid, chair of the Household Technicians of America, an offshoot of the National Committee on Household Employment. “And we don’t want to be expected to call our employers and our employers’ children ‘sir’ and ‘ma’am.” For Reid and other workers, inclusion in FLSA would allow them “to individually seek a decent wage.” Inclusion in the protections of the FLSA announced “that we too are entitled to the minimum wage offered to the other workers of the land; that our services, too, are of value to the society.” Reid warned that without raising wages and improving conditions, the day would soon come with “the affluent and Congressmen cleaning up after themselves because the women of the household have become liberated and have joined the work force and will not have time to cook, clean, wash, iron, and take care of the children” and domestic workers would be nowhere to be found.⁷⁵

On the eve of inclusion in FLSA, sponsoring Senator Williams decried, “Many domestics are treated just as they were 150 years ago—as slaves.”⁷⁶ But the connection of black and immigrant women with domestic work and the devaluation of all women’s labor were not exactly the same. Black, and increasingly, immigrant women of color, were still associated with caring for other women’s homes and children, with their own motherhood devalued. Later debates over the welfare queen amply showed that the nation saw black women as unworthy of receiving support to provide for their own children but would rather compel them to work in low-waged service positions like home care as a condition of receiving public assistance. Indeed, since the 1960s, welfare reformers recommended creating care jobs for aid recipients but denied the value of the mothering of such women.⁷⁷

While opponents of minimum wages for domestics implied that forcing higher wages would push household workers out of jobs onto welfare, others linked declines in the availability of servants to the need to kick poor women of color off welfare so to increase the supply of cooks and cleaners. As Georgia Democrat Philip Landrum declared at a 1969 House hearing on welfare reform, “I find many people can’t get domestic help. Couldn’t domestics be taken off welfare?”⁷⁸ During the FLSA hearings, the U.S. Chamber of Commerce charged that mandating minimum wages for domestic workers would make them too expensive for they were “marginal workers” that people could do without if the cost rose.⁷⁹ The consequence: increased welfare.⁸⁰

74. Premilla Nadasen, *Citizenship Rights, Domestic Work, and the Fair Labor Standards Act*, 24 J. POL’Y HIST. 74 (2012).

75. *Fair Labor Standards Amendments of 1973: Hearing on 93 H.R. 2831 and 93 H.R. 4767 Before the Gen. Subcomm. on Labor of the H. Comm. on Education and Labor*, 93rd Cong. 205 (1973) (statement of Geneva Reid, Chairwoman, Household Technicians of America).

76. Palmer, *supra* note 62, at 432.

77. BORIS & KLEIN, *CARING FOR AMERICA*, *supra* note 11, at 94-97.

78. Fair Labor Standards Amendments of 1973, 228 (statement of Robert T. Thompson (US Chamber of Commerce)); Memorandum from Clint Fair to Andy Biemiller on Social Insurance and Welfare Hearings, October 9, 1969, Collection 1, Box 54, folder 62, AFL-CIO Papers, George Meany Library and Archives, Silver Spring, Maryland.

79. *Hearings before the General Subcomm.*, House 228 (1973) (Thompson testimony).

80. *Id.*

VII. EXCLUSION OF HOME CARE WORKERS

Just as domestic workers who lived outside of their employers homes gained coverage under 1974 Amendments to FLSA, home care workers became classified as “causal babysitters and companions for the aged and infirm.”⁸¹ During hearings over the amendments, employers argued that mothers could not afford to hire these otherwise unemployable individuals and thus they would be forced to leave the labor force, causing shortages of secretaries, teachers and employees in other pink collar jobs.⁸² Thus, those who opposed paying household labor the minimum wage offered additional stories of hardship. They too drew upon discourses of affect. Allen Nixon of the Southern States Industrial Council countered advocates who stressed the poverty of uncovered workers with stories of invalids needing constant attention who were draining family resources. He deployed the example of his own mother-in-law whose physical impairment required domestic help. Appealing to others responsible for aging parents, he confessed, “her money is going to run out and I will have to take care of her. She has only one child, my wife.” Paying minimum wage to a helper for someone unable to lift her hand cost too much.⁸³

Nixon was not alone. Senator Dominick paraded before the Senate a complaint from a Louisiana woman which claimed that having to pay a higher minimum wage would force her “to quit my job and go home to take care of my mother.”⁸⁴ According to this Louisiana woman, minimum wage for domestics would transform a tax earner into a moocher, like her employee who was “getting two meals a day (only one was authorized), and drinking coffee, soft drinks, or milk all day long AT MY EXPENSE.”⁸⁵ Whether the worker would prefer higher wages instead of the supplements of servitude was not recorded.

