In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws

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Rae is a fifty-five year old African-American woman from Atlanta with a tenth-grade education. She has cleaned and cared for children in a few different families’ homes for much of her life. She lived in with one family for ten years and has done day work during the rest of her career. In at least one job, she had a close relationship with her employer (a woman) and the children of the white, upper middle-class family. She has also raised her own children. She is married, but her husband no longer lives with her. He was underemployed during the time they lived together, making her income the family’s primary source of financial support. Rae has always worked full-time, either for one family or different families five days per week. She has never paid income taxes. On the one or two occasions when employers volunteered to pay Social Security and other taxes, she responded vaguely and the employers never raised the issue again. She now earns $155 per week and receives a Christmas bonus, perhaps a week’s vacation pay and occasional hand-me-downs of food and clothing from various employers. She has no medical coverage. Employer families have occasionally paid for doctor visits, but she recently experienced some new problems and does not feel comfortable asking any current employers to cover her expenses.

Pia, a thirty-five year old woman from El Salvador, has lived and worked in California for the last few years. She speaks minimal English and does not have a green card or other documentation allowing her to remain legally in the United States. She has a family in El Salvador and some cousins and other relatives living and working (as household workers and day laborers) in the vicinity. She

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lives in with a young white professional couple and their three small children. She earns low wages ($80 per week) and has no Social Security, workers' compensation, or unemployment coverage. She has Sunday off each week, although the employers will occasionally ask her to work when they have another engagement that day. She has a small room in the house and eats the family's food, but does not usually sit at the dinner table with them. She would like to obtain legal documentation, then find other work and arrange for her family to immigrate. She has never been physically or sexually assaulted by the father of the children she cares for, but he and his friends have alarmed her with their sexual suggestions.

Cathy is a twenty-nine year old white woman raising two children (ages seven and eight) on her own in Boston. She works three to four days per week cleaning the apartments of single professional women or couples her age, and of older and retired people. Her days and hours vary depending on who calls, although she has some regular clients. She usually works when her children are at school, but sometimes brings them with her when she urgently needs money. She collects a small amount monthly from Aid to Families with Dependent Children and from other sources of public assistance; she also receives food stamps. She is currently on waiting lists for subsidized housing, and is behind in her rent. One of her employers, a young corporate lawyer, has offered to pay Cathy's Social Security and other benefits, but Cathy consistently opposes the suggestion. The older employers have never mentioned paying any benefits, and reacted negatively to Cathy's request for a small raise, saying that they could not afford to pay her any more than they were already paying.

HOUSEHOLD WORKERS: AN INTRODUCTION

At some point in their lives, most people who live in the United States labor for pay. By becoming “work force members,” they are immediately entitled and obligated to participate in government programs, such as Social Security, that are designed to protect workers' health and financial security. In certain sectors of the work force, however, employer (and employee) non-compliance with these laws is rampant. The problem is particularly severe for
private household workers, migrant farmworkers, and undocumented workers generally. Officially acknowledged nonenforcement is widespread as well, leaving employers free to disregard explicit legal obligations with little fear of reprisal.

In this article, I will address the ways in which household workers have systematically been denied employment rights and have suffered economic and physical exploitation at the hands of private employers. I explore the set of circumstances which allows people simultaneously to have and not have a right. The situation of these workers illustrates the striking gap between legal fiction and contemporary social reality.

The denial of rights is not particular to household workers; on the contrary, similar problems frequently confront workers in small-scale, informal and migrant work placements. However, household workers face a unique set of constraints which renders their situation especially difficult. The employment’s location in the private sphere, where regulators have traditionally hesitated to intervene, compounds the other challenges present in any work environment. Most workers also face discrimination based on combinations of race, immigration status, gender, age, education, and other factors.

In offering macro- and micro-level analyses of the landscape populated by private household workers, I have two primary goals. First, I have included narratives of individual workers in order to illustrate the diverse profiles of the individuals subsumed in the broad class of household workers and to indicate the variety of factors which shape workers’ choices. The recognition of the depth and variety of workers’ situations forms the background for the paper’s second goal of addressing the complexity of the relationship among diverse influences.

1. I use the phrase “household worker” to describe a person who is paid for performing any number of tasks to maintain a private household. These may include cleaning, laundry, childcare, cooking, and other forms of personal service to the employer. This definition derives in part from one offered by two scholars who have conducted international studies of household workers. They define household workers as “persons who are recruited from outside the employing household to perform some portion of its reproductive work.” Sanjek and Colen, At Work in Homes I: Orientation, in AT WORK IN HOMES: HOUSEHOLD WORKERS IN WORLD PERSPECTIVE 4-5 (R. Sanjek & S. Colen eds. 1990) (unpublished manuscript on file with author) [hereinafter At Work in Homes I].

Terminology in the field varies somewhat with the author and the age, with the result that formerly popular phrases such as “domestic servant” and “housegirl” are no longer in common use. I use the term “household worker” because it accurately describes the work. It is also more familiar to most than “household technician” yet lacks the stigma often attached to “domestic servant.” Although official labor force studies often distinguish workers hired primarily for childcare duties from other domestic workers, I include childcare workers under the general household worker rubric here because both groups share many of the same concerns.
By identifying and exploring the multifaceted interests of individual household workers, the article seeks to understand the "community" of household workers and the possibilities for enhancing this group's power. I examine the advantages and disadvantages of using standard legal strategies to improve the material conditions of this sector of society and to alter the asymmetry of power between employees and employers. Keeping the focus on this occupationally-defined "community," I assess the possibilities for challenging and fundamentally altering the current balance of power. This discussion proceeds in light of the unique situation of workers in private households, and the different and occasionally conflicting needs of individuals within this group of workers.

The three hypothetical workers described above—Rae, Pia, and Cathy—guide this article's inquiries. Their stories, in conjunction with information about real people, are intended to raise some of the central issues that face different categories of household workers. Underlying these stories is an attempt to achieve an integrated conception of individual/large group relationships. By studying particular employees alongside the larger category of private household workers, I focus on the individual's challenge to membership in an externally reinforced community. Ultimately, I aim to develop a strategy for effective outreach to a community of people linked by occupational conditions. My underlying premise is that to be effective, any outreach program must accommodate the multifaceted identities and shifting affiliations of individuals who are grouped together by law and work force status.

Part I provides historical background on household work as an occupation and, through the stories of Rae, Pia, and Cathy, sketches a demographic profile of household workers in the United States today. Part II sets out the contemporary framework of household workers' legal entitlements. These entitlements will be addressed again at the paper's end, where I suggest reforms which could enhance their effectiveness for the workers in question. Part III further develops the stories of Rae, Pia, and Cathy, both to illustrate the various and complex experiences of the individual united with the larger group and to highlight some specific issues which affect each worker's relationship to her legal entitlements. This section identifies some of the effects which racism, economic status, age, education, immigration status, language ability, tax and public benefits status, and the employer/employee relationship can have on the status of the household worker and on her perceptions of her situation.

In the latter parts of the article, I examine possible alternatives to the current approach, starting from the proposition that enhancing household workers' bargaining power with respect to their employers will likely result in
improvements in workers' material conditions both on and off the job. Part IV surveys historical organizing efforts by household workers and considers the effect that household work's location in the "private sphere" has had on workers' ability to organize and on government efforts to enforce laws. Part V proposes a set of regulations which would improve the current status of household workers, and assesses the costs and benefits of applying these model regulations to my hypothetical workers. Part V also considers broader critiques of the potential for any legislation to enhance worker empowerment, drawing upon the experiences of the group empowerment effort of the battered women's movement. Part VI concludes the paper with a general analysis of legislative, organizing, and other strategies for improving the material conditions of any group which is composed of individuals with diverse and sometimes conflicting interests.

I. A DEMOGRAPHIC PROFILE AND BRIEF HISTORY

Rae, Pia, and Cathy, my hypothetical household workers, are fairly typical of the diversity of household workers in the United States today. This section will first provide an historical context for evaluating the changing trends in private household employment. Then, relying on statistics from the Department of Labor, Census Bureau and other sources, the section will situate these three women within the broad demographic profile of private household workers, taking into account race, age, education, language ability, and immigration status.

Until the 20th century, household work was the most common occupation of all employed women and girls over ten years old. Historical information therefore offers a useful backdrop against which to assess the changing nature of the workforce population and the development of related laws.

Since the 17th century, household work has often been the first paid occupation entered by women in commercializing and industrializing societies. The United States Census for 1890 reported that almost one-third of all employed African-American women and nearly half of all foreign-born wage earners (including white women) worked as "servants." Nearly one-fourth of

4. Id. at 81.
native-born wage-earning white women also worked as domestic servants.\(^5\)

By 1920, trends had shifted such that nearly half of African-American wage-earning women did servant or laundry work, while the representation of native and foreign-born white women in those fields dropped considerably.\(^6\) At that time the nature of household employment began to change, with employees increasingly living apart from the employer, rather than “living in.” The shifting racial profile of the workforce, caused in part by increased migration of African-American women to the North, contributed to this change.\(^7\) During the following decade, however, the number of domestic workers swelled to nearly two million, partly as a result of renewed immigration of women willing to perform domestic labor.\(^8\) Other job opportunities expanded as well, especially for white women. African-American women became increasingly overrepresented as household workers: 63% of African-American wage-earning women held domestic employment positions in 1930; the rate declined marginally to 60% by 1940.\(^9\)

Japanese-American women were similarly over-represented as private household workers relative to their numbers in the general San Francisco Bay area population before World War II. In 1940, over half of all employed Japanese-American women in that area worked as “domestics.”\(^10\) A notable phenomenon just before that time, which seems to persist today, was the seeming arbitrariness of wages which varied both among workers and among the various employers of one worker.\(^11\) According to one scholar, “successful

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5. Id.

6. Id. at 81-2. A common historical interpretation links this shift to the decline in immigration of groups which had supplied domestic workers in the North, leading to an increased demand for native-born household workers. Since white women began to have access to other job opportunities, African-American women became domestic servants, as such workers were then called. See, e.g. Grossman, supra note 2, at 17-18.

7. Grossman, supra note 2, at 18. The change also “occurred simultaneously with changing notions of what housework was and how it should be performed. White women sought to make housework a fulfilling position for the unpaid wife-manager while black women sought to make it a respectable job for women workers.” Palmer, supra note 3, at 82 (citation omitted).


9. Palmer, supra note 3, at 82. Angela Davis’ commentary lends additional shape to the shifting trend. “Black women were the domestic work force in the South, first as slaves and then, after Emancipation, as domestic workers on a predominantly live-out basis. Blacks became a service caste; as many have noted, to be a servant meant to be black, and vice versa.” Colen, *Just a Little Respect*: West Indian Workers in New York City, in MUCHACHAS NO MORE: HOUSEHOLD WORKERS IN LATIN AMERICA AND THE CARIBBEAN 171, at 177 (E. Chaney & M. Garcia Castro eds. 1989).


