

Marginalized Struggles for Legal Reform: Cross-Country Consequences of Domestic Worker Organizing

Katherine Maich

Based on twenty-one months of participant observation research and interviews in three countries, this article explores the dynamics of struggles for domestic worker legislation and the resultant consequences in Guatemala City; the San Francisco Bay Area, California; and Lima, Peru. In this cross-country comparison of three different stages in the struggle for legislation, each group of marginalized domestic workers presents challenges to long-standing hierarchies of power, class, race, and gender. Their actions shed insights on the process and consequences of worker organizing across the United States and Latin America.

Keywords: *domestic work, ethnography, Latin America, social movements, women's empowerment*

What possibilities of mobilization are produced on the basis of existing configurations of discourse and power?

—Judith Butler (1995, p. 47)

The law was made for one thing alone—for the exploitation of those who don't understand it.

—Bertolt Brecht (1928, p. 74)

Indigenous and immigrant women who perform labor in the homes of the upper class face a particular set of obstacles, such as verbal, emotional, and sexual abuse; lack of benefits; isolation; and racialized and gendered discrimination. Yet despite these hurdles, domestic workers across the United States and Latin America are currently organizing for defined benefits as state-recognized workers, higher wages, a political voice, and economic justice within varying political contexts. Moving from macro-level issues of globalization, state governance, and migratory patterns to the micro-level daily experiences of contractual relationships, exploitation, and

Katherine Maich is a PhD candidate in sociology at the University of California, Berkeley, and a researcher for the International Domestic Worker Federation.

resistance, domestic work remains both an important historical phenomenon as well as a relevant and contemporary practice ripe for sociological analysis (Parreñas, 2001). In addition, power dynamics present in domestic worker-employer relationships demonstrate the intersectionality of class, race, and gender as well as tensions around the care economy and commodification of reproductive labor.

This article is part of a larger study that interrogates the implications and possibilities of domestic worker legislation and applies to other situations of implementing national domestic worker legislation, and yet operates within a grounded understanding that these laws and their effects cannot be universalized but must be understood through a situated and intersectional analysis specific to women's national, cultural, racial, economic, and social situations. My project intervenes to recognize ways that a legal framework can alleviate or at least impede continued discrimination, abuse, and mistreatment of domestic workers. Yet few laws have dealt with this specific population in the past, and furthermore, labor law studies yield a dearth of literature actually examining effects of legal inclusion for categories of formerly excluded workers, save for some studies focusing on social reforms resulting from industrial relations legislation (Brown & Wadhvani, 1990). Merike Blofield's (2012) thoughtful and systematized research on domestic worker laws showcases the differences in both legislative process and political involvement in four Latin American countries, although it does not capture the outcome or consequences of such laws. Therefore, we know very little about what sorts of consequences arise from the struggle for highly sought after legislation. How does the organizing process, implementation, specifics, and enforcement of legislation come to bear on the lives of those it attempts to protect, offer benefits to, or bring into political inclusion?

This article thus investigates questions of process and resultant outcomes of domestic worker rights struggles in three locations, representing three distinct contexts in Guatemala, the United States, and Peru. Guatemalan domestic workers are engaged in a political struggle to bring about state recognition amid a violent post-civil war climate; California's domestic workers are organizing creatively for legal change and using New York's 2010 legislation as a springboard; and Peruvian domestic workers in Lima have enjoyed basic labor rights for the past ten years but are grappling with the limitations to state recognition. In this cross-country comparison of three different stages in the struggle for legislation, each group of marginalized domestic workers presents challenges to long-standing hierarchies of power, class, race, and gender, and their actions provide important insights into the process and consequences of domestic workers organizing across the United States and Latin America.

Theoretical Framework

My research contributes to the literature on social movements, worker struggles, state governance, and the politics of feminist activism, as it seeks to understand the particular shape of organizing struggles and outcomes in three countries as domestic workers mobilize for state-granted contractual labor rights.

Women's Movements in Latin America

The bulk of literature focusing on Latin America has skirted experiences of domestic workers and their struggles for state-granted contractual rights. A vast array of literature focuses on the political history of Latin American development and state formation (Bulmer-Thomas, 1987; Dunkerley, 1989). Another area focuses on the rampant civil wars, internal armed conflicts, and reconciliation and human rights struggles that have plagued the region (Cleary, 1997, 2007; Manz, 2005; Sanford, 2004). This literature has understood many Latin American women, and specifically indigenous women, as widows, wives, and mothers, negating a valuable part of their identities as *workers* (Smith, 1996; Stephen, 1997; Westwood & Radcliffe, 1993).

Women's political rights across Latin America have traditionally taken a backseat to seeking restoration from the rampant civil wars that have historically plagued not just Guatemala and Peru but also the entire region, with militant security forces responsible for the deaths and disappearances of hundreds of thousands (Fumerton, 2003; Manz, 2005; Sanford, 2004). Women's suffrage and civic engagement throughout the region came about intermittently, as early sweeping democratic reforms were later subsumed under brutal military dictatorships, peasant revolts, and massacres (McCreery, 1994). This ebb and flow of potentiality for more state-granted rights, to then be squelched by oppressive military regimes, has only persisted. In this way, work on Latin American women and social movements often privileges the fixed, gendered positionalities rather than considering worker identity and labor-related rights struggles.

