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Women’s Legal History
“You are mistress of no time of your own …”¹ This statement sums up the negative perception of domestic work. During the Progressive Era, reformers extolled the virtues of domestic work, but working women increasingly refused to enter the profession, because of domestic work’s lack of personal freedom. Reformers mainly focused on ameliorating the working conditions of factory and shop jobs through protective labor legislation; as a result domestic workers received no legislative protection.

Domestic work is the maintenance of a household. Domestic workers clean the house, wash the laundry, plan and cook meals, and care for the young, adult, and elderly household members.² Domestic workers were maids, cooks, laundresses, waitresses, and nurses.³

¹ Lucy Maynard Salmon, Domestic Service 145 n. 1 (MacMillan Company 1897) (quoting a domestic work when she discusses that one or more free evenings “is not sufficient compensation”); see also Lillian Pettengill, Toilers of the Home: The Record of a College Woman’s Experience as a Domestic Servant vi (1903) (quoting her friend Gretchen who tried to dissuade the author from becoming a domestic worker).

² See David Katzman, Seven Days a Week: Women and Domestic Service in Industrializing America 120-23 (1978) (recounting the typical workweek of Inez Goodman, a domestic worker in 1901 and how she balanced daily household tasks, weekly tasks, and impromptu task); see also Evelyn Nakano Glenn, From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor, 18 Signs 1,1 (1992) (defining domestic work as “reproductive labor [which] includes . . . purchasing household goods, preparing and serving food, laundering and repairing clothing, maintaining furnishings and appliances, socializing children, providing care and emotional support for adults, and maintaining kin and community ties.”); cf. Lillian Pettengill, supra note 1, at 7-8, 12-3 (working as a general maid or maid of all work for the Barry family in which the aunt oversaw the entire household, one daughter cooked and cleaned and another daughter shopped and cared an ailing mother); Inez Goodman, Ten Weeks in a Kitchen, The Independent, Oct. 17, 1901, at 2459-60 (recalling all the cleaning tasks she had to perform like sweeping carpets, making beds, ironing shirts after the weekday wash, and making and serving meals).

³ See Katzman, supra note 2, at 44 (stating that domestic work required no education, experience or skill despite the different type of domestic workers); see also More Slavery at the South: By A Negro Nurse, The Independent, Jan. 25, 1912, at 196 [hereinafter Negro Nurse] (“[M]ore than two-thirds of the negro women [in the town where I live], whether married or single, are compelled to work for a living – as nurses, cooks, washerwomen, chambermaids, seamstresses, hucksters, janitresses, and the like.”); Job Analysis and Information Section Division of Standards and Research, Department of Labor, Job Descriptions for Domestic Service and Personal Service Occupations 27-29, 33, 37-39, 49-51 61-65 (1939) (giving detailed job descriptions of chambermaid, child sitter and nurse, cook, kitchen helper, maid-of-all-work, and laundress).
Traditionally, wives, mothers, and daughters performed domestic work for no compensation. Consequently, American society never viewed domestic work as an occupation. However, a class of women, who entered the household and received money, room, and board for performing domestic work, always existed. Until the middle of the twentieth century, domestic work was the predominant occupation of women. David Katzman in *Seven Days a Week* summarized the work of a typical domestic worker at the turn of the century well:

> Daily chores for the maid-of-all-work included lighting fires . . . , preparing and serving meals and cleaning up, making beds, doing light dusting, sweeping or scrubbing front steps and porch . . . and running errands . . . A typical week would begin with washing on Monday, ironing on Tuesday, and mending on Wednesday. On Thursday the dining room would thoroughly cleaned, including polishing of silver and glass. On Friday the house would be swept and the windows cleaned. Saturday would entail major housecleaning – the kitchen, cellar, and rooms not cleaned thoroughly on other days – and then perhaps breadbaking.

Typically living in their employer’s homes, domestic workers worked at least ten to twelve hours a day. Employers, who were usually white middle class women, expected live-in domestic

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4 See Katherine Kaufka, Note, *The Commodification of Domestic Care: Illegitimacy of Care Work and the Exploitation of Migrant Workers*, 18 Geo. Immigr. L. J. 159, 165 (maintaining that while domestic work was commoditized, society still sees it as women’s work and does not highly value it); cf. Inez Goodman, *A Nine-Hour Day for Domestic Servants*, *The Independent*, Feb. 13, 1902, at 397 (quoting a good friend who advocated for shop girls to have seats because these workers were on their feet for ten hours a day but ignored the fact that her domestic worker was on her feet at least eleven hours a day).

5 See Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race and Agendas of Reform*, 48 Am. U. L. Rev. 851, 854 (1999) (arguing that more women were in domestic work than any other field from 1870 to 1940); see also *Katzman*, supra note 2, at 53 (“In 1860, 65.6 percent of all female nonagricultural workers had been servants; in 1930, only 20.6 percent.”).

6 *Katzman*, supra note 2, at 122; see also Goodman, supra note 2, at 2461 (recalling how the hard work made her feet ache and she went to a doctor to get some relief).

7 See *Katzman*, supra note 2, at 95, 108 (pointing out that domestic workers sometimes had to share inadequate rooms or sleep in the kitchen or with children). But see Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* 128 (1985) (explaining that although Black women worked twelve to fourteen hours a day, they typically refused to live in their employers’ homes because they valued being with their families and communities).
workers to fulfill any impromptu request. Paid domestic workers were called servants or help; this label ignored the employer-employee relationship between the family and the domestic worker and legitimized the personalism of the work environment. The working relationship was personal, because female employers hired domestic workers both as workers and companions.

With industrialization, opportunities for women to work outside the home expanded. Working class women began to work in textile mills and manufacturing; and middle class women entered the teaching, nursing, and social work professions after receiving college and university degrees. Reformers during the Progressive Era pushed for legislation to regulate the unhealthy working conditions in factories, laundries, and mills. They lobbied state legislatures to protect workers’ health through laws that restrict working hours and created minimum wages.

8 See Katzman, supra note 2, at 111 (stressing that ten to twelve hours a day was average and day could last longer and pointing out that Black domestic workers typically worked the same hours women in other jobs worked). See also Margaret Lynch-Brennan, Ubiquitous Bridget: Irish Immigrant Women in Domestic Service in America, 1840-1930 in Making the Irish American: History and Heritage of Irish in the United States 332, 337 (J.J. Lee & Marion R. Casey eds. 2006) (asserting that employers hired domestic workers for their time not specially to complete certain tasks); cf. Mary Romero, Maid in the U.S.A. 28 (1992) (arguing that white employers hired women of color to be domestic workers for their labor and for a feeling of racial superiority).

9 See Katzman, supra note 2, at 112-13 (highlighting that when a domestic worker was awake, she was “at the beck and call of her mistress.”).

10 See Katzman, supra note 2, at 261 (“Many employers wanted to be mistresses or desired the companionship of another woman in the household. They wanted a personal relationship . . . . “); see also Salmon, supra note 1, at 169 (maintaining that while employer-domestic worker relationship is a personal one, using the golden rule to regulate is inadequate because this rule does not solve all the problems of domestic work).

11 See Katzman, supra note 2, at 146 (contrasting the retention of domestic work’s personal nature, because its workplace was the household, with the increasing impersonal nature of other work relationships; Pettengill, supra note 1, at 102-03, 105(working for three sisters who happily ignored her paltry cooking skills because they enjoyed their conversations with and companionship of Pettengill).

However, the Supreme Court struck down gender-neutral protective labor legislation in *Lochner v. New York* because the legislation infringed on the male workers’ liberty of contract.\textsuperscript{13} Liberty of contract is the right to freely negotiate contracts with another party.\textsuperscript{14} At the turn of the century, the Supreme Court believed that the due process clauses of the Fifth and Fourteenth Amendments protected this right, because the amendments stated that “no person shall be . . . deprived of life, liberty, or property, without due process of law . . . .”\textsuperscript{15} The Court recognized labor as a form of property, and a state could not deprive a person of this form of property without the due process of law.\textsuperscript{16} After *Lochner*, legislators and reformers created legislation specifically protecting female factory workers.\textsuperscript{17} They employed this tactic as a first step to getting universal labor rights protections.\textsuperscript{18} Protective labor legislation was a way to protect

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\textsuperscript{13} See *Lochner v. New York*, 198 U.S. 45, 64 (1905) (finding that New York could not use its police power to restrict the working hours of male bakers because it reasoned that limitations on working hours would protect the bakers’ health).

\textsuperscript{14} See id. (“[T]he real object and purpose were simply to regulate the hours of labor between the master and his employes (all being men, sui juris), in a private business . . . the freedom of master and employe to contract with each other in relation to their employment . . . cannot be prohibited or interfered with, without violating the Federal Constitution)."

\textsuperscript{15} See, e.g., U.S. Const. amends. V, XIV §1; *Lochner*, 198 U.S. at 53 (stating affirmatively that the Fourteenth Amendment protected the right of employers and employees to contract for labor); see also Julie Novkov, Liberty, Protection, and Women’s Work: Investigating the Boundaries between Public and Private, 21 Law & Soc. Inquiry 857, 862-63 (1996) (explaining that liberty of contract was both a property and liberty right because the concept

\textsuperscript{16} *Lochner*, 198 U.S. at 53 (“The right to purchase or to sell labor is part of the liberty protected by [the Fourteenth] amendment, unless there are circumstances which exclude the right). The Supreme Court argued that this right was not absolute; a state could limit it through its police power to protect public health, safety, welfare, and morals. Id.

\textsuperscript{17} See e.g., Act of May 2, 1905, no. 226, 1905 Pa. Laws 352 (establishing work hour restrictions for women and children one month after the Supreme Court decided *Lochner*). But see Catherine Allen, Legislation for Household Workers in *Fair and Clear in the Home* 57-59 (Dorothy P. Wells & Carol Biba eds. 1936) (illustrating the difficult road of trying to legislate domestic work and the several reasons employers, business and industrial groups and legislators used to defeat the attempts to legislate domestic work).

\textsuperscript{18} See Kessler-Harris, supra note 12, at 184 (pointing out that reformers believed that protective labor legislation targeting women and children would be the first step towards protecting all unorganized workers).
female factory workers so that they could bear the next generation of Americans. In Muller v. Oregon, the Supreme Court accepted the argument that women had a limited liberty of contract.

Even though domestic work was grueling, reformers and legislators saw domestic work as healthy and the natural domain of women. Reformers and legislators sought to lure white women to domestic work. However, during the turn of the century, white American women were less likely to enter the profession. While immigrant women were domestic workers in the Northeast and the Midwest, women of color increasingly performed domestic work. Black women were domestic workers in the South and became domestic workers more and more in Northern cities after 1900; Latina women were domestic workers in the Southwest; and Asian women, especially Chinese and Japanese women, were domestic workers in the Western states and Hawaii. Because domestic work was seen as the healthy and natural work of women, and because women of color and immigrant women became the majority of domestic workers, legislators and reformers excluded domestic workers from protective labor legislation.

This paper will look at domestic workers from 1870 to 1930 and how Progressive reformers, legislators, courts, and unions ignored their work. Specifically, it will examine the exclusion of domestic work from protective labor legislation and will argue that this exclusion is

19 See Muller v. Oregon, 208 U.S. 412, 422 (1908) (finding that the Oregon legislature appropriately segregated female and male workers because women needed special protection).