11. Id. at 63. Glenn’s analysis here focused on workers during 1915-1930.
generations of Japanese women became trapped by established pathways that provided access to the job in the beginning, but later separated them from other opportunities and resources."¹²

World War II augmented job opportunities for many women so that domestic service no longer dominated the labor census counts. The proportion of women working in private households dropped from 8.4% in 1950 to 2.6% in 1979.¹³ Nevertheless, women of color such as Rae remain disproportionately represented as private household workers.¹⁴

While the contemporary statistical information offered here provides a broad framework, its inaccuracies indicate as much about the current status of private household workers as do the numbers themselves. Statistics cited here do not account for undocumented workers, workers who do not pay income or Social Security taxes, and other workers who have avoided various census efforts.¹⁵

Despite statistical inaccuracies, certain trends in household work as a profession are fairly clear. From its role as the predominant occupation of all employed women and girls over age ten in the 19th century, private household work has come to employ less than three percent of all employed women.¹⁶ In 1988, the Department of Labor counted 909,000 workers as private household employees.¹⁷ Those workers averaged 25.9 hours of work per week, with full-time workers spending an average of 44.6 hours and part-timers an average of 14.8 hours on the job.¹⁸ Of the 909,000 workers counted, 96% were female.¹⁹ Among the women, 22.6% were African-

¹³ Palmer, supra note 3, at 82.
¹⁴ For example, in discussing Chicana workers, Mary Romero comments that "...like most other women, domestic workers found employment in low-paying, low-status jobs. However, their ability to obtain immediate employment may distinguish them from other women who seek employment during times of financial crisis. These Chicana workers were unique in that they could always find employment as domestics. The challenge was to find a job outside domestic service." Romero, supra note 12, at 82 (emphasis in original).
¹⁵ See infra text accompanying notes 63-67.
¹⁶ Grossman, supra note 2, at 17-18.
¹⁷ BUREAU OF LABOR STATISTICS, ANNUAL AVERAGE INDUSTRY AND OCCUPATIONAL TABLES FOR YEAR ENDING DEC. 1988, Table 8: Employed Persons by Detailed Occupation, Class of Worker, Sex, Race and Hispanic Origin at 442 (unpublished data on file with author).
¹⁸ BUREAU OF LABOR STATISTICS, ANNUAL AVERAGE INDUSTRY AND OCCUPATION TABLES FOR YEAR ENDING DEC. 1988, Table 11: Persons at Work by Hours of Work, Major Occupation, Sex, Race, and Hispanic Origin at 490 (unpublished data on file with author).
¹⁹ BUREAU OF LABOR STATISTICS, ANNUAL AVERAGE INDUSTRY AND OCCUPATION TABLES FOR YEAR ENDING DEC. 1988, Table 30: Employed and Experienced Unemployed Persons by Detailed Occupation, Sex, Race, and Hispanic Origin at 725 (unpublished data on file with author).
American and 16.3% were Hispanic.²⁰ Of 54,000 unemployed persons in the same private household worker category, 92.5% were women, with African Americans comprising 22.5% of those unemployed, and Hispanics accounting for 16.7%. ²¹

Employed private household workers were spread across the age spectrum, with 82.4% aged 20 and over.²² Among the women, 82.7% were aged 20 and over; ²³ 25% were over 54 years old, and 46.8% were between 25 and 54 years of age.²⁴

An analysis of female private household worker’s median weekly wages averaged for 1976-84 shows African-American women earning $143, Hispanic women earning $148, and white women earning $124.²⁵ In the general workforce, African-American women earn 92% of what white women earn, and Hispanic women earn 85% of the same.²⁶ It is not clear why pay distribution by race for household workers follows a different trend.²⁷

Statistics compiled in March 1988 show that female heads of households comprised 16% of all private household workers. Nearly 20% of those had never married. Among the approximately 50% of those women with their own children under eighteen, 24% had never married, while the remainder were

²⁰  Id.
²¹  Id.
²²  Id. at 177. (unpublished data on file with author).
²³  Id. at 185.
²⁴  Id. at 186.
²⁵  Malveaux & Wallace, Minority Women in the Workplace, in WORKING WOMEN: PAST, PRESENT AND FUTURE 265, 273 (K. Koziara, M. Moskow & L. Tanner eds. 1987) (citing U.S. Department of Labor, Bureau of Labor Statistics, unpublished data on black and Hispanic women, 1976-1984). Although a variety of cultural and statistical reasons might account for the statistically uncharacteristic situation here that white women in private household work earn less than women of color, the authors offer no explanation. In contrast, white women’s earnings in commercial cleaning services surpass those of similarly employed women of color.

The same statistical source also shows median weekly wages for all occupations, with African-American women averaging $242, Hispanic women at $224 and white women at $264. Notably, cleaning services workers’ earnings are somewhat higher than those of private household workers, with African-American women garnering $183, Hispanic women at $166 and white women at $193. Id. at 273.

²⁶  Id. at 274. Yet another example of pay differentials occurs along the southern borders of the United States.

According to a 1987 study of Mexicans household workers in El Paso, Texas, on the Mexican border, salaries there are “sadly deficient” compared to earnings for similar work in other parts of the United States. Day workers in El Paso averaged $15 per day and live-ins generally received $30 to $60 per week in the early 1980’s. Some employers, however, offered $80 or less per month for live-in services. Ruiz, By the Day or Week: Mexicana Domestic Workers in El Paso, in TO TOIL THE LIVELONG DAY 272 (C. Groneman & M. Norton eds. 1987).
either divorced, widowed or had their married spouses absent.\textsuperscript{28}

Of the 867,000 private household workers counted in the 1988 study, 50% had less than four years of high school education. One third had completed four years and 16% percent had at least one year of college. Median school years completed for this group, which includes workers over age fifteen of both sexes and all races, were twelve.\textsuperscript{29}

In January 1987, of 660,000 male and female private household workers aged 25 and over, median job tenure was 5.2 years. The mean was 8.4.\textsuperscript{30} A different set of statistics shows that of 959,000 employees in private household occupations,\textsuperscript{31} median tenure with the current employer was 2.6 years and mean tenure was 4.7.\textsuperscript{32} Household cleaners and servants remained longer, with median tenure of 3.9 years and mean tenure of 7.2 years.\textsuperscript{33} However, of 617,000 workers classified as “maids and housemen” in January 1987, over half had spent four or more years in the business, and over one-fourth had worked for ten or more years in the field. Although the median age was 38.2 years, 17.5% of all workers were 55 and over.\textsuperscript{34}

Predictions for the year 2000 estimate that employment in private household worker positions may drop from 1986 levels by approximately 11,000 to 100,000 positions.\textsuperscript{35}

Racial balance within the occupation has shifted significantly. The number of African-American women, in particular, has fallen steadily but remains disproportionate to the total percentage of African-American women in the work force. By 1979, 45% fewer African-American women worked as household workers than in 1970.\textsuperscript{36} In March 1979, very few African-American women under thirty were counted in Bureau of Labor statistics for

\begin{itemize}
\item \textsuperscript{28} BUREAU OF LABOR STATISTICS, Table 29: Detailed Occupation of Employed Family Heads (Husbands in Husband-Wife Families) by Type of Family (Mar. 1988) (unpublished data on file with author).
\item \textsuperscript{29} BUREAU OF LABOR STATISTICS, Table 13: Occupation of Employed Persons 16 Years Old and Over by Age and Years of School Completed (Mar. 1988) (unpublished data on file with author).
\item \textsuperscript{30} BUREAU OF LABOR STATISTICS, Table 13: Total Tenure in Current Occupation by Detailed Occupation, Sex, and Selected Age (Jan. 1987) (unpublished data on file with author).
\item \textsuperscript{31} These statistics include cooks, housekeepers, butlers, child care workers, private household cleaners and servants.
\item \textsuperscript{32} BUREAU OF LABOR STATISTICS, Table 24: Tenure in Current Occupation by Detailed Occupation and Tenure with Current Employer (Jan. 1987) (unpublished data on file with author).
\item \textsuperscript{33} Id.
\item \textsuperscript{35} BUREAU OF LABOR STATISTICS, EMPLOYMENT BY INDUSTRY AND OCCUPATION, 1986 AND PROJECTED 2000 ALTERNATIVES (unpublished data on file with author).
\item \textsuperscript{36} Grossman, supra note 2, at 18.
\end{itemize}
household workers. However, in 1981, 9.7% of employed African-American women were private household workers, 5.6% worked in cleaning services, and 3.3% performed personal service work. Comparable percentages for Hispanic and Mexican women were lower, and white women had the lowest representation in the private household worker and cleaning service occupations. A 1978 study found that the representation of Native-American women among private household workers was second only to that of African-American women.

Although government statistics indicate that private household work is a small and stable occupation, many researchers suggest otherwise. Saskia Sassen-Koob argues that gentrification in New York City during the 1980s has actually increased demand. Referring to statistical indicators generally, Malveaux and Phyllis Wallace, who have also conducted significant studies of the occupation, find that "since many women do not report their employment in jobs of this type, the occupation may be more important than its relative [reported] size suggests." Undocumented workers such as Pia, who also tend to be women of color, generally remain uncounted by demographers. One analyst who has focused on domestic workers globally argues that immigration has regained importance as a factor in domestic work, as it was during the early twentieth century. For example, unprecedented numbers of West Indian women have migrated to New York since 1965 for household worker positions in efforts to obtain permanent resident alien documentation. Mexican women crossing the border into El Paso and other cities, as discussed above, also form substantial numbers of workers who remain unrepresented in the statistical profiles.