In reality, the babysitter was the teenage girl next door, not a family breadwinner who needed higher wages to support others; so too the elder sitter was a friend or neighbor whom they assumed would not be employed otherwise. But some child minders were workers, and so the Senate added “casual” to clarify the distinction between teenage babysitter and family breadwinner.⁸⁶ But, in making the rules to implement the 1974 amendments, the U.S. Department of Labor extended companionship to include domestic workers employed by health or welfare agencies who spent no more than 20% of their time at housekeeping while assisting elderly individuals and people with disabilities with the fundamental activities of daily living, including toiletry, eating, and ambulation. Prior to 1975, these

81. 40 Fed. Reg. 7404 (1975); see Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 29(b), 88 Stat. 55, 76 (authority to issue implementing regulations).

82. To Amend the Fair Labor Standards Act of 1974: *Hearing Before the Gen. Subcomm. on Labor of the H. Comm. on Education and Labor*, 93rd Cong. 2nd Sess. 4-9 (1975) (statement of L.H. Fountain (D-North Carolina)).

83. *Fair Labor Standards Amendments of 1973: Hearings Before the Gen. Subcomm. on Labor of the H. Comm. on Education and Labor on H.R. 4757 and H.R. 2831*, 93rd Cong. 1st Sess. 138 (1973).

84. *Legislative History of the Fair Labor Standards Amendments of 1974*, 94th Cong. 2d Sess., Prepared by the Subcomm. on Labor of the Comm. on Labor and Pub. Welfare, United States Senate, vol. I (1976), 951 (letter from Hilda Poppell read by Senator Dominick).

85. *Id.*

86. U.S. Senate. Comm. on Labor and Pub. Welfare. *Fair Labor Standards Amendments of 1971*, pt. 1, 290-1 (May 26, June 3, 8, 9, 10, 17, and 22, 1971) 290-1.

aides and personal assistants had come under the FLSA, but with this relief from paying overtime, a for-profit home care industry began a phenomenal growth that continues.

Congress either had not caught up to the emergence of home care as a distinct occupation out of earlier homemaker/choremaker publically financed programs or choose to ignore them to save Medicaid costs. Williams and others viewed home care as a question of need for care recipients rather than a question of worker justice, not fully connecting domestic work with care work.⁸⁷ Here the devaluation of women's domestic labors led to the dismissal of a type of service work as real work. The definition of home care workers as elder companions under FLSA lingered for the next forty years, to be finally overturned by the Obama Administration. The rule went into effect after court challenges in 2016.⁸⁸

As a society, it appears that we have worried about the comfort and quality of life of the recipient of care, who could be ourselves in the future, more than the conditions of pay and working environment of those who provide care. This affective preference had pervaded Supreme Court deliberations in *Long Island Care at Home v. Evelyn Coke*, in which Associate Justice Stephen Breyer worried whether "millions of people" would be able to afford home care if they had to abide by the nation's wage and hour law.⁸⁹ "[A]ll over the country," he declared, "it's the family, the children, the grandchildren, an aunt, an uncle, maybe a good friend, maybe they're not even related, who is paying for a companion for an old, sick person so they don't have to be brought to an institution."⁹⁰ Care as a labor of love here became a rationale to ignore the conditions of care as employment.

California Governor Jerry Brown echoed Breyer when he rejected "The Domestic Workers Bill of Rights" in 2012 (although he accepted a more limited bill the following year). Brown asked:

What will be the economic and human impact on the disabled or elderly person and their family of requiring overtime, rest and meal periods for attendants who provide 24 hour care? What would be the additional costs and what is the financial capacity of those taking care of loved ones in the last years of life? Will it increase costs to the point of forcing people out of their homes and into licensed institutions?⁹¹

He worried about "the privacy of people's homes," which enforcement might violate, underscoring the vitality of those old feelings about the home.⁹² In foregrounding the concerns of receivers of domestic and personal services, Brown nearly erased the very presence of the workers behind the bill

87. *Hearings Before the Senate Special Comm. On Aging (1977)*, reprinted as *Appendix A to "Statement of the National Council for Homemaker-Home Health Aide Services," Subcomm. on Select Revenue Measures of the Comm. on Ways and Means: Hearing on H.R. 3245 the Indep. Contractor Tax Status Clarification Act of 1979*, 96th Cong. 1st Sess. 656 (1979) (testimony Delivered by Susan K. Kinoy).

