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LABOR LAW AND LATCRIT IDENTITY POLITICS: Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"

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SUMMARY: ... While I made a conscious effort to study domestic service from the standpoint of the workers, I found myself reflecting on the conversation with my colleague - my first encounter with the "servant problem." ... In response to data showing the lack of mobility for domestic workers and the classical reference to domestic service as a "bridging occupation," I always could expect at least one colleague to argue that the work experience in their home would result in social mobility for the domestic worker. ... This point becomes particularly important in the discussion of women of color employed in domestic service. ... In an effort to attract American workers, an attempt to professionalize domestic service by upgrading training and advocating certification was introduced as a means to improve the status, pay, and working conditions to make child care and domestic service more attractive and competitive with other occupations. ...

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I. Introduction

Before beginning my first college teaching post in 1980, I stayed at the home of a colleague who employed a live-in domestic worker. Until then, I had been unaware of the practice of hiring teenage, undocumented Mexican women as live-in household help, nor had I had access to the social or "private" space of an employer. I was struck by the ease in which this middle-class family violated the law, participated in the underground economy, and most of all, disregarded their employee's rights.

I was shocked at the way my colleague and his family treated their sixteen-year-old domestic, who I will call Juanita. Only recently hired, Juanita was still adjusting to her new environment; her shyness was reinforced by my colleague's constant flirting. I observed many encounters that served to remind Juanita of her subservient role. For example, one evening I walked into the kitchen as my colleague's young sons were pointing to dirty dishes on the table and in the sink and yelling at Juanita, "Wash! Clean!" Angry and humiliated, she glanced at me from her frozen position at the kitchen door. Aware of the risks of my reprimand,

manding the boys, I chose to suggest instead that Juanita and I would wash and dry the dishes, while the boys cleared the table. When my host returned from his meeting and found us cleaning the last pan, his expression told me how shocked he was to find his houseguest and future colleague washing dishes with the maid. His obvious embarrassment confirmed my suspicion that I had violated the normative expectations of class-based behavior within the home. n1 After excusing my behavior as one of those Chicano radicals who identify with *los de abajo* (the downtrodden), he began to relate a litany of problems he experienced when hiring Mexican immigrant women. He recalled his efforts in assisting their illegal crossing from Ciudad Juarez to El Paso and in, introducing them to the modern conveniences used to clean his house in the Country Club area. He did not feel his generosity and goodwill had been repaid because their loyalty failed to extend beyond a few months. He assured me that their failure to return to work after a weekend off was due to their interest in finding a husband.

Not long after my encounter with Juanita, I began systematic research on private household workers. n2 While I made a conscious effort to study domestic service from the standpoint of the workers, I found myself reflecting on the conversation with my colleague - my first encounter with the "servant problem." n3 The servant problem in the U.S. has always involved the shortage of workers who are willing to accept the substandard wages and working conditions frequently found in the positions they occupy. Like my colleague in El Paso, employers rarely accept their position as "employers," but rather characterize the employment of undocumented women as a domestic or nanny as "help [*1047] ing those poor Mexican women." n4 In addition, the employer-employee relationship is further denied by employers' claims that their maid is "just like one of the family." n5 However, interviews with private household workers expose a wide range of emotional, physical, and economic exploitation experienced by women of color. Frequently these forms of exploitation occur under the guise that the employee is engaging in a labor of love as a family member, rather than engage in paid labor as an employee. n6 Disguising the employee-employer relationship provides the foundation for the "servant problem" and the search for the "faithful servant."

At first, I was caught off guard when colleagues responded to my research as employers rather than as scholars, researchers, or feminists. n7 Even after I presented a detailed analysis of the personalism and asymmetrical nature of the employer-employee relationship and the relationship between the underground economy of domestic labor, legislation protecting household workers, and the substandard working conditions facing women of color, there always was one colleague who continued [*1048] to insist that her maid/nanny/cleaning woman/girl (or some version of this) was indeed "like one of the family." In response to data showing the lack of mobility for domestic workers and the classical reference to domestic service as a "bridging occupation," I always could expect at least one colleague to argue that the work experience in their home would result in social mobility for the domestic worker. This was particularly the case for employers who wanted recognition for arranging work hours that permitted their Guatemalan worker to attend classes to learn English or to drive. n8 Question-and-answer sessions turned into a defense of practices such as hiring undocumented workers for less pay than college students, not filing income taxes, paying social security, sixty hour work weeks for live-in employees, or gift-giving in lieu of raises and benefits. The recurring responses made me realize that my feminist colleagues had never considered their relationship with "cleaning women" on the same plane as those with secretaries, waitresses, or janitors; that is, they thought of the former in terms of the mistress-maid relationship. When I pointed out the contradiction, many still had difficulty thinking of their homes - the haven from the cruel academic world - as someone's workplace. While they were aware of their responsibility for paying income taxes and social security, they openly accepted the lawbreaking activity of not filing either on the basis that no one else does. Their overwhelming feelings of discomfort, guilt, and resentment, which sometimes came out as hostility, alerted me to the resistance these employers exhibit to any challenge to their "privilege" to hire household workers for such little money or benefits as the underground market will allow.

As I reflect back on these colleagues/employers' comments, I recall questions posed by anthropologist Leo Chavez in the introduction of his book, *Shadowed Lives, Undocumented Immigrants in American Society*.

Drawing from Benedict Anderson's notion of "imagined communities,"⁹ Chavez asked whether there lives an image of community in the minds of American citizens that includes undocumented immigrants as part of the larger society. Many of the workers employed in domestic [*1049] service have been left outside the other communities, including "feminism," "workers," "working mothers," and "family."¹⁰ The discourse on the "servant problem" discloses ways that communities are constructed to exclude workers on the basis of race, class, gender, and immigrant status. Furthermore, intersectionality excludes and marginalizes the majority of domestics in immigration and employment legal discourse.