In addition to the work force's changing racial balance and the shift in private household work arrangements from live-in to day work, the structure of the household work market has altered as well. Many workers, like Rae, Pia

37. Id. at 18-19.
39. Id.
41. Colen & Sanjek, At Work in Homes II: Directions in AT WORK IN HOMES: HOUSEHOLD WORKERS IN WORLD PERSPECTIVE 16 (R. Sanjek & S. Colen, eds. 1990) (unpublished manuscript on file with author) [hereinafter At Work in Homes II].
42. Id.
43. Malveaux & Wallace, supra note 25, at 285.
44. Colen, supra note 9, at 179.
45. Id.
and Cathy, continue to use references from other workers and employers, preferring the sense of security provided by informal networks over that of agencies or advertisements. \(^{46}\) However, private agencies have become increasingly popular among workers and employers as a clearing-house for making job connections. Such agencies pay women a portion of their receipts from employers and provide Social Security and other standard forms of worker coverage. While many agencies in New York and Boston charge homeowners between $12 and $20 per hour, the cleaners themselves generally earn around $6 per hour. Many agency employees work part-time. They receive no benefits, such as paid vacations or health insurance, other than those mandated by government. \(^{47}\) Employers check green cards, Social Security cards and references as required by law, but many workers in agencies simply provide employers with false documentation. \(^{48}\)

However they get their jobs, once at work most private household workers are responsible for similar tasks. These usually include vacuuming all rooms (often moving furniture in the process), washing and waxing floors, changing linens, dusting, and cleaning bathrooms and the kitchen. Some cook and take care of children. Others shop, iron and do laundry. Payment systems vary by employer and situation, but most workers are paid weekly or bi-weekly in cash or by check. \(^{49}\)

II. BENEFITS AND ENTITLEMENTS—THE GOVERNMENT’S ROLE

As noted in their brief biographies, none of the three hypothetical household workers receive anything from employers other than a paycheck and some food or old clothing. That they are theoretically but not practically covered by the federal and state laws which regulate employer/employee relationships is not unusual. \(^{50}\) The fact that "a large amount of noncompli-

\(^{46}\) Romero, \textit{supra} note 12, at 81.
\(^{49}\) Id.
\(^{50}\) \textit{See infra} text accompanying notes 63–67.
"ance" is apparent with respect to the minimum wage law and other laws will be discussed below, following an initial outline of employment taxes for household employers and employees as they currently exist.

While many, if not all, states require tax payments and withholding in private household work relationships, this section will primarily address federal obligations, with only passing references to related state requirements. However, the reader should bear in mind that benefits and enforcement issues under state laws parallel those under federal legislation.

In brief, household workers, like most wage-earners, must pay federal income and Social Security taxes. In 1989, the maximum possible earnings of any person under 65 for an exemption from filing a tax return was $7,200.

Every employee receiving quarterly cash wages of at least $50 from an employer was obligated to pay 7.51 percent of those earnings in federal Social Security taxes (Federal Insurance Contribution Act, hereinafter FICA).

In addition, federal laws impose a tax (6.2% in 1990) on all wages for old age, survivors and disability insurance.

Employers are subject to a more complex set of requirements. In addition to falling within the scope of the Fair Labor and Standards Act (FLSA) which mandates minimum wage payments for household workers, employers face numerous tax obligations. First, if an employer pays cash wages of at least $50 in a calendar quarter, she must file Form 942, "Employer's Quarterly Tax Return for Household Employees" each quarter and Form W-2, "Wage and Tax Statement" at year end. This constitutes the employer's matching portion of FICA. Second, if an employee requests income tax withholding and the employer agrees, the employee must complete Form W-4, "Employee's Withholding Allowance Certificate" and the employer must file Form 942 each quarter and Form W-2 at year end. Third, if an employer pays cash wages of

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52. INSTRUCTIONS FOR FORM 1040, U.S. DEPT. OF TREAS., IRS, 1989, at 4. The low-end of the non-filing scale is $5,100 annual income for a single person under 65, or $9,200 annual income for a married couple filing a joint return with both spouses under 65. Id.
53. EMPLOYMENT TAXES FOR HOUSEHOLD EMPLOYERS, PUB. 926, U.S. DEPT. OF TREAS., IRS, 1 (1990) [hereinafter PUBLICATION 926]. In 1990, the Social Security tax rate increased for both employees and employers to 7.65%.
55. This obligation has been in place since 1974, following the efforts of many groups to include private household workers in the FLSA's minimum wage provision. The Household Technicians of America, a "unionlike collective bargaining group" which grew out of the National Committee on Household Employment in 1971, worked specifically to achieve the change. Palmer, supra note 3, at 87. For further discussion of organizing efforts directed at legal change, see infra Part IV.
$1000 or more during a calendar quarter, she must file Form 940 or Form 940-EZ, "Employer's Annual Federal Unemployment (FUTA) Tax Return," at year end.\(^57\) Finally, if an employee gives an employer Form W-5, "earned income credit advance payment certificate," the employer must follow the same procedures as above for Form 942 and Form W-2, and give Notice 797, "Notice of a Possible Federal Tax Refund Due to the Earned Income Credit" (EIC) to all potentially eligible employees.\(^58\)

The same form which explains these various obligations also details the definition of a household employer. Its general rule provides that "If a worker performs services that are subject to your [the employer's] will and control, as to both what must be done and how it must be done, that worker is your employee. It does not matter if you exercise this control as long as you have the LEGAL RIGHT to control both the method and result of the services."\(^59\) The form gives several situational examples and illustrations of workers who may be household employees, including housekeepers and maids. It also provides information about variations on employment relationships and tax agreements. Penalties for non-compliance include financial charges and potential jail sentences.

In addition to tax laws, employers must abide by the Immigration Reform and Control Act (IRCA) of 1986. The Act provides that anyone who knowingly hires an immigrant without proper documentation could face maximum penalties of up to $10,000 in fines and six months in jail.\(^60\) Employers can legally sponsor an immigrant to do household work if they can prove "a shortage of documented workers available to do the same work at the 'prevailing wage.'"\(^61\)

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57. NOTICE TO HOUSEHOLD EMPLOYERS ABOUT FEDERAL UNEMPLOYMENT TAXES, NOTICE 576, U.S. DEPT. OF TREAS., IRS (Rev. Oct. 1989), explains that FUTA (Federal Unemployment Tax Act) taxes are used primarily to cover administrative costs of state unemployment compensation systems. The FUTA tax rate for 1989 based on the first $7000 of cash wages paid to each household employee during the year was 6.2% minus, in most cases, a 5.4% credit if the employer made payments required to the state unemployment fund. State unemployment taxes are determined according to a percentage on a taxable wage base under state unemployment law.

58. PUBLICATION 926, supra note 53, at 1.

59. Id. at 2 (emphasis in original). Case law also helps to shape the parameters of this definition. See, e.g., Neill v. United States, 271 F. Supp. 445 (D.C. Miss. 1967) (holding that women who performed general household duties and care for bedridden elderly woman were domestic servants subject to federal insurance contributions taxes and not practical nurses working as independent contractors).


61. Colen, supra note 9, at 173. In New York in 1985, the prevailing wage was just under $200 for a forty-four and a half hour work week.
One state requirement which deserves mention is workers' compensation insurance. Massachusetts law provides a useful example, although specific obligations vary by state. In Massachusetts, an employer who hires a household worker for sixteen or more hours weekly must purchase workers' compensation insurance or be subject to a fine and jail sentence.62

The legal complexities themselves may help explain the high levels of non-compliance with entitlements laws. Moreover, the absence of enforcement unfortunately and obviously reflects the absence of political and legal will to achieve the law's theoretical priorities. For example, one researcher cites government statistics showing that household workers collectively work below the minimum wage, describing the scenario as "a situation of socially dispersed employer lawlessness."63 A journalist chronicling the treacherous paper path of employer tax forms asserted that it "is taken for granted among those who work for the Social Security Administration that many who employ domestic workers don't pay Social Security tax and submit records . . . ."64 Regarding negligible enforcement of immigration laws with respect to household workers, a member of the Texas Governor's Task Force on Immigration said, "We [the government] are sending mixed messages. We want workers in service to the rich, maids and busboys, but otherwise they are not welcome."65 An INS deputy director in El Paso, Texas, echoed this view of enforcement, commenting that, "[i]t doesn't make sense looking for one illegal maid in Eastwood when we could be removing an alien from a good paying job."66 The pattern of informally sanctioned non-compliance lends support to Martha Minow's observation that enforcement difficulties "point toward the real meaning of the law."67

62. MASS. GEN. LAWS ch. 152. Insurance for a private household employee working twenty or more hours per week costs approximately $203 per year. It covers all medical and rehabilitation expenses incurred, and two-thirds of lost income for a worker out of work for five days. The coverage also provides a small death benefit. One insurance agent commented that his agency carries workers compensation insurance as a service but not for great profit, adding that few employers request it. The twelve policies on his agency's records were sold mainly to lawyers. Telephone interview with agency representative, Kaplansky Insurance Company, Boston, Mass. (Jan. 25, 1990).

63. At Work in Homes II, supra note 41, at 11 (citing J. ROLLINS, BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS 130 (1985)).


III. INDIVIDUAL STORIES — THE STRANDS OF WORKERS' LIVES

Many, if not most, private household workers fall through the gaps in the net of legal entitlements described above. This section will consider the roots of the apparent mismatch between the law and workers' needs. In closely examining the lives of workers such as Rae, Pia and Cathy, the analysis here seeks clues as to why much of current employment-related legislation effectively is irrelevant to private household workers.

Rae is in many ways typical of the statistically profiled private household worker. She is African-American, older, and did not complete high school. While none of these or any other factor is uniquely responsible for her current occupational status, being an African-American woman within the racist and sexist tradition pervading much of the United States undoubtedly shapes her relationship with her employers and her work. Rae’s race and gender not only influence why she originally entered the private household workforce but also affect her decisions about whether to stay.

Although the statistical commentary in Part I illustrated the disproportionate representation of women of color in the private household workforce, certain additional facts deserve mention to demonstrate further the tangle of racism and job choice. First, African-American women have historically been the sole support of a household more often than white women, with the resulting increased financial pressure to find and retain employment. Even if married, African-American women have been more likely than white women to continue in the paid workforce after having children, partly because of the “relatively greater labor force difficulties of African-American husbands, compared with white husbands.” A 1981 United States Department of Labor report suggests that educational disadvantage also keeps many African-

68. See supra text and notes in Part I.

69. As illustrated in the demographic analysis in Part I, African-American women have been disproportionately represented as private household workers nationwide. In areas where women of other non-white racial groups comprise high percentages of the local population, such women are similarly overrepresented among the area’s private household workers. See supra text and notes in Part I. This overrepresentation, as noted earlier, is evident particularly for Japanese-American women in San Francisco and Mexican and Mexican-American women near the United States’ border with Mexico.

Malveaux and Wallace, in their extensive research on minority women in the workplace comment that there “is little doubt that race discrimination is a factor in explaining differences in the occupation status of black, white, and Hispanic women.” Malveaux & Wallace, supra note 25, at 277. They add that their analysis of detailed occupations “leads to the conclusion that black women experience not only more, but also a different kind of occupational segregation than white women.” Id. at 284.


71. Id.
American women in private household work. An analysis which reviews statistical representations of African-American, Chicana and Japanese-American women concludes that "for women of color, domestic service has not resulted in social mobility but rather has trapped them in an occupational ghetto."

Rae first began doing household work when she finished tenth grade. Having grown up in Atlanta during the pre-Brown v. Board of Education era, Rae attended all African-American schools which had few resources and overcrowded classes. She learned the basics of reading and mathematics, but then left to do private household work full-time. Being an African-American woman without a strong education left Rae few other options for paid employment.