20 See id. (“Even thought all restrictions on political, personal and contractual rights were taken away, and she stood . . . upon an absolutely equal plane with him . . . her physical structure and a proper discharge of her maternal functions . . . justify legislation to protect her from the greed as well as the passion of man.”).

21 See Smith, supra note 5, at 894 (arguing that society perceived domestic work as stress free and easy).

22 See Glenn, supra note 2, 8 (asserting that Blacks, Japanese, and Latina women experienced racial and economic discrimination because white society used the groups’ racial and ethnic make-up to justify the shepherding of these groups into domestic work). But see Lee Chew, The Biography of a Chinamen, The Independent, Feb. 19, 1903, at 420 (recounting how he worked as a domestic worker for two years in California, after emigrating from Canton province, China).

23 See Smith, supra note 5, at 884, 886-87 (stressing that reformers did not seriously attempt to get domestic work legislation until the New Deal).
the result of the degradation of domestic work by female workers, reformers, and legislators and the shepherding of women of color into domestic work. The paper will examine legislation and cases from the Progressive Era to assert that the liberty of contract was perceived differently for female workers than for male workers. However, domestic workers did not have the limited liberty of contract. Lastly, this paper will look at the movement to reform domestic work and how reformers valued the employers’ concerns over those of domestic workers. Domestic workers received no protection from protective labor legislation because reformers, legislators, and courts believed domestic work was healthy; and domestic workers were unable to organize and to demand for better working conditions because of their lack of bargaining power and lack of liberty of contract.

I. Expansion of Women’s Employment Opportunities

Industrialization helped to move work from the household to the public sphere. Industrialization allowed for the mass production of common household products, which were traditionally made by female household members. For example, women no longer had to make their own clothing or laundry soap or preserve fruits and vegetables. Starting in early 1800s, the change in the American economy allowed for women to work outside the home.\textsuperscript{24} For women from lower socio-economic groups, who were unable to take advantage of technical advances,\textsuperscript{25} the growth of factories provided much needed jobs and income to support themselves and their families. Women worked in textile mills, iron works, canneries, and tobacco and cigar factories; they worked as brick-makers, telephone operators, office clerks, and sales girls. Despite the variety of positions, women were still the majority of paid domestic workers and laundresses.\textsuperscript{26} While women increasingly entered the workforce, the percentage of women, who were domestic

\textsuperscript{24} See Nancy F. Cott, The Bonds of Womanhood” “Woman’s Sphere” in New England, 1780-1835 69-70 (1977) (arguing that separate spheres allowed American society to idealize home as a haven from the harsh and competitive nature of the public working world and that society expected women to be unselfishly the moral centers of the family).

\textsuperscript{25} See Kessler-Harris, supra note 12, at 119-23 (highlighting that women from lower-socio economic groups lived in areas that lacked sewers, running water, and sanitation, and that they felt pressed to enter the workforce to support their families).

\textsuperscript{26} See Katzman, supra note 2, at 45-46 (comparing the number of male domestic workers and launderers with the number of female domestic workers and laundresses and finding on average women were about ninety-one percent of domestic workers and laundresses from 1910 to 1930).
workers, declined. In 1870, approximately fifty percent of women were domestic workers; sixty years later only twenty percent of female workers were domestic workers.\(^{27}\)

Despite the wealth of work opportunities, women tended to segregate themselves from men and other ethnic groups.\(^{28}\) Women preferred to work with other women from their own ethnic group. Family and community members helped women get jobs in factories and shops.\(^{29}\) Jewish women participated in vocational training more frequently than other immigrant women and were frequently in the female garment industry; Polish and Slavic women were either textile workers in New England or workers in food-processing plants and textile mills in the South and Midwest; and Italian women in New York gravitated towards factories creating artificial flowers and male clothing.\(^{30}\)

II. Devaluation of Domestic Work

When women from lower socio-economic classes could choose where they worked, they preferred “genteel” jobs, jobs that were compatible with traditional feminine roles and marriage.\(^{31}\) Women ranked jobs based on a number of factors, which included the type of work

\(^{27}\) See id. at 53. (noting that about forty percent of female workers were teachers, shop clerks, and office workers).

\(^{28}\) Cf. id. at 69 (finding that Jewish women preferred manufacturing jobs or piecework, sewing work that companies gave to women to complete at home).

\(^{29}\) See Kessler Harris, supra note 12, at 125-26 (stressing that knowing someone at the factory was key to an immigrant woman getting a job there); see also Evelyn Nakano Glenn, Issei, Nisei, War Bride: Three Generations of Japanese Women in Domestic Service 69 (1986) (“Japanese owners of commercial laundries and nurseries were especially likely to follow the Japanese model of family labor by hiring (and often housing) the entire family”).

\(^{30}\) See Kessler-Harris, supra note 11, at 127, 137-38 (stating that immigrant families expected their wives and daughters to relinquish their wages and work with members of their own ethnic groups).

\(^{31}\) See id. at 135-36 (pointing out women took jobs because of the job’s social status and sometimes in spite of the low wages the job paid); cf. Cott, supra note 24, at 202 (arguing that society assigned women a “vocation” according to her natural roles in the home).
and the ethnicity and sex of their co-workers.\textsuperscript{32} Jobs that required interaction with men or women from other ethnic groups were less “genteel.”\textsuperscript{33}

At the top of the hierarchy were office and sales jobs, while domestic work and waitressing were at the bottom; factory work was in the middle.\textsuperscript{34} The ethnicity of the workers was also a factor. For example, native born American women tended to be office clerks and department store sales girls; they shunned waitressing and domestic work, because waitressing required contact with men and alcohol and domestic work was considered servile.\textsuperscript{35} Ironically, lower status jobs had better wages than higher status jobs. Women preferred to receive lower wages and be in more “genteel” industries like office and sales work.\textsuperscript{36}

Domestic work was at the bottom of the hierarchy for a number of reasons. First, domestic work was associated with service and a lack of independence.\textsuperscript{37} Other jobs allowed

\textsuperscript{32} See Kessler-Harris, supra note 12, at 135-37 (using glassmaking and waitressing as examples of coarse and low status jobs because glassmaking required constant stooping and included the dangers of being burned and waitressing, especially at restaurants serving alcohol, required contact with men).

\textsuperscript{33} See id; see also Smith, supra note 5, at (categorizing domestic work as Black women’s work).

\textsuperscript{34} See Kessler-Harris, supra note 12, at 135 (finding that work that required more skill was higher on the hierarchy than unskilled work).

\textsuperscript{35} See id. at 137-39 (telling how Baltimore department stores would only hire American women in order to be prestigious); A Servant Girl’s Letter, The Independent, Jan. 2 1902, at 36 (“The very name servant girl carries along with it a degrading sense of servility and servdom that is resented by the most ignorant of them.”).

\textsuperscript{36} See Kessler-Harris, supra note 12, at 137 (including the story of a teenage factory worker whose mother forced her to quit her $8.00 per week factory job to work in a store at $1.25 per week because the shop job was more prestigious); see also Pettengill, supra 1, at vii (“Gretchen was aghast at my plan for taking up her work … ‘It’s no place for you. You get some office work, or something; anything is better than this…’”); A Servant Girl’s Letter, supra note 35, at 36 (saying that profession cannot be elevated, although believing that the “servant girl problem” will be resolved in the millennium).

\textsuperscript{37} See The Confession of a Japanese Servant, The Independent, Sept. 21, 1905, at 662 [hereinafter Japanese Servant] (“There was no honor, no responsibility, no sense of duty, but the pliancy of servitude was the cardinal requirement. There is no personal liberty while your manhood is completely ignored.”).
women to control a part of their day, unlike domestic work.\textsuperscript{38} According to a woman surveyed by Lucy Maynard Salmon, “other occupations have well-defined hours, after which one can do as she pleases without asking any one.”\textsuperscript{39} Moreover, female workers reviled at the thought of putting on the cap and apron, the domestic worker’s standard uniform and a symbol of the domestic worker’s servility.\textsuperscript{40} During the Progressive Era, domestic workers were called domestic servants, a label which emphasized the servile nature of the work. Moreover, employers called domestic workers by their first names while domestic workers had to call their employers mistress or mister.\textsuperscript{41} According to a Black domestic worker, “[n]o matter what they call us … we must tamely submit … we must enter no protest; if we did object, we should be driven out…”\textsuperscript{42} While live-in domestic workers were always on call for work,\textsuperscript{43} office and

\textsuperscript{38} See Kessler-Harris, supra note 12, at 136 (quoting a factory worker who preferred factory work to domestic work because she has more free time and higher social standing); see also Kathy Peiss, Cheap Amusements: Working Women and Leisure in Turn-of-the- Century New York 37-38 (1986) (contrasting how the segmentation of the factory work allowed female factory workers more leisure time in comparison to recognizing that the length of one’s work day and extra money limited working women’s leisure time); Salmon, supra note 1, at 147 (reasoning that domestic work’s lack of personal independence discourages women from entering the profession because they disliked the constant interference by their employer and lack of free nights and Sundays); Negro Nurse, supra note 3, at 196-97 (“I am compelled by contract … to sleep in the house. I am not allowed to go home to my own children … only once in two weeks, every other Sunday afternoon – even then I’m not permitted to stay all night).  

\textsuperscript{39} Salmon, supra note 1, at 145-46 n.1.  

\textsuperscript{40} See Lucy M. Salmon, Domestic Service: From the Standpoint of the Employee, The Cosmopolitan: A Monthly Illustrated Magazine, July 1893, at 351 (“The cap and apron sometimes indicate the rise of the employer in the social scale rather than the professional advancement of the employee. The wider the separation in the any community between employer and employee, the greater the tendency to insist on cap and apron.”).  

\textsuperscript{41} See Pettengill, supra note 1, at 241 (quoting her German immigrant co-worker who said “Vhat fur you call her mistress? … She is no great lady over me to say to me was I do. I my own mistress.”); Negro Nurse, supra note 3, at 198 (“The [Black] women are called ‘Cook,’ or ‘Nurse,’ or ‘Mammy,’ or ‘Mary Jane,’ or ‘Lou,’ or ‘Dilcey’ …”); see also Jones, supra note 7, at 130 (pointing out that Black women were called demoralizing names such as mammy and girl); Brennan, supra note 8, at 333 (finding that employers associated Irish domestic workers with the names Bridget, Biddy, Kate, Katy, Maggie, and Peggy, and this association caused one woman to change her name once she emigrated).  

\textsuperscript{42} Negro Nurse, supra note 3, at 182.
factory jobs allowed women some measure of independence. After they completed their hours, factory and office workers were free to have social lives and rest. In contrast, the domestic worker’s workplace was her home; and her opportunities for a social life were restricted. If her employer allowed her to have guests at the house, she would have to entertain them in the kitchen or a non-family area.

