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DOMESTIC WORKER ORGANIZING: BUILDING A CONTEMPORARY MOVEMENT FOR DIGNITY AND POWER

Hina Shah & Marci Seville***

We have read in history books and other books about slavery of long ago, but the way the housemaids must work now from morning till night is too much for any human being. I think we girls should get some consideration as every other labor class has, even though it is housework (‘Fifteen weary housemaids’ to Mrs. Roosevelt, February 1938 . . .).¹

With the passage of this International Convention and Recommendation, I am emotional thinking of all of the domestic workers—their sweat, their hard work, the abuses they’ve endured—and I myself have lived this experience. Today, at a global level, the work of cleaning houses, caring for children, the elderly, and disabled is recognized as work—work like any other. (Juana Flores, domestic worker delegate to the International Labour Conference, June 16, 2011).²

I. INTRODUCTION

In the past decade, domestic workers have created a robust worker movement and sustained organizing in states like New York

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¹ PHYLLIS PALMER, DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES, 1920–1945 73 (1989).

² Nat’l Domestic Workers Alliance, *Domestic Workers Win Global Recognition with the Adoption of the ILO Convention for Domestic Workers*, JOBS WITH JUSTICE BLOG (June 16, 2011), <http://www.jwjb.org/2011/06/domestic-workers-win-global-recognition-with-the-adoption-of-the-ilo-convention-for-domestic-workers/>.

and California, as well as nationally and internationally.³ Their labor has borne fruit in the passage of the New York Domestic Workers Bill of Rights (“New York Bill of Rights”) and the International Labour Organization’s (“ILO”) adoption of the ILO Convention and Recommendation Concerning Decent Work for Domestic Workers.⁴ California is poised to pass its own bill of rights and nationally, the Department of Labor has proposed regulations greatly expanding wage entitlements for live-in domestic workers and workers providing companionship services.⁵ It seems at last that domestic workers are gaining visibility and legal rights.

The success of domestic worker organizing in the twenty-first century may seem like an anomaly against the backdrop of increased hostility towards unionized labor and an overall decline in wages and benefits for workers.⁶ The contemporary domestic worker movement, beginning in the 1990s, builds upon centuries of organizing and agitation by domestic workers and others for a cultural shift that values domestic labor as real work.⁷ The current

³ The term “domestic worker” as used in this article refers to workers who labor in private homes including those individuals who clean or maintain the premises and caregivers for children, elderly, or persons with disabilities. The term encompasses the various labels used to describe this work including babysitters, nannies, housecleaners, caregivers, attendants, home health care aides, companions, and household workers.

⁴ *Campaigns: New York Domestic Workers Bill of Rights*, DOMESTIC WORKERS UNITED, <http://www.domesticworkersunited.org/campaigns.php> (last visited Dec. 28, 2011); Int’l Labour Organization [ILO], *Text of the Convention Concerning Decent Work for Domestic Workers*, at 15A/2, PR No. 15A (June 16, 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157836.pdf; Int’l Labour Organization [ILO], *Text of the Recommendation Concerning Decent Work for Domestic Workers*, at 15B/2, PR No. 15B (June 16, 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157835.pdf. The New York Domestic Workers’ Bill of Rights is landmark legislation passed in 2010 to extend labor protections to the state’s domestic workers; see Assemb. B. 1470, 2009–2010 Leg., 232d Reg. Sess., (N.Y. 2010), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A01470&term=2009&Text=Y; see also *infra* Part IV.A (discussing the New York Domestic Workers’ Bill of Rights). The International Labour Organization (“ILO”) “is the international organization responsible for . . . [developing] and overseeing international labour standards. It is . . . [a] ‘tripartite’ United Nations agency that brings together representatives of governments, employers and workers to jointly shape [labor] policies and programmes.” *About the ILO*, INT’L LAB. ORG., <http://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited Dec. 28, 2011); see also *infra* Part V (discussing the international movement to establish workers’ rights).

⁵ See *infra* Part III.C; Notice of Proposed Rulemaking, Application of the Fair Labor Standards Act to Domestic Service, 76 Fed. Reg. 248 (Dec. 27, 2011).

⁶ See LAUREN D. APPELBAUM & BEN ZIPPERER, *THE STATE OF THE UNIONS IN 2011: A PROFILE OF UNION MEMBERSHIP IN LOS ANGELES, CALIFORNIA AND THE NATION* 14 (2011), available at www.irle.ucla.edu/publications/StateoftheUnions2011Final.pdf; Lawrence Mishel & Heidi Shierholz, Sustained, High Joblessness Causes Lasting Damage to Wages, Benefits, Income, and Wealth 2–3 (Econ. Policy Inst Briefing Paper No. 324, Aug. 31, 2011), available at http://docs.google.com/viewer?url=http://w3.epi-data.org/temp2011/BriefingPaper324_FINAL+%283%29.pdf&hl=en_US&pli=1&chrome=true.

⁷ Once thought to be diminishing, the domestic service industry is experiencing unprecedented growth today. With a majority of women being an integral part of the

movement fundamentally alters past organizing models, linking the struggle to a broader movement for social justice. Unlike past organizing efforts, domestic workers are at the helm of the contemporary movement. They have made significant strides, through their leadership and visibility, moving the cultural paradigm and building a broad-based alliance with labor, social justice activists, faith-based organizations, women's groups, and students.⁸

Using a historical lens, this article analyzes the contemporary domestic worker movement's success and momentum in transforming cultural attitudes toward favoring the legal protection of domestic workers. Part II will discuss the reasons why domestic work has not been valued historically. Part III will trace the history of domestic worker organizing, focusing on three organizing models that helped alter the societal framework. Part IV analyzes the contemporary organizing models used in New York and California for domestic labor reform. Part V discusses the next frontier in domestic worker organizing: building transnational unity and power.

II. THE VALUE OF REAL WORK

The historic devaluation of domestic labor stems from a complex societal framework that is rooted in the gendered and racial makeup of the workforce. The low status of domestic labor was firmly intertwined with both the status of those who predominately served and the history of slavery. African-American women

workforce and an aging population, demand for caregivers has increased. ELLEN GALINSKY ET AL., *TIMES ARE CHANGING: GENDER AND GENERATION AT WORK AND AT HOME* 4 (2011), available at http://www.familiesandwork.org/site/research/reports/Times_Are_Changing.pdf; see also *Aging Statistics*, U.S. DEP'T OF HEALTH & HUMAN SERVS.: ADMIN. ON AGING, http://www.aoa.gov/aoaroot/aging_statistics/index.aspx (last modified Sept. 1, 2011) (stating that the U.S. population over sixty-five years or older will double by 2030); BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *OCCUPATIONAL OUTLOOK HANDBOOK 2010-11 EDITION, HOME HEALTH AIDES AND PERSONAL AND HOME CARE AIDES 2-3* (2010), available at <http://www.bls.gov/oco/pdf/ocos326.pdf> (last modified Dec. 17, 2009) (stating that home health aides, personal and home care aides projected to grow faster than average compared to other occupations); U.S. DEP'T OF HEALTH & HUMAN SERVS. ET. AL., *THE FUTURE SUPPLY OF LONG-TERM CARE WORKERS IN RELATION TO THE AGING BABY BOOM GENERATION*, 1, 3 (2003), available at <http://aspe.hhs.gov/daltcp/reports/lcwork.pdf> (stating that the aging of population is the greatest factor increasing demand for long-term care workers).

⁸ See 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*, INT'L LABOUR ORGANIZATION, at 17 (2010), available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_149488.pdf; Ai-jen Poo, *Organizing with Love: Lessons from the New York Domestic Workers Bill of Rights Campaign*, LEFTTURN: NOTES FROM GLOBAL INTIFADA (Dec. 1, 2010), <http://www.leftturn.org/Organizing-with-Love>.

dominated the domestic services both during and after slavery in the South.⁹ They soon came to supply domestic labor in northern cities as well, as African-Americans migrated in overwhelming numbers during the Great Migration.¹⁰

During this period, “black women . . . formed a servant and laundress class, as no white group had ever done before.”¹¹ By the 1940s, African-American women held close to half of domestic service jobs, nationally.¹² Not surprisingly, the mammy image—a large, maternal figure with a headscarf and almost always a wide-toothed grin—persists as the most enduring racial caricature of African-American women.¹³ The racial disdain for the black servant—“a despised race to a despised calling”—justified labeling the work as “nigger’s work.”¹⁴ As such, society easily disregarded domestic labor as not being real work, worthy of fair and equal treatment.¹⁵

Furthermore, domestic labor was seen as woman’s work, a “labor of love” having no economic currency.¹⁶ There was an ideological divide between the concept of family and the market, a divide along gender lines that valued men’s labor over women’s.¹⁷ Because it takes place in the home and benefits the employer’s family, the work was considered “outside the boundary of the world’s economy.”¹⁸ As non-commercial and non-productive work, the role of the homemaker was cloaked in the private sphere, justifying exclusion from labor protections.¹⁹

⁹ See PALMER, *supra* note 1, at 6; DANIEL E. SUTHERLAND, *AMERICANS AND THEIR SERVANTS: DOMESTIC SERVICE IN THE UNITED STATES FROM 1800 TO 1920* 4–5 (1981).

¹⁰ DONNA L. VAN RAAPHORST, *UNION MAIDS NOT WANTED: ORGANIZING DOMESTIC WORKERS 1870–1940* 42–43 (1988); see ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* 332–35, 338 (2010).

¹¹ VAN RAAPHORST, *supra* note 10, at 43 (footnote omitted). A majority of the servants outside the slave states until the late nineteenth century were white women. See PALMER, *supra* note 1, at 6; SUTHERLAND, *supra* note 9, at 4–5. Sutherland argues that native-born white women eventually abandoned domestic service, both as opportunities in factories increased for them and the prevalence of blacks and immigrants, predominately the Irish and the Chinese, made the profession not suitable for “civilized, respectable, Christian[s] . . .”).

¹² GEORGE J. STIGLER, *DOMESTIC SERVANTS IN THE UNITED STATES 1900–1940* 6 (1946).

¹³ See SUTHERLAND, *supra* note 9, at 6 (discussing American’s nostalgia for the idea of a time when “servants were efficient, cheerful, and obedient”).

¹⁴ *Id.* at 4 (footnote and internal quotation marks omitted).

¹⁵ *Id.* at 5.

¹⁶ Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 891 n.245 (1999).

¹⁷ *Id.* at 894–895; Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1, 7 (1999); Donna E. Young, *Working Across Borders: Global Restructuring and Women’s Work*, 2001 UTAH L. REV. 1, 22 (2001).

¹⁸ Banks, *supra* note 17, at 6; Smith, *supra* note 16, at 899–900.

¹⁹ Banks, *supra* note 17, at 7.

The gender battle also stratified the relationship between women along race and class lines. Industrialization altered the home from a place of production to a place of consumption.²⁰ White middle-class women increasingly embraced a life of leisure—“the ‘cult of domesticity.’”²¹ The work of the home was “haloed with maternal imagery”—the mistress charged with the spiritual and moral health of the family.²² Yet, this cult excluded poor women, especially immigrants and African-American women, who were increasingly called upon to do the menial housework.²³ This inequality among women became a barrier to providing equal treatment for those who served.

Finally, domestic labor was firmly part of the social structure that existed in America, especially in the home.²⁴ The traditional status of the non-slave domestic worker was as a menial servant within the household.²⁵ The master exercised complete control over the servant and thus set her apart from other labor.²⁶

The confluence of these factors hampered efforts to legitimize domestic service as *real work*.²⁷ This in turn justified the exclusion of domestic workers from government regulation.²⁸ While other workers gained labor protection at the turn of the twentieth century, domestic workers—by the 1930s numbering as many as those in “the railroads, coal mines, and automobile industry combined”—were categorically excluded.²⁹ Today’s movement seeks to rectify the historical exclusions.