Although opportunities for African-American women have expanded in the nearly forty years since she first entered the labor force, Rae does not now seriously consider seeking a better-paying or more secure job. While she sees younger African-American women entering fields which had been reserved for white men while she was growing up, Rae also continues to live with the effects of a low-quality education, and does not want, at her age and with her extensive experience, suddenly to change careers. She appreciates the degree of autonomy she has over her work, and also is skeptical as to whether she would be hired even if she did decide to switch jobs. She plans to continue doing private household work, at least until she can no longer do the physical labor. Although her financial responsibilities decreased after her children left home, Rae must continue to support herself, especially because she has no Social Security or medical coverage for retirement.

Given her financial constraints and her realistic appraisal of job opportuni-

72. Id. at 18. The report highlights the relatively low educational level of African-American women in private household work as compared to African-American women generally.

73. Romero, supra note 12, at 77. Household work has sometimes been described as an occupation ghetto for women of color who were "forced into wage employment by the uncertainty of husbands' and fathers' earnings, yet were excluded from most industrial and white collar jobs by a race and sex stratified labor market." Glenn, supra note 10, at 57.

74. Despite the expansion of opportunities, racism remains a strong limiting force. Scholars cite racial and cultural stereotyping among employers as one key to African-American unemployment. They note the low skills of many young minority applicants and the absence of effective job information networks in poor neighborhoods as other critical factors. Schmidt, Urban Jobless Joined to Suburban Jobs, N.Y. Times, Oct. 25, 1989, at A16, col. 1.

75. From interviewing many older women who had worked as private household workers, one scholar found that the women "were able to identify the ways in which society had limited their options because they were Black women, confining them to the least desirable sectors of the economy. They could also elaborate upon the ways they had asserted their worth as individuals and gained pride and self-satisfaction for the work they had done." Dill, Making Your Job Good Yourself: Domestic Service and the Construction of Personal Dignity in Women and the Politics of Empowerment 37 (A. Bookman & S. Morgen, eds. 1988).
ties, Rae plans to remain in private household work for approximately ten more years. She feels ambivalent about the decision. She enjoys the control she has over her work, and finds her current employers relatively kind, but is tired of their overt and subtle racism and would like to earn more money in addition to medical coverage for her newly surfaced health problems.

Her young professional employers seem unconcerned about Rae’s health, despite Rae’s occasional comments about difficulties to them. Employers who actively attend to such employee needs are rare. Mary Romero, in her study of Chicana household workers, asserts that the motherly role of employer cannot be assumed, especially when minority women do private household work, because “the mistress is in the position of delegating low-status work to women not only of a lower class but also of a different ethnic and racial group.” She adds that “[i]n the case of black women, the domination/subordination pattern of the relationship grew out of attitudes developed during slavery that black servants were inferiors and nonpersons.”

Rae’s medical needs may yet become more pressing. However, financial need is not all that might determine whether Rae will request a raise. As she sees the situation, her job opportunities lie exclusively in household work. Although her current jobs feel secure, Rae worries that the job market may shrink with the influx of Latin-American women. She has heard from employers and from other household workers that many Mexican and Guatemalan workers are being hired in the area, reportedly for lower wages than non-foreign born workers. Given her low level of savings and family

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76. “Contrary to popular conceptions, the overriding attitude domestic workers [surveyed] expressed toward their work was not disdain or loathing but ambivalence.” Id. at 36. Corrine Raines, who, when interviewed, had thirty years of experience as a household worker in New York, discussed her work.

So many people have gotten their education by it, and it isn’t any disgrace. . . . I wasn’t embarrassed that I’d done that because I knew I was prepared for something else. I did it because it was something I could do to help my husband out. . . . I think I should be proud and want to work. Domestic work is nothing to be ashamed of, but it’s an art, just like anything else. You just have to learn how to do it.

Queenie Watkins, who was interviewed after spending thirty years with one family, reported similar feelings. “First you got to make your job good yourself. You work at it every day. . . . The only thing about it is that we have to learn how to live with our job. Your job is your livin’ and you learn how to do it good. Nothin’ is perfect.” Id.

77. Romero, supra note 12, at 79.
78. Id.
79. Judith Rollins reports that foreign-born women are perceived by employers as less “angry (or, at least, less apt to show it) and more vulnerable and deferential than native born women.” ROLLINS, supra note 63, at 130.
financial support, she feels she cannot afford to risk her jobs in a potentially shrinking market. Rae's decision to remain a household worker and not to pursue legal entitlements reflects a balancing that appears to be typical of many workforce members with similar characteristics.

Pia shares many of Rae's concerns about how prejudice limits her job opportunities, although she identifies the discrimination more specifically with her foreigner status than with her race. She sees that she and her friends work primarily for wealthy white people, and that if employees are not Latina, they are usually African-American.

However, her feelings about her job are mixed. Despite sensing her employers' racism and classism, through comments they make and by their unwillingness to assist her in dealings with the INS, she is nonetheless thrilled to have her job. She no longer inhabits a war zone as she did while living in El Salvador. She enjoys a much higher material standard of living than she did at home, and senses accomplishment and increased security with her relatively high earnings, some of which she sends to family members still in El Salvador. In addition, she feels she is safer from INS raids than she would be if she worked on farms or in factories as do many of her friends and relatives. Although Pia's employers have not offered to help obtain legal documentation for her, she hopes that they will soon. She wants to bring as many family members as possible to the United States, at least temporarily. She also would like to improve her English and overcome the language barrier which she feels prevents her from finding other jobs or even bargaining

80. Many immigrant women experience a jump in their earnings by doing private household work in the United States, even if they undergo a decrease in professional status. "Commuter" maids of all ages along the Mexican-United States border comprise the majority of El Paso, Texas' live-in household workers. Their earnings compare favorably to those of white collar workers in Juarez, the Mexican city just across the border. Ruiz, supra note 27, at 279 (citing Quintanilla & Copeland, Mexican Maids, supra note 66, at 84-86).

81. In many ways, Pia is comparable to some Salvadorean private household workers interviewed in the Los Angeles Times. Those women consider their lives success stories. They have made their way out of a cauldron of war and dead ends at home. They work successfully for people they like, making three to four times the weekly salaries they earned when they first arrived in this country, and they are safer from la migra—the Immigration and Naturalization Service—than they might be in a factory or picking crops. Their coveted jobs do come with a price, however, paid by the heart. McConahay, Latina Nannies/Anglo Families; The Intimate Experiment; What Happens When Two Cultures Meet at the Playpen and the Cradle, L.A. Times Magazine, Feb. 19, 1989, at 20.

82. Many West Indian women also remain in private household work positions with hopes of obtaining documentation. "For undocumented West Indian women newly-arrived in New York and Canada, and separated from their families, the hope of reconstituting their households motivates them to do household work for others." At Work in Homes II, supra note 41, at 10.
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effectively with her current employers. Despite the benefits, Pia remains constantly aware of problems with her job. Primary among those is her immigration status. Although some women she knows have begun the documentation process with employers who must prove to the INS a shortage of documented workers available and willing to do private household work at the prevailing wage, Pia's employers are unwilling to take the same action. The employers fear being found liable for not having paid taxes or other benefits to Pia. At the same time, they would like Pia to obtain documentation so that they can be confident about her staying with them. Pia worries that her employers might fire her to hire another woman with legal residence status. The informal job network among Salvadorean women is fairly strong, but Pia feels she cannot financially afford to be jobless, even for a few weeks. Also, although she has occasionally tried to find a better paying job which would offer more security and benefits, she has not succeeded either for lack of documentation or, she senses, because of generalized discrimination by employers against foreigners. However, she calculates that her risk of entrapment by the INS is much less in a private home than it is in a public workplace, so she finds a positive side to her lack of other employment.

As a result of her financial and immigration status, Pia feels extremely

83. Dolores Garcia (not her real name), another private household worker whose employer wants her to teach the employer's children Spanish, comments that, "Someday I will go home and work in an artesania shop for tourists," adding that she plans to get that job by speaking good English which she will learn from the children. McConahay, supra note 81, at 37.

84. A former employer of one household worker, described in a speech by Gerald Lopez, also mistakenly feared such exposure. This family of married doctors, for whose house and children Maria Elena (the worker) had cared during a fifteen month stint, "feared that documenting Maria Elena's employment would expose them to criminal liability both for having employed an undocumented worker and for having not paid the minimum wage or into social security." They refused the INS' standard request for a notarized statement regarding Maria Elena's employment. Lopez, The Work We Know So Little About, 42 STAN. L. REV. 1, 5 (1989).

85. Although the employers would theoretically be liable, the actual risk of prosecution is extremely low. Interview with Deborah Ankur, Harvard Law School Lecturer in Immigration Law, in Cambridge, Massachusetts (Apr. 12, 1990).

Again, Pia's circumstances are similar to the situation when Maria Elena had "begun to sense that the employers she now works for would very much like her to get all this [legalization] taken care of—so that they can know whether they can depend on her or have to hire another housekeeper." Lopez, supra note 84, at 6.

86. The fact that agencies require green cards or other documentation for an applicant to prove legal resident status keeps many women in the informal network, although false papers are often purchased by workers with little fear that employers will discover the inauthenticity. Ripeck interview, supra note 48. One agency owner commented with respect to the job market that "it is not the agencies that are answering the demand. Much more typical are informal matches." McConahay, supra note 81, at 18.

vulnerable to her employers' demands. Her current wages are low, supporting
one scholar's observation that "[a]s populations grow whose legal employment
rights are severely restricted by immigration status, or by the absence of
statuses permitting formal sector waged work, the relative cost of household
labor falls."\textsuperscript{87} She has never requested a raise, nor has she asked for
employment-related benefits, such as vacation days or, for obvious documenta-
tion-related reasons, Social Security benefits.\textsuperscript{88} In addition to the loneliness
and demoralization which can accompany the job, particularly for a new
immigrant, Pia feels incapable of refusing her employers' demand that she
work occasional Sundays, rather than go to church or meet friends.\textsuperscript{89}
According to INS official James Smith, "It's human nature—the abuse and the
exploitation."\textsuperscript{90}

Pia also fears sexual exploitation by her male employer and his friends,
having heard stories ranging from requests for stripteases to actual rapes. None
of her colleagues have reported to police the stories of abuse they have
recounted to her.\textsuperscript{91}

Like many immigrant women, Pia's employment-related decisions reflect
her balance of concerns about immigration status, language ability, sexism,
racism, poverty, family, and other factors which shape her life.

In contrast to Rae and Pia, Cathy would seem to be relatively well off. She
is an American-born white woman who should face none of the race- or
nationality-based discrimination which is so influential in Rae and Pia's lives.