Furthermore, domestic work had a low status because it was primarily associated with immigrant women and women of color. Women of color increasingly performed paid domestic work. To be a domestic worker required a woman to be subordinate to her employer, and women of color were traditionally seen as servants. Domestic work was synonymous with inferiority,

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43 See Katzman, supra note 2, at 113 (finding that domestic workers were on call all day including after dinner was served; therefore, domestic workers could only control the time they spent away from the household); see also Jones, supra note 7, at 128, 131 (finding Black women found ways to protect their family interests by demanding to be live out workers and taking impromptu vacation days). But see Negro Nurse supra note 3, at 196-97 (relying on her eighteen year old daughter to look after her other children and admitting her eighteen year old and thirteen year old daughter working as domestic workers to help supplement her ten dollars a month income).

44 See Kessler-Harris, supra note 12, at 136 (quoting testimony from Young Women’s Christian Association, First Report of the Commission on Household Employment, May 1915) (“A factory girl is out more . . . has more time to be in the society others, and so is able to have high social standing if she has good social character.”); see also Peiss, supra note 38, at 45-46 (contrasting the isolation and lack of leisure time of domestic workers with other working women’s ability to have leisure time, and finding that factories, offices, and shops allowed women to socialize at work and created a lifestyle where women had more opportunities for leisure time).

45 See Peiss, supra note 38, at 37, 45-46 (finding that domestic workers would socialize on the streets and in parks while watching their young charges, but that their long hours and isolation did not allow for a social life in comparison to factory workers).

46 See Salmon, supra note 1, at 152-53, 158 (listing the inability to receive or invite friends and family to visit them although her employer’s home is her home and the invisibility and inferiority imposed by her employer when she is in the workplace or in public); Negro Nurse, supra note 3 at 196-97 (“I see my own children only when they happen to see me on the streets when I am out with [my mistress’] children, or when my children come to the ‘yard’ to see me.”); Goodman, supra note 4, at 399 (quoting her friend who allowed her domestic worker to entertain friends in her dinning room because the domestic worker began to attend a literary club and would not invite “drunken loafers” or thieves into the house).
especially racial inferiority. According to one domestic worker during this period, “[t]he negroes in the South have as much chance of social recognition as have those who do domestic work in the North.” A Black domestic worker in the South believed domestic work created a condition of nominal slavery.

Even immigrant women and women of color believed domestic work was inferior. In the Northeastern, Mid-Atlantic, and Midwestern states, Irish women were domestic workers because they tended to emigrate alone and did not have family support. Live-in domestic work gave them a place to live along with a job. With room and board included, these women could send money home to their families, a major reason why they immigrated. Irish women saw domestic work as a stop along the path to marriage; once they married, they tended to leave domestic

47 See Smith, supra note 5, at 877 (arguing that domestic work was perceived as “voluntary slavery”).

48 A Servant Girl’s Letter, supra note 35, at 54 (responding to Inez Goodman’s article about becoming a domestic worker for ten weeks and struggling to understand would choose domestic work as an occupation unless because of economic necessity).

49 See Negro Nurse, supra note 3, at 196 (“The condition of this vast host of colored people is just as bad as, if not worse than, it was during the days of slavery. Tho today we are enjoying nominal freedom, we are literally slaves.”).

50 See Kessler-Harris, supra note 12, at 127 (finding these Irish women entered domestic work in higher numbers as compared to Swedish, Polish, and German immigrant women, and pointing out that Jewish women avoided domestic work because they equated it with downward social mobility); see also Brennan, supra note 8, at 333 (stressing that Irish women emigrated to the United States through chain migration, a process by which a person would sponsor his sibling to emigrate).

51 See Kessler-Harris, supra note 12, at 136 (quoting a factory worker who believed domestic work was ideal for women who were alone or had negative experiences from her own family); Katzman, supra note 2, at 272 (pointing out that Irish women married later in life than other immigrant women and had experience with domestic work, consequently they were domestic workers in higher proportions).

52 See Brennan, supra note 8, at 341 (finding that Irish women living in Boston sent thousands of dollars to their families through using a single money exchange organization).
work. Even though they resented the social stigma, Irish women endured the social stigma attached to domestic work, because they knew that being domestic workers was temporary.

While Black women saw domestic work as inferior, domestic work was one of the few industries open to them. When they were able to choose jobs in other industries, they left domestic work. Black women feared being alone with a white man in his home, because of white society’s misconception that Black women were sexually available and promiscuous. For example, Black women as workers in cigar and cigarette factories sorted and dried tobacco leaves and sometimes made cigar and cigarettes. They worked in poorly ventilated rooms and wore handkerchiefs and cloths over their mouths and noses so that they did not breathe the foul air. Black women also worked seasonally in oyster processing factories in Southern coastal towns; because of this work, their hands constantly smelled like fish. Despite the worse working conditions, Black women preferred working in tobacco, cigar, and oyster factories to

53 See id. at 343 (arguing that Irish women saw marriage as both an escape from domestic work and a way to gain adult status in their community). Irish families did not expect married daughters to remit money home. Id.

54 See Kessler-Harris, supra note 12, at 137 (arguing that racial discrimination restricted Black women’s job opportunities and they chose domestic work and laundry over agriculture because agriculture was closely associated with slavery). But see Jones, supra note 7, at 134-35 (asserting that Blacks disliked the regimented work environments of industrial jobs because they felt these jobs were analogous to working under the overseer during slavery).

55 See Negro Nurse, supra note 3, at 197-98 (recounting how a white male employer made unwelcome sexual advances and the subsequent jailing of her husband when went to confront the employer); The Race Problem – An Autobiography: By A Southern Colored Woman, The Independent, Mar. 17, 1904, at 587 [hereinafter Race Problem] (“Few colored girls reach the age of sixteen without receiving advances from them – maybe from a young ‘upstart,’ and often from a man old enough to be their father …”).

56 See Jones, supra note 7, at 137-40 (highlighting the Black tobacco handlers would sing songs similar to Negro spirituals while working to take their minds off of how dirty and overheated the workrooms were). The women also used singing to create a rhythm for the monotonous and repetitive work of tobacco stripping and cigarette making. Id.

57 See id. at 141 (finding that working in a oyster processing industry provided work for Black men as fishers and gathers and Black women and children as oyster shuckers).
domestic work, because these jobs provided them with more freedom and had no connections with serving white dominant group.\textsuperscript{58}

Like Black women, Japanese women preferred to work in other occupations besides domestic work. Concentrated on the cities along the West coast, Japanese worked as domestic workers and home garment workers, and they worked alongside their husbands in family businesses.\textsuperscript{59} Occupational opportunities open to Japanese women were similar to the opportunities available to Japanese men; these opportunities varied depending on the city’s economy.\textsuperscript{60} For example, Japanese women in Seattle had more opportunities because of Seattle’s thriving lumber and canning industries. Japanese managed “small retail and service establishments, such as stores, hotels, restaurants, barbershops, and pool halls.”\textsuperscript{61} However, in San Francisco, Japanese immigrants did not have same economic opportunities; as a result Japanese men worked in agriculture and trade and Japanese women did piece work and domestic work.\textsuperscript{62}

Like Black women, the lack of economic opportunities and racial caste system in the Southwest pushed Latina women into domestic work.\textsuperscript{63} Middle class whites created home

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  \item \textsuperscript{58} See id. at 137; see also Katzman, supra note 2, at 222 (stating that Black women began to leave domestic work in greater numbers during World War I because job opportunities in other industries opened up).
  \item \textsuperscript{59} See Glenn, supra note 29, at 75 (indicating that immigrant Japanese women fit work around family responsibilities); cf. Jones, supra note 7, at 134 (stressing that Black women saw themselves first as mothers and then as breadwinners and they organized their lives accordingly).
  \item \textsuperscript{60} Glenn, supra note 29, at 77-78 (calculating that over fifty percent of Japanese women were domestic workers in San Francisco, which had limited economic opportunities for Japanese immigrants, as compared to between seven and twenty percent in Los Angeles and three to twenty-five percent in Seattle).
  \item \textsuperscript{61} See id. (finding Japanese people established retail businesses because of the demand from itinerant men working in lumber and canning industries).
  \item \textsuperscript{62} See id. 68-69, 75 (recounting the story of one first generation Japanese American women who had to thread forty needles for her mother before bed so that her mother could sew piece work kimonos without stopping).
  \item \textsuperscript{63} See Romero, supra note 8, at 83 (maintaining that race and ethnicity combined with lack of education forced Latina women to be domestic workers).
\end{itemize}
economic schools to train Latina women to be domestic workers. Southwestern society trained Latina girls to be domestic workers and later restricted their access to any other job so that Latina women were forced to be domestic workers.

Women of color were caught in a vicious circle. White society restricted their access to other jobs; therefore, they became domestic workers. For example, Southern textile mill owners refused to hire black women. The predominance of women of color in domestic work served to lower the status of domestic work. Women of color could only work in lower status industries, and these industries had lower status because women of color held the majority of the jobs. As a result, women of color were unable to elevate their status. Unlike the daughters of white immigrants, who increasingly refused to do domestic work, daughters of minority domestic workers replaced their mothers in the profession.

64 See Glenn, supra note 2, at 11-12 (pointing out that urban school systems designed curriculum to train Latino girls for domestic work and a local women’s group advocated training of Latino girls so that these girls will be useful for white middle class families); see also Romero, supra note 8, at 83-84 (highlighting the prejudicial attitudes of the white middle class in the Southwest who allowed Latino women to clean their houses but not be nannies to their children because of the racial inferiority of Latino women).

65 See Katzman, supra note 2, at 273 (noting the irony that Black women were pushed into domestic work, because of their perceived racial inferiority but that domestic work paid higher wages than higher status jobs); see also Glenn, supra note 2, at 10 (asserting that when two racial groups were available for domestic work, white middle class would employ the more privileged racial group as housekeepers, and less privileged groups as cooks and servants).

66 See Jones, supra note 7, at 135-36 (pointing out that cotton mill owners only hired Black people to clean the mills because of antebellum policy that stated slaves were too expensive to be factory workers).

67 See Salmon, supra note 1, at 146-47 (recognizing as unreasonable the native white woman’s uneasiness about competing with immigrant and women of color for domestic work jobs); see also Jones, supra note 7, at (highlighting that white employers saw Black people as congenital lazy workers and lamented that Black domestic workers were not as loyal as their slave mothers). But see Glenn, supra note 29, at 108-09 (explaining that white San Francisco society favored Japanese domestic workers because they saw the Japanese seen as loyal and dedicated workers).

68 Cf. Romero, supra note 8, at 27-28 (asserting that domestic work did not have low social status just because women of color were domestic workers, but that domestic work always had low status and society pushed them into domestic work).

69 See e.g., Glenn, supra note 29, at 102-05
Irish women, used domestic work to acculturate to the United States.\(^{70}\) However, women of color did not have this option. American society used domestic work as occupational ghetto for people of color and stifled any possibility of economic and social mobility.\(^{71}\)

### III. Exclusion of Domestic Work from Protective Labor Legislation

Protective labor legislation regulated the work hours and wages of women and children in a variety of industries.\(^{72}\) However, domestic work was noticeably absent from the list of industries that protective labor legislation regulated.\(^{73}\) Some laws explicitly excluded domestic work. In a 1932 report for the Women’s Bureau for the United States Department of Labor, Florence Smith listed Arizona, Mississippi, New Hampshire, Oklahoma, Pennsylvania, South Dakota, and Tennessee as states that explicitly excluded domestic work.\(^{74}\) For example,

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\(^{70}\) See Brennan, supra note 8, at 344 (arguing that Irish women used domestic work to learn about the cultural and class norms of the American middle class).