²⁰ Smith, *supra* note 16, at 900. Smith explains that before the Industrial Revolution, the home was a place of economic production, rather than consumption, where women concentrated on growing food, keeping animals, and making clothes, candles, and other household goods. *Id.* See also PALMER, *supra* note 1, at 5.

²¹ Young, *supra* note 17, at 4–5 (citation omitted).

²² PALMER, *supra* note 1, at 138; Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51, 51 (1997).

²³ Roberts, *supra* note 22, at 51.

²⁴ SUTHERLAND, *supra* note 9, at 26–27.

²⁵ Smith, *supra* note 16, at 876; SUTHERLAND, *supra* note 9, at 5.

²⁶ Smith, *supra* note 16, at 876–77; SUTHERLAND, *supra* note 9, at 5.

²⁷ Banks, *supra* note 17, at 6.

²⁸ *Id.* at 7.

²⁹ STIGLER, *supra* note 12, at 2; see also DOMESTIC WORKERS UNITED & DATACENTER, HOME IS WHERE THE WORK IS: INSIDE NEW YORK’S DOMESTIC WORK INDUSTRY 7 (2006), <http://www.datacenter.org/reports/homeiswheretheworkis.pdf> (discussing the exclusion of domestic workers from the law); see also Young, *supra* note 17, at 26–34; Banks, *supra* note 17, at 12–14 (discussing domestic worker exclusion from the Social Security Act); Phyllis Palmer, *Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act*, 7 J. POL’Y HIST. 416, 419 (1995) (discussing domestic worker exclusion from the Fair Labor Standards Act).

III. PAST MODELS OF DOMESTIC WORKER ORGANIZING

For centuries, domestic workers have struggled to gain recognition for their work and to improve the feudal working conditions they continued to face even into the post-industrial era. While much work remains, incremental progress was made to change society's attitudes towards the value of domestic labor—from the roots of slavery to a modern, business relationship.³⁰ Historically, from the 1870s to the 1970s, this change was a result of three distinct organizing strategies: collective action, standardization of the industry through voluntary efforts, and lobbying for government regulation. Much of the organizing centered on the need to ensure a supply of domestic labor and was often led by white, middle-class women.³¹ The historical organizing did not necessarily seek economic and social justice for workers. Domestic workers, for the most part, remained invisible and unprotected.³² While these strategies contributed to the changes in the industry, they failed to alter the gendered, racial, and caste-based cultural attitudes towards domestic workers.³³

A. “*The Maid’s Defiance*”—*Joining the Union*³⁴

Domestic workers had long been viewed as “unorganizable” because they work in isolated work units, each alone for a different employer.³⁵ The decentralized and multi-employer nature of the industry does not lend itself to the industrial union organizing model.³⁶ In addition, they were traditionally hidden in the home and thus, did not have access to others to form groups or take collective action.³⁷ They also have no legal protection when they do try to organize and join a union, as they are excluded from the

³⁰ See Smith, *supra* note 16, at 880–82.

³¹ See *infra* note 57 and accompanying text.

³² See Guevera Rosas & Ahn, *supra* note 30.

³³ DOMESTIC WORKERS UNITED & DATACENTER, *supra* note 29, at 2.

³⁴ “The Maid’s Defiance” is a song written for the Denver Housemaid’s Union in 1916. The first stanza is “[w]e are coming all together, we are organized to stay. For nigh on fifty years or more we’ve worked for little pay, But now we’ve got our union, we’ll do it never more.” VAN RAAPHORST, *supra* note 10, at 186.

³⁵ Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 54 (2000) [hereinafter Smith, *Organizing the Unorganizable*].

³⁶ See *id.* at 53–58 (discussing the practical hurdles of organizing domestic workers); see also N.Y. DEP’T OF LABOR, FEASIBILITY OF DOMESTIC WORKER COLLECTIVE BARGAINING 15–16 (Nov. 2, 2010), <http://www.labor.ny.gov/legal/laws/pdf/domestic-workers/domestic-workers-feasibility-study.pdf>.

³⁷ Smith, *Organizing the Unorganizable*, *supra* note 35, at 70–71.

National Labor Relations Act (“NLRA”).³⁸

Nonetheless, many domestic workers did exactly that—they formed unions and associations to better their working conditions and to lend solidarity to their struggle. At the turn of the twentieth century, there were efforts to organize domestic workers into unions, even though the early labor movement was generally hostile to female membership.³⁹

From 1870 to 1940, the American Federation of Labor (“AFL”) reported twenty domestic workers unions in various parts of the country affiliated with the AFL.⁴⁰ Domestic workers also joined the Knights of Labor and the Industrial Workers of the World (“IWW”).⁴¹

One of the most successful efforts to unionize domestic workers was led by Jane Street and the Domestic Worker’s Industrial Union, IWW Local No. 113, founded in 1916 in Denver, Colorado.⁴² Street’s vision for the union was larger than the traditional union demands for better wages and shorter hours;⁴³ she saw the union as a vehicle to rebalance the power “dynamic between mistress and servant.”⁴⁴ With its innovative strategies, including creation of an alternative placement agency, the IWW Local made real gains in increasing wages and reforming the working conditions.⁴⁵

Outside of formal unions, domestic workers formed clubs and

³⁸ 29 U.S.C. § 152(3) (2006); Smith, *Organizing the Unorganizable*, *supra* note 35, at 63–64. Most states, except for California, followed the NLRA’s lead and excluded domestic workers from their collective bargaining statutes. *Id.* at 61–62. Domestic workers are covered under California’s state collective bargaining law, Labor Code § 923, although there is no state agency comparable to the National Labor Relations Board, which enforces the NLRA. *Annenberg v. S. Cal. Dist. Council of Laborers*, 113 Cal. Rptr. 519, 525 (Ct. App. 1974); Smith, *Organizing the Unorganizable*, *supra* note 35, at 62.

³⁹ VAN RAAPHORST, *supra* note 10, at 156. Union hostility to female members had its roots in gendered assumptions that women lowered the wage standard, took jobs away from men, were temporary workers, were difficult to organize, and importantly, they belonged in the home. *Id.*

⁴⁰ *Id.* at 188.

⁴¹ *Id.*

⁴² *Id.* at 172.

⁴³ *Id.* at 189.

⁴⁴ Smith, *Organizing the Unorganizable*, *supra* note 35, at 84.

⁴⁵ VAN RAAPHORST, *supra* note 10, at 172; Smith, *Organizing the Unorganizable*, *supra* note 35, at 85. Members would systematically respond to the same “Help Wanted” advertisements to increase wages and improve working conditions by insisting on a set wage scale or reduced hours, even if they did not want the work. Smith, *supra* note 16, at 883 n.199. The success of Jane Street and her local inspired others to organize domestic worker unions in Seattle, Chicago, Cleveland, and even in Oklahoma. VAN RAAPHORST, *supra* note 10, at 192–93. Unfortunately, these local unions vanished as quickly as they formed. *Id.* at 202; see also *Pittsburgh Courier*, July 31, 1937, reprinted in BLACK WORKERS: A DOCUMENTARY HISTORY FROM COLONIAL TIMES TO THE PRESENT 479 (Philip S. Foner & Ronald L. Lewis, eds., Temple Univ. Press 1989).

associations for mutual support as well as for collective action to raise working standards.⁴⁶ Many of these clubs and associations provided a social space for domestic workers to congregate and often ran an employment agency.⁴⁷ These groups focused on professionalizing the industry, including skills training for workers.⁴⁸ Similar organizing strategies are currently being used by domestic worker organizations as incubators for worker leadership.⁴⁹

Traditional unions reentered the domestic service arena as a result of the growth of the home health care industry and government funding of these services for low-income individuals. For example, some home care workers in California are paid directly by the state through the In Home Supportive Services (“IHSS”) program.⁵⁰ The counties administer the program and the client who qualifies for the funding makes decisions regarding hiring, supervision, and even termination of the workers.⁵¹ From an organizing perspective, having a single entity, the state, to deal with was ideal. Service Employees International Union (“SEIU”) forged a decade long battle in California to have the government act as the employer for these workers, leading to the largest organizing victory since 1937.⁵² This organizing model is being replicated in other states, with more home care workers unionizing.⁵³

Outside of government-funded home health care workers, domestic workers remain outside of the traditional union model. Even so, domestic workers continue to organize as they did a

⁴⁶ VAN RAAPHORST, *supra* note 10, at 192–93.

⁴⁷ *Id.* The worker-run employment agencies were akin to the union hiring hall. Smith, *Organizing the Unorganizable*, *supra* note 35, at 86.

⁴⁸ Faye E. Dudden, *Experts and Servants: The National Council on Household Employment and the Decline of Domestic Service in the Twentieth Century*, 20 J. SOC. HIST. 269, 274–75 (1986). In the 1930s, most domestic workers joined the Young Women’s Christian Association (“YWCA”) than any other organization, which provided companionship and opportunities to take classes. *Id.* at 271, 274; Eunice Fuller Barnard, *Calls for a Kitchen Code Now Resound*, N.Y. TIMES, Oct. 14, 1934, at 8, 18.

⁴⁹ *See infra* Part IV.

⁵⁰ Smith, *Organizing the Unorganizable*, *supra* note 35, at 75; Stu Schneider, *Victories for Home Health Care Workers: Home Care Workers Get Organized*, DOLLARS & SENSE, Sept.–Oct. 2003, at 25.

⁵¹ Smith, *Organizing the Unorganizable*, *supra* note 35, at 75; Schneider, *supra* note 50, at 26.

⁵² Smith, *Organizing the Unorganizable*, *supra* note 35, at 73; Schneider, *supra* note 50, at 25. Having lost a lengthy court battle to recognize the state as the workers’ employer, SEIU succeeded in getting the state legislature to create county-level public authorities that would oversee the IHSS program and act as the employer of record for home care workers. Schneider, *supra* note 50, at 25–26.

⁵³ Schneider, *supra* note 50, at 26–27; David A. Lieb, *In Home Care Workers Opt for Union Representation*, BLOOMBERG BUSINESSWEEK (May 5, 2010), <http://www.businessweek.com/ap/financialnews/D9FGU5H80.htm>.

century ago, forming and joining workers centers, partnering with unions to forge a new model for collective action and seeking changes in the collective bargaining laws.⁵⁴

B. Addressing the “Servant” Problem—A Call for Self-Regulation

By the end of the nineteenth century, the Young Women’s Christian Association (“YWCA”) and other progressive groups were agitating for reform of the “servant problem.”⁵⁵ During this time, the demand for domestic labor, especially in middle-class homes, was increasing but the perception was that there was a lack of “good servants.”⁵⁶ Rather than becoming worker advocates, these groups—comprised mostly of white, middle-class women—saw their role as negotiators between domestic workers and middle-class housewives to improve working conditions and to ensure a steady supply of workers.⁵⁷ Infusing housework with scientific and efficiency principles, these reformers wanted to re-conceptualize the mistress/maid relationship from a feudal one to a modern business contractual relationship, hoping to make the job more desirable for white working women.⁵⁸

The YWCA and other groups called for self-regulation through

⁵⁴ See *infra* Parts IV & V (discussing worker center organizing and union collaboration). For example, the New York Bill of Rights mandated the state to investigate the feasibility of domestic worker organizing. See N.Y. DEP’T OF LABOR, FEASIBILITY OF DOMESTIC WORKER COLLECTIVE BARGAINING 15–16 (2010), <http://www.labor.ny.gov/legal/laws/pdf/domestic-workers/domestic-workers-feasibility-study.pdf>.

⁵⁵ See Smith, *supra* note 16, at 855–58 (discussing the growth of a campaign to organize domestic service through scientific and management principles).