From Cathy's perspective, however, life is not so easy. She has two
children to house and feed, with no support other than a meager income from
AFDC and related sources. She cannot afford childcare for the hours her
children are not in school. She never finished high school and feels qualified
only for low-skill jobs, which tend to pay little more than minimum wage.

\textsuperscript{87} At Work in Homes I, supra note 1, at 18.

\textsuperscript{88} Employer and employee responses illustrate the strong link of private household workers with
poverty, particularly for those who are undocumented. Entitlements laws are "flagrantly violated. Many
employers are reluctant to deduct the taxes and to keep appropriate records. Domestic workers, too, tend
to be unwilling to give up any of their meager, hard-earned wages. 'I want my money now,' one
Mexicana stated flatly." Ruiz, supra note 27, at 282.

\textsuperscript{89} "While employers vary in their treatment of workers, some employers clearly take advantage
of new immigrants' lack of knowledge of local conditions and their isolation from those who might
'enlighten' them. One undocumented worker was threatened with being reported to the INS for
expressing her dissatisfaction." Colen, supra note 9, at 175.

\textsuperscript{90} Ruiz, supra note 27, at 277 (citing Quintanilla & Copeland, Mexican Maids, supra note 66,
at 84).

\textsuperscript{91} Many women who cross the Mexican-United States border before daybreak also suffer abuse
from gangs and others. "Because of their dubious status in the United States, the rape victims do not
report the incidents." Id. at 281.
Cathy feels she must rule out such jobs because they pay too little and would require her registration in the Social Security system, which would render her ineligible for governmental financial support and subsidized housing. In many ways, therefore, she feels bound to her employers much as Rae or Pia feel bound to theirs.

While the jobs suit her needs for autonomy and flexible timing, they do not offer the employment-related benefits which Cathy knows other workers receive. Although Medicaid covers her family’s basic health care costs, Cathy accrues no Social Security retirement earnings and receives neither vacation days nor pay when she is ill. Cathy would like a raise, especially from a few long-term employers, but has not succeeded in getting one.

In deciding whether even to ask for a raise, Cathy pondered her position in the job market. Gentrification in many Boston neighborhoods had increased local demand for household workers, but local supply seemed to have grown as well. Many elderly people helped swell the market’s demand side, particularly those needing special home care, either following hospitalizations or simply as a result of their age. Cathy’s employers come mainly from this population and are unable to increase her salary, limited as they are by their own tight budgets.

In essence, Cathy’s self-evaluation focuses on factors including public benefits status, education, and family status. It is typical of many women sharing similar characteristics who choose not to pursue employment-related benefits.

Among them, Rae, Cathy, and Pia illustrate many points along the spectrum of diverse influences on private household workers: race, age, education, immigration status, language ability, poverty, expected job tenure, tax and public benefits status, and varying employer markets. In addition to these differentiating factors are many features which connect the workers’ fates. Primary among these are the nature of the employment relationship and the job, and the consequences of gender, race and class stereotypes which determine the employment situation’s background setting. Although these characteristics are highly interdependent, the following discussion will attempt

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92. The executive director of a community center which provides social services at a housing project describes a similar problem in Chicago. “We are talking with people about jobs, and they are calculating that it’s sometimes best for them to stay on welfare rather than work, because their rent will go up with their income.” Schmidt, supra note 74, at A16, col. 1.

93. Cathy provides “personal care” to many of these employers, including occasional bathing, cooking, shopping and general companionship. Expansion of in-home services to families in distress and increasing numbers of elderly receiving in-home care to reduce costs of hospitalization has expanded the market for private household workers. At Work in Homes II, supra note 41, at 17.
to draw out individual aspects of each.

While the actual employer-employee relationship is perhaps most critical for determining an individual worker’s work-related conditions, background factors unavoidably shape any interaction between the two parties. At the most basic level, gender roles both infuse and reinforce any relationship. Household work is somehow seen as “natural” for women, whether as family members or employees. For employees of color, the fact that housework is seen as women’s duty makes the work relationship particularly loaded. One writer notes that, “[p]aradoxically, domestic work has also been the occupation that most clearly defines women’s class, race, and ethnic differences, for it is an occupation in which some women (poor, African American, ethnically subordinate) have worked for wages paid by other women (usually middle class, white or ethnically dominant).” Finally, stereotypes of the home as ensconced in the private sphere and unreachable by the law lead many employers not to see their home as a workplace and themselves as employers, and to ignore the responsibilities of the employment relationship.

Although jobs and employers vary, certain experiences are common to most workers. Low pay, long hours, isolation and exhaustion from lengthy work days are widely considered intrinsic to the job. Lack of respect from employers, which manifests itself behaviorally as well as financially, also plagues household workers. Common related problems include employers who expect overtime on demand but do not pay for it, doctors’ bills which are not covered by insurance, periods of unemployment without unemployment insurance, no pay for vacation time or for when the employer goes on vacation.

94. The image of household work as women’s destiny, as well as the destiny of employees of color (eg. African-American maids and Asian “houseboys”), predominates in the media. Id. at 12, 15. “When household work comes to characterize a social group, it stigmatizes in a way that other working class occupations that involve productive work, and permit fuller family and personal life—such as mining, agricultural labor, factory work, or clerical employment—do not.” Id. at 12.

95. Palmer, supra note 3, at 80.

96. Commenting on Western society’s mystification of the ideological separation between the household and workplace, two authors argue that “‘Work’ became something one did for a wage in a ‘workplace’; the home was no longer seen as the site of ‘work’, and paid ‘housework’ was regarded by employers as low status, even stigmatized work, or not real work at all. In addition to its ideological implications for gender, this separation interferes with our capacity to see the home as a workplace, and to conceptualize the interpenetration of production and reproduction.” At Work in Homes I, supra note 1, at 9.

97. Carolyn Reed, a leader in the national organizing effort for household workers, clarifies that $100 per week [in 1980] is “not so great when you consider the experience of someone who’s been working 35 years and the variety of skill she must have by now. You can bet a plumber and an electrician make more than that.” Wood, Who Will Care for the Children of the ’80’s; Help; As the need for domestic help increases, so do expectations—on both sides, Wash. Post Mag., May 11, 1980, at 22.

98. Colen, supra note 9, at 174-75.
children who remain home unsupervised while a worker is caring for another family, and the indignities of being considered "inferior." In addition, the danger of unwanted sexual advances from men ranging from harassment to rape "is widely appreciated among household workers."  

Other problems include the work's low pay, low status, lack of mobility and job security. The market's loose nature encourages non-compliance with employment-related legislation as well. Many household work situations remain "informal, with terms and conditions negotiated by each worker and employer, orally more often than on paper, with little legal force attached to such contracts."  

While private household workers unquestionably labor for money more than for love, the intimate nature of work within another's household casts a distinguishing light on the employer-employee relationship. The personalism "coexists with an asymmetry that is also inherent in the relationship." This "insurmountable barrier of status [which is] reinforced by cultural and racial differences" plays out in employees' difficulties in requesting raises, changing working conditions or attempting to alter other aspects of the employment relationship. Rae, Fia and Cathy all experience this difficulty of knowing a family intimately on a level that sometimes approaches friendship or at least companionship, and then having to ask for more money. Sometimes it is because an employer is elderly or ill and relies on the worker. However, the most common reason for not asking, among other workers surveyed, was "a more general feeling about the personal nature of the relationship with the employer, including comments such as: 'She's so nice that I don't like to ask.'"  

Others have come to view the relationship differently. Jewell Prieleau, when asked whether her employer of thirty-one years saw her as a family member, captured the insecurities and tensions of the asymmetrical relationship in her comment:

99. Wood, supra note 97, at 22.
100. At Work in Homes II, supra note 41, at 10.
102. At Work in Homes II, supra note 41, at 11.
103. Glenn, supra note 10, at 65.
104. Id. at 67.
105. One New Orleans household worker captured the enmeshed nature of the companionship which sometimes develops in the employer/employee relationship with her comment, "After spending a long time together, . . . it was hard not to get close." Yes Ma'am (video produced by Gary Goldman, New Orleans, 1980) (available in Schlesinger Library, Harvard University) [hereinafter Yes Ma'am].
106. Glenn, supra note 10, at 65.
Well, they tell you that. But of course you have the feeling, because you know that if something goes wrong, something they didn't like, how fast they would let you go . . . . There is just a feeling between you that you can cover up for years and years, but that feeling in both parties is there. They nice and they treat me nice like a person would treat a maid. But you know they wouldn't go out of their way so much.  

As a result of the peculiarly isolated nature of private household work and the accompanying tensions of the employment relationship, employees often rely on their own forms of resistance to job difficulties rather than expect employer compliance with the law. In relation to Japanese-American household workers, Glenn comments that workers' "strategies include selecting and retaining employers who allow them scope to do the job as they see fit, seizing the initiative from employers, setting their own routines, and defining their own standards of work." Other forms of worker control through sabotage (e.g. over-starching shirts), theft and willful destruction (e.g. breaking plates, overuse of supplies), seem to have been common in the past, although they are not often discussed in current studies.

Direct confrontation and threats to quit are the most common "weapons" available to change employer behavior. However, while changing jobs is "the one great power the domestic possessed," the power is "an individual, not a collective one." The resistance stories of Rae, Pia, Cathy, and many other workers "crystallize around the workers' feeling that their rights were always subject to violation, that they must be prepared to defend and assert their humanity to make the work situation tolerable or to terminate it with a sense of self-respect." This section's analysis reflects the view that legislation and policies will

107. Dill, supra note 75, at 42.
110. Dill, supra note 75, at 41.
111. D. VAN RAAPHORST, supra note 109, at 211. However, one author's comments shed some historical perspective on these forms of domestic workers' resistance. "The whole body of domestic employees might strike and industry would not be stagnant, transportation would go on just the same, trade would not be interfered with, and manufacturers would know no difference." Id. at 213 (citing G. GROAT, AN INTRODUCTION TO THE STUDY OF ORGANIZED LABOR at 148-59). In contrast, where replacements are not easily found for childcare and elder care workers, those workers' threats to strike may have more power over particular employers or communities because of the pressing needs they satisfy.
112. Dill, supra note 75, at 43.
be accessible and meaningful to their intended audiences only if they are responsive to actual conditions of individuals' lives. A person's workforce status or even the societal realities of racism and poverty, if considered individually, remain inadequate proxies by which to develop effective legislation. It is the blend of such elements, as experienced by each individual worker, which is critical to responsive change. The focus here on isolating particular pieces of workers' lives does not suggest that distinct insights can simply be added together for a successful outcome. Rather, identification of individual strands among the influences that shape each worker's job choice, employment relationship, and status is critical to the development of effective employment-related laws.