\(^{71}\) See Glenn, supra note 29, at 102-05 (maintaining that domestic work served to oppress Black and Latina women, but within two generations Asian women were able to move out of domestic work’s occupational ghetto).

\(^{72}\) See Brief for National Consumers’ League as Amici Curiae Supporting Respondents at 1-8, Muller v. Oregon, 208 U.S. 412 (1908) [hereinafter Brandeis Brief] (listing excerpts from laws from nineteen states which primarily regulated the hours of manufacturing workers).

\(^{73}\) Id; see also Colo. Stat. § 4184 (1921) (restricting women working in manufacturing, laundries, hotels, restaurants, and shops to an eight hour work day).

\(^{74}\) See Florence P. Smith, United States Women’s Bureau, Department of Labor, Labor Laws for Women in the States and Territories: Revision of Bulletin 63, Hours, Home Work, Prohibited or Regulated Occupations Seats, Minimum Wage 17, 20, 25, 27-28, 30 (1932) (creating a multi-page chart which categorized state laws according to work hour limitations and listed what each law specifically included and excluded); see also Miss. Stat. Ann. § 4653 (1928) (creating a non-exclusive list of occupations regulated by a ten hour work day but expressly excluding domestic work); N.H. Stat. ch. 176, § 14 (1925) (“No female … shall be employed or be permitted to work at manual or mechanical labor in any employment, except household labor and nursing, domestic, hotel and boarding house labor …”); S.D. Codified Laws ch. 5 § 10014 (1929) (“Any employer, other person having control who shall compel any woman … for more than ten hours in any day … this Section shall not apply to … domestic servants …”)

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Pennsylvania’s law excluded domestic workers from its protection by defining establishment to be “any place … other than where domestic, coal-mining or farm labor is employed.”

Other laws implicitly excluded domestic work. For instance, Rhode Island’s 1899 law limited the hours of female workers in “any manufacturing establishment more than ten hours in any day.” This law, like laws from many other states, explicitly listed the industries it meant to regulate. By listing specific industries, this law implicitly exempted domestic work. Even when a law explicitly stated that certain industries or workers were not included, the law still implicitly exempted domestic work. For example, South Carolina excluded “mechanics, engineers, firemen, watchmen, teamsters, yard employees, and clerical force” from its ten hour work day legislation. By including the phrase “cotton and woollen manufacturing establishments,” this law sought to regulate the work hours of employees in textile mills; therefore, the law excluded domestic workers. Other states like Nebraska, sought to regulate laundry, hotel, and restaurant workers, whose work is similar to that of domestic workers. Nebraska’s law stated “that no female shall be employed in any manufacturing, mechanical or mercantile establishments, hotel

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75 See e.g., Act of May 2, 1905, no. 226, 1905 Pa. Laws 352, 352-53 (establishing twelve hour work days for women and children under sixteen).

76 See e.g., Act of Jan. 1, 1886, ch. 107, 1885 R.I. Laws 1, 1 (limiting the workday for female workers “except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery”); see also Smith, supra note 74, at 28 (noting that in 1928 Rhode Island passed the same law but broadened its scope to include retail and mechanical businesses and continued to ignore domestic work).


78 See id. (intending to regulate both the manufacturing and retail sides of textile industry in South Carolina).

79 See Smith, supra note 74, at 17-19 (listing California, Colorado, the District of Columbia, Kansas, Montana, New Mexico North Dakota, and Wyoming as states who restricted laundry, hotel and restaurant workers to eight or eight and half hour work days but either neglected to regulated domestic work).
or restaurant … more than sixty hours during one week.”80 By listing certain industries, legislators did not intend protective labor legislation to protect domestic workers.

After the Supreme Court invalidated New York’s gender-neutral law, reformers argued that women needed special protection because women were physiologically different than men and their health could not withstand the long work hours and hazardous conditions. Moreover, working in manufacturing interfered with their ability to procreate and to care for the next generation of American citizens. Protective labor legislation protected women’s health for two reasons. First, reformers believed that women could not physically endure hazardous working conditions. And second, women’s health was vital to the health and upbringing of children.81 Reformers and legislators used separate spheres ideology and the fear of race suicide to justify protective labor legislation.82 Both reformers and legislators saw the proper roles of women as child rearers and child bearers. Legislation was a tool to ensure that women, especially white women, fulfilled these roles.

The use of separate spheres ideology worked to exclude domestic work from protective labor legislation. Separate spheres ideology prizes the traditional roles of women; society see women’s natural place as the home.83 During the Progressive Era, reformers and legislators saw domestic work as natural and healthy; reformers tried to entice working women into domestic

80 Act of Mar. 31, 1899, ch. 107, 1889 Neb. Laws 26th Sess. 362 (limiting the hours of female workers sixty hours a week and requiring employers to provide female workers with chairs for sitting)

81 See Nancy S. Erickson, Muller v. Oregon Reconsidered: The Origins of a Sex-Based Doctrine of Liberty of Contract, 30 Lab. Hist. 228, 241(1989) (arguing that state legislators viewed women as the “bearer of the race” and thus created legislation that protected white women so that they could bear healthy white children).

82 See Kessler-Harris, supra note 12, at 185-86 (pointing out that the turn of century eugenics movement helped to characterize employers as selfish because working in factories and mines could endanger the health of women and consequently the white race); Erickson, supra note 81, at 241 (asserting that protective labor legislation treated women “as means rather than ends” because society saw women as child bearers); Smith, supra note 5, at 894-95 (emphasizing that legislatures and courts viewed protective labor legislation as way to help women fulfill their child bearing and rearing obligations).

83 See Muller v. Oregon, 208 U.S. 412, 421-22 (1908) (using separate spheres ideology to argue that women working outside the home is unnatural but sometimes necessary for subsistence).
work by extolling the clean and healthy working conditions. Therefore, they naturally did not lobby to have domestic work included in protective labor legislation. However, in reality, domestic workers tended to work longer hours than most factory, mine, and shop workers; they also did heavy cleaning and lifting and could be required to stay on their feet for hours. By perceiving domestic work as beneficial, reformers and legislators ignored the true nature of domestic work and excluded it from protective labor legislation.

Furthermore, because women of color were the majority of domestic workers, protective labor legislation excluded domestic work. Women of color were seen as natural servants because of the history of slavery and the racial inferiority of people of color. For white middle class families, having a domestic worker was a status symbol of membership in the middle and upper classes. This worker came from the subordinated racial and socio-economic groups. Even other female workers viewed domestic work as the work of inferior groups and “voluntary slavery;” being a domestic worker was seen as inconsistent with American democracy. Consequently,

84 See Goodman, supra note 4, at 54 (pointing out that employers desire an “angelic Amazon” for a domestic worker and work her domestic worker accordingly); see also Smith, supra note 5, at 894 (maintaining that reformers never did not believe that cleaning rugs and drapes as dusty and scrubbing floors as back breaking).

85 See Negro Nurse, supra note 3, at 196 (working sixteen hour days looking after her employer’s eleven month old baby and three older children and doing odd tasks, like sweeping, mopping, and watering the lawn, when the children were sleeping); Goodman, supra note 2, at 56 (“The thought of the extra work sickened me, and I concluded to give up. Instead of toughening, I was breaking…”); see also Katzman, supra note 2, at 120-23 (recounting the weekly work schedule of one domestic worker who usually rose at six a.m. and went to bed at 11 a.m. and had only had two to three hours of rest).

86 See Glenn, supra note 2, at 9 (arguing that when two racial groups lived together in a community one group were servants to the dominant group); see also Negro Nurse, supra note 3, at 196-97, 200 (accepting that she and the majority of Black people in the South were part of the servant class and wishing for better wages, better hours, and sufficient protection from unwanted sexual advances).

87 See Smith, supra note 5, at 877-79 (asserting that early in American history white workers defined their social status based on perceptions of what were Black professions and that once immigrant and Black women entered domestic work in increasing numbers, white women began to exit the profession in increasing numbers); cf. Servant Girl’s Story, supra note 35, at 36 (comparing the social status of domestic workers to the social status and stigma of Black Americans in the South).
domestic workers were inferior and did not deserve equal treatment and protection like other workers. Women of color were caught in a dilemma. Women of color, especially Black women, came from a history of slavery and subordination. Therefore, white society, female workers, reformers, legislators, and employers, saw women of color as inferior and not entitled to all the rights of democracy. Women of color were servants, not true workers.\textsuperscript{88} Hence, protective labor legislation ignored domestic work.

IV. Use of Separate Spheres Ideology in the Conceptualization of the Women’s Liberty to Contract

While the exclusion of domestic work from protective labor legislation resulted from the belief that domestic work was healthy and the natural work of women and while the majority of domestic workers were women of color, domestic work’s exclusion was also because domestic workers did not have liberty of contract. Men and women, who worked in manufacturing, mining, and offices, had this liberty. However, a man’s liberty of contract was different from a woman’s liberty of contract. Men had an unlimited liberty of contract, while courts and legislatures limited women’s liberty of contract in the interest of public health, safety, and morals. As shown below, domestic workers did not have access to either form of liberty of contract.

State governments could not interfere with a man’s ability to contract freely. The Supreme Court in Lochner v. New York stressed a man’s unlimited liberty of contract when it invalidated a New York law which restricted the work hours of bakers.\textsuperscript{89} New York argued that its police power to protect its citizens’ health justified the law.\textsuperscript{90} However, the Supreme Court disagreed, and it held that the state’s interest in public health could not justify an infringement of

\textsuperscript{88} See id. (explaining that the term help used to refer to white domestic workers and the term servant used to refer to Black domestic workers, but the use of different terms once Blacks were emancipated and entered paid domestic work).

\textsuperscript{89} See Lochner v. New York, 198 U.S. 45, 64 (1905) (“It is manifest to us that the limitation of the hours of labor … has no such direct relation to and no such substantial effect upon the health of the employee, as to justify us in regarding the section as really a health law.”).

\textsuperscript{90} See id. at 60-61.
the employers’ and employees’ right to freely negotiate labor contracts.\textsuperscript{91} While the decision seemed to be gender neutral, the Court included language that suggested that unlimited liberty of contract extended only to men. For example, the Court wrote:

No trade, no occupation, no mode of earning one’s living could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family.\textsuperscript{92}

The Court also talked about how the legislature used “its paternal wisdom”\textsuperscript{93} in creating the law, and it compared bakeries to other predominantly male professions, like law, medicine, and banking.\textsuperscript{94} Moreover, it distinguished the New York law from the Utah mining law, which was upheld in Holden v. Hardy.\textsuperscript{95} In Holden, the Supreme Court recognized that a state could limit liberty of contract because certain industries, including mining, could “no longer be carried out with due regard to the safety and health of those engaged in them.”\textsuperscript{96} According to the Supreme

\textsuperscript{91} See id. at 61; see also In Application of Morgan for Writ of Habeas Corpus, 26 Colo. 415, 420 (1899) (“Liberty means something more than mere freedom from physical restraint …. The right to acquire and possess property includes the right to contract for one’s labor.”).

\textsuperscript{92} See Lochner, 198 U.S. at 59, emphasis added.

\textsuperscript{93} See id. at 60.