This article discusses the exclusion and marginalization of women of color, namely immigrant women, from public debates surrounding household labor and childcare. Part II, offers an overview of the domestic labor debate that occurred in the 1960s and 1970s, highlighting the themes that shaped future feminist analysis on work and family. Ignoring the class difference among women, namely resources available for escaping the drudgery of household labor and aid for child care, reproductive labor was theorized as only unpaid work. Assumptions were made about the worth of monetary value in determining the status of reproductive labor rather than the intersection of gender, race, class, and citizenship. Part III, offers a brief historical account of employer dependence upon migration as the solution to the "servant problem." Building on Kitty Calavita's analysis of the relationship between the processes of lawmaking and lawbreaking, I will argue that domestic service is an occupation that borders on white-collar crime. I will also reveal how the "servant problem" represents the tension between these two processes. Part IV, is an overview of the controversy that arose over the hiring practices of Clinton's nominations for Attorney General, known as "Nannygate." The debates surrounding Nannygate highlight the consistency in the treatment of white collar crime and the relationship between lawmaking and lawbreaking. Part V, concludes with some thoughts about the intersectionality of women immigrant workers in fulfilling the needs for reproductive labor in the U.S.

II. The Domestic Labor Debate

Concern over the role of women in reproductive labor in the home and nation immediately appeared at the forefront of the feminist agenda in the 1960s. Theorizing about women's experiences, particularly the structure of gender inequality, feminists began by challenging the separate spheres of the private and the public realms that ignored the complicated relationship between family and work. Both European and U.S. feminists writings in the 1960s and 1970s addressed the politics of housework, focusing on the position of women in the family as the central [*1050] point for analyzing gender inequality.¹¹ Housework was identified as an important issue that affected women and that was crucial to understanding gender stratification. Analysis of the distribution of household labor and the value of the work performed by domestic laborers convinced many feminists that the oppression experienced by women was best symbolized in housework issues.¹² Housework determined not only women's lives in the home, but more importantly, also determined the social ideology and role expectations of women and reproduced the structure in a gendered work force.

Attention on the devaluation of women's unpaid labor in the home turned to discussions over wages for housework and the analysis of women as an economic class. These discussions were central components of what has come to be termed the "domestic-labor debate."¹³ Exploring the conversion of housework into wage labor was an attempt to unmask the relationship between women's labor and the economic system. Although the debate was engaged more fully in Italy and England, the demand of "wages for housework" influenced feminist thinking about housework in the United States. Concepts like "wageless housewives" or "unpaid household laborers" were developed to draw an analogy between women and racial minorities. Although popular [*1051] comparisons between gender and racial oppression were intended to highlight the seriousness of sexist acts and comments in everyday interactions between men and women, the analogy also devalued the experiences of women of color who suffered from both racism and sexism and relegated them to complete invisibility.¹⁴ Analogies did not take into account the fusion of racial and sexual

hierarchies. This point becomes particularly important in the discussion of women of color employed in domestic service.

Feminists who advocated in favor of wages for housework perceived wages as a solution to the low status and lack of regard for women's unpaid labor at home, n15 which has all too often been treated as an expression of women's subservient nature. n16 In an attempt to place value on reproductive labor, comparisons were made between the unpaid tasks women do in their homes with the wages workers receive when doing similar tasks in the labor market. Comparisons with workers in the labor force engaged in similar activities - cook, teacher, nurse, chauffeur, and the like - have been used to calculate the exchange value of housework. n17 Computing the monetary value of housework was an attempt to give marketplace value to homemaking activity. Economists based calculations on the accumulated market values of each household task. They concluded that housework was far from valueless but may actually be priceless. These studies impacted feminist theories about gender inequality by providing evidence (regardless of how incorrect the methods were) to support the assumption that domestic labor becomes valued when it is paid labor, and that as waged labor it also is treated as "real" work/employment. The exercise of computing the monetary value in the service sector completely erased the real experiences of women employed as private household workers. Domestic [*1052] tics engage in a wide range of reproductive labor, which include child care, cooking, and the completion of household errands; yet, the "market value" calculated by economists and other social scientists did not reflect the wage earned by these women workers nor the lack of benefits and job security. Furthermore, the domestic labor debate positioned woman as housewives; that is as heterosexual females with children, unemployed, and married to a white middle class male. Data supporting "wages for housework" were collected using research methods that completely ignored conditions in the underground economy or in the lawbreaking activities of middle-and upper-class families.

Research based on actual employment experiences of domestic workers does not support the thesis that "wages" increase the monetary or social value placed on reproductive labor, or does it elevate the status of the woman receiving the wage. n18 In the following sections, I will argue that the value and status of labor is tied to the social relations surrounding the work; that lawmaking is constructed to ignore the intersectionality of immigrant women of color who experience their race, class, gender, and citizenship differently than other workers, placing a low market value on their work and relegating them to the underground economy; and that the low risk involved in hiring undocumented women and not filing income tax or social security supports the lawbreaking activity of white collar crime committed by many employers in domestic service. An overview of the transition from servants to maids to house keepers and nannies points to a clear pattern of immigrant and women of color being employed in the most exploitative working conditions of the occupation.

III. Historical Overview of the Servant Problem

Public debates over the shortage and quality of private household workers has a long history as "the servant problem." n19 The first labor shortage occurred when men moved out of domestic service and into the factory. Operating within a seller's market, those men who remained in domestic service were criticized for their air of "independence and [*1053] insubordination." n20 As a result, employers immediately stratified workers in domestic service. They relegated immigrants and women of color to poorer working conditions, pay, benefits, and demeaning forms of social interaction. The experience of native born white women in domestic service was so distinct that Faye Dudden has argued that two different forms of nineteenth-century household service existed: help and domestics. n21 Young American born white women commonly were hired during busy times, especially harvest season, and during events that increased homemaking activity, such as illness or the birth of a child. n22 Dudden distinguished "help" on the basis that the "work was organized more around task than time," n23 and "domestic" were employed

to assist the homemaker who usually worked alongside her employee. The classification of domestic was reserved for immigrant, Black, Mexican, American Indian, and Asian men and women.