⁵⁶ SUTHERLAND, *supra* note 9, at 9. “A 1937 survey for *Fortune* magazine reported that ‘70 percent of the rich, 42 percent of the upper middle class, 14 percent of the lower middle class, and 6 percent of the poor reported hiring some [household] help.’” PALMER, *supra* note 1, at 8 (footnote omitted). The supply of domestic labor almost doubled between 1870 and 1910, even as white working-class women increasingly had greater opportunities in factories and offices. See Smith, *supra* note 16, at 864–66. While the demand exceeded supply, racial preferences must have played a role in the perception of the servant problem. *Id.* at 866 (discussing the complaints of the employing classes about their inability to find native-born white women).

⁵⁷ See generally Dudden, *supra* note 48, at 270 (discussing the formation of the National Council on Household Employment (“NCHE”) by white middle-class women, attempting to make service a better job and to attract more workers to it); see also Smith, *supra* note 16, at 880–82 (discussing the labor movement’s task to “restructure the domestic service relationship to appeal to the democratic spirit of white women”).

⁵⁸ See Barnard, *supra* note 48, at 18 (discussing NCHE’s attempts to establish agreements between maids and their employers setting out clear standards and duties); see also Dudden, *supra* note 48, at 270–71 (discussing NCHE’s publications describing the “‘employer-employee relationships in the home’” and the YWCA’s study on household employment which emphasized that it should become “‘more business-like’” (citations omitted)); see also Smith, *supra* note 16, at 880–82 (discussing the desire of the household labor movement to transform the relationship between maid and mistress from one of status to one of contract).

voluntary, standardized labor contracts.⁵⁹ This household reform movement rose to national prominence when the YWCA convened a national conference on household employment in 1928.⁶⁰ The National Council on Household Employment (“NCHE”) was created at the conference to coordinate educational and research activities in the hopes of educating employers and workers, and to gradually work out standards for household employment.⁶¹ It advocated that domestic service would not attract superior well-trained employees until it became a modern contractual relationship like other occupations.⁶² NCHE proposed limiting work hours, extra pay for overtime, rest days, and paid vacation.⁶³ The “code for maids,” as it was popularly called, was disseminated across the country throughout the 1930s and 1940s.⁶⁴ NCHE, however, failed to gain widespread support among employers and lacked a base of domestic workers, as it was made up of mostly white middle-class women, many of whom were social scientists and social workers.⁶⁵ The economic decline during the Great Depression curtailed NCHE’s plans and by 1945, it was mostly defunct.⁶⁶

While the calls for voluntary contracts and self-regulation fell far short of advocating for worker rights, it laid the groundwork for justifying labor protection in the home as it changed the public’s

⁵⁹ See Barnard, *supra* note 48, at 18; see also Dudden, *supra* note 48, at 271–72 (discussing NCHE’s proposed contracts that should govern the terms of service such as limits on working hours, guaranteed overtime, and permission for the domestic worker to live outside the home); Smith, *supra* note 16, at 885–86 (discussing NCHE’s contractual approach with minimum standards such as a maximum fifty-four hour work week or forty-eight hours for workers living out, and time off which was adopted by the Inter-Municipal Committee on Household Research (“ICHR”) and whose contractual approach was adopted by the Women’s Educational and Industrial Union of Boston (“WEIU”).

⁶⁰ Smith, *supra* note 16, at 883–84.

⁶¹ KHEEL CTR. FOR LABOR-MGMT. DOCUMENTATION & ARCHIVES, CORNELL UNIV. LIBRARY, GUIDE TO THE NATIONAL COUNCIL ON HOUSEHOLD EMPLOYMENT RECORDS, 1927–1943 (2000), <http://rmc.library.cornell.edu/ead/htmldocs/KCL05226.html> [hereinafter NCHE Records]. Prior to 1931, the council was called the National Committee on Employer-Employee Relationships at Home. *Id.* NCHE was quasi-governmental with the involvement of the Bureau of Home Economics, the Federal Board of Vocational Education, and the Women’s Bureau of the U.S. Department of Labor. *Id.*; Smith, *supra* note 16, at 883–84; see also Dudden, *supra* note 48, at 270 (discussing the involvement of various governmental agencies and officials with the NCHE).

⁶² Barnard, *supra* note 48, at 18.

⁶³ *Id.* (specifying a sixty hour work week, overtime, and a paid vacation after one year of service, in 1934); see also Dudden, *supra* note 48, at 271–72 (discussing the establishment of a gradual 48 hour work week so that the worker can eventually live in their own home in 1929). NCHE also proposed setting up employment agencies that would supervise the workers and educate employers about how to structure the working relationship. Dudden, *supra* note 48, at 272.

⁶⁴ See Barnard, *supra* note 48, at 18.

⁶⁵ Dudden, *supra* note 48, at 270.

⁶⁶ *Id.* at 272–73, 276–77.

perception of the home as a place that could not be regulated and standardized.⁶⁷

C. Legislating Value—The Fight for Equal Labor Protections

Although labor reformers in general had success at the turn of the twentieth century in getting government to regulate the workplace, any discussion of regulating domestic employment created a barrage of opposition from household employers.⁶⁸ Much of the opposition was grounded in the private/public dichotomy of the family home.⁶⁹ Regulating domestic work was antithetical to the private nature of the home, which rested firmly outside the marketplace. As one housewife wrote, “[a] code for maids! I hope it fails. . . . I work far harder now than my maid does, and longer hours. Besides, no home that is a home, with children and frequent guests, can run strictly by the clock.”⁷⁰ The private nature of the home was considered too sacrosanct for government intrusion and the housewife was seen as not capable of complying with legal mandates.⁷¹

Nonetheless, the YWCA and other household reform groups advocated for government regulation of the home.⁷² The first major national campaign for labor protection was to get the National Recovery Administration (“NRA”) to adopt a household workers code.⁷³ The YWCA and other organizations, as well as individual domestic workers, wrote to the Roosevelt Administration with

⁶⁷ See Smith, *supra* note 16, at 920 (discussing legislative developments which now include domestic service, such as the Fair Labor Standards Act and the Social Security Act).

⁶⁸ Seth D. Harris, *Conceptions of Fairness and the Fair Labor Standards Act*, 18 HOFSTRA LAB. & EMP. L.J. 19, 46–48 (2000) (discussing the American minimum wage campaign); Smith, *supra* note 16, at 890, 907. As a result of maximum hour laws, manufacturing workers’ hours reduced from 59 hours per week at the beginning of the twentieth century to 50.3 by 1925. Palmer, *supra* note 1, at 115. By contrast, domestic workers reported they worked an average 12 hours a day, 72 to 84 hours a week. *Id.*; Stigler, *supra* note 12, at 19. The first federal investigation into the conditions of domestic labor in 1901 similarly found that workers typically averaged thirteen-hour days. Smith, *supra* note 16, at 870.

⁶⁹ Smith, *supra* note 16, at 907–08.

⁷⁰ PALMER, *supra* note 1, at 57 (footnote omitted).

⁷¹ See Smith, *supra* note 16, at 908–12 (explaining the view of traditionalists that legal mandates would infringe on the nature of a private household because members of the private household require constant access to their help for any exigencies that may arise); Patricia Mulkeen, *Private Household Workers and the Fair Labor Standards Act*, 5 CONN. L. REV. 623, 628 (1973).

⁷² Smith, *supra* note 16, at 883–84.

⁷³ *Id.* at 887–88; PALMER, *supra* note 1, at 120. The NRA was established in 1933 by the National Industrial Recovery Act to set prices, wages, work hours, and production for each industry. Smith, *supra* note 16, at 887 n.226. Before the Act was found unconstitutional, the NRA adopted codes that covered ninety percent of all industrial workers. *Id.*

proposals to support an NRA code.⁷⁴ Giving credence to the household employers' opposition to regulation, the NRA declined to adopt a code for domestic workers.⁷⁵ The NRA responded to most correspondents, "[t]he homes of individual citizens cannot be made the subject of regulations or restrictions and even if this were feasible, the question of enforcement would be virtually impossible."⁷⁶

Domestic workers fared no better in gaining coverage in New Deal legislation, including the Fair Labor Standards Act of 1938.⁷⁷ Despite domestic workers' letter writing campaigns to Franklin and Eleanor Roosevelt as well as Secretary of Labor Frances Perkins highlighting slave-like conditions, domestic workers failed to secure government regulation.⁷⁸ Although the FLSA broke new ground by eliminating regional wage differences and by treating most industries the same, it excluded numerous employees either explicitly, like agricultural workers, or indirectly, like domestic workers, through a narrow reading of the Commerce Clause.⁷⁹ Domestic work was seen as not affecting interstate commerce as the work was considered a purely private enterprise within the home, and thus the work was originally considered as not part of FLSA's coverage.⁸⁰

When Congress amended the FLSA in 1974 to include domestic workers in minimum wage protections and overtime pay, not all domestic workers were covered.⁸¹ Congress shared the prevalent view that the labor of care was a pleasurable side activity done to supplement income rather than a viable profession for many low-income minority women.⁸² Thus, the 1974 FLSA amendments excluded babysitters employed on a casual basis and companions for the elderly or people

⁷⁴ PALMER, *supra* note 1, at 120.

⁷⁵ Smith, *supra* note 16, at 887–88.

⁷⁶ PALMER, *supra* note 1, at 120 (quoting Letter from A.R. Forbush, Chief, Correspondence Division, National Recovery Administration, to Eva J. Bulkely (Jan. 31, 1934)).

⁷⁷ Smith, *supra* note 16, at 889. The FLSA guarantees a federal minimum wage and overtime pay at one and a half times the employee's regular rate for all hours over forty in a workweek. 29 U.S.C. § 206(a)(1) (2007); 29 U.S.C. § 207(a)(2)(C) (2010).

⁷⁸ PALMER, *supra* note 1, at 120; Smith, *supra* note 16, 887–88.

⁷⁹ Palmer, *supra* note 29, at 419–20.

⁸⁰ Mulkeen, *supra* note 71, at 626.

⁸¹ Palmer, *supra* note 29, at 428; *see* Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, 88 Stat. 55 (1974) (codified at 29 U.S.C §§ 201–219). In 1961, Congress amended the FLSA to cover individuals employed "in an enterprise." Mulkeen, *supra* note 71, at 623. As a result, many domestic workers employed by larger agencies were part of the FLSA coverage. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 166–68 (2007).

⁸² *Long Island Care*, 551 U.S. at 167 (regarding a statement of Sen. Burdick indicating that companion services were provided ad hoc and informally by neighbors).

with disabilities.⁸³ Soon thereafter, the Department of Labor (“DOL”) enacted a regulation that not only exempted companions hired directly by the family or household who needed care, but also companions hired by third party employers.⁸⁴ The Supreme Court upheld the regulation as valid and binding.⁸⁵ As a result of the movement building of the past decade, the federal agency is revisiting certain longstanding regulatory exemptions. In late 2011, DOL issued a Notice of Proposed Rulemaking, proposing significant changes in the exemptions for both companions and live-in domestic workers.⁸⁶

There were also campaigns for inclusion of domestic workers in state wage and hour laws.⁸⁷ In 1941, the YWCA and other organizations wrote letters to the California Industrial Welfare Commission (“IWC”) urging the agency to issue a wage order for domestic workers.⁸⁸ At this time, only Wisconsin had a wage order

⁸³ 29 U.S.C. § 213(a)(15) (2010); *Long Island Care*, 551 U.S. at 167–68; The term “babysitting services” is defined as providing “custodial care and protection, during any part of the 24-hour day, of infants or children in or about the private home in which the infants or young children reside.” 29 C.F.R. § 552.4 (2010). The term “casual basis” as applied to babysitters is defined as “employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting.” 29 C.F.R. § 552.5. The term “companionship services” is defined as “those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs.” 29 C.F.R. § 552.6.