\textsuperscript{94} See id.

\textsuperscript{95} Holden v. Hardy, 169 U.S. 366, 395 (1898)(affirming the judgment of the Supreme Court of Utah because working in underground mines for longer than eight hours a day would be detrimental to a miner’s health). But see In Application of Morgan, 26 Colo. at 426 (“It would be absurd to argue that, which the process itself is continuous, limiting the hours of those laboring in a smelter in any wise conduces to preserve the health of any portion of the public.”).

\textsuperscript{96} Holden, 169 U.S. at 393 (“where mining is the principal industry, special provision is made for the shoring up of dangerous walls, for ventilation shafts, bore holes, escapement shafts, means of signaling the surface, for the supply of fresh air and the elimination, as far possible, of dangerous gases . . . .”). But see In Application of Morgan, 26 Colo. at 426, 451 (holding that a law limiting the hours male workers could work in a smelter was not allowed under organic law because it interfered with a man’s right to freely contract his labor).
Court in *Lochner*, baking was not as hazardous or unhealthy as mining; therefore, a law regulating the hours of bakers for health reasons could not be constitutional.\(^97\)

The Supreme Court suggested that the New York law emasculated the bakers because the law stripped them of their ability to negotiate labor contracts with their employers.\(^98\) The emasculating effect of protective legislation was a common belief during this time. Labor was seen as a form of property and men had the right to freely negotiate labor contracts.\(^99\) Both employer and employee were presumed to have equal bargaining power. For example, in 1886 the Supreme Court of Pennsylvania in *Godcharles and Company v. Wigeman* found a law that setting the weight of a ton was “an insulting attempt to put the laborer under a legislative tutelage.”\(^100\) The court later went on to state that the law was “degrading to [a laborer’s] manhood.”\(^101\) Like the Pennsylvania Supreme Court and U.S. Supreme Court, legislatures and other courts perceived anything that affected the equality of parties as an infringement of someone’s liberty of contract. Therefore, unions and collective bargaining were discouraged because they altered the equal bargaining power. However, these courts ignored the reality that workers and employers did not possess equal bargaining power, i.e. that workers were at a

\(^97\) See *Lochner*, 198 U.S. at 59 (“We think that there can be no fair doubt that the trade of a baker, in and of itself, is not as unhealthy on . . . it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy, than still others.”)

\(^98\) Cf. Erickson, supra note 81, at 239 (quoting *Godcharles & Co. v. Wigeman*, 113 Pa. 431, 437 (1886) (arguing that the Pennsylvania Supreme Court found labor legislations that regulated a man’s work hours as emasculating because the law treated men like women and children).

\(^99\) See Novkov, supra note 15, at 865 (1996) (finding that liberty of contract was a private right and state was prevent from interfering with it); see also *Kessler-Harris*, supra note 12, at 184 (pointing out that lawmakers and judges believe that unrestricted liberty of contract lead to the “upward mobility” of workers and employers).

\(^100\) See *Godcharles & Co. v. Wigeman*, 113 Pa. 431, 437 (1886) (writing only a three paragraph opinion because the court felt that the lower court correctly decided the case and this court did not feel it had to justify that ruling).

\(^101\) Id. (“He may sell his labor for what he thinks best . . . and any and every law that proposes to prevent him from doing so is an infringement of his constitutional privileges, and consequently vicious and void.”).
disadvantage. Success in the labor movement resulted from collective bargaining and unions. Nevertheless, male workers and male employers were seen as equals and had an unlimited liberty of contract. After Lochner, the state could not infringe on this right unless the contracts involved ultra-hazardous jobs or illegal activity.

Because of biological differences and women’s roles as mothers and caretakers, legislatures and courts believed that women had a limited liberty of contract. Historically, husbands and fathers supported their wives and daughters. Before the Married Women’s Acts, married women could not own property or enter into contracts. They were legally dependent on their husbands. While these acts gave women certain economic rights and industrialization enabled more women to work outside the home, society still perceived women as dependent on men. Protective labor legislation and the court decisions that upheld these laws reflected this understanding.

The Supreme Court in Muller v. Oregon used separate spheres ideology to justify protective labor legislation and consequently confirmed women’s limited liberty of contract. While acknowledging that women had the right to make contracts and control their property, the Court pointed out that women required extra protection, because a woman’s physical health could not handle long working hours and a woman’s weakened physical state led to unhealthy children. The legislation served to protect future generations of American society. As a result,

102 See Kessler-Harris, supra note 12, at 184 (pointing out that unionists, which included few women, fought and won fifty hour work weeks, however women workers had around sixty hour work weeks); Novkov, supra note 99, at 863 (asserting that union leaders worked within the liberty of contract framework in order to secure labor demands).

103 See Lochner, 198 U.S. at 53-55 (comparing the New York law on baking to a Utah law regulating underground mines, which the Supreme Court upheld, and stating that baking is not an ultra-hazardous job like mining and therefore the law was outside the scope of New York’s police power).

104 See Muller v. Oregon, 208 U.S. 412, 421-22 (1908) (“It is impossible to close one’s eyes to the fact that she still looks to her brother and depends upon him.”).

105 See id. at 421.
legislatures and courts could limit a woman’s ability to freely contract her labor with her employer.  

Reformers, legislators, and state courts shared the Supreme Court’s view of a woman’s liberty of contract. All saw women as being different from men and thus justified the different treatment of men and women. The Massachusetts House of Representatives found that long working hours led to exhaustion of the worker and “the degeneracy of the race.” This belief was echoed in other scientific reports during the Progressive Era. Louis Brandeis and Josephine Goldmark compiled several scientific and government reports in a historic brief for Muller v. Oregon. The brief argued that working long hours had permanent and detrimental effects on a woman’s health, including her ability to bear healthy children. While the scientific value of the brief’s reports is now disputed, this brief expressed the predominant opinion among legislators and reformers, and the Supreme Court positively cited in its opinion.

State courts also adopted the belief that labor legislation, which limited women’s ability to freely contract, was needed to protect women’s health. In 1902, three years before Lochner and six years before Muller, the Supreme Court of Nebraska found that women have a limited liberty of contract. This court in Wenham v. State considered whether a law limiting the hours of women in manufacturing and retail businesses, hotels, and restaurants was constitutional. Female workers in an Omaha laundry worked fourteen hours a day; the law limited the work day to ten

106 See id. at 422-23.

107 See Brandeis Brief, supra note 72, at 45 (quoting H. 98 (Ma. 1866).

108 See id. at 18 (“Women are fundamentally weaker than men in all that makes for endurance: in muscular strength, in nervous energy, in the powers of persistent attention and application. Overwork, therefore which strains endurance to the utmost, is more disastrous to the health of women than men, and entails upon them more lasting injury.”).

109 See Muller, 208 U.S. at 420 (“The legislation and opinions referred to in the margin may not be, technically speaking, authorities . . . yet they are significant of widespread belief that a woman’s physical structure and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil.”). But see Erickson, supra note 81, at 248-49 (asserting that while the Court endorsed the opinions in the Brandies Brief, the unanimous decision reflects a deeper belief in the physical inferiority of women because the dissenters in Lochner and Holden signed onto this decision).
The court recognized that a woman is now free to own and control property and her labor is her property; however, it found that the state has the police power to limit a woman’s liberty of contract her labor. Using separate spheres ideology, the court wrote:

Women in recent years have been partly emancipated from their common law disabilities. They now have a limited right to contract. They may own property, real and personal, in their own right, and may engage in business on their own account . . . . They are unable, by reason of their physical limitations, to endure the same hours of exhaustive labor as may be endured by adult males. Certain kinds of work . . . would wreck the constitutions and destroy the health of women, and render them incapable of bearing their share of the burdens of the family and the home.\textsuperscript{111}

In the court’s opinion, the danger of exploitation by her employer justified the law. Unlike male workers who were able to freely contract their labor, women needed special protection.\textsuperscript{112} By confirming the state’s power to legislate to protect women’s health, the court implicitly acknowledged that women could not be trusted to protect their own health.

In \textit{Matter of Miller}, the Supreme Court of California upheld a law which limited the hours a woman could work in a hotel.\textsuperscript{113} While recognizing that being a hotel chambermaid was less arduous than working in a factory or laundry, the court nevertheless found that a restriction on the maid’s hours was justified.\textsuperscript{114} The court also distinguished being a maid in hotel from

\textsuperscript{110} See \textit{Wenham v. State}, 65 Neb. 394, 396 (1902) (detailing that the laundry employer also failed to post required notices stating hour restrictions).

\textsuperscript{111} See \textit{id.}, at 405 (using the physiologically differences between men and women to justify the restrictions on a woman’s right to freely control her property and her labor); cf. \textit{Cott}, supra note 24, at 67 (arguing that American society in early and mid nineteenth century used the concept of domesticity to create distinct male and female sex roles). The strict definitions of sex roles were a reaction to the change from a primarily agrarian economy to an industrial one. Id. at 69.

\textsuperscript{112} See \textit{Wenham}, 65 Neb. at 396 (“The employers and the laborer are practically on an equal footing, but these observations do not apply to women and children.”); see also \textit{Kessler-Harris}, supra note 12, at 185 (explaining that the contemporary eugenics movement reinforced the belief that legislation needed to protect women from selfish employers because these employers could cause race suicide with their demands of a woman’s labor).

\textsuperscript{113} See \textit{Matter of Miller}, 162 Cal. 687, 700 (1912) (distinguishing canneries from hotels by recognizing that cannery employees work only seasonally and thus can rest during the off-season).

\textsuperscript{114} See \textit{id.} at 697.
being a maid in a boarding house and implicitly in a private home. The court stressed that hotel chambermaids worked longer hours than domestic workers and worked outside the home. In making this assertion, the court did not cite any studies on domestic workers and hotel workers. The court’s conclusion is contrary to actual studies on domestic workers. Live-in domestic workers tended to work longer hours than women who worked in other industries.\textsuperscript{115} They were required to stay on their feet for long periods of time, do heavy cleaning and laundry, and respond quickly to their employers’ requests for help.\textsuperscript{116} According to a Black domestic worker, “I’m on duty all the time – from sunrise to sunrise, every day in the week. I am the slave, body and soul, of this family.”\textsuperscript{117} Because hotel chambermaids worked for a profitable establishment, the court ignored the fact that they did the same work as domestic workers. They justified the inclusion of hotel maids and the exclusion of domestic workers, while rejecting the argument that law was “unreasonable and unnecessary for the promotion and preservation of the health and welfare of the human race.”\textsuperscript{118} The court deferred to the legislature’s opinion that this law was necessary to protect the health of women and their future children.\textsuperscript{119}

Ultimately the Supreme Court of California, like many other state courts, saw women as different and needing special legislative protection. In its opinion, hotel maids should not be able to choose to work longer hours; their liberty of contract had to be restricted so that their health and their future children’s health would be protected.

\textsuperscript{115} See \textit{Katzman}, supra note 2, at 120-23 (using the typical work week of Inez Godman to illustrate that domestic workers could easily have a sixteen hours workday with breaks only amounting to an hour or two); \textit{Goodman}, supra note 4, at 54 (“[Y]our maid is on her feet at least eleven hours a day with a score of stair climbings included. It seems to me that her case is more pitiable than that of the store clerk.”); see also \textit{Negro Nurse}, supra note 3, at 178 (working fourteen to sixteen hours a day as a nurse and only allowed to go home to see her children every other Sunday afternoon).