The industrial expansion of the late nineteenth century increased employment options for women. Just as male servants turned to new occupations, women also left domestic service as soon as the job market expanded. With other options available, young women were unwilling to submit to the long hours, lack of privacy, drudgery, and lack of mobility that characterized domestic work. n24 On average, domestics worked two or more hours longer than other working women and many worked seven days a week. David Katzman estimated that "nearly all domestics in the nineteenth century worked at least ten hours a day, with a full working day averaging eleven to twelve hours." n25 Live-in domestics found it especially difficult to place limits on the length of the work day. Industrialization brought on a shortage of household workers and began a general decline in domestic service in the United States. In 1870, fifty percent of women employed were servants and washerwomen.

By 1900, domestic service only accounted for one-third of all [*1054] employed women. n26 The major feature of domestic service in the twentieth century has been a continuing labor shortage. Julie Matthaei noted that in 1900, there were 95.6 female servants per one thousand families; by 1960 the number had dropped to 33.3. n27 The structure of work itself underwent changes as the middle class joined in the ranks of those "keeping servants." Unlike the aristocracy, the middle class could not afford to employ large a staff. Instead, middle-class homes were staffed with fewer servants or, more commonly, one "maid-of-all work." n28 Increased work loads placed upon fewer servants living in smaller quarters intensified master-servant relations. Household servants differed from their predecessors because they "were hired to supplement or take over what were considered the wives' responsibilities and during this period middle-class wives came to have primary responsibility for the hiring, department, and work assignments of servants." n29 Domestics were reduced to unskilled labor, and they were subjected to constant supervision. They became increasingly replaceable because all they brought to the relationship was their ability to perform general work and not particular skills.

World War I and its aftermath brought a general prosperity, thereby improving working conditions and opening employment opportunities for women. The war also slowed immigration, thus reducing the pool of women available for domestic service. Between the turn of the century and 1920, the percentage of employed women who worked as domestics had been cut in half to sixteen percent. Perhaps the Depression caused the figure to increase slightly to twenty percent over the next decade. n30 As always, domestic work attracted women with few employment options. For those women, the shortage of household workers provided an opportunity to regain a measure of autonomy. A seller's market [*1055] offered some leverage for changing the most oppressive aspects of the occupation. Furthermore, the rights gained by workers in the manufacturing and service economy established expectations that benefitted domestic workers in their negotiations. The most significant change resulting from the burgeoning labor market was the reduction of work hours and the shift to day work. This shift was eased by increased urbanization which permitted domestics to travel daily to and from work.

The labor shortage created a less docile work force, which led homemakers to complain about the laborer's attitude or quality of work as the "problem." A good domestic worker was expected to be the faithful servant, sacrificing her own family and personal life for her employers. Homemakers lamented the passing of the days when they had more control over the domestics in their employ. Commenting on the ambiguous meaning of the "servant problem," George Stigler wrote, "Does it mean - as one often suspects - that a good servant cannot be hired at the wage rate one's parents paid? ... Or does it mean that the market mechanism does not work - that the offer of the going rate of wages does not secure a servant because servants do not move to the highest bidder?" n31

Two of the most commonly supported solutions to the "servant problem" have been immigration and training. n32 Middle-class women stepped up efforts to professionalize homemaking and industrialization

created a shortage of household workers. Training and certification were offered as a solution to the "servant problem;" this approach was believed to upgrade housework to skilled labor, elevate the status of household workers, increase wages, and improve opportunities for social mobility. However, training did not change the occupation or assist in moving women into better paying jobs. As one 1940s report found, "domestic workers with special training for their jobs received no higher wages than those without it... It may therefore be concluded that the wages of household workers are determined by forces largely beyond the control of the workers themselves." n33 Schools established in response to unemployment during the Depression and later in the 1960s as part of the job training offered to the poor did not succeed in professionalizing domestic service. While immigration provided immediate relief to shortages of workers, employers complained about the quality of foreign workers unfamiliar with American culture. In addition, immigration did not provide a steady flow and reliable source of cheap labor.

[*1056] Neither immigration nor training are solutions that address the reasons for workers opting to leave the occupation or avoid it at all costs. Immigration and upgrading worker skills does not improve pay, decrease hours, address issues of loneliness and the lack of privacy on the job, reduce supervision, loosen tightened job descriptions, or eliminate the demeaning mistress-servant relationship. Because workers' concerns are disregarded or omitted during public debates over labor shortages, improving the working conditions has not surfaced as a component of the "servant problem."

The legal system has been extremely slow to respond to the needs of domestics by consistently excluding them from labor legislation. Domestics were not covered by federal minimum laws until 1974. The new coverage also included time and a half overtime pay after forty hours. n34 However, not all household workers were included under the protection of the minimum wage and overtime provisions. Exceptions were made for under employed workers (less than eight hours a week and earning less than \$ 50 per calendar quarter), live-in maids, and home care workers. n35 Five years later, the Department of Labor reported high rates of noncompliance and summarized the reasons as ignorance of the law, employee willingness to work for less, and workers' understating earnings and over reporting actual hours worked. n36 Because the Department of Labor did not engage in an information campaign to inform employees of the law, the processes of lawmaking and lawbreaking were established as low risk white collar crime.

The next section presents the most recent public debate on the "servant problem," commonly referred to as "Nannygate". Placing the controversy within the historical context of the "servant problem" highlights the continued practices of structuring immigration law and labor law to benefit employers rather than employees. When President Clinton's first two women nominees for Attorney General were questioned about their childcare arrangements, their advocates argued from a feminist position that male nominees were not questioned regarding the issue. Outrage against the nominees' hiring of undocumented women became characterized as a class distinction of lawbreaking and the leniency of the government towards white collar crime. In addition, the inadequate child care services became blurred with issues surrounding class privilege of the upper-middle class hiring live-in undocumented women to resolve [*1057] their child care needs. As in past debates over the servant problem, the discourse was dominated by employers who requested that solutions be sought through changes in immigration legislation and professional training. Again, proposed solutions offered little in the way of improving actual working conditions for women employed in domestic service.