⁸⁴ *Long Island Care*, 551 U.S. at 163; PAUL K. SONN ET AL., NATIONAL EMPLOYMENT LAW PROJECT, FAIR PAY FOR HOME CARE WORKERS: REFORMING U.S. DEPARTMENT OF LABOR’S COMPANIONSHIP REGULATIONS UNDER THE FAIR LABOR STANDARDS ACT 7 (2011), available at <http://www.nelp.org/page/-/Justice/2011/FairPayforHomeCareWorkers.pdf?nocdn=1>. The DOL promulgates regulations and enforces FLSA. *Id.* The 1970s DOL regulation exempted from coverage companions employed by third party employers that met the “enterprise coverage” test. *Long Island Care*, 551 U.S. at 175; SONN ET AL., *supra* at 7. The legislative history of the 1974 FLSA amendments reflects no intent by Congress to exempt these covered entities from FLSA coverage. SONN ET AL., *supra* at 7.

⁸⁵ *Long Island Care*, 551 U.S. at 162. In addition to the companionship exemptions, the FLSA currently exempts from overtime live-in workers who are not otherwise exempt under the casual babysitter or companionship exemption, such as a live-in housekeeper or nanny. 29 U.S.C. § 213(b)(21) (2010).

⁸⁶ See Notice of Proposed Rulemaking, Application of the Fair Labor Standards Act to Domestic Service, 76 Fed. Reg. 248 (Dec. 27, 2011). Among other changes, the DOL has proposed: (1) elimination of the exemption from minimum wage and overtime for workers falling within the definition of companion, when those workers are employed by a third party agency; (2) elimination of the exemption from overtime for live-in domestic service employees when those workers are employed by a third party agency; (3) a significant revision in the permissible duties of a companion which will result in far fewer workers falling under that exemption; and (4) more stringent record keeping of hours worked for live-in workers. *Id.*

⁸⁷ Smith, *supra* note 16, at 888–89.

⁸⁸ See Letter from Household Employee’s Alliance of N. Cal. to John Packard, Chairman of IWC (Feb. 26, 1941) (on file with the IWC Archives); Letter from Young Women’s Christian Ass’n to John Packard, Chairman of IWC (Feb. 18, 1941) (on file with the IWC Archives);

protecting household employees.⁸⁹ Not until the late 1960s did the IWC Wage Board recommend a wage order for household workers, and that recommendation excluded workers who exclusively cared for children and the elderly.⁹⁰ The rationale was that these workers were either young or elderly persons supplementing income received from their parents or social security benefits, respectively.⁹¹ The Wage Board also concluded that work with the elderly “tends to be viewed as socially desirable not only as a source of supplementary income for aging persons but also as a source of rewarding activity.”⁹² These assumptions flew in the face of materials submitted to the IWC Wage Board including the DOL’s Women Private Household Workers Fact Sheet, which showed that “a high[er] proportion of women private household workers were heads of families.”⁹³ The DOL Fact Sheet also showed that the median age of private household workers was 46 years, with only ten percent over 65 years of age.⁹⁴

The Wage Board’s recommendations formed the basis for excluding these workers entirely from coverage under the term “personal attendant” when the IWC finally adopted the Household Occupations Wage Order in 1976.⁹⁵ Finally in 2001, personal

Letter from S.F. Minimum Wage Comm. to John Packard, Chairman of IWC (Feb. 27, 1941) (on file with the IWC Archives). California regulates wages and hours by statute as well as by regulations, called wage orders, promulgated by the Industrial Welfare Commission. *Martinez v. Combs*, 231 P.3d 259, 270 (Cal. 2010).

⁸⁹ Smith, *supra* note 16, at 890 n.241. *Hearing Before the Industrial Welfare Comm. of the State of Cal.*, 1941 Leg., Reg. Sess. (Cal. 1941) (statement of Margaret Reinhart, President of Southern California Household Employees Council) (on file with the authors).

⁹⁰ MARGARET S. GORDON, WAGE BOARD FOR DOMESTIC HOUSEHOLD OPERATIONS, REPORT OF WAGE BOARD FOR DOMESTIC HOUSEHOLD OCCUPATIONS 3–4 (1968) (on file with the authors). The IWC convenes “wage boards” as part of its regulatory process. *Industrial Welfare Commission, Wage Board Prodecures [sic] and Nomination Form*, CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, <http://www.dir.ca.gov/iwc/Wageboardprocedures.html> (last updated Nov. 29, 2000). Wage boards are selected by the Commission and are composed of an equal number of representatives of employers and employees in the relevant occupation, trade, or industry. *Id.*

⁹¹ GORDON, *supra* note 90, at 3–4.

⁹² *Id.* at 4.

⁹³ WOMEN’S BUREAU, U.S. DEP’T OF LABOR, WOMEN PRIVATE HOUSEHOLD WORKERS FACT SHEET 2 (1968). In 1967, of the 1.7 million women over the age of 16 who worked as private household workers, including babysitters, twelve percent were heads of families. *Id.* at 1–2. Further, sixty percent of these heads of households reported income below the poverty level. *Id.* at 1.

⁹⁴ *Id.* at 3.

⁹⁵ California Industrial Wage Commission, Wage Order 15-76, § 1(B) (1976) (on file with the authors). The Wage Order defined “[p]ersonal attendant” as “babysitters and . . . any person employed by a private householder to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision.” *Id.* at § 2(I). A worker is a personal attendant when “no significant amount of work other than the foregoing is required.” *Id.* The Wage Order, adopted in 1976, did provide wage and hour protections to other types of household workers such as housekeepers, cooks, gardeners, and

attendants gained the right to minimum wage but continue to be excluded from all other provisions of the IWC Wage Order.⁹⁶

Even this threadbare coverage of domestic workers would not have been possible without a significant change in the cultural dialogue regarding housework. The feminist movement can be greatly credited with redefining housework as real labor.⁹⁷ It sought the same legitimacy for housework as paid work in order to gain a foothold into traditional male jobs.⁹⁸ The image of the housewife was now refashioned as a skilled, efficient worker in the home rather than as a devoted wife and mother.⁹⁹

During the 1970s, an unlikely alliance emerged between white middle-class feminists and domestic workers, most of whom were still poor, African-American women.¹⁰⁰ In the battle of the sexes, gender predominated over issues of class and race. Rather than demanding increased male participation in the housework, pioneer feminists had no objection to having another woman from a different class and race clean their homes and care for their children.¹⁰¹ As Barbara Ehrenreich puts it, “[t]he microdefeat of feminism in the household opened a new door for women, only this time it was the servants’ entrance.”¹⁰² The organizing focused on the needs of the career woman to a steady supply of labor, rather than equal treatment of domestic workers under the law.¹⁰³

The past organizing models, while not worker-centered, certainly made advances in redefining the relationship between mistress and

others. *Id.* § 2(C).

⁹⁶ California Industrial Wage Commission, Wage Order 15-2001, § 1(B) (2001). Currently, personal attendants hired by the household or by a third-party employer recognized in the health care industry are exempt from most provisions of Wage Order 15 including overtime and meal and rest breaks. CAL. CODE REGS. tit. 8, § 11150(1)(B), (2)(J) (2011). Personal attendants cannot spend more than twenty percent of their total work hours on duties unrelated to supervision, feeding, and dressing. CAL. CODE REGS. tit. 8, § 11150(2)(J); *Cardenas v. Mission Indus.*, 277 Cal. Rptr. 247, 249–50 (Ct. App. 1991). The IWC Wage Order 15 also does not apply to babysitters under the age of eighteen and individuals who are the parent, spouse, child, or legally adopted child of the employer. CAL. CODE REGS. tit. 8, § 11150(1)(B), (C), (D). In addition, live-in domestic workers who are not personal attendants are entitled to limited overtime provisions. CAL. CODE REGS. tit. 8, § 11150(3)(A).

⁹⁷ Palmer, *supra* note 29, at 427. At the 1973 congressional hearings, an office assistant at the National Organization for Women testified, “[w]omen know [that] housework is dirty, tedious work and they are willing to pay to have it done because they more than anyone else, know what it is worth.” Palmer, *supra* note 29, at 429 (footnote omitted).

⁹⁸ Palmer, *supra* note 29, at 427.

⁹⁹ *Id.*

¹⁰⁰ Palmer, *supra* note 29, at 427–28.

¹⁰¹ See Barbara Ehrenreich, *Maid to Order*, in *GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY* 85, 87 (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2002).

¹⁰² *Id.* at 90.

¹⁰³ *Id.* at 87; Mulkeen, *supra* note 71, at 626.

servant and pushing it from an entirely private sphere to the public arena. These efforts, however, failed to fundamentally change societal attitudes about the value of domestic labor. In the twenty-first century, large segments of domestic workers remain outside the law or receive less protection than other workers.¹⁰⁴

IV. REAL WORK FOR REAL WAGES: NEW YORK AND CALIFORNIA AT THE FRONTIER OF DOMESTIC LABOR REFORM

Just as the feminist movement was reframing the debate around housework and child-rearing, domestic service was changing from an African-American workforce to an immigrant women workforce.¹⁰⁵ The demographic changes provided a different, more effective model for domestic worker organizing.

In the 1990s, worker centers emerged as an alternative to union-based organizing in immigrant communities.¹⁰⁶ These centers have upended traditional organizing. Grassroots and worker-led, the centers focus on building the political and cultural power of immigrant communities.¹⁰⁷ Incubated in worker centers from the onset, domestic worker organizing has flourished around the country, including in New York and California, building a vibrant movement for change.

There are two focal points at the core of today's organizing model: building the power and leadership of domestic workers and fostering broad-based alliances.¹⁰⁸ Demanding real wages for their work, domestic workers have reframed the dialogue. In the past decade, society has gradually been recognizing and valuing domestic labor as a direct result of the vision and strategy of domestic workers' leadership that links their struggle to a broader movement for social and economic justice.¹⁰⁹

¹⁰⁴ DOMESTIC WORKERS UNITED & DATACENTER, *supra* note 29, at 3.

¹⁰⁵ *Id.*

¹⁰⁶ Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, 50 N.Y.L. SCH. L. REV. 417, 430–31, 452 (2005–2006); Victor Narro, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers*, 50 N.Y.L. SCH. L. REV. 465, 466–67 (2005–2006).

¹⁰⁷ Fine, *supra* note 106, at 426–28, 452; Narro, *supra* note 106, at 467–68.

¹⁰⁸ See Fine, *supra* note 106, at 445.

¹⁰⁹ ANDREA CRISTINA MERCADO & AI-JEN POO, ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, DOMESTIC WORKERS ORGANIZING IN THE UNITED STATES 8–9 (2008), http://awid.org/content/download/44879/482251/file/ENG%20Case%20Study_Domestic%20Workers%20Organize%20in%20US.pdf.

A. Movement Building in New York

In the 1990s, two New York City worker centers, the Women Workers Project of the Committee Against Anti-Asian Violence (“CAA AV”) and Andolan were at the forefront of organizing domestic workers.¹¹⁰ These organizations provided a critical analysis of the plight of domestic workers. Nahar Alam, a Bangladeshi domestic worker and one of the founders of Andolan, stated, “[i]t is impossible to organize domestic workers without also understanding the many ways in which they have been oppressed not just as workers but also as women, immigrants and non-English speaking people.”¹¹¹ The organizing strategies came from the transnational experience of the domestic workers themselves.¹¹²

Domestic Workers United (“DWU”) was formed as a collaborative project by members of CAA AV and Andolan to broaden their outreach to Caribbean and Latina domestic workers, who comprised the largest segment of domestic workers in New York City.¹¹³ Today, DWU is an independent organization of domestic workers from the Caribbean, Africa, and Latin America.¹¹⁴ DWU partnered with Damayan Migrant Workers Association, Cidado Global, Unity Housecleaners, Adhikar, and Haitian Women for Haitian Refugees, among others, to form the New York Domestic Worker Justice Coalition (“Justice Coalition”) to campaign for the New York Bill of Rights.¹¹⁵ In August 2010, New York’s governor signed into law the nation’s first Domestic Worker Bill of Rights, landmark legislation providing household workers with fundamental rights to, among other things, overtime pay comparable to other workers, protection against workplace harassment, a weekly day of rest, and three days

¹¹⁰ See *History of CAAV*, CAAV, <http://caaav.org/about-us/history-of-caaav> (last visited Jan. 2, 2012); *About Us*, ANDOLAN, <http://andolan.net/about-us.htm> (last visited Jan. 2, 2012). CAA AV was initially the fiscal sponsor of Andolan. MONISHA DAS GUPTA, UNRULY IMMIGRANTS: RIGHTS, ACTIVISM, AND TRANSNATIONAL SOUTH ASIAN POLITICS IN THE UNITED STATES 7–8 (2006).