Finally, many women's movements for social change have been understood as one dimensional. As Ray (1999) examines in *Fields of Protest*, a pervasive, ahistorical understanding of women's movements exists, especially women's movements in the third world, often portraying women's movements as homogenous, when in fact they are "embedded in particular histories and geographies" (p. 159). These histories and geographies offer constraints and limitations as well as particular political visions and possibilities. The historically contingent positions and multiple identities of women, in contrast to essentialized notions of victims or as otherwise understood via the civil war (Swider, 2006), must be incorporated in a broader understanding of domestic worker organizing. This article seeks to instead point to the multiple identities of Latin American women as both bound up within a post-civil war, historically contingent positionality and embodying strong identities as workers, beyond their familial roles as mothers, wives, daughters, and widows. It is with this multidimensionality that they make claims against the state for labor rights and legitimacy.

Making Sense of Multiple Rights Claims: Context Matters

The plethora of rights claims within each organizing struggle for legal reform remains another important factor affecting domestic worker legislation, and yet these claims are relatively unexamined within the extant literature. Blofield

(2009) discusses the ways that domestic worker struggles in Latin America take place today mainly within a neoliberal capitalist context, which has diminished the power of organized labor. This political climate allows for women's, indigenous populations', and other marginalized groups' voices to be heard, or at least to sound out a call for equality, although their claims may fall on deaf ears. Whose concerns are listened to in each organizing campaign? Guatemala, for example, extended legal rights and protections to its majority indigenous population only in 1996, and yet indigenous rights advocates within the country did so by invoking an International Labour Organization (ILO, 1996) convention. To this point, Blofield (2009) notes:

We also need to further explore the relationship of labor, feminist, and indigenous movements to the causes of other subdisadvantaged or doubly disadvantaged groups. If it is the case that feminists tend to prioritize middle-class concerns, that labor unions tend to prioritize the concerns of the relatively advantaged sectors of the labor force, and that indigenous movements tend to prioritize the concerns of their more prominent members, how and when do they break with this mold? (p. 185)

Thinking cautiously about how identity and interest play out in marginalized struggles is key here. Blofield (2009) goes on to caution that the struggle for domestic worker equality doesn't end there but is two pronged: the struggle for equal protections under the law is important, and the enforcement of those protections follows close at hand, as my Lima case demonstrates. Similar to Shireen Ally's (2009) argument regarding domestic workers in postapartheid South Africa, domestic workers felt that power was taken away from them as further discrimination was institutionalized into national law. Enforcement remains an issue not just of compliance but of consequences for those affected and interpellated by such laws.

Literature on Domestic Work and Organizing

Precisely because of the often contradictory and certainly ambiguous site and nature of their labor, domestic workers have a relatively short and uneven history of being organized.

—Raka Ray and Seemin Qayum (2009, p. 196)

Besides marginalization from state protections, the literature on domestic labor, or paid-unpaid cooking, cleaning, and care work performed within the home of another person, traces its origins back to the histories of slavery, servitude, and inequality lived out through racialized, sexualized, and economic relations of domination and coloniality (Dill, 1988; Glenn, 1986; Newsom, 1985; Rollins, 1985). Glenn (1992, 2010) has written extensively on the ways that white, class-privileged women in the United States have historically freed themselves of reproductive labor by purchasing the low-wage services of varying groups of women of color. She argues that within this system there exists a hierarchical and interde-

pendent relationship, one that interlocks the race, ethnicity, and class status of women in its distribution in both formal and informal labor markets.

This interlocking hierarchy is reflected globally through transnational migratory patterns of domestic workers, as well as locally in Guatemala, where poor, rural Mayan women work in the homes of wealthier, often Ladino (European-descendent) urban employers. In Peru, since the 1960s and as a result of violence from the internal armed conflict (roughly taking place from 1980 to 2000) and a persistently unequal distribution of wealth, high numbers of women have also migrated from the Andean, rural parts of Peru to find employment in the centralized capital of Lima, near the Pacific coast (Mick, 2011). Although external migration does occur, more than 70 percent of Peruvian domestic workers are internal migrants, or indigenous, relocated, and displaced women who come to the capital to seek work. And beyond these dynamics of racial hierarchies within reproductive labor, other scholars have highlighted the normalized expectations of housework in women's lives (Palmer, 1989), the construction of personal dignity on the job regardless of poor working conditions (Dill, 1994), and domestic worker relations with their employer families embedded in global care chains (Ehrenreich & Hochschild, 2004; Hondagneu-Sotelo, 2001; Parreñas, 2001).

Subject to what Tokman (2010) calls a "labor relation of subordination" (p. 2), 7.6 million women perform domestic work in Latin America, accounting for nearly a third of women's participation in the Latin American informal economy—27 percent of all women workers in the Latin American informal economy are domestic workers. Implicit in the domestic worker literature both in the United States and globally, however, is the notion that this group of workers is heterogeneous with regard to difficulty of the work, lack of decent pay, lack of respect and dignity, and employers' often-present abusive practices. Although domestic workers certainly share structural characteristics regarding their labor, there is much local and global variation, and domestic workers have a history of creative, alternative forms of organizing (Boris & Nadasen, 2008).