IV. Nannygate: A Continuation of the Servant Problem

Nannygate involved two issues: 1) the hiring of an undocumented worker during a period when it was illegal for an employer to do so; and 2) the failure to pay taxes. n37 However, as in the case of Kimba Wood and other potential nominees, "the Zoe Baird problem" became known as the hiring of undocumented household workers or not filing income taxes and social security on behalf of the workers. The public debate that ensued not only revealed a great deal about social norms and values relating to

gender and work, but it also brought to light the disregard for these same issues when race, ethnicity, and citizenship was submerged under the topic of immigration. Public opinion clustered around two sentiments, one emphasizing gender and the other emphasizing class. Gender politics were advocated by Baird supporters who cited a double standard. For instance, Kathleen Brown, the Treasurer of the State of California, remarked that, "For every man who has ever been confirmed to a Cabinet position, there has never been the notion of disclosure of his housekeeping arrangement, much less how much time he spent with his child." n38 Class politics characterized Nannygate as a "Yuppie" crime and resented attempts to sweep it under the rug. For instance, a forty-five-year old assistant manager at a pet store in Washington was quoted as the typical attitude of the average American: "She (Baird) thought she could do something illegal and get away with it... I don't think it's fair. I raised my kids while I was working, I worked days. My husband worked nights at the post office. Our in-laws filled in when they had to. This makes me mad." n39 Gender politics constructed its response to the issue of white collar crime by arguing that [*1058] the law was frequently violated and rarely enforced. n40 It was enforced in this case to discriminate against women, namely working mothers. Furthermore, they argued that Baird really did not do anything wrong because the law was out of step with the needs of the nation.

Interests expressed in the Nannygate scandal mirrored previous publicity over "the servant problem." Proposed solutions focused on increasing the number of eligible workers. In an effort to attract American workers, an attempt to professionalize domestic service by upgrading training and advocating certification was introduced as a means to improve the status, pay, and working conditions to make child care and domestic service more attractive and competitive with other occupations. n41 Embedded in the professionalization solution was an attack on immigrant workers as the source of the poor working conditions and low wages in domestic service. For instance, one commentator claimed that "without the wide use of illegal immigrants, the salaries of domestic workers would have risen over recent years. Domestic work might have become increasingly professionalized, with special schools for it, as has been the case in Britain and elsewhere." n42 He concluded with the claim that "what has happened is that illegal immigrants, for whom standard American wages are vastly higher than what they could earn in their own countries, have flooded the market, kept wage levels low and enabled employers to avoid the cost of employee benefits." n43 However this claim easily is rebutted simply by considering the experiences of women of color, particularly African-Americans, Latinas, Asians, and Native Americans. n44 As U.S. citizens, they experience the lowest salaries in their occupations and the worst working conditions. Rather than hold employers responsible for maintaining poor working conditions and pitting workers against each other, the blame was shifted to the [*1059] workers. In addition, training and certification as a solution to Nannygate ignored the realities of the market - even the agencies that trained and certified nannies were involved in hiring undocumented women.

The major avenue to increasing workers was through immigration. Several proposals emerged that outlined changes needed to shape immigration law around the needs of employers. Proposed changes included revisions of the unskilled worker visas, the H-2B non-immigrant visa, and the J-1 exchange visitor visa. Modifications were proposed for increasing the number of immigrants eligible for work visas, changing the temporary classification, and reducing the lengthy labor certification process. n45 Although many of the proposals argued that immigration changes and training programs benefitted nannies and domestics, worker concerns were not central to the discussion. In the debates, workers were identified only in terms of their citizenship and legal status. As Kevin Johnson and Stephanie Wildman have noted, legal terminology and language was frequently used to create nonpersons and invisibility. n46

Public debates never included nannies and domestics class and gender identity politics. The press did not inquire about the type of employer Zoe Baird was. Lillian Cordero, the nanny, was deported immediately. Outrage over failure to pay social security existed because Zoe Baird broke the law, not because she violated workers' rights. The class and gender dynamics of Nannygate were carefully constructed to exclude the workers involved. This was done by exclusively defining class and gender as a white issue and

limiting discussions of race and ethnicity to immigration. n47 Nor did immigration proposals address workers' grievances; they were shaped with employers in mind. n48 Advocates for Zoe Baird and Kimba Wood denounced the unequal treatment of working mothers in the confirmation hearings by pointing to the unrealistic employer sanctions, but few acknowledged that differential enforcement of immigration policy as political. n49 Undocumented private [*1060] household workers always have been used as pawns in employers' personal fights, whether they be feuding neighbors or rival politicians. n50 Gender politics did not inquire into why women immigrant workers were targeted. n51 Nominees could easily have been asked about the hiring practices of gardeners.

The proposed remedies appear quite different if looked at from the perspective of the employee. If one examined the situation from the "bottom up," workers' issues would be addressed rather than seen as simply an immigration problem. A workers' perspective would not suggest training, certification, and more supervision. Rather, it would suggest higher wages for workers n52 and enforcement of federal employment law. Employers will continue to hire undocumented workers as long as they remain cheap labor and the enforcement of sanctions remains lenient. n53 Workers' complaints about conditions shed light on the attractive nature of hiring undocumented labor, particularly as live-in help. n54 For instance, embedded in the proposals is the assumption that employers hire a live-in nanny or au pair only to provide child care. Mike Bailey, owner of the Child Care Connection in Northridge, California, described the typical request: "I want a nanny who's energetic, clean and neat, can cook and clean, speaks English, is available before I go to work and after I get back home'. That means arriving at 6 a.m. and staying till 10, and they're expected to be on call the rest of the evening. 'And oh, by the way, we want to pay her \$ 100 a week.'" n55 In another case, Nancy [*1061] Cervantes, a volunteer employment-rights attorney working with CHIRLA (Coalition for Humane Immigration Rights of Los Angeles) described the working conditions of one client who was treated like chattel. "Concepcion" worked eighteen months in a household of five adults and three children. She was responsible for all their cooking, cleaning, washing, and child care. Her day began at 6:00 a.m. and ended well past midnight, six days a week, for \$ 100 a week. n56 Concepcion's situation is more typical than unique and highlights important issues that make the work unappealing to workers with other options. n57

Workers' complaints challenge the assumption that employers are actively seeking workers who are citizens. The nature of these complaints demonstrates that employers instead are seeking workers who are non-citizens and have an undocumented status. Behind Zoe Baird's use of the Peruvian couple and the case of Concepcion lies the reason that day care centers are not as good a solution to upper-middle-class parents who can afford to hire "help." Employers prefer workers who are available all the time, can accommodate the employer's schedule, and are willing to undertake the wide variety of tasks connected to childcare and maintaining a household. Because day care centers are not open twenty-four-hours-a-day, they force parents to maintain regular hours. As in the case of Zoe Baird, Aetna offered employees a variety of options to assist in child care, including a day care center, but none of these options provided the privileges found in home child care. n58 As one immigration advocate has stated, employers are "turning to illegal exploitation because it's too inconvenient to let wages go up. People think they are entitled to quality in-home care for dirt-ball wages... That's got to stop." n59 Changes in immigration legislation will not reduce the attractiveness of undocumented workers. Only when undocumented workers are first treated on the basis of their status as employees, rather than their [*1062] immigration status, can the servant problem be addressed in a way that respects human rights before the rights of employers.