¹¹¹ DAS GUPTA, *supra* note 110, at 226.

¹¹² See MERCADO & POO, *supra* note 109, at 7.

¹¹³ *Id.*; *About Us*, DOMESTIC WORKERS UNITED, <http://www.domesticworkersunited.org/aboutus.php> (last visited Jan. 2, 2012).

¹¹⁴ MERCADO & POO, *supra* note 109, at 7; DOMESTIC WORKERS UNITED, *supra* note 113.

¹¹⁵ MERCADO & POO, *supra* note 109 at 7; Ai-jen Poo & E. Tammy Kim, *Organizing to Transform Ourselves and Our Laws: The New York Domestic Workers Bill of Rights Campaign*, 44 CLEARINGHOUSE REV. 577, 578 (2011); Interview with Jill Shenker, Field Director, National Domestic Workers Alliance & former Organizer, La Colectiva, (October 7 & 10, 2011); see DOMESTIC WORKERS UNITED, *supra* note 113; see also *Partners*, DOMESTIC WORKERS UNITED, <http://domesticworkersunited.org/partners.php> (last visited Jan. 2, 2011) (listing the various DWU partner organizations).

paid time off.¹¹⁶ The success of the New York Bill of Rights must be credited, in large part, to the workers' leadership. Their voices, vision, and strength guided the campaign and helped build key alliances.

1. Laying the Groundwork for Victory: Building Worker Power

From the outset, "DWU was a movement-building vehicle" led by workers not only to advocate for themselves, but to also connect their struggle to all workers and subjugated people.¹¹⁷ By demanding dignity, respect, and fair treatment of domestic work, it sought to build the power of the workers and to see themselves as "agents of change."¹¹⁸ Outside of its small staff, DWU is run by its worker members.¹¹⁹ It invests heavily in developing worker leadership, hosting an annual Leadership Training Program.¹²⁰ DWU requires its member leaders to attend trainings and skills classes so they can meaningfully participate in its campaigns and organizational culture.¹²¹

¹¹⁶ See Assemb. B. 1470, 2009–2010 Leg., 232nd Reg. Sess., (N.Y. 2010). See NATIONAL EMPLOYMENT RIGHTS PROJECT, RIGHTS BEGIN AT HOME: PROTECTING YOURSELF AS A DOMESTIC WORKER (2010), available at <http://www.nelp.org/page/-/Justice/2011/RightsBeginatHome.pdf?nocdn=1>, for more information about the rights provided under the New York Bill of Rights. Prior to the 2010 New York Bill of Rights, New York provided minimum wage to all domestic workers, except part-time babysitters working in the employer's home and live-in companions employed by the household directly. N.Y. COMP. CODES R. & REGS. tit. 12, §§ 142-2.1, 142-2.14(c)(1) (2010), former N.Y. LAB. LAW § 651(5)(a) (McKinney Supp. 2006). The Bill of Rights narrowed the minimum wage exemption to exclude only part-time babysitters employed on a casual basis. Other domestic workers are now entitled to minimum wage in New York. N.Y. LAB. LAW § 651(5)(a) (McKinney 2010). Prior to the Bill of Rights, there were also various limitations on overtime for domestic workers. Live-in companions employed by the private householder had no overtime entitlement. N.Y. COMP. CODES R. & REGS. tit. 12, §§ 142-2.1, 142-2.14(c)(1). Other domestic workers who were exempt from overtime under the FLSA, such as live-in housekeepers or nannies, were entitled to overtime but at a reduced rate of one and one-half times the minimum wage, rather than one and one-half times the regular rate of pay. N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2. After enactment of the Bill of Rights, all domestic workers in New York have some overtime entitlement, including live-in companions employed by the householder. N.Y. LAB. LAW §170. Except for employees who work on a casual basis and companions employed by a third party employer, domestic workers are entitled to overtime calculated at one and one-half times the employee's regular rate of pay. *Id.* The casual employee and third party employer companion are entitled to overtime at one and one-half times the minimum wage. N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2. New York has different overtime rules based on whether workers are residential or non-residential employees. Under the state regulations, non-residential workers are entitled to overtime after forty hours of work in a workweek, while residential workers are entitled to overtime after forty-four hours in a workweek. *Id.*; N.Y. LAB. LAW §170.

¹¹⁷ MERCADO & POO, *supra* note 109, at 7.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ HOBDEN, *supra* note 8, at 4.

Realizing that without labor reform, domestic workers would continue to face exploitation that had no redress, DWU moved into the public policy arena in 2002.¹²² DWU led the effort to pass New York City Local Law 33 in 2003, which required employment agencies to advise domestic workers and employers about labor rights.¹²³ While the bill did not change the existing legal coverage of domestic workers, it was a critical step in the broader organizing campaign. The workers' understanding of their existing rights and the ability to enforce them is central to building worker leadership and reframing the debate.

After this initial policy victory, DWU organized a November 2003 convention to discuss statewide standards.¹²⁴ Attended by hundreds of domestic workers, the convention set key priorities that eventually became the New York Domestic Workers Bill of Rights.¹²⁵ To capture the voices and experiences of domestic workers and to provide solid evidence of the need for labor reform, DWU partnered with the DataCenter, a research organization for social justice movements and grassroots organizing, to conduct an industry-wide survey.¹²⁶ Workers played a lead role in designing the survey, collecting data, and analyzing the information.¹²⁷ *Home Is Where the Work Is: Inside New York's Domestic Work Industry* was published in 2006, providing the first in-depth analysis of New York City's domestic workforce and much needed data for the campaign.¹²⁸

As the campaign progressed, DWU did not lose sight of its core objective, to build the power and strength of domestic workers.¹²⁹ DWU formed a campaign organizing committee of members, charged with making technical and tactical decisions about the campaign, while strategic decisions were brought to the entire membership as well as to the members of the Justice Coalition.¹³⁰

The leadership of the workers and the overwhelming support among domestic workers for the campaign were essential ingredients in building broad alliances. The power of the workers'

¹²² Poo & Kim, *supra* note 115, at 578. DWU used the policy campaigns as another organizing tool to build the power and base of domestic workers. *Id.*; Interview with Jill Shenker, *supra* note 115.

¹²³ N.Y.C., N.Y., ADMIN. CODE § 20-771(a) (2011); Poo & Kim, *supra* note 115, at 578.

¹²⁴ Poo & Kim, *supra* note 115, at 578.

¹²⁵ *Id.*

¹²⁶ DOMESTIC WORKERS UNITED & DATACENTER, *supra* note 29, at 1.

¹²⁷ *Id.*

¹²⁸ *Id.* at 5–6.

¹²⁹ Poo & Kim, *supra* note 115, at 578.

¹³⁰ HOBDEN, *supra* note 8, at 16.

stories drew people from diverse backgrounds to champion the bill.¹³¹

2. Reframing the Debate—“We Are All Connected.”

One of the strengths of DWU’s organizing strategy was recognizing the need to build a powerful coalition of diverse allies.¹³² The campaign drew people from a cross section of groups ranging from social justice organizations and unions to faith-based communities.¹³³ These allies became deeply invested participants in the campaign, along with the workers.¹³⁴ By framing its analysis around “broader axes of structural inequality,” DWU linked the struggle of domestic workers to other marginalized groups.¹³⁵

Along the way, DWU forged alliances with organizations and groups that became integral to the campaign. New York City’s luxury apartment doormen provided access to the hundreds of domestic workers hidden behind closed doors.¹³⁶ The doormen knew the domestic workers in their building, heard stories of the day-to-day life for these workers, and understood the problems they faced.¹³⁷ Along with their union, Service Employees International Union Local 32BJ, the doormen helped reach out to domestic workers and showed solidarity throughout the long legislative battle.¹³⁸

Because of the intersectionality of race, gender, and class inequality faced by domestic workers, groups like Jews for Racial and Economic Justice (“JFREJ”) and interfaith organizations that did social justice work were drawn to the campaign.¹³⁹ JFREJ started the “Employers for Justice” campaign to organize employers to support the campaign.¹⁴⁰

As DWU expanded its base of supporters and allies, workers learned that almost everyone had some connection to domestic

¹³¹ *Id.* at 17.

¹³² *Id.*

¹³³ *Id.* at 17–18.

¹³⁴ Interview with Jill Shenker, *supra* note 115.

¹³⁵ Poo & Kim, *supra* note 115, at 579; *see also* HOBDEN, *supra* note 8, at 17. DWU made a key alliance with farm workers, who have been historically excluded from most labor protections like domestic workers. Poo & Kim, *supra* note 115, at 577, 579.

¹³⁶ *See* HOBDEN, *supra* note 8, at 19.

¹³⁷ *Id.*; Poo & Kim, *supra* note 115, at 579.

¹³⁸ Poo & Kim, *supra* note 115, at 579; *see also* HOBDEN, *supra* note 8, at 19–20.

¹³⁹ *See* Poo & Kim, *supra* note 115, at 579; *see also* HOBDEN, *supra* note 8, at 18–19.

¹⁴⁰ *See* HOBDEN, *supra* note 8, at 18. The success of the “Employers for Justice” program inspired the formation of Hand In Hand: The Domestic Employers Association. *See also* *Who We Are, HAND IN HAND: THE DOMESTIC EMPLOYERS ASSOCIATION*, <http://domesticemployers.org/who-we-are/> (last visited Jan. 26, 2012).

workers—either they or their families had worked as domestic workers, they were cared for by domestic workers, they hired domestic workers, or they knew someone who was a domestic worker.¹⁴¹ It was critical to understand this connection and how it shaped views about the campaign. It also provided some very powerful alliances. John Sweeney, the former president of the AFL-CIO (1995–2009), whose own mother was a domestic worker, lent his personal story and solidarity to the New York campaign.¹⁴² These personal connections infused the campaign with strong and loyal supporters and gave the campaign additional power. The two-fold organizing strategy of building worker power and broad-based alliances proved to be the right ingredients in New York.¹⁴³ These same strategies are being employed in California.

*B. Si Se Puede/Makibaka! Huwag Matakot!: California On the Brink of Reform*¹⁴⁴

On the West Coast, by the mid-1990s immigrant rights organizations in both Northern and Southern California had become involved in domestic worker organizing.¹⁴⁵ In the early phase, four worker centers were central to organizing California’s largely Latina and Filipina domestic workers.¹⁴⁶ *Mujeres Unidas y Activas* (“MUA”), the Women’s Collective of the San Francisco Day Labor Program at La Raza Centro Legal (“La Colectiva”), the Pilipino Workers Center (“PWC”), and the Coalition for Humane Immigrant Rights of Los Angeles (“CHIRLA”) each employed innovative

¹⁴¹ Poo & Kim, *supra* note 115, at 580.

¹⁴² See Daniel Millstone, *Domestic Workers on the March; Join Them Sat. June 9th*, THE DAILY GOTHAM BLOG (Aug. 6, 2007), http://dailygotham.com/blog/daniel_millstone/domestic_workers_on_the_march_join_them_sat_june_9th.

¹⁴³ See Poo & Kim, *supra* note 115, at 580.