However, all domestic worker groups' organizing efforts point to both the lack of the state in regulating domestic worker-employer relations and the importance of the state when it does, albeit less commonly, exercise regulatory power. As Brown (1995) has argued, the state constitutes subjects in particular ways with corresponding discourses, creating "political identities" through either legislation or marginalization. Via early decisions on the state's part to *not* regulate domestic work, the nearly uniform response across countries has again left domestic workers unregulated, producing subjects with a particular political identity. With regard to the politics of domestic employment, then, the state is implicated as an actor early on, and yet it remains remarkably silent on the pressing question of *domestic* employment regulation. With few exceptions, the home is still not fully considered a site of labor by the state or by industrial unions, and so there is a great deal of catching up to do, and domestic workers in Guatemala, Peru, and the United States are taking up this very challenge (Folbre, 1994; Glenn, 2010; Solari, 2006; Tronto, 2002).

Methodology and Data Collection

How we negotiate the power we wield and the resistance we face in fieldwork depends strongly on the reflective practices we employ.

—Nancy Naples (2003, p. 48)

My research methodology is informed by sociological tradition as well as reflections on feminist research practice. Ethnography and participant observation research bring relevant ethical considerations to the fore, such as Naples's (2003) feminist material framework, which continually negotiates the insider-outsider debate as well as complications of standpoint theory in a way that attempts to minimize the exploitation of those people being researched. She cautions, "Feminist ethnographers [must] emphasize the significance of locating and analyzing particular standpoints in differing contexts to explicate relations of domination embedded in communities and social institutions" (Naples, 2003, p. 21). Viewing the "everyday world as problematic" (Smith, 1988) and attempting to model Haraway's (1988) directive "for us to become answerable for what we learn how to see" (p. 583), I employ an intersectional analysis (Amott & Matthaei, 1996) purposefully by examining the interchange of power, gender, class, race, and nation as I situate myself and these workers' specific actions within a larger context of social and economic conditions and constraints.

Harkening to Collins's (1986) "outsider within" paradigm, Naples argues that the insider versus outsider positions are never fixed but are fluid and constantly shifting. She notes that recognizing the fluidity of insiderness and outsidership calls to mind three important points; "as ethnographers we are never fully outside or inside the 'community,' our relationship to the community is never expressed in general terms but is constantly being negotiated and renegotiated in particular, everyday interactions, and these interactions are themselves enacted in shifting relationships among community residents" (p. 49). These three aspects of ethnographic work encourage researchers to maintain a reflexive relationship that recognizes the researcher's shifting positionality along lines of citizenship, social class, education, and culture, such as my own positionality as a white, female US citizen doctoral candidate in relation to *las trabajadoras del hogar* and their struggle for inclusion as women workers of an unstable state in Guatemala, as immigrant workers deserving basic labor protections in California, and as protected household workers demanding real enforcement of legal norms in Peru.

The Field Sites

Between June 2010 and April 2013, I conducted twenty-one months of participant observation research and in-depth interviews in three different field sites—Guatemala City, Guatemala; the San Francisco Bay Area, California; and Lima, Peru. I spent a total of five months researching in Guatemala (2010–2011), eight months in the Bay Area (2012), and eight months in Peru (2011–2013). In each location, I aligned myself with a central domestic worker organization—in Guatemala City, I worked with La Asociación de Trabajadoras del Hogar de

Guatemala (LATHGUA); in California, with Domestic Employers and Workers Together (DEWT); and in Peru, with El Hogar de Rosita (HER). Although I made contact with unions and the organizations I worked with are allied with unions, I did not specifically organize with any domestic worker unions because of the deeply entrenched patriarchal, bureaucratic structure of the labor movement in Latin America.

I conducted interviews and participant observation with each organization by attending meetings and strategy sessions, and by organizing and participating in events. In Guatemala, I attended meetings with government officials around the implementation of recently passed maternity legislation and efforts to ensure a national minimum wage for domestic workers with LATHGUA, a group of garment factory and domestic workers. In California, I spoke with employers who were a part of DEWT and helped coordinate marches, protests, letter-writing campaigns, and other statewide organizing efforts to bring about legislation. In Lima, I taught a course on the Peruvian household workers law each Sunday at HER and interviewed domestic workers, former domestic workers, employers, activists, and staff of local feminist and labor nongovernmental organizations (NGOs), totaling more than sixty interviews and more than three hundred hours of participant observation.

Findings

Guatemala: *Eterna primavera, eterna tiranía*

The tradition of the oppressed teaches us that the “emergency situation” in which we live is the rule. We must arrive at a concept of history which corresponds to this.

—Walter Benjamin (1969, p. 257)

Guatemala has suffered massive political violence and genocide throughout its history of colonization and internal struggle, bleeding into the recent civil wars of the late twentieth century, which disproportionately affected poor, indigenous populations. *Civil war* is the commonly used term for the violence enacted by the military regime of Guatemala between the 1960s and the 1990s against its majority Mayan population, yet many Guatemalans from rural parts of the country prefer the term *internal armed conflict*. This phrase most aptly demonstrates the targeted nature of state violence against the hundreds of small villages that were massacred and burned off the map through the state’s “scorched earth” policy, whereas the larger cities remained relatively stable.