88. *Home Care Ass'n of America v. Weil*, 799 F.3d 1084, 1097 (D.C. Cir. 2015); see *We Count on Home Care*, U.S. DEP'T OF LABOR, <http://www.dol.gov/whd/homecare/litigation.htm> (last visited Feb. 12, 2016).

89. Transcript of Oral Argument at 27, *Long Island Care At Home, LTD., et al., Petitioners v. Evelyn Coke*, 551 U.S. 158 (2007) (No. 06-593).

90. *Id.*

91. Letter from Edmund G. Brown Jr., Gov. of Cal., to the Members of the Cal. State Assemb., Sept. 30, 2012, https://www.gov.ca.gov/docs/AB_889_Veto_Message.pdf (last visited Feb. 12, 2016).

92. *Id.*

and whose entitlement to minimum wage and decent work was at stake.⁹³ Brown conflated home care workers under California's In Home Supportive Service (IHSS) program with domestic workers hired by individuals or private agencies to claim that signing the bill would cost the state hundreds of millions of dollars, leading to reduced services. Leaving aside the validity of his claim that paying for overtime would hurt IHSS, Brown forgot that the "Bill of Rights" explicitly left out IHSS workers.⁹⁴

VIII. NEW ORGANIZING

New care worker organizing efforts reject the usual separation between work and love. This growing movement of domestic and care workers—cleaners, elder carers, home aides, and nannies—demands rights and recognition, but does so by "leading with love," as Ai-jen Poo, the Director of the National Domestic Worker Alliance (NDWA), has declared. While demanding inclusion in existing labor standards, activists seek to construct a new social wage, to revalue reproductive labor and those who perform it and ensure we all receive care.

In launching "Caring Across the Generations" in 2011, organized domestic workers took a significant step "to build a more caring economy for all of us," that is, to show the commonalities between the needs of providers and those of the receivers of care, for which domestic labor of all kinds is necessary.⁹⁵ The general framework of the campaign appeals to the individual and her needs that are nonetheless social needs, an all-in-the-same-boat togetherness, that values responsibility and solidarity. "Join Caring Across Generations to build the system of quality, dignified care we all need to live fulfilling, independent lives," the appeal goes—for "care is for life."⁹⁶

The campaign has sought to improve the working conditions of long-term care workers and reaffirm the right of seniors and disabled people to receive care. In understanding that these rights must exist in a larger social and political context, Caring Across the Generations has spoken out against attacks against immigrants, those who are doing labors of love for too low pay.

Under a framework of interdependence, foreign to prevalent individualism and market solutions, traditional adversarial models of employer/employee appear less applicable to a form of intimate labor where strikes without replacements (from family or friends) can mean death. Overall, domestic workers seek to lead through an alternative way of bringing all of us into conversation and to join together to improve care and its delivery. But the questions remain: Can a politics of love counter the fear and scarcity central to this political moment? Can organizations built by women of color – for domestic workers and immigrant rights – re-signify the meaning of love in a society of violence, in

93. *Id.*

94. *Id.*

95. The coalition consists of Jobs with Justice, AFSCME, Hand in Hand: The Domestic Employers Association, Direct Care Alliance, SEIU, National Council on Aging, PHI, and other senior groups along with NDWA. Information comes from Caring across the Generation website, first visited in November 2013.

96. *It is time to secure the quality care we need*, CARING ACROSS GENERATIONS, <http://www.caringacross.org/action/join/> (last visited Dec. 8, 2016).

which the loving domestic remains associated with the Southern mammy myth and a “one of the family” ideology that clouds wage theft and injuries of power between women hidden in the home? Can an appeal to a larger social good bypass individual self-interest? Can the rhetoric of love function as a term for solidarity to build a stronger coalition politics? The answers to these questions are being formulated through the continuing struggles of domestic and care workers to achieve recognition and rights.