\textsuperscript{116} See \textit{Katzman}, supra note 2, at 120-23 (pointing out that employers rarely understood the delicate balance of juggling both daily and weekly chores and the constant interruptions destroyed any rhythm a domestic worker had established).

\textsuperscript{117} \textit{Negro Nurse}, supra note 3, at 197.

\textsuperscript{118} See \textit{Miller}, 162 Cal. at 697.

\textsuperscript{119} See \textit{id.} (finding that the legislature’s purpose of preserving the health of women and the race was rationally related to the creation of an eight hour work day for female workers).
Limited liberty of contract both helped and hurt working women. The legislation guaranteed safer working conditions and limited hours. Pennsylvania’s 1905 law required “suitable and proper wash and dressing-rooms, and [non-adjoining] water-closets for males and females” if they were working together.\textsuperscript{120} This law also required the inspection of workshops by Chief Factory Inspector to ensure that workshop was “in a clean and safe and sanitary condition.”\textsuperscript{121}

While creating safer working conditions, protective labor legislation only applied to working hours; the legislation did not ensure a living wage to female workers. In \textit{Adkins v. Children’s Hospital}, the Supreme Court expressly stated that a law creating a minimum wage for female workers had no causal relationship to the protection of health and morals.\textsuperscript{122} While the Court acknowledged that several states had minimum wage laws, it nevertheless rejected the constitutionality of this law. The Court argued that allowing minimum wage laws would create a slippery slope because “if, in the interest of public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may . . . be invoked to justify a maximum wage.”\textsuperscript{123} Therefore, a state could not further restrict a woman’s limited liberty of contract by mandating a minimum wage. In the Court’s opinion, minimum wage laws went to “the heart of contract;” they affected the primary thing that employers and employees negotiated.\textsuperscript{124}

\footnotesize{\textsuperscript{120} See Act of May 2, 1905, no. 226, 1905 Pa. Laws 355}(requiring that proper ventilation of wash and dressing rooms).

\footnotesize{\textsuperscript{121} See id. at 357} (stating that the Chief Factory Inspector would determine how many people could safely work in the place and issue permits to all business that meet safety and sanitary requirements).

\footnotesize{\textsuperscript{122} See Adkins v. Children’s Hospital, 261 U.S. 525, 556 (1923)} (“The feature of this statute . . . is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do.”).

\footnotesize{\textsuperscript{123} Id. at 560.}

\footnotesize{\textsuperscript{124} See id. at 553-54} (explaining that minimum wage laws go to essence of the contract while working hour laws only affect the conditions of work, not the contract). “A law forbidding work to continue beyond a given number of hours leaves the parties free to contract about wages and thereby equalize whatever additional burdens may be imposed upon the employer.” \textit{Id. But see Smith, supra} note 74, at 11 (noting that California, Colorado, Massachusetts, Minnesota, North Dakota, Oregon, South Dakota, Washington, and Wisconsin had minimum wage laws in 1932 nine years after the Supreme Court decided \textit{Adkins}).
negotiation of wages, both women and men had an unlimited right, and the state could not use its police power to control wages.\textsuperscript{125}

Protective labor legislation hurt working women because it reinforced the idea that true domain of women was the home. The belief that women needed special protection because they were different from men was the premise of these laws. Separate spheres ideology, the rationale behind the laws, promoted the ideal that the woman’s natural domain was the home; she was the moral center of the family and was entrusted with the upbringing of the children.\textsuperscript{126} Protective labor legislation prized this role over her role as a breadwinner. The courts and legislatures assumed that women only worked out of necessity.\textsuperscript{127} Therefore, protective laws were necessary to guard a woman’s health until she could return to the home.

While one may argue that domestic workers possessed the liberty of contract because protective labor legislation did not reduce the hours of domestic workers, this argument is incorrect. Because domestic work was “healthy,” legislators and reformers did not believe that domestic workers needed protection.\textsuperscript{128} They did not see the home as a place where domestic workers could be exploited.\textsuperscript{129} Therefore, domestic workers did not have a de facto limited liberty of contract.

Unlike men, domestic workers did not have an unlimited liberty of contract. Both male workers and female domestic workers did not have legislation that limited their work hours. However, male workers were treated as employees while female domestic workers were treated

\textsuperscript{125} See Adkins, 261 U.S. at 554-55 (concluding that adult women like men have a legal right to negotiate their wages).

\textsuperscript{126} See Cott, supra note 24, at 69 (asserting that separates spheres ideology proposed that women through their maternal influence could strengthen the moral center of society).

\textsuperscript{127} See Muller v. Oregon, 208 U.S. 412, 421-22 (1908) (finding that a woman’s body puts her at a disadvantage when she tries work for her survival).

\textsuperscript{128} See Smith, supra note 5, at 894 (asserting that reformers and legislators never considered domestic work a dirty and dusty occupation, therefore they did not seek to regulate it).

\textsuperscript{129} See id. at 894-95 (finding that reformers and legislatures saw domestic work as the perfect opportunity for young women to learn about taking care of a home and raising children).
as servants and dependents. For example, live-in domestic workers could not complain about their living accommodations; employers expected them to be grateful that they provided their room and board. While domestic workers received higher wages than other female workers, they worked more hours. Other workers worked fifty to sixty hours a week, but domestic workers worked seventy to eighty hours a week. In return for their long hours, domestic workers received living accommodations and food. In the South, live out domestic workers got a “service pan,” which was the leftover food from the family’s meals. The service pan was included as part of a Black domestic workers wages. Southern employers expected Black workers to steal food from their kitchens, and consequently they paid their domestic workers less. Employers did not see domestic workers as employers but helpers, dependants, or potential thieves, as in the South. Employers hired domestic workers to be companions and

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130 See Katzman, supra note 2, at 236-37, 239 (pointing out that employers treated domestic workers as subordinate when they called them by their first names); Negro Nurse, supra note 3 at 182 (explaining that while she looking after her charges she could ride the white coaches with no problem but when she was alone, she was relegated to the “colored people’s coach”).

131 See id. at 108 (recounting the disgust an employer felt when her domestic worker asked for a more accommodating room).

132 See e.g., Smith, supra note 5, at 870-71.

133 See Negro Nurse, supra note 3, at 199 (asserting that the service pan allowed Black families to eat because their wages were too meager to provide for housing, clothing, and food for the typically average to big sized family); see also Jones, supra note 7, at 132 (highlighting that white employers calculated the cost of food and secondhand clothes and usually reduced the domestic workers by that amount).

134 See Jones, supra note 7 at 132 (finding that Black domestic workers believe taking food, or toting, was their right because of their inadequate wages); Negro Nurse, supra note 3 at 199 (maintaining that that white employers expected their domestic workers to take food home to their families even though some white people denounced the tradition of the service pan).

135 See Pettengill, supra note 1, at 215 (“You muss nevair take even a cent you find anywhere in she room. She leaf it purpose.”); Negro Nurse, supra note 3, at 199 (“We don’t steal; we just ‘take’ things – they are a part of the oral contract, express or implied. We understand it, and most the white folks understand it.”). But see Salmon, supra note 40, at 347 (asserting that working in a home, along with the healthiness of domestic work, was an advantage especially for immigrant women and women without their own homes).
servants; in the employer’s mind, domestic workers were not employees.\textsuperscript{136} Moreover, domestic workers were invisible; they were not member of their employers’ families but they were not employees either.\textsuperscript{137}

Domestic workers’ unequal bargaining power illustrates their lack of liberty of contract. While all workers during the Progressive Era had unequal bargaining power, domestic workers had even less bargaining power. Other workers, men and women, worked side by side with other workers. This made it easier for them to organize into unions and push for better working conditions and wages. Domestic workers worked in isolation or with one other domestic worker. Moreover, because of the long working hours, domestic workers had difficulty organizing and agitating for reform. For example, despite organizing many members, unions of domestic workers at the turn of the century failed.\textsuperscript{138} They could not realize their goals of obtaining higher wages, rest days, and shorter work days.\textsuperscript{139}

The transient nature of domestic work hindered domestic workers’ bargaining power because they could simply leave a position and hopefully find a better. Domestic workers used the ability to get another job as away to get better working conditions.\textsuperscript{140} For example, Japanese

\textsuperscript{136} \textit{Cf.} Pettengill, \textit{supra} note1, at (recalling how one employer believed that it was appropriate to demand Pettengill get a smallpox vaccination over Pettengill’s protests).

\textsuperscript{137} \textit{See} Katzman, \textit{supra} note 2, at 200 (pointing out that white Southerners treated Black domestic workers as invisible, and because of this, employers developed more intimate relationships with their Black domestic workers)

\textsuperscript{138} \textit{See} Philip S. Foner, \textit{Women and the American Labor Movement: From Colonial Times to the Eve of World War I 241-43} (1979) (chronicling the attempts to unionize domestic workers in Kansas City, Duluth, Chicago and New York City and highlighting that these unions disappeared before becoming affiliated with the American Federation of Labor or actively pushing for better working conditions).

\textsuperscript{139} \textit{See id.} (listing the goals of the 1901 Workingwomen of American as receiving two hours each afternoon and one evening a week to rest, being allowed to have gentlemen friends to visit, prohibiting a reduction in wages after the initial employment contract is negotiated).

\textsuperscript{140} \textit{But see} Negro Nurse, \textit{supra} note 3, at 197-98 (saying if she left her job because she refused to submit to mistreatment her former employer would tell other employers negative things).
domestic workers endured unsatisfactory working conditions for long periods of time. They did not feel that they could negotiate better terms and used quitting as a way to find a better job.  

Ultimately domestic workers could not negotiate their working conditions. The personal nature of domestic work made it subject to the whims of their employers. The employer gave the assignments and set the schedule, and she reserved the power to change the job at anytime. The only recourse for domestic workers was not to negotiate new terms to their oral employment contracts but to quit. The imbalance of bargaining power between white employers and Black domestic workers is a good example. Both the racial caste system and economic poverty contributed the unequal bargaining power. Black domestic workers knew that if another Black worker was ready to step into their position if they displeased their employer. These women did not believe that they could negotiate higher wages and better working conditions because their families depended on their salaries. Unlike the men in white immigrant families, men in urban Black families suffered from high unemployment. When Black domestic workers did

141 See Glenn, supra note 29, 163-64 (maintaining that Japanese domestic workers felt it was demeaning to complain about mistreatment and they would prefer to save face and quit); cf. Japanese Servant, supra note 37, at 663 (“She wanted me to state the reason. My real objection was that the work was indeed too hard and unpleasant for me to bear .... I thought it is rather impolite to say so and partly my strange pride hated to confess my weakness, fearing the reflection as a lazy boy.”).

142 See Pettengill, supra note 2, at 162-63 (discovering that the power her employer had to change which day Pettengill had off on the very day she was supposed to have off). But see Negro Nurse, supra note 3, at 197-98 (believing that she could not negotiate for better wages because her employer would find someone else and she could not quit out of economic necessity).