¹⁴⁴ The Spanish chant “Si Se Puede,” translated roughly as “Yes We Can,” and the Filipino rallying cry “Makibaka! Huwag Matakot,” meaning “Struggle/Have No Fear,” can be heard from the chorus of the Latina and Filipina domestic workers in California who are organizing for change. Interview with Katie Joaquin, Lead Organizer, Filipinos for Justice & Statewide Organizer, California Domestic Workers Coalition (Oct. 12, 2011); Interview with Aquilina Soriano-Versoza, Executive Director, Pilipino Workers Center Southern California (Oct. 12, 2011).

¹⁴⁵ See MERCADO & POO, *supra* note 109, at 3–5.

¹⁴⁶ See *id.* In Los Angeles in the 1990s, sixty-eight percent of domestic workers were foreign-born Latinas. See PIERRETTE HONDAGNEU-SOTELO, DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE 17 (2001); John Enriquez Andres, *The Raiding of the Pearl: The Effects of Trade Liberalization on Philippine Labor Migration, and the Filipino Migrant Worker’s Experience*, 10 RUTGERS RACE & L. REV. 523, 555 (2009) (“Domestic workers constitute the largest group of OFWs [(Overseas Filipino Workers)] . . .”); Diana Vellos, *Immigrant Latina Domestic Workers and Sexual Harassment*, 5 AM. U. J. GENDER & L. 407, 409 (1997) (stating that Latinas are the largest group of women entering the domestic labor force in the U.S.).

strategies that they developed organizing immigrant working-class communities.¹⁴⁷

Harkening back to the models used in the early twentieth century, both of the San Francisco organizations focused on worker leadership through direct services, including establishing employment agencies within their organizations.¹⁴⁸ MUA began organizing domestic workers in 1994 with the launch of *Manos Cariñosas*, or *Caring Hands*, a project to provide training and work opportunities for Latina home health care aides, and in 2001, expanded to include childcare workers.¹⁴⁹ In 2001, *La Colectiva* was formed at *La Raza Centro Legal*, as a worker-run collective to create opportunities for economic self-sufficiency and personal and political empowerment through trainings and worker leadership development.¹⁵⁰

PWC, founded in Los Angeles in 1997, brought the voices of Filipina domestic workers to visibility through its “COURAGE” Campaign—Caregivers Organizing for Unity, Respect, and Genuine Employment.¹⁵¹ The COURAGE campaign mobilizes workers in the home healthcare industry through education, leadership development, employer accountability, and legislative reform.¹⁵² CHIRLA, as the most established organization in Los Angeles focusing on immigrant rights and multi-ethnic coalition building, brought to the Coalition expertise in advancing the agenda for immigrant communities through advocacy, community education, and organizing.¹⁵³

By sharing their strategies and working collaboratively in their

¹⁴⁷ See MERCADO & POO, *supra* note 109, at 3–5; *MUA’s History*, MUJERES UNIDAS Y ACTIVAS, <http://www.mujeresunidas.net/english/history/history.html> (last visited Jan. 2, 2012); *About Us*, LA COLECTIVA: ORGANIZED LABOR FOR AN ORGANIZED HOME, <http://lacolectivasf.org/about.html> (last visited Jan. 26, 2012); *About Us*, PILIPINO WORKERS CENTER, <http://www.pwsc.org/about-us> (last visited Jan. 26, 2012); Fine, *supra* note 106, at 423; Narro, *supra* note 106, at 488–89; *Our Story*, COALITION FOR HUMANE IMMIGRANT RIGHTS OF L.A. (Apr. 27, 2010), <http://www.chirla.org/content/our-story>.

¹⁴⁸ See *Manos Cariñosas*, MUJERES UNIDAS Y ACTIVAS, <http://www.mujeresunidas.net/spanish/caring.html> (last visited Jan. 26, 2012) (describing the *Caring Hands* employment services for Latina immigrants); LA COLECTIVA, *supra* note 147.

¹⁴⁹ MUJERES UNIDAS Y ACTIVAS, *supra* note 147.

¹⁵⁰ See *Resources*, LA COLECTIVA: ORGANIZED LABOR FOR AN ORGANIZED HOME, <http://lacolectivasf.org/resources.html> (last visited Jan. 26, 2012); Interview with Jill Shenker, *supra* note 115.

¹⁵¹ Iryll Sue Umel, *Cultivating Strength: The Role of the Pilipino Workers’ Center COURAGE Campaign in Addressing Labor Violations Committed Against Filipinos in the Los Angeles Private Home Care Industry*, 12 ASIAN PAC. AM. L.J. 35, 35, 55 (2007); PILIPINO WORKERS CENTER, *supra* note 147.

¹⁵² See Umel, *supra* note 151, at 55; PILIPINO WORKERS CENTER, *supra* note 147.

¹⁵³ COALITION FOR HUMANE IMMIGRANT RIGHTS OF L.A., *supra* note 147; Narro, *supra* note 106, at 488.

communities, these organizations came together to develop a statewide strategy to improve the domestic service industry. As in New York, organizers recognized that there was little or no data on the domestic workforce in California.¹⁵⁴ Data would be essential to any legislative effort to change the existing exclusions of domestic workers from the law. MUA and La Colectiva joined with the DataCenter, as DWU had, “to create a participatory research project to assess the industry.”¹⁵⁵ Members designed a survey and were trained to administer it, which they conducted on buses, in parks, at laundromats, and in the homes of household workers.¹⁵⁶ The report, *Behind Closed Doors: Working Conditions of California Household Workers*, highlighted rampant abuses in California’s domestic service industry.¹⁵⁷

1. Worker Democracy In Action

In 2005, MUA, La Colectiva, PWC, CHIRLA along with People Organized to Win Employment Rights (“POWER”) formed the California Household Worker Coalition, and began discussion of a legislative campaign.¹⁵⁸ At a statewide meeting that same year, each organization, represented by their members, presented their membership’s ideas for reform, resulting in a wide range of proposals.¹⁵⁹ The Coalition researched the feasibility of each idea and prioritized its agenda for reform.¹⁶⁰ Assembly member Cindy Montanez, who would author a 2006 domestic worker bill, chose two issues: the overtime exemption for personal attendants—the domestic workers who provide care for children, elderly, or people with disabilities—and liquidated damages for violations.¹⁶¹

¹⁵⁴ MUJERES UNIDAS Y ACTIVAS ET AL., *BEHIND CLOSED DOORS: WORKING CONDITIONS OF CALIFORNIA HOUSEHOLD WORKERS 2* (2007), available at <http://www.datacenter.org/wp-content/uploads/behindcloseddoors.pdf>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*; Interview with Jill Shenker, *supra* note 115.

¹⁵⁷ MUJERES UNIDAS Y ACTIVAS ET AL., *supra* note 154, at 5.

¹⁵⁸ See Umel, *supra* note 151, at 60; MERCADO & POO, *supra* note 109, at 6.

¹⁵⁹ MERCADO & POO, *supra* note 109, at 6.

¹⁶⁰ Interview with Jill Shenker, *supra* note 115.

¹⁶¹ *Id.*; Interview with Andrea Cristina Mercado, Lead Organizer, Mujeres Unidas y Activas (Oct. 7 & 10, 2011); Umel, *supra* note 151, at 60. Liquidated damages are a form of damages for a breach or violation of a contract. BLACK’S LAW DICTIONARY 418 (8th ed. 2004). In 2006, California Labor Code § 1194.2 provided liquidated damages for court actions for minimum wage. CAL. LAB. CODE § 1194.2(a) (West 2011). Proposed Assembly Bill 2536 would have given domestic workers covered by the bill an entitlement to liquidated damages in administrative proceedings as well as court actions and to recover those damages for failure to pay both minimum wage and overtime. Assemb. B. 2536, 2005–2006 Leg., Reg. Sess. (Cal. 2006), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2501-2550/ab_2536_bill_20060905_enrolled.html. In 2011, California passed Assembly Bill 240,

Introduced in 2006, Assembly Bill (“AB”) 2536 provided the first opportunity for the Coalition’s workers to be involved in the legislative process.¹⁶² During the course of the legislative campaign, over 500 domestic workers participated in education, outreach, and advocacy activities including crafting the bill, testifying at legislative hearings, meeting with legislators, holding press conferences and rallies at the state capitol, and making strategic decisions.¹⁶³ As the bill progressed in the legislature, the Coalition faced significant opposition from home-health agencies and several disability-rights advocates and made compromises on the scope of the bill.¹⁶⁴ However, in just one year, the Coalition succeeded in having the legislature pass a domestic worker bill, only to be vetoed by then-Governor Arnold Schwarzenegger.¹⁶⁵

But the Coalition’s worker leaders would not be defeated. They had gained invaluable experience in organizing statewide and lobbying in Sacramento that they would draw upon in future campaigns.¹⁶⁶ The Coalition members continued building their base in their local communities, focusing on worker education and leadership training, providing direct service, working on immigrant rights campaigns, and creating visibility through media work.¹⁶⁷ They also participated in national and international efforts which helped sustain the organizing between legislative campaigns.¹⁶⁸

In 2010, bolstered by increased visibility of domestic worker issues, New York’s progress on its Bill of Rights, and the strength of national organizing, the California organizations reconvened under the umbrella California Domestic Workers Coalition.¹⁶⁹ With

allowing for the recovery of liquidated damages for minimum wage violations in administrative proceedings for all workers covered under California wage and hour laws. Assemb. B. 240, 2011–2012 Leg., Reg. Sess. (Cal. 2011).

¹⁶² Umel, *supra* note 151, at 61.

¹⁶³ *Id.*; MERCADO & POO, *supra* note 109, at 6.

¹⁶⁴ Senate Rules Committee, Bill Analysis, Assemb. B. 2536, 2005–2006 Leg., Reg. Sess. (Cal. 2006), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2501-2550/ab_2536_cfa_20060811_171007_sen_floor.html; Interview with Jill Shenker, *supra* note 115; Interview with Andrea Cristina Mercado, *supra* note 161.

¹⁶⁵ Assemb. B. 2536, 2005–2006 Leg., Reg. Sess. (Cal. 2006) (Governor Schwarzenegger’s veto message), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2501-2550/ab_2536_vt_20060930.html.

¹⁶⁶ Umel, *supra* note 151, at 61; MERCADO & POO, *supra* note 109, at 6.

¹⁶⁷ Interview with Jill Shenker, *supra* note 115; Interview with Andrea Cristina Mercado, *supra* note 161.

¹⁶⁸ See *infra* Part V.

¹⁶⁹ *NY Bill of Rights*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/ny-bill-of-rights> (last visited Jan. 26, 2012). The Coalition includes eight core organizations: MUA, La Colectiva, PWC, CHIRLA, POWER, Filipino Advocates for Justice (“FAJ”), Centro Laboral de Graton, and Instituto de Educacion Popular del Sur de California (“IDEPSCA”). See *The Coalition*, CALIFORNIA DOMESTIC WORKERS

Governor Schwarzenegger still in office, the Coalition chose to focus on securing the adoption of a legislative resolution on the need for labor reform for domestic workers.¹⁷⁰ Recognizing that domestic workers were vital to the economy, Assembly Concurrent Resolution (“ACR”) 163 passed the California legislature and strongly set forth the need to provide domestic workers with legal protections.¹⁷¹ With Governor Schwarzenegger’s term ending, the next step was to propose a comprehensive bill of rights in California.