For the purposes of my research, Guatemala’s historical and contemporary context of violence matters in two related ways. First, the indigenous domestic workers of LATHGUA use this context of violence and the platform they are understood through via the state—as *women*, or gendered civil war victims (versus *survivors*) who are vulnerable and deserving of patriarchal protection—to change the rules of the game by organizing not “just” as workers, deserving certain labor rights (e.g., to collectively bargain) or “just” as women, in accordance

with particular gendered or human rights (e.g., reparations made post-civil war), but as *women workers*. Violence, then, both creates underlying instability and sets the terms of the debate itself. Second, violence in the Guatemalan context matters more broadly and beyond the local context as domestic workers organize in a time of crisis, or a “state of emergency” (Benjamin, 1969). Contrary to the commonly held belief that daily life is much improved since the official end of the civil war with the Peace Accords of 1996, those agreements offered blanket impunity and presently conditions on the ground are arguably worse. An unintended consequence of the instability of the Guatemalan state amid scattered violence and political chaos is the emergence of a specific type of political field, characterized by contestation and pushback in particular moments and mutual recognition and rapport in others.

This unstable political ground creates a new political field, which, as Ray (1999) has explained, “includes such actors as the state, political parties, and social movement organizations, who are connected to each other in both friendly and antagonistic ways, some of whose elements are more powerful than others, and all of whom are tied together by a particular culture” (p. 9). Situated within the broader use of the concept of field as a site of struggle, always in contestation (Bourdieu, 1993) and as “structured, unequal, and socially constructed environment within which organizations are embedded and to which organizations and activists constantly respond” (Ray, 1999, p. 6) the perpetuation of violence in the Guatemalan context creates and maintains a new unstable political field within which domestic workers struggle for recognition.

Domestic Worker Organizing in an Unstable State

They are afraid of us . . . because we are *not* scared. Supportive and spirited, women united will never be defeated!

—LATHGUA flyer, 2011

Violence continues to plague Guatemalan domestic workers’ struggles for legislation and enforcement, as does discrimination along multiple lines of identity. At a LATHGUA rally and in a flyer distributed there, Analaura, a longtime organizer and member of LATHGUA, stated:

We working women are the driving force of the world economy. . . . are violated in our labor rights. We are the victims of all kinds of violence. We are more than 51 percent of the population, the work force, at home and in production, we are the bosses of our homes, we care for health, education, we are our husband’s support, our spouse’s, our parents’, and we are drastically discriminated against for being women, we are denied the right to work due to our age, our ethnic group, our maternity situation, we make miracles so we can buy at the market with minimum wage, lower than the cost of the basic food basket.

Here Guatemalan domestic workers' claims to inclusion recognize that gender, class, and race are inextricably bound up together—one cannot be just K'iche, for example, or just *a woman* or *a worker* (Blofield, 2009). And yet in many ways, this quest for legitimacy, inclusion, and recognition calls into question the gendered character of the state's historic treatment of women as monolithic, vulnerable, and victimized.

Guatemalan domestic workers are excluded from the majority of labor law coverage, but their regional domestic worker network, Confederación Latinoamericana y del Caribe de Trabajadoras del Hogar (CONLACTRAHO), recently made historic strides (Código del Trabajo). The Secretaría de Obras Sociales de la Esposa del Presidente (SOSEP) and the Instituto Guatemalteco de Seguridad Social (IGSS) signed an agreement in July 2009, establishing a Special Program for Protection of Domestic Employees (PRECAPI) that permits domestic workers access to certain state-granted resources, including maternity services and hospital coverage (Valladares, 2009). Perhaps most striking, however, is the gendered nature of this state-granted right—maternity services granted in order to reproduce the labor force, but no provisions for real regulation, higher wages, safer working conditions, an ability to collectively bargain, and an end to employer abuse.

Structurally, as potentially precedent-setting as PRECAPI is as a type of “gateway” law, IGSS, SOSEP, and the Ministry of Labor still regard Guatemalan women as either “just” women or “just” workers. The Secretaría Presidencial de la Mujer (SEPREM) occupies a more complex and strategic position, as the office is direct evidence of the Guatemalan state taking the majority of responsibility for the brutal violence and massacres of the civil war. SEPREM was created through the 1996 Peace Accords to specifically address women's education, health, and other concerns. However, it plays only a minimal role in enforcing PRECAPI, instead running workshops targeted at reproductive health concerns and fostering solidarity across Ladino, Indigenous, and Garifuna (descendants of African, Caribbean, Arawak, and West Indian ancestors) women. Although racial solidarity and reproductive health are both critical to women surviving and thriving in Guatemala, they fall short of truly addressing the myriad concerns of domestic workers that include both worker rights and gender rights. And precisely because this office remains fixed in an understanding of women as occupying familial roles, Guatemalan domestic workers offer a challenge not only to SEPREM but also to broader understandings of the multifaceted roles that women live out on a daily basis.

Speaking to the importance of PRECAPI and the relationship with employers, Analaura continued:

A measure is to make the employers aware in the household, of their [workers'] own rights, of a working day, salary, rest hours, benefit payments, compensation for dismissal, and the right to have time for their studies. Today, this awareness campaign is scarcely present in the IGSS offices, to enroll them in

the PRECAPI program, that is where we are seeing the value each employer gives their worker, to protect their health. . . . [T]hat kind of value is the same that is reflected by not valuing the person who takes care of their children, who takes care of their possessions, who they leave at home when they go to work. It's part of an awareness campaign, such as when our salaries are raised, the worker doesn't have a pay raise, their salary stays the same. They also receive benefits like the annual bonus [*bona catorce*] and the holiday bonus, and don't remember their worker. That is the case for most employers, because only 1 percent of the employers who possess the economic capacity actually comply with those things.