143 See Glenn, supra note 29 at 158 (highlighting that Japanese domestic workers felt both overt and subtle expressions of inequality between themselves and their white employers); see also Negro Nurse, supra note 3, at 197-98, 199-200 (recounting how Black women, especially domestic workers had to endured unwelcome sexual advances and unequal sexual relationships from white male employers to keep the jobs they desperately needed).

144 See Negro Nurse, supra note 3, at 197 (“[I]f some negroes did here and there refuse to work for seven and eight and ten dollars a month, there would be hundreds of other negroes right on the spot ready to take their place and doe the same work, or more, for the low wages that had been refused.”).

145 See Jones, supra note 7, at 124 (finding that male unemployment in 1880 New Orleans was fifty-five percent, and in Athens, Georgia in the first decade of the 1900s approximately 80% of
try to organize and push for better working conditions and wages, the white majority crushed their efforts.\textsuperscript{146}

V. Domestic Work Reform Movement

During the Progressive Era, reformers sought to transform domestic work. Their goal was to attract more native white women to the profession. While mid-nineteenth century reformers stressed the use of Christian benevolence,\textsuperscript{147} Progressive Era reformers advocated the use of scientific management techniques; these reformers argued that these techniques would transform domestic work into a more business-like profession.\textsuperscript{148} These reformers, including Lucy Maynard Salmon, advocated the use of Frederick Taylor’s scientific management principles, which revolutionized business. For example, Salmon talked about the need for specialization in domestic work. She argued that that technology would allow homes to outsource much of the work done by domestic workers. Laundries could wash and iron a family’s clothes; canneries and processing plants could make and preserve food, and factories could make better quality clothing.\textsuperscript{149} Scientific management was the Progressive Era’s solution to the servant problem, the problem of the limited supply of domestic workers but the endless demand for these workers.\textsuperscript{150}

\textsuperscript{146} See The Washing Amazons, The Daily Constitution, Aug. 3, 1881, at 4 (“The strike … has about reached its finale, and in a week at the furthest the washer-women will be bending over their tubs, singing songs as loudly as if they had succeeded.”).

\textsuperscript{147} See Katzman, supra note 2, at 248-57 (chronicling the number of proposed solutions from Catharine Beecher’s espousal of the benevolent education of workers to Progressive Era reformers’ advocacy of scientific management techniques).

\textsuperscript{148} See Salmon, supra note 1, at 226-30 (asserting that the use of scientific techniques would lead to greater specialization and outsourcing of much of a domestic worker’s duties, and consequently domestic work would be transformed into a live-out profession); see also Edward Earle Purinton, The Efficient Housewife, The Independent, Mar. 20, 1916 at 421-26 (extolling the efficiency principles of saving money while food shopping, planning meals and the day’s work, and using modern household and kitchen aids).

\textsuperscript{149} See Salmon, supra note 1 at 212, 229 (maintaining that using scientific management would elevate domestic work from it drudgery because many of its tasks would be outsourced); cf. Katzman, supra note 2, at 256 (telling how some turn-of-the-century housewives embraced the
Reformers stressed that the employer-domestic worker relationship should be treated as any other business contractual relationship.\(^\text{151}\) According to Edward Earle Purinton, the director of the Independent Efficiency Service, “[t]he cure for the ‘servant’ problem [was] to realize there [was] no servant;” the domestic worker was not a servant but an employee.\(^\text{152}\) Reformers advocated the use of contracts to remedy domestic workers’ lack of liberty of contract and the poor working conditions and low social status of domestic work. However, the use of contracts was completely voluntary and self-regulated. Employers had the discretion to use them and no enforcement mechanism existed.\(^\text{153}\) Moreover, while characterizing domestic work as any other

then technological advances of the vacuum cleaner, motorized washing machine and electric irons and consequently got rid of their domestic workers).

\(^\text{150}\) See Katzman, supra note 2, at 250-54 (highlighting the work of Flora Thompson who argued that domestic labor should be more highly valued). Thompson wrote about students in a domestic science school who spent hours planning a meal for twenty-five cents, but the students put no value on their own labor. Id. at 252; see also Daniel E. Sutherland, Americans and Their Servants: Domestic Service in the United States from 1800 to 1920 163-81 (1981) (arguing that Salmon’s major contribution to the reform movement was the application of scientific principles to the servant problem).

\(^\text{151}\) See How We Settled the Servant Problem: By a Business Woman, The Independent, Sept. 22, 1910, at 627 (“We try to treat her as we wish to be treated in our offices. For our relationship is one of business and not a social one, and in the majority of cases I think it is wiser not to mix the two.”); Salmon, supra note 40, at 346 (“The employer becomes a members of the great class of wage-payers and the employee joins the ranks of wage-earners. Domestic service whether given or received, becomes a part of the great labor question and it must be judged as an occupation by the same tests that are applied to every other.”); see also Katzman, supra note 2, at 251-53 (drawing on the work of Josephine Martin to point out the movement for recognizing the domestic work relationship as a contractual one); Smith, supra note 5, at 883-86, 903 (discussing the 1928 National Conference on Employer-Employee Relations in the Home, which advocated the use of contracts). The conference created sample contracts which detailed minimum working standards; but it also stressed that employers and employees could create contracts specially tailored to their needs. Id. at 884.

\(^\text{152}\) Purinton, supra, note 148, at 426 (“What the housemaid objects to is being called, classed and treated as a servant.”).

\(^\text{153}\) See Allen, supra note17, at 56 (arguing that employment contracts would not work because he selfish employers would not respect them); see also Smith, supra note 5, at 883-86, 903-05 (maintaining that reformers were reluctant to push for legislation because they respected the employer’s superiority over her domestic worker);
business relationship was an improvement, Progressive reformers ignored the personalism that was inherent in domestic work. \footnote{154}{See Katzman, supra note 2, at 263 (noting that reformers failed to recognize that transforming domestic work into a live-out profession did not alleviate the personalism because employers were able to maintain a personal relationship with their domestic workers).} Employers hired domestic workers for their labor but also for companionship. \footnote{155}{See id. at 261, (pointing out that employers believed that domestic workers chose this profession and wanted to be their employer’s companions); cf. Pettengill, supra note 1, at 105 (“The Wetherlys were interested in me as an individual, and improved convenient opportunities to get acquainted, cheerfully bearing the burden of conversation to that end.”).} Employers frequently discussed private family matters in front of domestic workers. \footnote{156}{See Negro Nurse, supra note 3, at 198 (recalling how Black domestic workers had to passively submit to whatever their employers and employer’s children would call them because they would lose their jobs otherwise); see also Katzman, supra note 2, at 188 (“It was even common for whites to discuss the inferiority of blacks in front of their black servants.”); cf. Race Problem, supra note 55, at 588-89 (telling the story of when she was girl white children used derogatory words toward her and a beloved Sunday school teacher who had recently died and how she felt like less of a person).}

Lastly reformers proposed the education of domestic workers, employers, or both through domestic science courses and programs. Domestic science education would teach women on both sides of the domestic work relationship how to perform and manage domestic work. \footnote{157}{See Salmon, supra note 1, at 254 (“No improvement is possible in domestic service until every part of the household comes abreast of the progress made outside of the household; until the profession of housekeeping advances, like the so-called learned professions, through the accumulated wisdom of its individual members; until it ceases to be merely a passive recipient of the progress made elsewhere, and becomes on its own part an active, creative force.”); Purinton, supra note 148, at 422 (arguing that an efficient housewife is a wife, mother, and housekeeper and she must learn all three roles to be efficient); see also Sutherland, supra note 150, at 168 (noting that Salmon advocated the borrowing from other disciplines, such as psychology and economics, to educate employers and domestic work and hence improve domestic work).} Reformers established schools and training programs in several cities and colleges. \footnote{158}{See Sutherland, supra note 150, at 165 (pointing out that graduates from college programs in domestic science became teachers in other colleges and normal and vocational schools); see also Purinton, supra note 148, at 426 (asserting the progressive housewife can educate herself in the principles of household efficiency by taking either college or general education courses in household management); Emily E. Ford, Governmental Training Schools for Domestic Service,
both employers and domestic workers were resistant to education. Employers believed that education and other reforms interfered with the home’s privacy. Domestic workers were resistant because the expense of education did not seem worth it. Domestic workers knew that domestic work provided no job enhancement opportunities.\textsuperscript{159} Moreover, any women could become a domestic worker with no training.

Reformers tailored their reforms to the employers’ needs and concerns. All suggested reforms were voluntary. While reformers cared about the working conditions of domestic work, they were mostly concerned with elevating the domestic work’s social status. Reformers wanted more women, especially native white women, to enter the profession.\textsuperscript{160} By advocating for contracts and scientific management, reformers sought to alter domestic work so that domestic workers would have more personal independence.\textsuperscript{161} In their opinion, domestic work’s social status would rise and domestic work could compete effectively with other female jobs.\textsuperscript{162} During the Progressive Era, reformers did not advocate for legislation that would protect domestic

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\item[159] See Salmon, supra note 1, at 141, 183 (recognizing that employers may reward hard work and efficiency in domestic work with a raise but domestic workers do not receive promotions). Salmon argued that entering hotel work was a promotion for domestic workers. \textit{Id.}
\item[160] See Katzman, supra note 2, at 263 (maintaining that the desire to attract more women to domestic work was the reformers’ primary goal and improvement of the working conditions was only a method to attract more women).
\item[161] See Salmon, supra note 1, at 226 (asserting that the shift from live-in to live-out would give domestic workers’ control over a part of their lives and own households); Domestic Service Put on Eight-Hour Basis, \textit{The New York Times}, June 14, 1925, at X18 (telling how an employment bureau began to place domestic workers in eight hour day jobs after discovering a demand for these jobs existed because the workers wanted to live out of their workplaces and they desired greater freedom); \textit{cf.} Peiss, supra note 38, at 37, 45 (arguing that the nature of domestic work isolated domestic workers and gave them limited opportunities for leisure time). While caring for their employers, children in a park, domestic workers would steal moments to socialize with each other. \textit{Id.}
\item[162] See Sutherland, supra note 150 at 168 (highlighting that Salmon did not believe that scientific management would eliminate the need for domestic workers).
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workers. They refused to force employers to improve working conditions; they ultimately left reform to the employers.163

Domestic workers’ efforts to change domestic work were few and ineffective in the long term. When faced with unsatisfactory working conditions, most domestic workers simply chose to change jobs.164 They believed that they lacked the power to change the working conditions and their employers’ attitude. For example, Japanese women, like other domestic workers, used quitting as a last resort.165 After enduring horrible working conditions for a significant period, they would simply quit. When their employers would beg them to stay, these women refused change their minds. However, they tried to save face and dignity by lying about their reason for quitting.166

Other women tried to change their working conditions through passive resistant. Black domestic workers’ use of this technique provides an illustrative example. Black women would frequently take “holidays,” “sick days,” or “vacations” without informing their employers.167 They use this time to spend with their families and communities. White employers bemoaned these holidays and characterized Black women as lazy and undependable.168 Black women used

163 See Katzman, supra note 2, at 263 (pointing out that reformers never proposed to give power to the workers because they accepted the employers’ superiority). But see Allen, supra note 17, at 56 (“It is the careless or selfish minority of employers who are always ready to exploit their workers and to pull down hour and wage standards, who must be checked. It may be that there is only one way to reach this minority and that is through the medium of state laws.”).