IV. ORGANIZING AND THE POTENTIAL FOR WORKER EMPOWERMENT

While the above discussion illustrates the central role of individual resistance, some collective actions have succeeded in improving workers' status and conditions. Consideration here of organizing efforts aims to uncover potentially effective avenues for legislative outreach to workers as well as possibilities for improved use of non-legal worker resistance tactics. Both these concerns fall under the general goal of developing strategies to improve workers' material conditions.

This section first reviews the reasons for worker resistance and the persistent obstacles to collective action among private household workers to set in context the uneven history of organizing efforts. The discussion focuses briefly on the history and current state of various household workers' organizations. Stepping away from workers' immediate concerns, the commentary then addresses the potential of organizing efforts in this sector from practical and theoretical standpoints. Finally, analogies with the current battered women's movement are considered for their potential instructiveness in methods for reaching individuals who feel isolated and disempowered.

The stories of Rae, Pia, Cathy, and other workers, and the historical and demographic information presented above illustrate the range of obstacles that interferes with workers' collective, as well as individual, empowerment. Factors which stem from the nature of the job itself include, briefly: the individual and informal character of private household work which leads to workers' isolation from one another; low socio-economic status of workers resulting in low education and information levels among workers; fierce competition among workers in tight job markets; complex interpersonal
employer/employee relationships; and a history of indifference to organized labor.\textsuperscript{113}

In addition to their individualized circumstances, household workers confront a daunting challenge in the very idea of organizing for change by seeking "rights, privileges, and protections associated with the workplace in a sphere governed by personal and familial values."\textsuperscript{114} Their generalized distrust of professional women's and feminist organizations' efforts of assistance,\textsuperscript{115} as well as a widespread mistrust of lawyers, also impedes organizational efforts by outsiders.\textsuperscript{116}

Various influences, including many of those identified above, have rendered workers' organizations more of an historical phenomenon than a current reality. Nonetheless, a brief review provides useful insight into how these factors have shaped labor organizing among household workers.

More than statistical analysis, private household workers' comments over time reflect the intractable nature of work-related problems. One worker in 1915 offered a situational analysis strikingly similar to views of many contemporary workers. "If it be admitted, then, that housework is in itself a desirable and suitable occupation for women who must earn their living by manual labor, it cannot be the work itself, but the conditions surrounding it that make it so distasteful to the modern woman."\textsuperscript{117} A 1916 song called "The Maid's Defiance," written for members of the Denver Housemaid's Union, also outlines the ever-present problems facing private household workers, and illustrates the potential power and inspiration which collective action holds for workers.

We 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.

Chorus:
It's a long day for household Mary, it's a long day's hard toil.

\textsuperscript{113} D. \textsc{Van Raaphorst}, \textit{supra} note 109, at 187.
\textsuperscript{114} Dill, \textit{supra} note 75, at 35.
\textsuperscript{115} \textsc{Chaney} \& \textsc{Castro}, \textit{A New Field for Research and Action}, in \textsc{Muchachas No More} 4 (E. \textsc{Chaney} \& M. \textsc{Castro}, eds. 1989).
\textsuperscript{116} This distrust is particularly prevalent among women of color. "Instead of using law and lawyers, most low-income women of color apparently often deal with oppressive circumstances through their own stock of informal strategies." Lopez, \textit{supra} note 84, at 8.
\textsuperscript{117} \textsc{Grossman}, \textit{supra} note 2, at 18 (citing \textsc{C. Barker}, \textit{WANTED A YOUNG WOMAN TO DO HOUSEWORK} 25-26 (1915)).
It's a burden too hard to carry, so our mistress' schemes will foil.
For we're out for a shorter day this summer,
Or we'll fix old Denver town.

We've answered all your door bells, and we've washed your dirty kid.
For lo-these many weary years, we've done as we were bid,
But we're going to fight for freedom, and for our rights we'll stand.
And we're going to stick together in one big Union band.

Chorus
We've washed your dirty linen and we've cooked your daily foods;
We've eaten in your kitchens, and we've stood your ugly moods.
But now we've joined the Union and organized to stay,
The cooks and maids and chauffeurs in one grand array.

Chorus
You've paid the wages, that's what kept us on the run.
You say you've done your duty, you cranky son-of-a-gun.
We've stood for all your crazy bunk, and still you wave and shout,
And call us insufficient and a lazy gad-about.118

Low wages, poor working conditions and employer disrespect remain constants
in the individual and collective struggles of household workers to improve their
work environments.

Despite the challenges to collective action, some organizations have
emerged over time. As illustrated here, they respond to both private household
work's particularities and the resulting needs of workers.

Predecessors of contemporary organizations seemed to organize according
to racial and ethnic backgrounds, paralleling the social and job-finding
networks of their workers. In 1909, Nannie Helen Burroughs opened the
National Training School for Women and Girls, which emphasized intellectual
development along with skills refinement for African-American women
workers.119 In 1921, Burroughs inaugurated the National Association of
Wage-Earners for women. While members included “household engineers of
servantless homes,” most were household workers who supported better

(also cited in D. VAN RAAPHORST, supra note 109, at 186-87).
119. Palmer, supra note 3, at 83. The school’s name change in the 1930s to the National Trade
and Professional School suggested that “the training given for white women to manage their own homes
more efficiently was, when taken by black women, occupational training to labor in someone else's
home.” Id. at 85.
training for their work.\textsuperscript{120}

Slightly over a decade later, El Paso household workers formed the Domestic Workers Association which included over 500 Mexican-American women in a union-like organization to demand a minimum wage ($3 per week).\textsuperscript{121} The organization survived only briefly because of community hostility to the union and high unemployment on both sides of the border, whose combined effect insured a constant supply of workers.\textsuperscript{122}

In addition to action-oriented groups, clubs, though ostensibly social, “provided the formal structure for the development of a shared consciousness about the conditions and nature of domestic work.”\textsuperscript{123} The clubs offered a place for information-sharing about individual acts of resistance and encouraged negotiation and further resistance.\textsuperscript{124}

Later collective action efforts continued to reflect the race and class divisions which distinguish private household work employees from employers. During the 1960’s while some white feminists argued for wages for housework, African-American women led efforts “to make domestic work a commercial and specialized occupation with central agencies supplying specialized workers to perform specific tasks at a profitable margin.” Many women’s organizations, led by the National Council on Negro Women, organized the National Committee on Household Employment (NCHE) in 1964. The NCHE proposed to upgrade the status of African-American workers, many of whom did private household work, by publicizing the work situations of private household workers (especially the lack of minimum wage pro-

\textsuperscript{120} Id. at 84.

\textsuperscript{121} Ruiz, supra note 27, at 273.

\textsuperscript{122} Id. at 274. Interestingly, the McCarran-Walters Act, which attempted to control the flow of Mexican Nationals into the United States, sparked Anglo women employers to organize. In 1953, they formed the Association for Legalized Domestics and sought INS aid to create legal contracts for women from Juarez, Mexico to work in El Paso. Their proposal paralleled the government-authorized bracero program for “non-immigrant” Mexican farmworkers hired by Southwest agribusiness, including provisions for minimum salaries, acceptable living quarters and food, visa fees and at-will termination. Mexican-American household workers protested the proposal, saying worker supply was adequate on the Texas side of the border and that local employers simply wanted sanction for paying lower wages. The Department of Justice refused to consider the program. Id. at 274-75 (citing El Paso Herald Post, Oct. 12, 15, 30 and Nov. 9, 18, 1953).

\textsuperscript{123} Dill, supra note 75, at 49.

\textsuperscript{124} “Although these groups cannot be compared to some of the unions of domestic workers that were formed to bring about changes in wages and working conditions, they must be acknowledged as an important element in the domestic worker’s struggle to gain mastery over her occupation.” Id. In addition, for African-American women in particular, participation in social clubs and church organizations, as well as a reputation as a decent and law-abiding citizen helped offset the low status of private household work. Id.

\textsuperscript{125} Palmer, supra note 3, at 85.
Household Workers

1991]

1. Household Workers

tections), establishing training programs to standardize the work, and organizing specialized home services for contracting that would justify increasing workers’ wages. It contracted with the Department of Labor (DOL) and the Women’s Bureau to run several model training and organizational projects from 1967-71. Pilot programs provided training, placement, follow-up for employers and employees, and support for creation of agencies. Although they did not become self-sustaining, workers who completed the training benefitted financially from the experience, earning higher wages than those who did not.

In 1971, the Household Technicians of America (HTA) grew out of the NCHE. As noted earlier, the HTA provided critical support for household workers’ inclusion in a 1974 Fair Labor Standards Act minimum wage provision. Other organizations also continued the NCHE’s training drive including the Women’s Service Club of Boston, the Dallas Committee on Household Employment, and the Household Technicians of Louisiana.

Although some organizations presently exist, especially for immigrant women, their training component seems to have declined in the past decade. Commercial agencies might have provided an alternative organizing hub around which household workers could have enhanced their bargaining position with employers, as the NCHE attempted to achieve. However, agencies have not filled that role. Perhaps as a result of minimal financial resources or business training of workers, agencies are generally run by people other than workers themselves. Those who benefit most from privately organized household worker enterprises thus tend not to be the workers.

The same diversity which enriches the household worker sector thus can also divide the group by placing differently situated workers in competition for jobs and salaries. The physical isolation of household workers from one another augments the pressure against collective action already fostered by intragroup differences.

Moreover, changes in the field of household work such as the mechanization of most tasks aside from child and elder care have enabled many potential employers to subcontract work to discrete services (e.g. wash-and-fold

126. Id. at 85-86.
128. Id. at 92. At least into 1980, the club operated Homemaker Training Programs, funded under the Comprehensive Employment and Training Act, which trained 60 women per year in 12 week sessions. Id. at 93.
129. The committee offered courses in health and grooming, household skills and work simplification, nutrition, home safety and first aid, pet and plant care, and kitchen management.
130. Yes Ma’am, supra note 105.
laundromats, rug cleaners and window washers) or do their own chores after work hours. The shift from home to commercial production for food preparation, clothing care and leisure entertainment also influences workers' potential to enhance their bargaining power vis-à-vis employers.¹³¹

Private household workers also continue to confront ethnic and racial differences, exacerbated by worker and employer prejudices which combine to deter collective action. More specifically, African-American women's efforts to organize have been slowed by periods of substantial female immigration. Large increases in migration multiply the supply of workers and, as a result, decrease not only wages but also the bargaining power of those already employed.¹³²

In addition, traditional economic analysis raises serious questions about the potential for any fundamental change in household workers' status. In a society with a market-based economy, "work that produces no exchange value is devalued. . . . [w]hile industrial workers are integrated into a socially organized system of production, the household worker remains atomized."¹³³ While household work is a service strongly desired by certain economic classes, it is neither an irreproducible necessity nor a highly specialized skill requiring lengthy training. As a unique and discrete non-essential service, it is also not naturally linked to other market sectors. Its valuation by society at large therefore depends, at least in part, on the goodwill of the market.