Compliance and enforcement of extant laws remain important issues even without national domestic worker legislation, and my research with LATHGUA demonstrates that their struggles are framed in terms of both worker rights and gender rights, and they will not settle for merely “winning” one or the other. Their organizing struggles are geared toward goals of winning more state-granted labor protections, higher minimum salaries, greater civic participation on behalf of women, awareness around both domestic and political violence, encouragement of women's education and autonomy, and more legitimacy as *real workers*. Guatemalan domestic workers, then, utilize the state's recognition of them as *women*—with corresponding rights laid out in Peace Accords documents and other legislation—to push for recognition and respect as *workers* while at the same time moving beyond the binary of either-or and instead working toward rights as *women workers*. As Chun (2009) suggests, then, this Guatemala case study choice challenges particular boundaries of who “counts” as workers and what the experiences of their work lives and organizing mean, especially when their identities as workers have been historically obscured in lieu of familial-based and/or civil war-affected frames, such as mother, daughter, wife, and widow.

California's Transformative Organizing Models: Moving beyond Antagonism with Employers?

Regardless of the exact nature of the domestic worker legislation in all of my sites, questions of effective enforcement and consequences of that legislation loom. To this point, how do employers—a key variable in organizing in the United States but virtually absent in the Latin American organizing cases—factor in here and affect the way that the law is practiced, lived out, and embodied in the day-to-day employment relationship?

Looking to the creative organizing happening in California can offer important insights for ways to envision a traditional understanding of hostile, antagonistic employer-employee relations, providing alternative ways in which to engage employers to see domestic worker rights as not necessarily beyond their own rational self-interest but actually within their own self-interest. In reaching this decision, the National Labor Relations Board majority looked to the history surrounding the original intentions of the National Labor Relations Act, stemming from

New Deal legislation, and decided that the act aimed to address the unequal bargaining power between employers and employees. Furthermore, “Congress established the NLRB because it mistrusted the manner in which the courts, which were historically associated with employer interests, might enforce the law” (Feldacker & Hayes, 2014, p. 3). Yet perhaps this strong dichotomy of employer versus worker simply no longer fits the contemporary work model, or still fits regarding protections but necessitates a reenvisioning of employer roles and rhetoric considering the positionality of employers and their subjectivity.

The DEWT model of transformative organizing attempts to engage employers in conversations about how they understand themselves as employers, their domestic workers, and their relationship to domestic work itself. After a great deal of organizing that involved immigrant organizations, women’s groups, and employer-based progressive faith communities, as well as domestic workers themselves, the New York Domestic Workers’ Bill of Rights was passed in mid-2010, the first statewide law of its kind in the United States to attempt to remove from exclusion domestic workers’ historical categorization. California’s DEWT organization has embraced this New York model, which posits that domestic worker legislation would provide a template for employers’ awkward, uncomfortable feelings and the tensions around hiring someone to care for their child or parent, clean their home, or cook for them. In the United States, where hiring domestic workers can still be understood as a taboo practice with respect to documentation (and considering the gendered practice of targeting high-profile women for their employment of domestic workers more than men in similar positions, such as the Zoë Baird case [Chang, 2001]), DEWT attempts to provide a way to protect domestic workers’ rights while also alleviating guilt, discomfort, and uncertainty on the part of employers, many of whom genuinely wish to treat their domestic workers well but simply do not have the tools, knowledge, or guidance to do so.

As a domestic worker employer in the Bay Area explained:

When our child was born, we had a woman come to do shared child care with another family. She was from Thailand. There was also a language situation; she came to the house three days a week. What worked well was that she was just wonderful and she really loved our child; they had a good relationship. One challenge was that we wanted to pay her more, but the other family didn’t want to, and so we came up with a compromise but we still didn’t feel it was enough. It was an awkward conversation to have with this other family. . . . [I]f we could have had a regulatory requirement that we could have pointed to in order to show them, it would have eased the tension, it would have provided us with guidance in order to be fair and do the best. She was with us for two years taking care of our son.

Here the ability to turn to a “regulatory requirement” could remove or at least ameliorate the sense of uneasiness and awkwardness that this well-intentioned employer faced with another employer family. The urge to “be fair” and “do the best” echoes many morally motivated sentiments of wealthier pockets of the faith

community who employ domestic workers and yet want to do so ethically. Rather than only punishing abusive or “bad” employers to live up to a higher standard, domestic worker regulation can allow employers to have a frame of reference from which to better understand their relationship and obligations to their employee. Another former employer in the Bay Area expressed this similar sentiment of awkwardness, yet with a power analysis:

Because we have the financial relationship, there was a strange element added to it all. There was so much care, but then there was also the element of paying Reina. There was a weird feeling. I know that she loves her [our daughter], but there is always the power in the relationship. Reina is dependent on us for the money. This really speaks to the identity struggle of being an employer of a domestic worker. That weirdness can play out in different ways, so regulations would lessen that awkward feeling of having power in the relationship. If it could just be a very clear standard, it could be more clear and also more respected.