IX. AFFECT ON THE GLOBAL STAGE

Domestic workers in the U.S. belonged to a worldwide surge in organizing that broke through the somber façade of the ILO to win Convention 189. Rather than repeat the story of that victory, here I emphasize the interplay between affect and legibility deployed in winning “decent work” as a norm.⁹⁷ Appeals to the heart were among the most potent devices used to move delegates. Workers bore witness; personal testimony of exploitation and suffering made the case for inclusion in national labor standards, mandated by the Convention. Domestic workers had to confront two reigning discourses: that their work was inappropriate for ILO consideration and that they were victims, not agents, in need of rescue by governments and other workers who were already protected under the law. While rejecting the first portrait, they fed into the second when it advanced their cause.

It should be noted that the ILO is a tripartite organization, with worker, employer and government representation on all committees. Its annual International Labor Conference (ILC), where various conventions and other instruments are voted on, consists of country delegations with two government, one employer, and one worker delegate. The employer and worker delegates come from major associations, like the U.S. Chamber of Commerce or the AFL-CIO. In addition, there is a formal Employers group and a formal Workers group. The International Labor Office (the Office) of global civil servants runs the day-to-day activities of the organization, overseen by the elected Director-General and his assistants. The ILC also elects a Governing Body, which has government, worker, and employer members. The Office can admit civil society organizations—such as international trade union federations, human rights groups, and international feminist NGOs—to specific meetings of the ILC as observers with limited participation rights.⁹⁸

Previous conventions and non-binding recommendations passed by the ILC rarely applied to domestic workers. A few mention them, including Sickness Insurance (Industry) Convention, 1927 (No. 24); Medical Examination of Young Persons Recommendation, 1946 (No. 79); Employment Services Recommendation, 1948 (No. 83); and, most significantly, Maternity Protection Convention (Revised),

97. Eileen Boris & Jennifer Fish, “*Slaves No More*”: Making Global Labor Standards for Domestic Workers, 40 FEMINIST STUD. 411, 411-443 (2014); see generally MATHER, *supra* note 5.

98. GERRY RODGERS, EDDY LEE, LEE SWEPSTON, AND JASMIEN VAN DAELE, THE ILO AND THE QUEST FOR SOCIAL JUSTICE, 1919-2009 (2009).

1952 (No. 103). But core standards relating to minimum age of employment (No. 33, No. 60, No. 138) and night work (No. 79, No. 171) allow signatory states to exempt domestic workers.⁹⁹

In the late 1940s and early 1950s and again in the mid-1960s, the ILO discussed whether to address the domestic work sector, but ended up just studying its characteristics.¹⁰⁰ While after WWII, it began to consider the care or family responsibilities of women employed elsewhere, only with the Nursing Personnel Convention, 1944 (No. 149) and accompanying Recommendation (No. 157) did the ILO address any form of care labor. Building off of research commissioned by its Social Protection Division, the ILO in the early 2000 recognized that care work, like household employment, existed as an occupation and thus required protocols and regulations, with care workers needing inclusion under social security.¹⁰¹ Only after passage of Convention 189 did the ILO proceed to consider the care economy, highlighting better conditions for paid household labor as necessary for other women to succeed in “the paid labour market in increasingly larger proportions and in breaking the glass ceiling.”¹⁰²

X. EMPLOYER AND WORKER ARGUMENTS

Employers long had rejected action on domestic labor. Not only were there no organized employers to bargain with, they claimed that domestic work wasn’t applicable to international regulation because it just wasn’t “a matter in which international competition is likely to arise,” a Swiss Employer advisor explained in 1936.¹⁰³ He declared, “The Employers’ representatives only represent employers in industry and commerce, and the question of domestic servants do not concern them.”¹⁰⁴ When deliberating on a “Holidays with Pay” recommendation in 1954, employers stressed the personal relationship between servant and employer, as well as the process of individual settlement of conditions, as reasons for exclusion.¹⁰⁵

Such arguments persisted into more recent discussions when the ILO finally addressed conditions of domestic work in 2010. Even while supporting some action, the Employers group questioned the wisdom of a convention. It felt that regulation “would not directly affect the private sector companies that were its members.”¹⁰⁶ Warned Mr. K. Rahman from Bangladesh, “regulation might not always be the key to mitigating poor working conditions and abuse faced by domestic workers.” Rahman believed, “Regulatory measures were not necessarily applicable in all countries, and could be counter-

99. ADELLE BLACKETT, MAKING DOMESTIC WORK VISIBLE: THE CASE FOR SPECIFIC REGULATION 6-7 (1998), available at http://www.ilo.org/public/libdoc/ilo/1998/98B09_500_engl.pdf.