Finally, although household workers may make substantial contributions to individual homes, the isolated nature of the employment often interferes with perceptions of one job as part of a larger framework. The argument that "people cannot defy institutions to which they have no access, and to which they make no contribution"¹³⁴ reiterates the difficulty of altering asymmetrical employment relationships. It also underscores the importance of household workers envisioning themselves as part of a broad enterprise.

Atomized work can alienate a worker from her larger community. In so doing, it may enhance the potential for work conditions and employer attitudes to damage a worker's self-esteem to the point of fostering passivity and silence. Those in power, including legislators and law enforcers, as well as individual employers, "point to this silence to legitimate their regime. The subordinated

¹³¹ Palmer, supra note 3, at 87.
¹³² Id.
¹³³ Glenn, supra note 10, at 61.
¹³⁴ F. PIVEN AND R. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 23 (1977) [emphasis omitted].
person [herself can begin] to believe the argument."\[135\]

This is not to say that organizing is necessarily futile. Many institutional cleaning workers, for example, belong to unions which monitor pay, job security and promotions under a union contract which may also offer benefits packages and cost-of-living increases.\[136\] Indeed, some labor market theorists distinguish among markets by the presence of worker organizations. They identify unions, especially for marginal workers, as critical for "job security, stable employment, higher wages and established paths for advancement."\[137\] Still, the challenges presented by conflicting needs of different household workers as well as the isolated and gendered character of the job currently render collective action a partial improvement, at best.

V. AVENUES FOR CHANGE

While worker-led efforts to improve the conditions of private household work are important, governmental backing through legislation and supporting programs also plays an essential role in changing the status quo. This section proposes a set of regulations which attempts to address the many factors raised above, and then evaluates the regulations' consequences for Rae, Pia and Cathy. In addition to focusing on individual effects, the section also critiques the possibility of achieving material change through legislation by drawing attention to the background "rules" against which any implementation occurs. Finally, analogies with the current battered women's movement are considered for their potential instructiveness in tactics for reaching and securing the lives of individuals who feel isolated and disempowered.

A. A Legislative Proposal

The regulations attempt to decrease the vulnerability of private household workers. They have two guiding objectives: first, to facilitate workers' coverage under relevant employment laws, and second, to minimize the decrease in job supply while enforcing the financial obligations of those who can afford to pay them. In addition, the regulations pointedly undertake to reduce the vulnerability to exploitation of immigrant women, particularly those

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137. Id. at 105 (citing R. EDWARDS, CONTESTED TERRAIN: THE TRANSFORMATION OF THE WORKPLACE IN THE TWENTIETH CENTURY 169-71 (1977)).
who lack legal work or residence documentation.

Specifically, the regulations aim to have a widespread outreach and a streamlined registration system so that workers will be informed of their rights by those they trust (e.g., churches, community groups). One goal is that workers should not have to confront their employers directly about employment law violations. In addition, the regulations attempt to be relatively inexpensive for workers by exempting them from tax obligations on the bulk of their earnings. They strive to avoid forcing workers to choose between immediate income and receipt of future benefits for retirement and disability.

On the employers' side, the regulations recognize the tenuous financial situations of some employers, particularly those who are elderly and/or require medical or other special needs care, by creating a tax exemption for those who fall below a certain floor income amount. The decreased cost to workers of registering within the system will concurrently increase the cost to non-exempt employers by facilitating law enforcement and employers' liability for related taxes. However, the demand curve for employers with incomes above the exemption amount presumably will not shift significantly, and the government's enforcement efforts will be enhanced at little cost to workers.

Household Employment Regulations: A Proposal

Preamble: These regulations are proposed to provide private household workers with benefits and protections comparable to those of other service workers. Current statutes regarding social security payments, unemployment insurance and workers' compensation cover all workers meeting certain criteria. However, private household workers seldom receive the coverage due from their employers. These proposed regulations respond to the crisis in private household worker coverage by changing current legislation and enforcement provisions which encourage employer and employee non-compliance and weak governmental enforcement. They are intended at base to improve the material conditions and economic self-sufficiency of a set of workers comprised primarily of women, including many women of color.

Individual regulations address particularly critical needs. Proposals pertaining to United States residency documentation (see 3(c)) aim to protect the continued employment of undocumented household workers. Proposals pertaining to registration services (see 4(a)) attempt to avoid confrontations between employer and employee and return the enforcement burden to the Internal Revenue Service which enforces tax obligations throughout the workforce.
The Regulations:

1. Current legislation providing for Social Security, Workers' Compensation and Unemployment Insurance coverage as described below would remain in effect except as provided by these regulations.

   a. Social Security (SS) laws which require an employer and employee each to pay 7.65% of the employee's salary in SS taxes, where an employee earns over $50 wages in a calendar quarter, would remain in effect except as modified below.

   b. Unemployment Insurance (UI) tax payments required of an employer paying wages exceeding $1000 per calendar quarter at a rate of 3% of the first $7000 would remain in effect except as modified below.

   c. Workers' Compensation Insurance (WCI) required of employers who hire a worker for sixteen or more hours per week would remain in effect except as modified below.

   d. The Immigration Reform and Control Act of 1986 (IRCA) making it illegal to hire undocumented workers would be modified to exclude household workers from its coverage as provided below.

2. The following provisions modify coverage described in Sec. 1(a) - (d).

   a. Employers required by current legislation to pay SS, UI and WCI taxes described in Sec. 1(a) - (c) who meet the following criteria are hereby exempt from obligations to pay such taxes for household workers employed by them:

      (1) The household worker is hired exclusively for household or domestic work performed principally inside the employer's residence;

      (2) The household work provided involves childcare, cleaning and other services in the nature of repair and maintenance rather than improvements to employer's residence;\(^{138}\)

      (3) The household worker is employed on a regular basis for general tasks rather than on a sporadic basis for discrete

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problems or needs of the residence;
(4) The employer is not otherwise exempt from tax obligations by virtue of employee's status as an independent contractor; and
(5) The income of all those who reside in employer's household during at least half of the household worker's taxable employment period must fall below $A [amount to be calculated to encompass average income of elderly employers].

b. State and federal governments will jointly provide revenues to match tax payments otherwise required of those employers exempted under Sec. 2(a) in proportion to their current cost-sharing arrangements under WCI and Medicaid.

c. Employers not exempt under Sec. 2(a) from paying SS, UI and WCI taxes must continue to pay their obligations as scheduled.

d. Employers of undocumented household workers are subject to the following additional regulations:
   (1) IRCA requirements of United States citizenship or specified documentation from the Immigration and Naturalization Service (INS) for lawful employment of any worker will not apply to workers hired exclusively for household or domestic work as defined in Sec. 2(a)(1)-(3).
   (2) Employers of undocumented workers not otherwise exempt from SS, UI and WCI payments under Sec. 2(a) must pay such taxes, with SS and UI taxes transferred to the general fund described in Sec. 3(c).

3. Private household workers required by law to pay income and SS taxes must do so except as modified by the following provisions:139

   a. Workers earning less than $B [a number to be determined which is well over the federally recognized poverty line] calculated according to number of dependents are exempt from any tax liability.

   b. Workers currently receiving public benefits through Aid to Families

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139. Ideally, Section 3's application would extend to all workers who qualify for its terms regarding earnings and documentation.
with Dependent Children, Supplemental Survivors Insurance, Medicaid and other similar programs will retain eligibility and current funding levels without penalty for employment earnings up to the amount described in Sec. 3(a), after which benefits will be reduced in a scaled proportion to reported earnings.

c. Workers who are undocumented by the INS and not exempt under Sec. 3(a) must have their taxes withheld and paid into a general fund for immigrant services pending further amendments to IRCA as described in the preamble to these proposals.

4. These regulatory changes will be implemented through the following programs and public relations plans:

a. Employees will register with the Internal Revenue Service's (IRS) local office (or with the state welfare office, if employees receive public assistance benefits) as private household workers under an expedited filing system as described in the preamble to these proposals.

b. Information outreach to workers, including information on tax regulations as well as workplace safety and sexual harassment laws, to be provided orally and in writing in multiple languages in a variety of locations, including supermarkets, playgrounds, churches and buses; basic information regarding the regulations also to be enclosed with tax forms and/or other governmental mass mailings.

c. Information outreach to employers to be enclosed with tax forms and/or other government mass mailings, as well as through statewide advertisements and public service messages regarding employer responsibilities for private household employees.

B. The Regulations: A Cost/Benefit Analysis

Although they attempt to encompass most major problems faced by household workers, these regulations have a number of flaws which will be addressed below. Indeed, some of the problems may be so serious as to make the creation of such regulations a damaging endeavor. Nonetheless, the regulations' specific efforts to accommodate conflicts among factors merit attention, if only to underscore the extreme difficulty of achieving a satisfactory resolution.
First, the modifications of employee liability (Reg. Sec. 3) aim to compensate for the tendency of people earning subsistence wages to opt for current consumption rather than delayed benefits when given the choice. Under the proposed regulations, an employee will not gain by foregoing benefits; unless she earns over a specified amount, she will not have to pay taxes out of her salary. Secondly, the regulations attempt to minimize negative effects on job availability by exempting from tax obligations employers earning below a certain income level (Reg. Sec. 2(a)(5)). Although increased cost might reduce the salaries offered by non-exempt employers, the regulations' underlying assumption is that the effect is not likely to be significant as there are reasonable exemption ceilings and a high demand for quality service by those same employers. However, as Rae, Pia and Cathy note, even a small effect may feel significant to one living in or near poverty.

Thirdly, the shift in IRCA obligations reflects an attempt to diminish the particularly egregious exploitation of undocumented workers. Other regulations aim to reduce the ramifications of the shift for non-foreign workers who may be perceived by employers as "more expensive."

Finally, the tax exemption for certain employers of household workers admittedly risks reinforcing consideration of the home as a different kind of workplace as well as incurring the wrath of wealthy employers. However, widespread education and increased enforcement are directed at minimizing the risk of further ingraining the "separate spheres" ideology. Parallels between current tax bracket differentials for higher earners and the exemption framework should help assuage disgruntled taxpayers.

While the above analysis describes the intended effects of the proposed regulations, a return to individual examples can best illustrate both the intended and unintended consequences of the regulations' application to diverse workers. The following discussion assumes that the proposals have been implemented and that outreach efforts have succeeded (admittedly, a substantial assumption), and explores the potential consequences for Rae, Pia and Cathy.