With inherent recognition of power dynamics at play within this classed, racialized, and gendered relationship, there is a tension between the love and care that Reina the domestic worker provides and the amount, frequency, and exchange of money within the relationship. Although legislation would not wipe away the hierarchies within domestic work itself, it would allow for both parties to move forward with a clear understanding of the expectations of the job and of the value of the work itself.

Regarding the somewhat transitory nature of domestic workers themselves in terms of their relationships with different and dynamic families, clients, and agencies, standards and protections could also foster a safety net for domestic workers when in transition from one family to another. As an older male Bay Area employer explained:

We helped her [our domestic worker] to find new employment when we let her go with our older son, and that was a huge undertaking. Other families weren't really helping that much. Language was a barrier, and she didn't use email. And so my wife helped out a lot finding her a new [employer] family. . . . [S]he was in a bad situation and didn't have the tools to ensure that she had a good working situation. Without people “helping,” she would be lost and so easy to take advantage of because of this situation. Standards and regulations would make it clear and ensure she is not taken advantage of any longer.

This reliance on the benevolence of employers to “help” is one of the key characteristics of the dependent nature of domestic work itself, especially with regard to immigrants or women without strong social networks of potential work sites and clients. Utilizing parents' groups and social networks of employers undergirded by standardized regulations and practices, or going so far as the employer registry currently suggested in Lima, would enable domestic workers to maintain more independence and power over their own working conditions and job options.

Peru, Ten Years Later: “When the law says one thing . . .”

Many are migrants within their own countries or come from indigenous communities. On their free day, Sunday, they need to go for a walk or visit their families and children if they can; so they have little time to organize themselves.

—Marcelina Bautista (cited in Mather, 2006, p. 7)

Peru’s story differs drastically, as Quechua domestic workers struggle with the limits of domestic worker legislation passed in 2003 under Peru’s first indigenous president to be democratically elected, President Alejandro Toledo. Although many Peruvian domestic workers are happy to have a law, some also feel as though the national legislation actually solidified and inscribed discrimination against domestic workers because of the weak protections it guarantees, offering few significant improvements and arguably even creating regressive effects. According to the ILO (2010):

Associations of domestic workers have banded together with trade unions, women’s groups and a range of support centers to protest against the Household Workers Act No. 27986, which they claim institutionalizes discrimination against domestic workers by according them less favorable rights than other workers. The campaign was led by the Centre for Household Workers’ Capacity Building under the slogan, “We are the exception to labor rights.” (p. 79)

This notion of the exception to labor rights is striking: domestic workers have not only been historically left out of labor legislation; when they are finally brought into inclusion, it is with significantly fewer worker protections than other workers, which categorically and institutionally reinstates discrimination. Marcelina Bautista, former secretary-general of CONLACTRAHO, speaks to these inadequacies and the problematic character of domestic worker laws in Latin America:

It is as if domestic/household workers are not “real” workers. We need new initiatives to make this work visible and properly respected. Also, most of the laws are discriminatory, with no gender perspective, and still permeating through them, not just culturally but even with the juridical norms themselves, are notions of servitude and bondage. (as cited in Mather, 2006, p. 7)

And in thinking through the particular factors that influenced the passage of legislation but with an emphasis on how (un)realized those promises of the law remain, the racialized and gendered landscape of Lima acts as a colonial holdover. Orlove (1993) describes the social and political Peruvian landscape in relation to the racialized hierarchies still blatantly at work in contemporary culture in the following manner:

A comparison of the radically different systems of geographical thought in the Spanish colonial and independent republican periods suggests that the distinct images of order in each period can best be understood, not as reflections of the underlying order of geographical phenomena on the earth’s surface,

but as products of the specific social, cultural, and political contexts in which these geographies developed. Summarized in the briefest terms possible, colonial orderings emphasized historicized racial differences among persons within a relatively balanced and homogeneous space, while postcolonial orderings stressed naturalized regional differences among places within a homogeneous, though covertly racialized, population. (p. 301)

So even with national labor protections on the books, a looming issue for Peruvian domestic workers of a deeper psychological and physically disturbing nature is rampant sexual harassment and rape. Because of the isolated nature of domestic work, women and girls in domestic work are often unfamiliar with Lima; are ill informed or uninformed about their state-granted rights; and often lack the resources, confidence, and financial stability to speak out against employers or seek new employment after abuse (Staab & Maher, 2006). As a twenty-seven-year-old Limeño, Carlos, told me about his friend's family, "They just expected her [the family's domestic worker] to be 'practice' for their eldest son's first sexual experience. . . . [I]t's pretty common" (personal communication, July 2011). Echoing these sentiments, Ernestina Ochoa of the Sindicato Nacional de Trabajadores del Hogar del Perú (SINTRAHOGARP), the trade union of household workers in Peru, notes, "There are also a lot of sexual harassment cases. We defend them, but the majority are not dealt with properly—the employers often win."