Much of the opposition to Zoe Baird was clearly a form of class conflict. It was an expression of working-class and lower-middle-class anger toward what was perceived as a "Yuppie"-class privilege. Rather than identifying with the larger issue impacting working mothers, child care was defined as an elite-class issue involving live-in nannies. The controversy completely ignored the realities of the working poor, working class and lower-middle class. Although child care options for these classes are limited by finances, they too face overtime and long commutes to and from work, making day care center options less than adequate.

However, in the Zoe Baird dispute, child care was defined as an isolated issue that affected wealthy lawyers and politicians: The universal issue of child care was ignored. Affordable child care remains a private and family problem rather than a public issue requiring a public solution. Upper-middle-class families can afford the personalized service to work around the limited child care options in this country. Opposition to Baird and Wood appeared to be class based. It looked like working and lower-middle-class workers resented the leniency towards "Yuppie" crime. However, class interests were defined on racial grounds, thereby excluding the violation of the rights of working-class immigrants and women of color who were denied social security and other benefits. Instead, the workers' issues were treated as simply an issue of immigration status.

V. Conclusion

The role of employers continues to be a major component in upgrading the domestic service occupation because household labor negotiations frequently occur within the underground economy and involve few government regulations. Consequently, employers have enormous leeway in determining working conditions, setting wages, establishing job descriptions, and determining the work structure. Recent studies reveal that household workers report a wide variation in wages and working conditions. Employers decide whether to give raises, and they usually decide if social security or benefits are obtained. Domestic workers have little influence over their working conditions other than the choice to accept the job or quit. Given the power that employers exert over working conditions domestic workers feel dependent on and at the mercy of their employers more than other workers. For most domestic workers, the occupation continues to be regulated by community norms and values that determine informal labor arrangements made between a private [*1063] household worker and her employer. n60 Pierrette Hondagneu-Sotelo argues that upgrading working conditions in the occupation weighs heavily on educating employers and state support. n61

Latina domestic workers propose an interesting case for several areas of critical race theory, particularly the intersection of race, class, gender, immigration, and citizenship status. As an occupation that always has been dominated by the most vulnerable worker in an area, one is not surprised to find that the image of the Black woman toiling in the kitchen, cleaning the house, and caring for her employer's children has now been replaced largely by an image of Spanish speaking immigrant woman. Like the case of Juanita in El Paso, poor and working-class (and sometimes middle-class) Latina immigrant women find an open market for their services as maids and nannies in homes throughout the country. However, marked by their class, race, ethnicity, gender, and immigrant status, these women are employed in a segment of the occupation that has low wages, long hours, and additional work that includes both housework and childcare. Additionally, many face isolated live-in conditions in this facet of the underground economy. The intersection of statuses make Latina immigrant women ideal candidates for fulfilling the needs of American families; not only are they less expensive than employees hired by agencies, but they are more easily exploited for additional work, and need not be provided any benefits. They also provide the social markers that distinguish the worker from other household members. Focusing on the intersection of statuses is crucial because many social scientists, politicians, and members of the general public have argued that the poor working conditions of the occupation can be attributed to the workers themselves. Throughout the history of domestic service in this country, this attitude has dominated and has resulted in attempts to professionalize the occupation rather than improve the working conditions for domestic workers. This history also includes systematic exclusion from employment legislation, as well as attempts to gain special provisions for bringing a specific class of immigrants to work as domestic workers and nannies. n62 Concern about improving the working conditions of domestic workers and nannies has been abated by [*1064] social scientists who have characterized the occupation as a vestigial form of feudalism and predict its disappearance in modern society. However, signs to the contrary are visible throughout the United States: the riders of color on public transportation in affluent white neighborhoods, women of color (frequently in white uniforms) in parks caring for white children, and the portrayal of women in the media as domestic workers (usually in the form

of walk-on scenes in film or in the case of the Salvadoran maid in the O.J. Simpson trial). Proposals to address the "servant problem" that focus on immigration law maintain exploitative working conditions. Unless proposals include both safeguards for both undocumented and documented immigrant workers and mobility to better positions in, as well as outside, domestic service, the "servant problem" will continue to reflect the worker's struggle for a better life.

FOOTNOTE-1:

n1. Advice given to masters at the rise of industrialization could certainly have applied to the live-in conditions I confronted in El Paso and in many contemporary situations:

To be on familiar terms with one's servants shows the cloven foot of vulgarity ... Encourage your servants now and then by a kind work, and see that they have good and wholesome food, clean and comfortable quarters. Once in awhile give them a holiday, or an evening off, a cash remembrance at Christmas, and from time to time some part of your wardrobe or cast-off clothing. They are just like children, and must be treated with the rigor and mild discipline which a schoolmaster uses toward his pupils.