100. Boris & Fish, *supra* note 97.

101. MARY DALY, CARE WORK: THE QUEST FOR SECURITY (Mary Daly, ed., 2001), available at http://staging.ilo.org/public/libdoc/ilo/2001/101B09_350_engl.pdf.

102. Susan Maybud, *Women and the Future of Work—Taking Care of the Caregivers*, INTERNATIONAL LABOUR ORGANIZATION (March 2015), http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_351297.pdf (last visited Dec. 8, 2016).

103. ILO, *Proceedings of the International Labor Conferences*, 20th Session 465 (1936).

104. *Id.*

105. ILO, *Proceedings of the International Labor Conferences*, 37th Session 564-5 (1954).

106. ILO, *Proceedings of the International Labor Conferences*, 99th Session 12/4 (2010).

productive if they ignored ground-level realities,” especially in countries with surplus workers. He essentially argued rights for domestic workers would lead to unemployment. Moreover, he doubted that the actual employers of these workers had “the legal expertise to comply with rigid rules set by international labour standards.”¹⁰⁷ Government delegate Halimah Yacob from Singapore, a receiving nation for migrant domestic workers, repeated the belief that this form of labor was different because it “differed from other types of paid work as employers did not hire domestic workers to increase their business profits, but rather to help in the household.”¹⁰⁸ The home remained a private sphere, but subsequent discussions over the convention showed that workers had rights there: to privacy; to leave during rest times and vacations; and even to negotiate where they resided.¹⁰⁹

In short, domestic work was unlike other forms of work. Indeed, the employers were “unique” for being “householders and families,” and they too had rights, the right to privacy as the Employers group emphasized.¹¹⁰ Thus they sought to amend the final convention with a preamble paragraph

in order to provide a balanced picture of the context in which domestic work occurred: ‘Considering the unique nature of domestic work in or for households, and the unique nature of those who engage domestic workers, the majority of whom act in an individual capacity, and who are householders, parents and/or have other caring responsibilities.’¹¹¹

The Workers group and some governments (Australia, the U.S. and Uruguay—the latter two with vigorous domestic worker organizations and the former represented by a sympathetic feminist) shot down this proposal.¹¹² They countered that “domestic workers were also parents, sisters, and so on, and thus had similar concerns to those of employers of domestic workers” and not all domestic workers were care workers. The Employer group then withdrew this particular gambit.¹¹³ By the end of the negotiations, while the Employer group still insisted on an instrument that “did not unfairly impinge upon the rights of householders to conduct their family affairs,” they “took a pragmatic view” and negotiated a convention that “would be practical, useful and capable of adoption by a majority of countries”—even if they voted against adoption.¹¹⁴

During the 2010 International Labor Conference, where the ILO began its two-year deliberation on the issue, delegates spoke in terms of hardship, suffering, and exploitation. Malaysian Worker delegate Syed Mohamud evoked a venerable metaphor: “Let us resoundingly reject slavery in any form.”¹¹⁵ The Holy See spoke of a double “risk:” domestic workers “come from the most disadvantaged segments of

107. *Id.* at 12/4-5.

108. *Id.* at 12/6.

109. ILO, *Proceedings of the International Labor Conferences*, 100th Session 15/30-15/50 (2011).

110. *Id.* at 15/4.

111. *Id.*

112. On government and domestic worker activism during the proceedings, see Eileen Boris & Megan Undén, *The Intimate Knows No Boundaries: Global Circuits of Domestic Worker Organizing* (Ito Peng and Sonya Michel, eds.), GENDER, MIGRATION, AND THE WORK OF CARE: A MULTI-SCALAR APPROACH TO THE PACIFIC RIM (forthcoming 2017).