Abuse and discrimination based on race, gender, class, and ethnicity follow domestic workers wherever they go, as exemplified in the recent case of María Ríos Fun. A domestic worker in Lima, Ríos Fun accused her employer, Peruvian diplomat Marita Puertas Pulgar and her partner, Alexis Aquino Albegrin, of human trafficking when they brought Ríos Fun to work for them in New Jersey, where she was given only bread and coffee for nourishment, overworked with only one day off every six weeks, and subjected to verbal abuse and psychological coercion. Sample (2013) writes of the case:

Before coming to the United States last October, she [Ríos Fun] said, she signed a contract establishing the terms of her employment: She would work as a "housekeeper" seven hours a day, five days a week, at a wage of \$9.82 per hour and overtime pay of \$14.73 per hour. In addition, according to the lawsuit, she would be granted paid holidays, sick days and 15 paid vacation days per year, as well as three meals per day, six days per week. But as soon as she arrived, Ms. Ríos said, her employers revealed hidden intentions. (A20)

Although this kind of verbal abuse and other cases of sexual abuse and racial slurs against domestic workers happen globally, Peru's entrenched class- and race-based colonial hierarchy allows for a broad-based cultural acceptance of these practices, perpetuated generationally against domestic workers.

Many of my interviewees spoke to the law's contradictions and shortcomings quite directly. Isabel pointed out some of the law's internal contradictions as well as limitations when I asked her, "How effective is the law, in your opinion?" We

spoke over cups of hot instant coffee in a small Colombian *comedor* in Lima on her second day at El Hogar de Rosita, after a six-hour labor and capacitation workshop.

Hmm . . . for example, the law says one thing and it is impossible for the employer to follow. For example, say the person should work for eight hours—this can never happen! Never. If you get up at seven in the morning and start to work, you cannot be done yet; working until seven is twelve hours. No, it's impossible. This part of the law is really bad.

When prompted to talk about other parts of the law, Isabel continued, “About 50 percent is followed through, the other 50 percent, no,” which speaks to the household workers' law allowing domestic workers just half of the other prescribed rights that Peruvian workers enjoy. Not only is half of the law not even able to be followed; also the rights that the law affords are already half of what other workers earn. And when household workers do attempt to confront the Ministry of Labor, they are literally seen, categorized, and understood as a servant class, filing less important claims than other workers in the country. Yet the law has allowed household workers to celebrate national holidays—but again, they receive only 50 percent of their pay. When every other recognized group of workers in Peru enjoys a month's pay in July and December, household workers earn 50 percent of their pay during that period. Clearly, not only is enforcement of the law lacking in Peru; the law itself has prescribed provisions that accord domestic workers only half of all other workers' rights.

Conclusion

This article introduces an important analysis that will help Latin American scholars, sociologists, labor scholars and activists, feminist theorists, and the engaged public better understand the ways that long-standing patterns of legal exclusion can shift the political landscape. As these cases demonstrate, resultant consequences from social movements for legislation can reshuffle particular political dynamics, and although legislation around political rights is an important step for social inclusion and broader human rights, the processes, struggles, and effects of legislation are not always straightforward. As found in the Peruvian case, certain laws that attempt to free workers from historically discriminatory categories can paradoxically lock them in deeper.

Moreover, this article's situated and comparative approach allows not only for a cross-country analysis but also for a longitudinal understanding of the process around domestic worker organizing for basic rights, from the initial organizing period within varying contexts such as the violent conditions in Guatemala to California's employer organizing patterned off of legal reform in New York to the aftereffects of legislation in Peru. Guatemala's indigenous domestic workers are organizing in a violent state to demand legislative recognition of their value as women workers, moving beyond binaries of worker rights, human rights, and gendered rights. California's organizing model recognizes the key role that

employers play in passing legislation for marginalized domestic workers, thus challenging the classic understanding of employers as antagonistic while still acknowledging tensions and inequalities around class, race, ethnicity, and gender in the way that domestic work is lived out, paid for, and practiced. Peru shows us that passing legislation is only half the battle, as cultural tropes around discrimination, marginalization, sexual abuse, and lack of enforcement of domestic worker rights still remain, even with a law on the books.

Thus, in the broader struggle for democracy, human rights, and political inclusion, these cases shed dynamic insights on the organizing process, implementation, specifics, and enforcement of legislation in three different locations. Future sustained research should continue to interrogate the role of legislation in the dynamic economies of Latin America and the United States. Ideally, these studies will illuminate understandings about how legislation positively or negatively affects marginalized populations of citizens and workers in varying political contexts in the broader struggle for respect and recognition.

References

- Ally, S. (2009). *From servants to workers: South African domestic workers and the democratic state*. Ithaca, NY: Cornell University Press.
- Amott, T., & Matthaei, J. (1996). *Race, gender and work: A multicultural economic history of women in the United States*. Boston, MA: South End Press.
- Benjamin, W. (1969). Theses on the philosophy of history. In H. Arendt (Ed.), *Illuminations: Essays and reflections* (pp. 253–259). New York, NY: Schocken Press.
- Blofield, M. (2009). Feudal enclaves and political reforms: Domestic workers in Latin America. *Latin American Research Review*, 44(1), 158–190.
- Blofield, M. (2012). *Carework and class: Domestic workers' struggle for equal rights in Latin America*. Pittsburgh, PA: Pennsylvania State University Press.
- Boris, E., & Nadasen, P. (2008). Domestic workers organize! *WorkingUSA: The Journal of Labor and Society*, 11, 413–437.
- Bourdieu, P. (1993). *The field of cultural production; or, The economic world reversed*. New York, NY: Columbia University Press.
- Brecht, B. (1928). *The threepenny opera*. New York, NY: Penguin Classics.
- Brown, W. (1995). *States of injury: Power and freedom in late modernity*. Princeton, NJ: Princeton University Press.
- Brown, W., & Wadhwani, S. (1990). The economic effects of industrial relations legislation since 1979. *National Institute Economic Review*, 131(1), 57–70.
- Bulmer-Thomas, V. (1987). *The political economy of Central America since 1920*. Cambridge, UK: Cambridge University Press.
- Butler, J. (1995). Contingent foundations. In S. Benhabib, J. Butler, D. Cornell, & N. Fraser (Eds.), *Feminist contentions: A philosophical exchange* (pp. 35–58). New York, NY: Routledge.