Russell Lynes, How America "Solved" The Servant Problem, *Harpers Magazine* at 50 (1963). For other examples of publications aimed at Latina domestics, see Gladys Hawkins, *Your Maid from Mexico*; Linda Wolf, *Tell-A-Maid*; Apron Pocket Press; *Home Maid Spanish*. Currently we do not find books on folkways, mores, norms, values and racial etiquette governing domestic service in the United States; however, occasionally, editorials and magazine articles offer do's and don'ts and other helpful hints to working women seeking household workers, including nannies. See Danielle Crittenden, *The Servant Problem, No Longer Just the Lament of the Rich, Now It's Every working Mother's Nightmare*, *The Women's Q.* (1997).

n2. See Mary Romero, *Maid in the U.S.A.* (1992). See also Not Just Like One of the Family: Chicana Domestics Establishing Professional Relationships With Employers, in *Feminist Issues* 10 (1990); Chicanas Modernize Domestic Service, 11 *Qualitative Soc.* (1988). "I'm Not Your Maid! I am the Housekeeper.": The Restructuring of Housework and Work Relationships in Domestic Service, in *Experiences of Gender: Color, Class and Country* (Gay Young & Bette Dickerson eds., 1994); Chicanas and the Changing Work Experience in Domestic Service, in *Maid in the Market: An International Perspective* (Sedef Arat-Koc & Wenona Giles eds., 1994).

n3. See Linda Martin & Kerry Segrave, *The Servant Problem: Domestic Workers in North America* (1985).

n4. The cult of domesticity offered middle-class women opportunities to practice "good works" without leaving their own homes by engaging in "home missionary work" with their servants. Helen Munson Williams' papers stated that one objective of the project was "to restore the right relationship between classes, and to bring them nearer to each other in the ways appointed by God and nature." Faye Dudden, *Serving Women: Household Service in Nineteenth-Century America* (1983). Application of the cult of domesticity in the lives of Chicana and Mexican immigrant women can be found in the programs developed under the WPA. See Sarah Deutsch, *No Separate Refuge Culture, Class and Gender on an Anglo- Hispanic Frontier in the American Southwest, 1880-1940*, 182 (1987).

n5. One of the earliest critiques of the employer's claim was written by Alice Childress in her depiction of an African-American day worker named Mildred. The conversations were first published in Paul Robeson's newspaper *Freedom* under the title "Conversations from Life" and later in the *Baltimore Afro-American* as "Here's Mildred." A collection of her writings were later published in *Like One of the Family: Conversations from a Domestic's Life* (1986). For a brilliant analysis of Childress's character, Mildred, see Trudier Harris, *From Mammies to Militants* 111-34 (1982).

n6. See Romero, *supra* note 2, at 123-133 (discussing emotional labor); see also Julia Wrigley, *Other People's Children* (1995); Judith Rollins, *Between Women: Domesticity and their Employers* (1985); Evelyn Nakano Glenn, *Issei, Nissei, War Bride: Three Generations of Japanese American Women in Domestic Service* (1986); Bonnie Thornton Dill, *Making Your Job Good Yourself*, in *Women and the Politics of Empowerment* (Anne Bookman & Sandra Morgen eds., 1988); Shelle Colen, "Just a Little Respect": West Indian Domestic Workers in New York City, in *Muchachas No More: Household Workers in Latin America and the Caribbean* (Elsa M. Chaney and Mary Garcia Castro, eds., 1989).

n7. At the time, I thought employers emerged in the oddest places as journal reviewers for papers I submitted to women's studies and sociology journals and at professional conferences. Academicians reviewing my submissions wrote their comments from the perspective of an employer rather than engaging in the issues of gender, race, and class analysis of work and family. I observed similar responses to other scholars of color analyzing employee and employer relations. Researchers focusing solely on domestic associations or domestic service in the immigrant experience were less likely to be confronted by academicians speaking from the position of an employer.

n8. English speaking abilities open up possibilities for domestics who can frequently negotiate higher pay than monolingual Spanish speakers or other non-English speakers. Driving, and having a driver's license also increase the wage scale for workers because they can do errands for their employer, along with the cleaning and child care. However, these skills by themselves do not necessarily assure the worker's mobility outside domestic service or the underground economy. But, both skills do expand the range of domestic tasks the worker can do for the employer's family.

n9. "In the minds of each lives the image of their communion... It is imagined as a community, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship." Benedict Anderson, *Imagined Communities* 15-16 (1983).

n10. See Gerald P. Lopez, *The Work We Know So Little About*, [42 *Stan. L. Rev.* 1, 1 \(1989\)](#) (noting how the plight of immigrant women employed as domestics reflects the larger society).

n11. See Juliet Mitchell, *Women's Estate* 14 (1971). In her classic essay, Della Costa, summarized the position commonly held by feminists: "all women are housewives, and even those who work outside the home continue to be housewives ... [It] is precisely what is particular to domestic work ... as quality of life and quality of relationships which it generates, that determines a woman's place wherever she is and to which ever class she belongs." Della Costa, *Women and the Subversion of Community*, in *Radical America* 6 (1972).

Similarly, Nona Glazer argued that domestic labor is "central to understanding women's continued subordination in both advanced capitalist and socialist societies, and that women's assignment to housework and child care (whether or not given women ever actually do the work involved) structures women's lives outside the household." Nona Glazer, *Everyone Needs*

Three Hands: Doing Unpaid and Paid Work, in *Women and Household Labor* (Sarah Fenstermaker Berk ed., 1980).

n12. As Ann Oakley professed, "a study of housework is consequently a study of women's situation." Ann Oakley, *Women's Work* 9 (1974).

n13. See Paul Smith, *Domestic Labour and Marx's Theory of Value*, in *Feminism and Materialism: Women and Modes of Production* (Annette Kuhn and Ann Marie Wolpe eds.); John Harrison, *The Political Economy of Housework*, 4 *Bull. of the Conf. of Soc. Economists* 35-51 (1973); Wally Secomb, *The Housewife and Her Labour Under Capitalism*, 83 *New Left Rev.* 3-24 (1974); Lise Vogel, *The Earthly Family*, 7 *Radical Am.* (4-5) 19-50 (1973); Ira Gerstein, *Domestic Work and Capitalism*, 7 *Radical Am.* (4-5) 101-28 (1973); Jean Gardinar, *Women's Domestic Labour*, 89 *New Left Rev.* 47-57 (1975); Jean Gardinar, et al, *Women's Domestic Labour*, 4 *Bull. of the Conf. of Soc. Economists* (2) 1-11 (1975); S. Hiimmmlweit & S. Mohun, *Domestic Labor and Capital*, 1 *Cambridge J. of Econ.* 1, 15- 31 (1977); M. Coulson, et al., *The Housewife and her Labour Under Capitalism: A Critique*, 89 *New Left Rev.* 559, 559-71 (1975); I. Gought and J. Harrison, *Unproductive Labour and Housework Again*, 3 *Bull. of the Conf. of Soc. Economists* (1) 1-7 (1975); Terry Fee, *Domestic Labor: An Analysis of Housework and Its Relation to the Production Process*, 8 *Rev. of Radical Pol. Econ.* 1-17 (1976).