To gear up for the 2011 legislative campaign, the Coalition developed a steering committee comprised of both organizers and domestic workers from each of the member organizations.¹⁷² All decisions about the legislation were vetted through the membership of each group.¹⁷³ The Coalition members invested in developing the policy advocacy skills of its organizers. Either in 2011 or earlier, organizers from the member organizations participated in the Women’s Foundation of California’s Women’s Policy Institute fellowship program, which trains women activists on how to navigate successfully the state legislative process.¹⁷⁴ In February 2011, Assemblymembers Tom Ammiano and V. Manuel Perez introduced AB 889, California’s Domestic Worker Bill of Rights.¹⁷⁵ Assemblymember Perez had authored ACR 163 and the Coalition felt that Assemblyman Tom Ammiano, who has a longstanding relationship with grassroots communities, would understand the worker participatory process central to the Coalition.¹⁷⁶

The scope of the initial bill was far-reaching, reflecting the member-driven agenda for reform.¹⁷⁷ It was also a platform for

COALITION, http://cadomesticworkers.org/?page_id=7 (last visited Jan. 26, 2012).

¹⁷⁰ Interview with Jill Shenker, *supra* note 115.

¹⁷¹ Assemb. Con. Res. 163, 2009–2010 Leg., Reg. Sess. (Cal. 2010), *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100ACR163&search_keywords=

¹⁷² *See* CALIFORNIA DOMESTIC WORKERS COALITION, *supra* note 169.

¹⁷³ Interview with Andrea Cristina Mercado, *supra* note 161.

¹⁷⁴ Organizers from MUA, PWC, CHIRLA, and La Colectiva were Women’s Policy Institute fellows in 2007–2008. *Women’s Policy Institute 2007–2008*, THE WOMEN’S FOUNDATION OF CALIFORNIA, <http://www.womensfoundca.org/site/c.aqKGLROAIrH/b.5048969/apps/sl/content.asp?ct=4455845> (last visited Jan. 26, 2012). Organizers from IDEPSCA, POWER, MUA, CHIRLA, and FAJ were 2010–2011 Fellows. *Domestic Workers Launch Campaign for Bill of Rights*, THE WOMEN’S FOUNDATION OF CALIFORNIA, <http://womensfoundationofcalifornia.com/2011/03/10/domestic-workers-launch-campaign-for-bill-of-rights/> (last visited Jan. 26, 2012).

¹⁷⁵ Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_bill_20110217_introduced.html. The official title of the Bill of Rights is the Domestic Work Employee Equality, Fairness, and Dignity Act. *Id.*

¹⁷⁶ Interview with Andrea Cristina Mercado, *supra* note 161.

¹⁷⁷ Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), *available at*

bringing renewed visibility to domestic worker issues through media and public discussion.¹⁷⁸ In May 2011, the Coalition was one of the sponsoring organizations for a San Francisco Domestic Workers Human Rights Tribunal, where workers presented compelling testimony.¹⁷⁹ As Juana Flores, former domestic worker, Co-Director of Mujeres Unidas y Activas, and leader in the National Domestic Worker Alliance, states, “Our employers and society as a whole benefit when we are treated with dignity and respect. We need to improve our laws, from the state to the international level, in order to help ensure basic rights for domestic workers.”¹⁸⁰

Workers continued to play a central role in strategic decision making. There is inevitably an inherent tension between maintaining worker participation and the fast moving legislative process. As explained by Andrea Cristina Mercado, Lead Organizer for MUA,

Ironically, we found the legislative process moves far too quickly to sustain democratic decision making by our memberships. Each organization named domestic worker representatives who they involved in the decision to make sure domestic workers had a voice in any policy change. This required building trust among the members in delegating decision-making to staff and a few key worker leaders.¹⁸¹

But, the Coalition stayed true to its commitment to worker democracy and endeavored to go back to the worker members for key strategic decisions. After a critical Assembly Appropriations Committee hearing, it was clear that compromises were necessary to get the bill out of committee.¹⁸² Following lunch on the Capitol lawn of homemade tacos made by the members from San Francisco,

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_bill_20110217_introduced.html. Assembly Bill 889 seeks to eliminate the exclusions of personal attendants under WO 15, and to provide additional rights such as uninterrupted sleep, use of kitchen facilities, and workers compensation coverage for all domestic workers. The original bill also included paid vacation, sick days, notice of termination, and health and safety protections. *Id.*

¹⁷⁸ Jorge-Mario Cabrera, *Women Like Kerry Kennedy, Eve Ensler, Gloria Steinem and Arlene Holt-Baker Get It – Will Sacramento?*, DESERT LOCAL NEWS (May 23, 2011), (copy on file with Albany Law Review); Interview with Andrea Cristina Mercado, *supra* note 161.

¹⁷⁹ Press Release by Andrea Christina Mercado & Katie Joaquin, *Domestic Workers Present Their Case for an End to Discrimination and Exclusion at Human Rights Tribunal in San Francisco*, U.S. HUMAN RIGHTS NETWORK (May 26, 2011), <http://www.ushrnetwork.org/content/pressrelease/domestic-workers-present-their-case-end-discrimination-and-exclusion-human-righ>.

¹⁸⁰ *Id.*

¹⁸¹ Interview with Andrea Cristina Mercado, *supra* note 16.1

¹⁸² Interview with Rocio Avila, Graduate Law Fellow, Women’s Employment Rights Clinic, Golden Gate University School of Law (September 28, 2011).

the workers sat in their organizational caucuses to discuss whether retaining health and safety protections or workers compensation was a greater priority for the workers.¹⁸³ The legal team and organizers joined the groups to respond to questions posed in English, Spanish, and Tagalog, about the benefits under each law, the cost implications to the state, and which segment of domestic workers would be affected.¹⁸⁴ The questions were detailed and challenging, with the workers determined to make informed decisions. The groups reached consensus in a process that was an inspiring example of democracy in action.¹⁸⁵ Their decision was communicated to the authors and the bill passed out of committee with the workers' preference of retaining workers compensation over inclusion in health and safety laws.¹⁸⁶

AB 889 passed the state Assembly and the Senate labor committee with many of the most critical provisions intact, but stalled in the Senate Appropriations Committee.¹⁸⁷ As of the writing of this article, AB 889 is a two-year bill expected to move forward in 2012.¹⁸⁸

2. Building Visibility Through Worker Voices and Allies

Because of the historic invisibility of domestic workers, the Coalition sought to illuminate the stories of the workers through their own voices, innovatively using old and new media to bring their stories to the public.¹⁸⁹ They tell a compelling story of how the

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Current Bill Status*, Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_bill_20110825_status.html. Among the key provisions that remain in the bill after amendments are overtime and meal and rest breaks for personal attendants, right to use kitchen facilities, expansion of workers compensation, and uninterrupted sleep. See Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_bill_20110712_amended_sen_v94.pdf (as amended by Senate, July 12, 2011) (striking very little from the original bill).

¹⁸⁸ See *Bill Analysis*, Assemb. B. 889, S. Appropriations Comm., 2011–2012 Leg., Reg. Sess. (Cal. Aug. 25, 2011) (stating the bill was in the “suspense file”).

¹⁸⁹ See, e.g., *Stories*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/workers-stories/> (last visited Jan. 26, 2012). In early 2011, Domestic Workers United activist and nanny Christine Yvette Lewis went toe to toe with Stephen Colbert on the Colbert Report. *The Colbert Report* (Comedy Central television broadcast Jan. 26, 2011), available at <http://www.colbertnation.com/the-colbert-report-videos/372323/january-26-2011/christine-yvette-lewis>. IDEPSCA recently won the best Mobile Content in the World Summit Award in the category of M-Inclusion and Empowerment. *Mobile Voices Wins World Summit Award*, INSTITUTO DE EDUCACION POPULAR DEL SUR DE CALIFORNIA, <http://idepsca.org/node/69> (last visited Jan. 26, 2012). Its

intersectionality of class, race, nationality, and gender shape the current experiences of domestic workers.¹⁹⁰ Maria Fernandez, a domestic worker and member of La Colectiva, reflected, “[I]ack of representation makes our work invisible—a job that isn’t seen has no value. . . . And that’s where the differences arise, in salary, with race, for being a woman; harassment—psychological, sexual; and even threats for any issue that comes up on the job.”¹⁹¹

These factors continue to create sub-standard working conditions in the twenty-first century for domestic workers, with some workers still treated like the servants of old.¹⁹² The legislative campaigns have provided a vehicle to shed light on these abuses. “I could not sleep more than 3 hours. . . . [Employers think] that they pay you, so they can do what they want, like they own you,” testified Patricia Aceberos, a domestic worker and member of Filipino Advocates For Justice, at the Asian Pacific American Labor Alliance Workers’ Rights Hearing in San Francisco.¹⁹³

At the Assembly Labor Committee hearing on AB 889, Pilipino Worker Center member Boots De Chavez, a domestic worker employed for over ten years, described her working conditions, “you are not given the dignity you deserve. . . . [I worked] for a family that would not let me use their showers. I could only take sponge baths by the sink. . . . I have also not been allowed to use the kitchen to cook my own food.”¹⁹⁴

The campaigns have also galvanized the workers to demand respect and dignity for their work. Edma Delgado, a domestic worker and MUA worker leader, said,

I became involved in the campaign because I have been a domestic worker my entire life, just like my mother, and I am not ashamed of this. We all deserve respect. The truth is that people depend on us and for this reason our work

Mobile Voices (“VoxMob”) project created a platform for domestic worker and other low wage workers in Los Angeles to create stories about their lives and communities directly from their cell phones. *Id.* When the blockbuster 2011 movie, *The Help*, opened in theaters, domestic workers put together a YouTube Video connecting the current conditions of domestic workers to the movie’s historical feature. Domesticworkers, *Meet Today’s Help*, YOUTUBE (Aug. 9, 2011), <http://www.youtube.com/watch?v=-RyEGeZmAn8>.

¹⁹⁰ *See id.*

¹⁹¹ *María Fernández: Working for Recognition*, LA COLECTIVA, <http://www.lacolectivasf.org/gallery/story07.html> (last visited Jan. 26, 2012). La Colectiva organized “*Profiles in Strength & Dignity: The Women of La Colectiva*,” a photo exhibit of their women members, with poignant narratives. *Id.*

¹⁹² *See id.*

¹⁹³ Patricia Aceberos, Domestic Worker, Address at the Oakland Asian Pacific American Workers Rights Hearing (March 12, 2011) (on file with the authors).

¹⁹⁴ *Hearing on Assemb. B. 889 Before the Assemb. Labor Comm.*, 2011 Leg., Reg. Sess. (May 2011) (statement of Boots De Chavez) (on file with the authors).

should be respected and valued.¹⁹⁵

To further increase the visibility of the campaign, the Coalition prioritized building relationships and integrating key allies. Hand in Hand, an organization of domestic work employers dedicated to “caring homes and just workplaces,” became an integral part of the Coalition’s strategy, bringing together employers of nannies, housecleaners, and caregivers who supported and lobbied for the passage of AB 889.¹⁹⁶ The Coalition also prioritized relationship building with other immigrant rights organizations and unions, gaining wide-spread support from local labor unions and central labor councils.¹⁹⁷ As in New York, the progressive Jewish community and other faith-based groups have played an active role in supporting economic and social justice for California’s domestic workers.¹⁹⁸

California, like New York, offers a vibrant example of how the voices of domestic workers, with the support of allies, have made an impact on the entrenched attitudes about the value of work. The organizing has not only been about passing a bill, but also about the cultural and social significance of worker leadership and alliance building to push towards a movement for “global justice.”¹⁹⁹

¹⁹⁵ Interview by Rocio Avila with Edma Delgado, Domestic Worker & Worker Leader, Mujeres Unidas y Activas (Oct. 7, 2011).