113. ILO, 100th Session, *supra* note 109, at 15/18.

114. MATHER, *supra* note 5, at 65 (the final vote was 396 in favor, 16 against, 63 abstentions). *Id.* at 67.

115. ILO, 99th Session, *supra* note 106, at 8/22 (statement of Syed Mohamud).

society, with very limited resources for protection; and . . . their working environment leaves them open to exploitation.”¹¹⁶ A Worker delegate from India composed a picture of vulnerability, speaking of “extreme forms of exploitation,” “tragic plight,” being “helpless and downtrodden,” and undertaking “forced labour.”¹¹⁷ Even those who crafted their remarks in terms of rights, justice, and fairness cast domestic workers as damaged by being enclosed in “private homes” with “endless hours,” no rest days, and poor treatment.¹¹⁸ They were subject to sexual harassment and occupational and health hazards, with no recourse.

A year later, when the ILO passed the convention, the remarks of the Director General on “opening up a door to labour standards in the informal economy” could not be so easily dismissed. Speakers at the International Labor Conference mixed affect with rights talk. The Holy See’s Monseigneur Tomasi underscored the “global care chain, which is structurally built on the disruption of basic family relationships for all women involved,” which required “a ‘relational’ approach to the economic situation of women.”¹¹⁹ While he lamented the exchange of care for remittances as disrupting families, he embraced protections to obtain “the security that decent work desires and requires.”¹²⁰

Worker delegates found in “their blood and sweat to keep afloat the living standards of society as a whole” reason to extend labor standards.¹²¹ Domestic worker advocate Ida Le Blanc of Trinidad-Tobago, speaking at the beginning of the session when observers could take the floor, countered employers who saw 24-hour shifts solving the acute need of elderly people and those with disabilities by suggesting the hire of more workers for defined shifts. But, confirming the expectations placed on care, she added, “I doubt that many domestic workers would turn away and do nothing [to help a needy client]. It is not just about our duties as employees but about us as human beings, with a conscience just like anyone else. Why would we need legislation for such a situation?” she asked.¹²²

XI. ACTIVIST STRATEGIES

Through consistent messaging, domestic worker activists, whose connection with NGO observers allowed them to be present, drew upon the rhetorical appeal and effectiveness of personal testimony to increase the likelihood of passing the convention. Organized as the International Domestic Worker Network (IDWN), they explained, “we want to reach the hearts of employers” and “leave the audience

116. *Id.* at 8/20 (statement of Monsignor Tomasi).

117. *Id.* at 8/15 (statement of Mr. Sajinarayanan).

118. *Id.* at 8/10 (statement of Mr. Martinez).

119. ILO, 100th Session, *supra* note 109, at 6/7 (opening remarks of Director-General); ILO, 99th Session, *supra* note 106, at 9/9 (statement of Monsignor Tomasi).

120. ILO, 99th Session, *supra* note 106, at 9/9 (statement of Monsignor Tomasi).

121. ILO, 100th Session, *supra* note 109, at 9/34 (statement of Mr. Sandrasekera).

122. *Id.* at 9/36 (statement of Ms. Le Blanc).

in tears.”¹²³ Worker Vice-Chair of the Committee on Decent Work for Domestic Workers, Halimah Yacob of Singapore, already in 2010 had exhorted delegates to look “deep in your heart and your conscious” when voting.¹²⁴

Calls for justice at the ILC were laced with emotion. Shirley Pryce of the Jamaica Household Workers’ Association announced,

Our hearts are filled that we have reached such an historic moment. We, the domestic workers of the world, have before us the text . . . that recognizes us as workers with the fundamental rights of other workers. We have been overlooked for so long and now know that what is wrong will at last be set right.¹²⁵

Like Pryce, representatives from NGOs, including Defense for Children International, Anti-Slavery International, Migrant Forum in Asia, appealed to their own experience of abuse for the authority to speak during committee deliberations.¹²⁶ Juana Flores of NDWA, who at the 2011 ILC attended as a Worker delegate, remembered, “That was an unforgettable experience. I realized every moment that, with my voice, I was speaking for all the workers in this sector.”¹²⁷ For Flores had the honor of voting for “all the domestic workers in the United States.”¹²⁸ She contrasted her “feeling of pride” with the humiliation that her mother had felt as a servant. The ILO experience reaffirmed that “[o]ur work is of great value, and has been for centuries. People could not do their work without our help. We are as necessary as any other worker.”¹²⁹