n14. Feminist legal scholars writing Critical Race Theory have written extensively on the exclusions and marginalization of women of color. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. Chi. Legal. F.* 139; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, [43 *Stan. L. Rev.* 1241 \(1991\)](#); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, [42 *Stan. L. Rev.* 581 \(1990\)](#); Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 *N.Y.U. Rev. L. & Soc. Change* 607 (1993-94).

n15. See Mariarosa Dalla Costa, *Women and the Subversion of Community*, 6 *Radical America* (1) 67-102 (1972).

n16. See Silvia Federic, *Wages Against Housework*, in Ellen Malos, *The Politics of Housework* 221 (1980). "In a society in which money determines value, women are a group who work outside the money economy. Their work is not worth money, is therefore valueless, is therefore not work, can hardly be expected to be worth as much as men, who work for money." Margaret Benson; *The Political Economy of Women's Liberation*, in Malos, *supra*, at 121.

n17. This economic perspective suggested a strategy for reducing the stigma of housework that transcended semantic changes, such as referring to housewives as domestic engineers.

n18. Reported wages are below estimates suggested in studies generated by calculating market value in the service sector by specific tasks. Research findings indicate variation by region and appear to reflect a number of influences in the market that increase or decrease the pool of undocumented workers employed in the underground economy. See Pierrette Hondagneu-Sotelo, *Regulating the Unregulated?: Domestic Workers' Social Networks*, 41 *Soc. Problems* 58-59 (1994). See also Romero, *supra* note 2, at 170.

n19. See Martin & Segrave, *supra* note 3; see also George Stigler, *Domestic Servants in the United States: 1900-1940*, in *Occasional Paper No. 24*, at 36 (New York, National Bureau of Economic Research 66).

n20. See Pamela Horn, *The Rise and Fall of the Victorian Servant* 7-9 (1975) (noting that the choice to leave domestic service was not always voluntary and pointing out that Lord North levied a tax against "keeping male servants" in 1777 in order to force more men into the factories).

n21. See Dudden, *supra* note 4, at 44.

n22. See Samuel McKee, *Labor in Colonial New York, 1664-1776* (1935). Glenna Matthews described housewives in colonial America homes as being "in charge of a team that kept the household supplied and functioning. Many housewives had help from a 'hired' girl even if they had no full-time servants, and they could count on regular assistance from their own family." Glenna Matthews, *Just a Housewife: The Rise and Fall of Domesticity in America* 3 (1987).

n23. Dudden, *supra* note 4, at 39.

n24. See David Katzman, *Seven Days a Week: Women and Domestic Service in Industrializing America* (1981).

n25. *Id.* at 111.

n26. See *id.* at 271.

n27. See Julie Matthaei, *An Economic History of Women in America: Women's Work, the Sexual Division of Labor and the Development of Capitalism* 282 (1982). Regardless of the introduction of modern conveniences, the shift from live-in to day work, or the eight hour day, domestic service remains undesirable work and only women without other options enter the occupation. George Stigler commented on the degree of concern the shortage caused: "Indeed one can hardly escape one or both of two references from the perennial complaints about the servant problem: either domestic service is a disappearing occupation or rivals the weather as a major conversational subject." Stigler, *supra* note 19, at 1.

n28. Maids-of-all-work translated into working alone on the job. Their isolation was worsened by being treated invisible. Domestic workers complained of loneliness even when they were surrounded by people in their employer's home.

n29. See Rollins, *supra* note 6, at 35. See also Theresa McBride, *The Domestic Revolution: The Modernization of Household Service in England and France, 1820- 1920* (1976) (analyzing the middle-class acquisition of household servants as a significant factor in establishing the housewife as "the mistress of servants ... because it represented a clear concession of sphere of power which was specifically female").

n30. See Katzman, *supra* note 24, at 271.

n31. Stigler, *supra* note 19, at 36.

n32. See Martin & Segrave, *supra* note 3, at vii.

n33. G. Fox, *Women Domestic Workers in Washington, D.C.*, 349 *Monthly Rev.* 54 (1942).

n34. See Martin & Segrave, *supra* note 3, at 131.

n35. See *id.* at 135.

n36. See *id.* at 148. Martin and Segrave note that domestic workers, like most workers, are highly unlikely to choose to work for less pay. Rather, they are forced to accept lower wages. The third factor noted is that the Department of Labor basically accuses domestic workers of lying about their working conditions.

n37. See Cecilia M. Espenosa, *The Illusory Provisions of Sanctions: The Immigration Reform and Control Act of 1986*, 8 *Geo. Immig. L.J.* 343 (1994); Kathleen A. DeLaney, *A Response to "Nannygate": Untangling U.S. Immigration Law to Enable American Parents to Hire Foreign Child Care Providers*, [70 *Ind. L.J.* 306](#); M. Isabel Medina, *In Search of Quality Childcare: Closing the Immigration Gate to Childcare Workers*, 8 *Geo. Immig. L.J.* 161 (1994); Suzanne Goldberg, *In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws*, 3 *Yale J.L. & Feminism* 100 (1990).

n38. *Some Perceive a Double Standard for Male, Female Nominees*, *Star Tribune*, Feb. 7, 1993.

n39. See Felicity Barringer, *What Many Say About Baird: What She Did Wasn't Right*, *N.Y. Times*, Jan. 22, 1993, at A10 (arguing that Baird only acted like a mother: "I think she probably put the priority of her child first. I can't condemn her for that").

n40. See Clifford Krauss, *Nominee Pays Fine for Hiring of Illegal Aliens*, *N.Y. Times*, Jan. 7, 1993, at 15.