¹⁹⁶ HAND IN HAND: THE DOMESTIC EMPLOYERS ASSOCIATION, *supra* note 140. Not all domestic employers of caregivers support the bill. Some in the disability community have raised concerns that AB 889 will make care for low-income people with disabilities unaffordable as it will mandate overtime for caregivers currently exempt under the personal attendant exclusion. S. Comm. on Lab. and Indust. Relations, Bill Analysis, Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_cfa_20110705_131704_sen_comm.html. The unintended conflict between the rights of low-income people with disabilities to live independently and the rights of domestic workers to fair working conditions that value their labor has created a roadblock to the passage of the bill. Interview with Jill Shenker, *supra* note 115; Interview with Andrea Cristina Mercado, *supra* note 161. The Coalition has confronted the intersectionality among these marginalized groups head-on. *Id.* It has made a concerted outreach to the disability community and has convened several meetings to foster an understanding of each group’s position. *Id.* These dialogues are continuing as the bill progresses in the next legislative session. *Id.* The Coalition hopes to reach a compromise that values domestic labor while ensuring quality care and independent living for low-income people with disabilities. *Id.*

¹⁹⁷ Assemb. Comm. on Lab. and Emp’t, Bill Analysis, Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_cfa_20110414_102836_asm_comm.html; S. Comm. on Lab. and Indus. Relations, Bill Analysis, Assemb. B. 889, 2011–2012 Leg., Reg. Sess. (Cal. 2011), *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_889_cfa_20110705_131704_sen_comm.html.

¹⁹⁸ *See Support the CA Domestic Workers Bill of Rights*, PROGRESSIVE JEWISH ALLIANCE, <http://www.pjalliance.org/article.aspx?ID=658&CID=1> (last visited Jan. 26, 2011) (supporting the AB 889 campaign).

¹⁹⁹ MERCADO & POO, *supra* note 109, at 3.

V. FORGING A NATIONAL AND TRANSNATIONAL MOVEMENT

In order to seek global justice, the workers realized that they had to build a broader movement—not only locally, but nationally and internationally. In June 2007, domestic worker organizations from around the country convened at the first United States Social Forum in Atlanta, Georgia.²⁰⁰ The domestic workers and organizers met each morning of the Social Forum to share organizational models, discuss campaign and leadership development successes, and in the afternoons and evenings they participated in and presented their issues to the broader Social Forum.²⁰¹ At the conclusion of the forum, the National Domestic Workers Alliance (“NDWA”) was launched, with thirteen founding member organizations.²⁰² NDWA hoped to raise the visibility of domestic worker issues at the national level and build the strength of domestic worker organizational efforts on the ground through sharing and collaboration across local organizations.²⁰³ Since then, NDWA has grown to over thirty member organizations in twelve states and provides capacity as well as support to organizing campaigns around the nation.²⁰⁴

NDWA played a key role in founding a national campaign in 2011, Caring Across Generations, to address the needs of both care recipients and caregivers.²⁰⁵ This new campaign recognizes that the concerns of domestic workers and care recipients are often aligned, as marginalized groups.²⁰⁶ Caring Across Generations brings together advocates and activists in the disability and senior

²⁰⁰ MERCADO & POO, *supra* note 109, at 3–4; *see also About, UNITED STATES SOCIAL FORUM*, <http://www.ussf2010.org/about> (last visited Jan. 26, 2012). The U.S. Social Forum is a setting where activists come together to “effectively and affirmatively articulate the values and strategies of a growing and vibrant movement for justice in the United States.” *Id.* Its goals include: creating “a space for social movement convergence and strategic discussion”; advancing a “social movements agenda for action and transformation”; building “stronger relationships and collaboration between movements”; deepening the “commitment to international solidarity and common struggle”; and strengthening the “local capacity to improve social conditions, organizing and movement building . . .” *Id.*

²⁰¹ MERCADO & POO, *supra* note 109, at 4; Interview with Jill Shenker, *supra* note 115.

²⁰² Interview with Jill Shenker, *supra* note 115.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *See* Hilda L. Solis, U.S. Sec’y of Lab., Remarks Before the National Domestic Worker Alliance’s Inaugural Care Congress (July 12, 2011), *available at* <http://caringacrossgenerations.org/news/7-news/63-remarks-by-hilda-l-solis-secretary-of-labor-at-care-congress>.

²⁰⁶ *See About, CARING ACROSS GENERATIONS*, <http://caringacrossgenerations.org/about> (last visited Jan. 26, 2012).

communities, labor unions, women's organizations, and a wide range of other social justice advocates.²⁰⁷ It seeks to develop long term strategies for addressing the growing demand for affordable quality home care, along with fair job conditions for domestic workers and a path to citizenship.²⁰⁸

Founding member organizations of NDWA joined the international movement for domestic workers. In November 2006, an international conference was held in Amsterdam, with over sixty representatives of domestic workers organizations, trade unions, allies, and researchers.²⁰⁹ They developed a strategy for international action in support of domestic worker rights.²¹⁰ The International Domestic Workers' Network was established, and run by and for domestic workers organizations across the world.²¹¹ In coordination with these international efforts, allies in the academic and legal fields formed the Research Network for Domestic Worker Rights to document the working conditions and organizing and advocacy models being developed by domestic workers around the world.²¹²

Establishment of the International Domestic Workers' Network was the initial step in a multi-year effort to have the ILO set global labor standards for domestic work.²¹³ On June 16, 2011, with members from NDWA, DWU, MUA, La Colectiva, and other worker organizations present in Geneva, the ILO adopted its historic Convention and Recommendation Concerning Decent Work for Domestic Workers.²¹⁴ The Convention and Recommendation are

²⁰⁷ *Local Organizing: Making Connections and Bringing the Campaign Home*, CARING ACROSS GENERATIONS, <http://caringacrossgenerations.org/about/local-organizing> (last visited Jan. 2, 2012).

²⁰⁸ Solis, *supra* note 205.

²⁰⁹ *About Us*, RESPECT AND RIGHTS FOR DOMESTIC WORKERS, <http://en.domesticworkerrights.org/?q=node/82> (last visited Jan. 26, 2012).

²¹⁰ *Id.*

²¹¹ *Id.* The International Domestic Workers' Network is made up of domestic workers' unions and associations from around the world, including Africa, Asia, the Caribbean, Latin America, North America, and Europe. *Id.* Support organizations include the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations ("IUF") and Women in Informal Employment Globalizing and Organizing. *Id.*; *International Domestic Workers' Network*, WOMEN IN INFORMAL EMPLOYMENT: GLOBALIZING AND ORGANIZING, <http://wiego.org/informal-economy/international-domestic-workers'-network> (last visited Jan. 26, 2012).

²¹² *Official Launch of the Research Network for Domestic Worker Rights*, RESEARCH NETWORK FOR DOMESTIC WORKER RIGHTS (Research Network for Domestic Worker Rights), Aug. 2011, at 1, 7, <http://en.domesticworkerrights.org/sites/default/files/ResearchNetworkNewsletter1.pdf>.

²¹³ See RESPECT AND RIGHTS FOR DOMESTIC WORKERS, *supra* note 209.

²¹⁴ *Text of the Convention Concerning Decent Work for Domestic Workers*, *supra* note 4; *Text of the Recommendation Concerning Decent Work for Domestic Workers*, *supra* note 4.

“aim[ed] at protecting and improving the working and living conditions of domestic workers worldwide—estimated to number anywhere between 53 million and 100 million.”²¹⁵ It is “an international commitment to work on improving the living and working conditions of a very large segment of the work force which has been historically excluded, either totally or in part, from the protection of labour law.”²¹⁶

Collaboration in the ILO process helped solidify NDWA’s relationship with the traditional trade union movement. Shortly before the June 2011 ILO Conference, NDWA and the AFL-CIO entered into a partnership agreement.²¹⁷ Although both the New York and California campaigns had developed strong ties with local unions, the AFL-CIO agreement formalized a joint commitment “to raise the level of respect and recognition for domestic workers, establish labor standards, and to help build a more inclusive and powerful labor movement in the United States.”²¹⁸ The agreement is grounded in “strengthening collaboration on local, statewide, national and international campaigns for recognition and labor standards for domestic workers.”²¹⁹

The AFL-CIO, which had staff with many years of experience at the ILO and is the worker representative for the United States at the ILO, provided critical support to NDWA on the adoption of the ILO Convention.²²⁰ The AFL-CIO included in its ILO delegation its first domestic worker, Juana Flores, a member of NDWA and Co-Director of MUA, and it involved NDWA in ILO tripartite meetings with governments, employers, and labor.²²¹ NDWA and the AFL-CIO published a joint open letter encouraging other national trade union centers worldwide to collaborate with domestic worker groups and similarly ensure the involvement of domestic workers themselves in the ILO negotiations.²²²

²¹⁵ *Questions and Answers on the Convention Concerning Decent Work for Domestic Workers*, INT’L LAB. ORG. (June 21, 2011), http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/articles/WCMS_158371/lang--en/index.htm [hereinafter ILO, *Questions*].

²¹⁶ ILO, *Questions*, *supra* note 215.

²¹⁷ National Domestic Workers Alliance & AFL-CIO, *Partnership Agreement Between the American Federation of Labor Congress of Industrial Organizations (AFL-CIO) and the National Domestic Workers Alliance (NDWA)*, May 10, 2011, http://en.domesticworkerrights.org/sites/default/files/NDWA_AFLCIO_Partnership_Agreement.pdf.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Interview with Jill Shenker, *supra* note 115.

²²¹ *Id.*

²²² National Domestic Workers Alliance & AFL-CIO, *Open Letter from the AFL-CIO and National Domestic Workers Alliance (USA) to Trade Unions and National Centers Around the World*, May 10, 2011, at 5, <http://www.domesticworkerrights.org/sites/default/files/>

The ILO Convention and Recommendation are groundbreaking on an international level, for the first time moving the ILO standard setting process into the informal economy.²²³ For the domestic worker activists in New York and California, the ILO process was an opportunity to have their own fight for justice recognized worldwide and to see their work contribute toward improving the lives of domestic workers globally. In the words of ILO worker delegate Juana Flores:

“It has been an honor and a privilege to represent the voices of the millions of domestic workers in the United States during this process and to stand in solidarity with domestic workers across the world. . . . Our many years of hard work organizing among domestic workers in the United States enabled us to make a significant contribution to this process.”²²⁴

VI. CONCLUSION

The contemporary domestic movement has made significant strides in reforming the legacy of exclusion. After decades of grassroots organizing, domestic workers have strengthened their membership base and developed as leaders and advocates. Through the process, they have attracted a broad base of supporters and have fundamentally shifted the societal framework which values their work. Nowhere was this shift more obvious than at the ILO Convention where government, union, and employer representatives from all over the world spoke to the value of domestic work and the workers deserving decent working conditions.²²⁵ After the adoption of the ILO standards for domestic workers, domestic workers put down their mops and brooms, took the hands of their own children and families, and came together to celebrate the long overdue global recognition of their right to dignity, respect, and decent working conditions.²²⁶ They shared the

NDWA_AFLCIO_Open_Letter.pdf.

²²³ Press Release, Int'l Lab. Org., 100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under the Realm of Labour Standards (June 16, 2011), http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm (“We are moving the standards system of the ILO into the informal economy for the first time, and this is a breakthrough of great significance History is being made.” (quoting Juan Somavia, ILO Director-General)).

²²⁴ Press Release, Nat'l Domestic Workers Alliance, CA Domestic Workers, Employers and Labor Leaders Celebrate Historic Vote [hereinafter CA Domestic Workers].

²²⁵ Interview with Jill Shenker, *supra* note 115.

²²⁶ CA Domestic Workers, *supra* note 224.

feelings expressed by Guillermina Castellanos, Co-Director of La Colectiva, who started working as a domestic worker at the age of five, has nine children, and has been representing NDWA in the international campaign:

“It’s incredible the emotion I felt in the moment of the vote—so much pride and dignity at this historic, hard fought, hugely important recognition of the human rights of domestic workers. We don’t have much money to leave to our children, but now we will leave them this legacy of justice.”²²⁷

²²⁷ Interview by Jill Shenker, Field organizer, National Domestic Workers Alliance with Guillermina Castellanos, Day Laborer and Co-Founder and Coordinator of the Women’s Collective of the Day Labor Program (June 2011).