Leaders of the IDWN deployed gendered tropes to gain legibility as workers while appealing for inclusion in universal rights that too often had been labeled as exclusively male rights. They broke through the formal apparatus of the ILO by bringing social movement tactics to its staid halls and by marching in the streets of Geneva to publicize their cause. With allies from the Swiss labor movement and various NGOs, they stood at the “Broken Chair,” a symbol of the rights of people with disabilities, in front of the United Nations Building and “unfurled” a “giant apron,” a patchwork of squares signed by workers, brought from Hong Kong.¹³⁰ They built solidarity through ending meetings by singing. They announced their presence known through wearing campaign colors and t-shirts with messages much as social movements do when entering public arenas without permission to talk. Along these lines, they deployed their bodies to express themselves in a space where non-delegates had no right to speak.¹³¹

Voicing emotions ran counter to ILO protocol but electrified the proceedings. In doing so, worker advocates deployed affect but also re-inscribed women, and domestic workers in particular, as outsiders to the standards of global governance, even as they sought inclusion in labor standards. They were

123. Jennifer Fish, International Labour Conference, field notes 2010, from Boris & Fish, *supra* note 97.

124. *Id.*

125. ILO, 100th Session, *supra* note 109, at 10/42 (statement of Ms. Pryce).

126. *Id.* at 15/12-13.

127. MATHER, *supra* note 5, at iii, 67.

128. *Id.*

129. *Id.* at 75.

130. *Id.* at 60-61.

131. Boris & Fish, *supra* note 97, at 436.

going against the rules of conduct set up by the ILO for the conduct of business and thus appeared as unruly, out of place, alien to the world of diplomacy and global civil society. But they had to appeal to the heart as well as the mind because formal channels of decision-making diminished their participation.

This use of affect to appeal to the employers of household workers, civil society, and government officials at the ILO resembled the strategy embraced by domestic worker associations in the United States, as we have seen. In the US, domestic workers appeared as outsiders in so far as they were immigrants rather than citizens, without legal standing, who had to rely on moral suasion and the fairness of their request. Claims of mutual interest—better work, better care—bolstered appeals to justice. But domestic workers in the United States also won political clout for passage of legislation in so far as state legislators represented communities where co-ethnics and allies could make the difference in electoral races. Thus, unlike the IDWN group at the ILO, domestic worker formations, like the California Domestic Worker Coalition, could find local political figures to introduce and push bills of rights formulated by the social movement. For IDWN, support of ILO officials and delegates was the closest equivalent.¹³² Such differentiation stems from institutional imperatives—the bureaucratic shape of an international body like the ILO compared to the organization of a state legislature.

XII. CONCLUSION

Should we dismiss love as a way of being and as a political strategy if we cannot overcome its association with that which is freely provided? Can emotion be a political tool to advance rights? In the political economy of the U.S., in an attempt to bring women employers onto the side of women workers, these have proven to be vital and strategic. At the ILO, appeals to the heart moved delegates.

In trying to re-signify the meaning of love away from the racialized mammy's natural feelings to a social justice goal, we must remember the historical forces that led to the conflation of the domestic with the home care worker and then separated the two by designating the home aide as an elder companion. Public policies made home care into a low waged job for poor women of color. Domestic workers might be "the oil in the wheels" of the global economy, as Tanzanian trade unionist Vicky Kanyoka reminded the 2010 ILC:

It is our work in households that enables others to go out and be economically active . . . it is us who take care of your precious children and your sick and elderly; we cook your food to keep you healthy and we look after your property when you are away.¹³³

Yet too often households took for granted that oil for their wheels as they failed to compensate more than a bare wage.

Until those providing reproductive labor are recognized in law and social policy as well as daily interactions as workers, love will not be enough. In a changing global economy, where workers and capital are mobile, and fewer employers take responsibility for labor conditions, however, law also

132. Boris & Undén, *supra* note 112.

133. ILO, 99th Session, *supra* note 106, 8/41 (statement of Ms. Vicky Kanyoka).

may not be enough. The self-organization of workers in either case has become essential in keeping their requirements for decent work before the public. By emphasizing interdependence, how we depend on each other, they have the best chance of any to break through the ideological individualism and individual blame of our day.