n41. See, e.g., Theresa Monsour, *Minnesota, the Land of 10,000 Nannies, Where Women Sought for Work Ethic*, *St. Paul Pioneer Press*, Feb. 1, 1993, at 1B, 4B (describing the students of Red Wing/Winona Technical College, highlighting wonderful working conditions, including traveling all over the country and the world and gym equipment in their apartment-sized private living area). See also Anna Quindlen, *Justice is Blind: Kimba Wood and the Sins of Zoe Baird*, *N.Y. Times*, Feb. 7, 1993 ("One reason the employment pool may include so many foreign workers is that in many other countries the care of children is an honorable profession. In America, it is treated like scut work.").

n42. Lawrence E. Harrison, *If Domestic Work Paid Well*, *N.Y. Times*, Jan. 31, 1993, at F11. Similar arguments are also made by other lawyers. See Jerome B. Ingber, *Create a 'Nanny Visa' to Help Meet U.S. Child Care Needs*, *St. Paul Pioneer*, Feb. 16, 1993.

n43. Harrison, *supra* note 42, at F11.

n44. See Rollins, *supra* note 6; Glenn, *supra* note 6; Romero, *supra* note 2; Hondagneu-Sotelo, *supra* note 18; Leslie Salzinger, *A Maid by Any Other Name: The Transformation of "Dirty work" by Central American Immigrants*, in *Ethnography Unbound: Power and Resistance in the Modern Metropolis* 139-60 (Michael Buraway et al., eds., 1991).

n45. See DeLaney, *supra* note 37, at 306.

n46. See Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of NonPersons*, 28 *U. Miami Inter-Amer L. Rev.* 264 (1996); Stephanie M. Wildman, *Privilege Revealed: How Invisible Preference Undermines America* 9 (1996).

n47. See Ontiveros, *supra* note 14, at 618.

n48. Analysis of the IRCA application to conditions of undocumented workers employed in domestic service clearly demonstrates the lack of benefits these workers will receive and does not serve as an incentive for employers to increase wages or provide benefits. See Goldberg, *supra* note 37, at 79; Diana Vellos, *Immigrant Latina Domestic Workers and Sexual Harassment*, [5 *Am. U. J. Gender & Law* 407, 427](#) (1990); Nancy Ann Root & Sharyn A. Tejani, *Undocumented: The Roles of Women in Immigration Law*, [83 *Geo. L.J.* 605, 615](#) (1994).

n49. However, unlike workers, the employer does not face deportation or suffer the crisis of unemployment.

n50. See Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, [1993 B.Y.U. L. Rev. 1139, 1218-41](#) (discussing the use of immigrants in political debates).

n51. Although all undocumented workers are vulnerable to discrimination because of their limited employment options, fear of deportation, limited English skills, and ignorance of legal rights, the burdens of discrimination fall hardest upon women. Immigrant women, many of whom are undocumented, often work in conditions that are far worse than, and for wages that are below, those offered to immigrant men or nonimmigrants.

Ontiveros, *supra* note 14, at 618.

n52. See *id.*

n53. See Peter Margulies, *Stranger and Afraid, Undocumented Workers and Federal Employment Law*, 38 DePaul L. Rev. 553, 554 (1989).

n54. See U.S. Agencies Look Other Way on Domestic Help, *Wash. Post*, Feb. 14, 1993; Mary Poppins Speaks Out, *Newsweek*, Feb. 22, 1993, at 66-68. Five problems identified were: (1) employers' low regard for domestic labor and childcare; (2) employers' refusal to pay a decent wage and over time; (3) long hours; (4) hard work; and (5) no benefits. See David Rosenbaum, *No Pensions, No Unemployment, No Compliance: Usually the Illegality in Domestic Work is Benefits Denied*, *N.Y. Times*, Jan. 1, 1993.

n55. See *The Parent Rap: It's Hard to Follow the Law and Easy to Get Good, Illegal Child Care*, *Newsweek*, Feb. 1, 1993, at 34-37. See also Carla Marinucci, *Domestics Tell of Virtual Slavery: 7-day Weeks and Demand for Sexual Favors by Bosses*, *S.F. Examiner*, Jan. 11, 1993, at A1; Carla Marinucci, *Immigrant Abuse: "Slavery - Pure and Simple"*, *S.F. Examiner*, Jan. 10, 1993, at A1.

n56. See *Mary Poppins Speaks Out*, *Newsweek*, Feb. 1, 1993, at 66-68.

n57. For further discussion on immigration law and the impact on undocumented women, see Root & Tejani, *supra* note 48. For specific impact of IRCA, see Grace Chang, *Undocumented Latinas: The New Employable Mothers in Mothering Ideology, Experience, and Agency*, 259-85 (Evelyn Nakano Glenn, Grace Chang, et al. eds, 1993) The case of household workers sponsored by an employer for an immigrant visa is a long process and one that lends itself to ample opportunities for exploitation. See Vellos, *supra* note 48; Medina, *supra* note 37.

n58. "Some employees do not want to bundle up their children on cold winter mornings before sunrise for a long commute to a center. Others have work schedules that make it impossible for them to pick up their children when required by the centers. And then there is the simple fact that many higher-paid employees with demanding schedules will often choose in-home care, because it means they don't just get their children diapered, but their houses tidied as well." Cindy Skrzycki, *Baird's Firm Offered Better Child-Care Deal than Most*, *Star Tribune*, Feb. 7, 1993, at 29A.

n59. *Id.*

n60. For the definition of the informal sector, see Alejandro Portes, *The Informal Sector VII Review* 157 (1983), which applies to the current condition in domestic service. "It is work that is unstandardized, and unorganized, requires no formal training and from which employees may be fired for lack of cause. Its workers are not included in the protective legislation

covering wages, illness, accidents or retirement. And its labor is far more 'elastic'; hired in good times and discharged during bad; hired for unspecified periods and fired without notice." *Id.*

n61. See Pierrette Hondagnue-Sotelo, *Affluent Players in the Informal Economy: Employers of Paid Domestic Workers*, 17 *In'l J. Soc. & Soc. Pol'y* 130.

n62. For instance, one such denied was proposed with the Bracero Program in El Paso. See *El Paso Wives Appeal Ruling Barring Maids*, *El Paso Herald Post*, Nov. 18, 1953, at 13.