Rae has experienced both positive and negative results from the change. Her employers now pay Social Security taxes, which has motivated Rae to stay with her jobs for a while longer if her health allows. She wants to meet the minimum calendar-quarter qualifying requirement so that she can receive the higher income of Social Security rather than Supplemental Survivor's Insurance upon reaching retirement age. She need not pay income or Social Security taxes because her income falls below the minimum amount set in the regulations. However, she continues to suffer from medical problems and feels even less able to request a raise now that her employers are paying Social Security taxes for her. Also, although she feels fairly secure with several of her
employers, Rae worries that one who is relatively less wealthy than the others may be seeking to hire a younger and undocumented Latin-American woman who would present no medical problems and expect a lower salary.

Pia does not share Rae’s pleasure in receiving Social Security benefits. She will not receive the benefits of unemployment, disability and old age income security until IRCA is changed, so the fact that her employer pays taxes provides Pia with little direct benefit. Furthermore, she is no longer as "inexpensive" to her employers, as they have told her on several occasions. Like Rae, she is not very worried about her job security but feels less able to request an increase in salary or vacation time because she is aware that her employer pays taxes on her behalf.

On the positive side, Pia no longer fears being fired for lack of documentation. She feels significant relief as a result of this change, and has commented to friends that the greater sense of security almost entirely overcomes her increased difficulty in requesting changes in employment conditions. Her male employer has not stopped sexually harassing her, however, and Pia wonders if perhaps it has increased following the changes.

Cathy hates the change. She lost one job with an employer who was just over the minimum income exemption for Social Security taxes. The employer decided to hire an undocumented woman who not only charged less but also knew nothing of the new legislation. Little has changed with Cathy’s elderly employers. They do not pay taxes and they have also not given her a raise. Although Cathy is now earning calendar-quarter credit through government payments of her taxes, those benefits seem outweighed by increased financial strain as a result of the job loss. She also sees fewer job opportunities because employers, in her view, are more interested in evading the law and hiring undocumented workers who charge less and will not likely register with the IRS. She initially had trouble with her AFDC caseworker but those problems have been resolved. Still, she feels strongly that in most ways the new laws have harmed her income and opportunities.

The many disappointments identified by Rae, Pia and Cathy regarding implementation reflect the complex challenges to any legislative endeavors. Even with efforts to accommodate multiple interests, the proposed regulations (and perhaps any regulations) face two fundamental and related problems. First, regulations which require action by members of a disempowered group can be criticized for ignoring the psychological consequences of marginalized status on an individual’s willingness to take action. Second, the regulations

140. Political scientist Kristin Bumiller draws attention to the gradual judicial acceptance of the theory developed by Gunnar Myrdal that "groups with a history of mistreatment suffer from the effects
may seem offensively inconsiderate of reverberations resulting from shifting the status quo in one area but not others.

The increased difficulties sensed by Rae, Pia and Cathy following the proposals' implementation suggest that altering one aspect of workers' bargaining power without changing the larger context would be minimally effective at best, and potentially quite damaging. Indeed, implementation may become expensive for workers as employers start to pay taxes and become less willing to bargain regarding salary, vacation days or other employment concerns. As Rae, Pia and Cathy note, even small effects may feel significant to one living in or near poverty. Kristin Bumiller argues in the context of civil rights that "[s]ince most antidiscrimination laws rely primarily on the victims to identify violations, report them to public authorities, and participate in enforcement proceedings, these laws tacitly assume that such behavior is reasonably unproblematic and that those in the protected class can and will accept those burdens." Generally, this critique suggests that law does not reflect the complex nature of discrimination and cannot change the broader context surrounding its application. In short, "the model of legal protection does not present a viable option for social change because law is not central to most people's lives."

C. The Battered Women's Movement: An Analogy

A movement outside the household worker situation provides some hope for combining legislation and collective action to address the seemingly intractable problems posed here. The campaign against domestic violence offers interesting parallels for reaching and empowering a diverse and atomized group of women linked primarily by a single common experience, be it a violent relationship or work force status.

One key to its success is its agenda. The battered women's movement aims to reeducate the batterer, decrease the cost of change to women, increase the perceived cost of battering, and expand community support options. The private household worker movement could similarly aim to change the

of hostility, and this in turn reinforces their victimization and prevents them from using the instruments of power to benefit the interests of the group." K. BUMILLER, THE CIVIL RIGHTS SOCIETY 11-12 (1988) (citing G. MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944)).

141. Id. at 2-3.
142. Id. at 110.
employer and create legal doctrine and practice that would enable women to receive standard work force protections for private household work rather than press for their shift out of such work and ignore the consequences for those who remain. One legal scholar of the battered women's movement comments:

being placed in the double bind of having to choose between being a woman and unequal, on the one hand, and being equal and not a woman on the other, is the hallmark of women as an oppressed class. The way out of this double bind is not, however, to choose between equality and identity, nor even to move back and forth depending on the instant context, but rather to focus on, criticize and change the conditions that create the double bind.144

Similarly, private household workers as a group have conflicting as well as coinciding interests which create multiple binds. One key to effective organization and legislation therefore is attention to the conditions—including racism, immigration status, employment relationship and other factors—which combine to create those binds.

Legislation that addresses the realities of workers' lives may achieve some of the success that the best domestic violence-related legislation has achieved. Legislation as well as litigation strategies have increasingly demonstrated a measure of sensitivity to the unique circumstances surrounding violence perpetrated in an intimate relationship. They address and accommodate the reasons people stay in a situation which appears unhealthy for them. The "intimate" nature of the relationship suggests that similarly sensitive tactics for reporting and enforcement to regulate an employment relationship which occurs within a private home would be useful. Such tactics would recognize that seemingly voluntary tradeoffs may not actually be in the workers' best interests.

When the unique "intimate" characteristics of a domestic violence situation are disregarded by police and the courts, offenders go unprosecuted because authority figures are unwilling to infiltrate so-called private situations. Victims remain virtually unprotected by laws which in theory exist to ensure their safety. The resemblance to the current situation of non-compliance with and non-enforcement of employment-related protections for private household workers is striking.

The proposed regulations attempt to incorporate these concerns in the

144. Id. at 31 (notes omitted).
household work employment sector by creating a worker registration system which avoids the need for direct confrontation between workers and employers. Ideally, outreach efforts connected to the legislation would also be designed to reach workers who feel so disempowered that they do not see themselves as deserving legal protections or benefits for their labor. However, much more work remains to be done to create legislation which is both sensitive and coherent from the viewpoint of private household workers. Still, the movement around domestic violence offers an important model for integrating the interests of individuals linked by a similar situation. Its insights may aid in mobilizing the community of interest among household workers to achieve state and societal recognition of current legislation's inadequacies and the urgent need for meaningful protection.

VI. CONCLUSION: GROUP-BASED TREATMENT AND THE NATURE OF COMMUNITIES

If nothing else, Rae, Pia and Cathy teach the important lesson that an apparent “community” cannot be dealt with apart from its context, whether the linkage (or divisions) among community members be race, class or workforce status. Although the three women are all private household workers and share certain common experiences of working conditions and employment relationships, their responses to those conditions vary according to their membership in other “communities” which shape their lives. For example, each will quit a job when conditions become intolerable, but what constitutes an intolerable situation for Rae may be tolerable for Cathy and even good for Pia. This balancing is little different for household workers than for other workers who also must consider the costs and benefits to them of changing the status quo.

The various factors that both unite and divide individual workers raise basic questions about the value of striving to change the individuals' material conditions by focusing on workforce status, and about the law's ability to support that change. This paper has questioned whether and how any legislation based on group membership can successfully address problems without harming individual group members in other parts of their lives. The continued high level of workers' vulnerability highlights the need to consider how legal and policy terms may encourage differential implementation of protective laws which currently exist. The extensive non-compliance and non-enforcement of employment-related legislation suggest that reliance solely on employment status is an inefficient and ineffective basis for assigning and regulating legal entitlements and obligations. Whether workforce-related laws ultimately meet specific workers' needs may therefore be more a matter of luck than rational
decision making.

The question of whether a benefit-distribution system structured by workforce status can serve a population of diverse individuals thus remains an important inquiry. The difficulties presented by the proposed regulations’ application to Rae, Pia and Cathy show the fundamental importance of each individual’s assessment of her circumstances to her perception and prioritization of tactics for changing her material conditions. For example, as described above, a policy which reinforces an employer’s obligation to pay Social Security taxes may reduce employer demand and harm workers whose poor English language skill and family obligations make household work one of the only accessible jobs for them. Similarly, changes which secure the jobs and personal security of undocumented women in an effort to reduce their exploitation by employers will likely increase competition in the job market for workers legally employed in the United States.

Individual balancing of interests does not take place in a vacuum, however. Workforce status deserves consideration precisely because it highlights the external conditions which help determine various factors’ costs in each individual’s self-assessment. In other words, addressing individuals by workforce status recognizes that a worker’s bargaining power is shaped by elements involved in any employment relationship as well as by her race, education and economic status. The differences in position between one selling labor and one buying labor add a particular twist to an individual’s coordination of already complex societal affiliations.

If workforce status is at least relevant to evaluating individuals’ broader needs for financial support and general welfare protection, its incorporation into outreach and empowerment efforts is critical. The regulations proposed in Part V reflect a standard legal effort to incorporate this recognition. However, as its hypothesized application for Rae, Pia and Cathy reveals, legal changes aimed at strengthening workers’ status in the employment relationship have limited positive effects at best. Rather than truly transform the nature of the employment relationship, legal guidelines simply prioritize certain protections over others. Absent broader changes in the background of the employment relationship and in the worker’s own sense of empowerment, any legally-imposed change or improvement in one facet of the job will cost the worker bargaining power in another area.

The development of meaningful protective legislation must therefore coincide with extra-legal empowerment of the community involved. If a community becomes empowered through itself, it can then make effective use of legal support for changes it desires but is unable to achieve independently.

Again, however, as this paper has attempted to illustrate, such organiza-
tion is difficult where individual workers' multiple and potentially conflicting concerns pose barriers to any unified undertakings. Actions that would enhance one group's bargaining position, such as changing immigration laws, might directly hurt another group's strength. Although one response to this conflict might divide worker groups according to immigration status, other differences such as racial, geographic, educational characteristics would arise to further fragment the already small coalition.

In view of the generally low status of private household work, combined with pressures of poverty, family obligations, immigration status and other life-shaping concerns, supportive legislation may simply not be adequate to help generate a sense of linkage or collective empowerment among even a small group of household workers. Perhaps the key to developing laws which enhance "community" organizing is to recognize the internally conflicted nature of community membership, and view legislation as offering supports around which individuals can balance their own interests and then unite if it serves them.

Legislation can thus provide a grounding point for such communities of interest rather than an ultimate solution to the power imbalances of groups involved. The regulations proposed in Section V might be seen positively as enabling certain workers to reduce their fears of employment security and to gain willingness to communicate with other workers about issues of common concern. When developed with sensitivity, legal supports may well assist workers in bargaining with employers to improve their material conditions.