164 See Glenn, supra note 29, at 163-64 (noting that quitting was the last resort because the domestic worker could not work with her unreasonable employer). But see Negro Nurse, supra note 3, at 197 (believing that organizing and demanding for higher wages would not help because many unemployed Black workers would willingly work for lower wages).

165 See Glenn, supra note 29, at 163-64.

166 See id., (stating that Japanese domestic workers saw quitting as a defeat and therefore they gave excuses for why they quit).

167 See Jones, supra note 7, at 131-32 (stressing that community and church activities were important than work, therefore Black domestic workers commonly did not show up to work on the days of community events).

168 See id., (quoting testimony from hearing before the U.S. Senate Committee on Education and Labor to show the frustration of white employers).
these racist stereotypes to their advantage. They knew that Southern white society perceived
them as lazy; therefore they worked according to white society’s expectation.\footnote{169 See id. at 133-34, (arguing that Black domestic workers recognized that they had some power because they controlled the quality of their work). But see Negro Nurse, supra note 3, at 196-97, 199 (feeling that even though some white people considered Black people to be lazy and disapproved of the service pan, she still worked fourteen to sixteen hours a day for her white employers and received only ten dollars a month).} Irish domestic
workers demanded the right to celebrate all important religious holidays, because these holidays
and the Catholic Church provided them with a sense of community and a social life.\footnote{170 See Brennan, supra note 8, at 336 (noting that Irish domestic workers asked for Catholic holidays off, and because of their insistence some employers expressly advertised that “No Catholics need apply.”).} Their
employers disliked this habit. However, Irish women simply took the days off without
permission.

While most domestic workers passively accepted or passively resisted the nature of
domestic work, a few domestic workers actively tried to change the occupation. Women tried to
organize unions in Kansas City and Duluth in 1897, New York City in 1900, and Chicago in
1901.\footnote{171 See Foner, supra note 138, at 241-42 (looking at the early efforts to unionize domestic workers under the American Servant Girls’ Associations in Kansas City and Duluth, the Domestic Servants’ Union in New York City, and the Workingwomen of American in Chicago).} However, all of these unions quickly disappeared.\footnote{172 See id. at 241-43 (finding that the Kansas City union organized thirty local unions with over 5,000 members, the Duluth union organized 175 members, New York union organized only twelve members but called for a general strike, and the Chicago union organized 300 members and pushed for a $1 increase in wages for cooks, housekeepers, second maids, and young inexperienced maids).} These unions were able to organize
many domestic workers but were unable to sustain the initial momentum.

One famous group was the Denver Local no. 113 of Industrial Workers of the World
(IWW) union. Unlike other unions of the era, the IWW espoused Marxist principles and
organized workers according industry.\footnote{173 See Donna L. Van Raaphorst, Union Maids Not Wanted: Organizing Domestic Workers 1870-1940 170 (1988) (arguing that while the IWW realized that women were going to remain a part of national workforce, little evidence exists on how the union organized women).} The Denver Local was a local union of domestic
workers. The isolation of domestic work and rapid turnover of domestic workers made organizing workers difficult. However, Jane Street, the union leader, achieved some success. She explained her organizing techniques in a lengthy 1917 letter to a female labor organizer in Tulsa, Oklahoma. While only having eighty-three active members, Street was able to place women in over 1000 jobs and created an employment office, where Street and other members made a card file of jobs. Street wrote that “we keep a record of every job advertised in every paper.” The cards detailed “the wages, the size of the family and house, etc.” Then the union would send a member to answer the ad, and she would demand shorter hours, rest days, and higher wages. If the employer refused to hire her, the union would send another woman who would ask for the same thing. By continually supplying women to answer job ads, the union forced employers to concede to its demands for shorter hours and higher wages. The union did

174 See Daniel T. Hobby, “We Have Got Results”: A Document on the Organization of Domestics in the Progressive Era, 17 Lab. Hist. 103, 103-04 (quoting Letter from Jane Street, union organizer, Industrial Workers of the World Local # 113 to Elmer F. Buse (1917) (on file at National Archives, Department of Justice, Record Group 60, File 18701-28).

175 See id. at 105 (quoting Letter from Jane Street, union organizer, Industrial Workers of the World Local # 113 to Elmer F. Buse (1917) (on file at National Archives, Department of Justice, Record Group 60, File 18701-28)) (explaining that information about the job would be shared with domestic workers before they applied for the job); see also Raaphorst, supra note 173, at 190 (asserting that this card file is what gave the union real power in Denver because with the card file they could control the market for domestic workers).

176 See Hobby, supra note 174, at 105 (quoting Letter from Jane Street, union organizer, Industrial Workers of the World Local # 113 to Elmer F. Buse (1917) (on file at National Archives, Department of Justice, Record Group 60, File 18701-28)). In the letter Street pointed out that employers at first used the union’s employment agency but later realized that using the agency was not to their advantage. Id.

177 Id.

178 See id. (“If a girl decides to shorten hours on the job by refusing to work afternoons … her employer does not fire her until she secures another girl. She calls up an employment shark and asks for a girl. With the union office in operation, no girl arrives.”).

179 See id. (quoting Letter from Jane Street, union organizer, Industrial Workers of the World Local # 113 to Elmer F. Buse (1917) (on file at National Archives, Department of Justice, Record Group 60, File 18701-28)) (explaining how several domestic workers would answer a job ad and demand a salary of $30 a week when employer advertised it for $20 and how a domestic worker would say she accept $20 a week for a job but she would not report for work).
not have to strike because it could raise wages on each job independently. Street believed that the laziness of middle class housewives made it easy to control the market. She wrote “[t]he nerve-wracked, lazy society woman is not hard to conquer.”180 Street’s union expanded, and similar domestic worker unions sprung up in Chicago, Cleveland, Duluth, Salt Lake City, and Seattle.181 While the union prospered despite pressure from middle class employers and the YWCA, the union was crushed after the federal government attacked the IWW through the Espionage Act.182

Another example of domestic workers protesting and fighting for better working conditions is the 1881 washerwoman’s strike in Atlanta, Georgia, where 3,000 laundresses and domestic workers joined a strike started by laundresses for higher wages.183 In the summer of 1881, what started as twenty women and men initially meeting in a local church and organizing grew to 3,000 in less than three weeks.184 The Washerwoman’s Association of Atlanta struck to get $1 for every twelve pounds of clothes washed.185 Domestic workers joined the women on the

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180 Id. (quoting Letter from Jane Street, union organizer, Industrial Workers of the World Local # 113 to Elmer F. Buse (1917) (on file at National Archives, Department of Justice, Record Group 60, File 18701-28)).

181 See Foner, supra note 138, at 411 (highlighting that Street’s union was able to expand despite vandalism and robbery by enemies and to move into new offices).

182 See id.

183 See also Raaphorst, supra note 173, at 200 (telling the story of how Black women came together to fight for higher wages in the recalcitrant South); Jones, supra note 7, at 148 (explaining at strike by Black women during the 1880s was a form of militant activism); Dorothy Sterling ed., We Are Your Sisters: Black Women in the Nineteenth Century 358 (1984) (discovering that while the Black Washerwomen and their supporters tried to keep the strike going amongst the resistance from the white establishment, the exhaustion of funds ended the strike and the women had to return to washing at the same rate).

184 See The Wet Clothes the Washerwomen Bring Home, The Daily Constitution, July 29, 1881, at 1, (discovering that the organization grew from one initial church meeting and local Black preachers promoted the washerwomen’s cause and announced future meetings).

185 See id. (quoting Captain Bill Starnes of the Atlanta police who said “nearly 3,000 negroes women are asking their white friends who supported them during the cold hard winter to pay them a dollar a dozen for washing”); The Doughty Washwomen, The Daily Constitution, July 26, 1881, at 4 (“Several families who decline to pay the price demanded, have determined to send their clothing to Marietta where they have secured laundry service.”).
picket lines and asked for an increase in wages.\textsuperscript{186} Despite this strong showing of solidarity, the white establishment brutally crushed the strike by raising the rents of the strikers, requiring washing licenses, and jailing the leaders.\textsuperscript{187} In defiance, the strike leaders wrote to Atlanta’s then mayor, Jim English.

\begin{quote}
We, the members of our society, are determined to stand to our pledge and make extra charges for washing, and we have agreed, and are willing to pay $25 or $50 for license as a protection, so we can control the washing for the city. We can afford to pay these licenses, and will do it before we will be defeated, ant then we will have full control of the city’s washing at our own prices, as the city has control of our husband’s work at their prices.\textsuperscript{188}
\end{quote}

However, not all of the supporters could afford to continue, and the strike soon ended because the washerwomen and domestic workers were economically and politically weak.\textsuperscript{189}

The 1881 washerwoman’s strike and Jane Street’s efforts prove that domestic workers could organize and fight for change during the Progressive Era. Nevertheless, most reformers listened to theories and the employers when advocating for change.

\section*{VI. Conclusion}

\textsuperscript{186} See \textit{The Doughty Washwomen}, supra note 185, at 4 (“Not only the washerwomen, but the cooks, house servants and nurses are asking for an increase. The combinations are being managed by the laundry ladies.”).

\textsuperscript{187} See \textit{The Washing Amazons}, supra note 146, at 4 (recounting the story of how one white landlord raised the rent of his Black tenant in retaliation because she refused to wash clothes for less than a dollar a dozen); \textit{The Wet Clothes}, supra note 184, at 1 (noting the arrest of six members and leaders of the strike for disorderly conduct and fighting because according to the reporter they tried to physically induce another Black women who continued to wash clothes to join the strike); \textit{A Move in the Right Direction}, \textit{The Daily Constitution}, July 26, 1881, at 4 (“We learn that a that next meeting of the city council, an ordinance will be offered requiring all washerwomen belonging to any ‘association’ or ‘society’ to pay a business tax or license. We also learn that the new steam laundry company will apply for an exemption for city taxation…”).

\textsuperscript{188} \textit{The Washing Amazons}, supra note 146, at 4 (quoting Letter from The Washing Society of Atlanta, Georgia to Jim English, Mayor, Atlanta, Georgia (Aug. 2, 1881)).

\textsuperscript{189} See \textit{id.} (“[The passing of the licensing ordinance] has fallen like a bombshell in the camps of the strikers, and has induced quite a number to withdraw from the organization.”); see also \textit{Jones}, supra note 7, at 149 (maintaining that the white establishment crushed the strike because the laundresses and domestic workers questioned white supremacy).
Domestic workers suffered from social stigma and sometimes racial inferiority. Saddled with the persistent belief that house work was the natural occupation of women and the perception that domestic work symbolized servility and racial inferiority, domestic workers lacked liberty of contract and the bargaining power to demand higher wages and better working conditions. Attempts to organize into unions, while initially successful, failed. While progressive reformers tried to emphasize the business relationship that existed between domestic workers and their employers, they neglected to push for legal reform. All of their reforms, like domestic science education and contracts, were voluntary. Legislators and courts forgot that domestic work was a true form of work; legislators and courts clung to the mistaken belief that women truly belonged in the home. As a result, protective labor legislation ignored domestic work and courts and legislators did not recognize domestic workers as having either unlimited or limited liberty of contract because domestic work was the natural work of women, especially women of color who were racially inferior.