- Chang, G. (2001). *Disposable domestics: Immigrant women workers in the global economy*. Boston, MA: South End Press.
- Chun, J. (2009). *Organizing at the margins: The symbolic leverage of labor in South Korea and the United States*. Ithaca, NY: Cornell University Press.
- Cleary, E. (1997). *The struggle for human rights in Latin America*. Westport, CT: Praeger.
- Cleary, E. (2007). *Mobilizing for human rights in Latin America*. West Hartford, CT: Kumarian Press.
- Código de Trabajo. (2008). Articles 156–160, “Trabajo a domicilio,” chapter 3. Articles 161–166, “Trabajo doméstico,” chapter 4. Decree No. 1441, Guatemala City, Guatemala.
- Collins, P. H. (1986). Learning from the outsider within: The sociological significance of black feminist thought. *Social Problems*, 33(6), S14–S32.
- Dill, B. T. (1988). “Making the job good yourself”: Domestic service and the construction of personal dignity. In A. Bookman & S. Morgen (Eds.), *Women and the politics of empowerment* (pp. 33–52). Philadelphia, PA: Temple University Press.
- Dill, B. T. (1994). *Across the boundaries of race and class: An exploration of work and family among black female domestic servants*. New York, NY: Garland.
- Dunkerley, J. (1989). *Power in the isthmus: A political history of modern Central America*. London, UK: Verso Press.
- Ehrenreich, B., & Hochschild, A. (2004). *Global woman: Nannies, maids, and sex workers in the new economy*. New York, NY: Holt Paperbacks.
- Feldacker, B., & Hayes, M. (2014). *Labor guide to labor law*. Ithaca, NY: Cornell University Press.
- Folbre, N. (1994). *Who pays for the kids? Gender and the structures of constraint*. New York, NY: Routledge.
- Fumerton, M. (2003). *From victims to heroes: Peasant counter-rebellion and civil war in Ayacucho, Peru, 1980–2000*. Purdue, IN: Purdue University Press.
- Glenn, E. (1986). *Issei, Nisei, war bride: Three generations of Japanese American women in domestic service*. Philadelphia, PA: Temple University Press.
- Glenn, E. (1992). From servitude to service work: Historical continuity in the racial division of paid reproductive labor. *Signs*, 18(1), 1–43.
- Glenn, E. (2010). *Forced to care: Coercion and caregiving in America*. Cambridge, MA: Harvard University Press.
- Haraway, D. (1988). Situated knowledges: The science question in feminism as a site of discourse on the privilege of partial perspective. *Feminist Studies*, 14(3), 575–599.
- Hondagneu-Sotelo, P. (2001). *Doméstica: Immigrant workers cleaning and caring in the shadows of affluence*. Berkeley, CA: University of California Press.
- International Labour Organization. (1996, June 13). *Guatemala ratifies convention guaranteeing indigenous rights*. Retrieved from http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008061/lang-en/index.htm.

- International Labour Organization. (2010). Domestic workers organizing around the world. In *Decent work for domestic workers* (pp. 77–80). Retrieved from http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf.
- Manz, B. (2005). *Paradise in ashes: A Guatemalan journey of courage, terror, and hope*. Berkeley, CA: University of California Press.
- Mather, C. (2006). Latin America and the Caribbean: Already united. In *Respect and rights: Protection for domestic/household workers! Part II: Actions around the world* (pp. 7–13). Retrieved from <http://ifwea-org-bin.directo.fi/@Bin/462465cb447a47ab737fdb4a313a0d1e/1404149499/application/pdf/148866/2006RespectAndRightsDmstcWrkrs.pdf>.
- McCreery, D. (1994). *Rural Guatemala, 1760–1940*. Palo Alto, CA: Stanford University Press.
- Mick, C. (2011). Discourses of “border-crossers”: Peruvian domestic workers in Lima as social actors. *Discourse Studies*, 13(2), 189–209.
- Naples, N. (2003). *Feminism and method: Ethnography, discourse analysis, and activist research*. New York, NY: Routledge.
- Newsom, L. (1985). Indian population patterns in colonial Spanish America. *Latin American Research Review*, 20(3), 41–74.
- Orlove, B. (1993). Putting race in its place: Order in colonial and postcolonial Peruvian geography. *Social Research: An International Quarterly*, 60(2), 301–336.
- Palmer, P. (1989). *Domesticity and dirt: Housewives and domestic servants in the United States, 1920–1945*. Philadelphia, PA: Temple University Press.
- Parreñas, R. (2001). *Servants of globalization: Women, migration, and domestic work*. Palo Alto, CA: Stanford University Press.
- Ray, R. (1999). *Fields of protest: Women’s movements in India*. Minneapolis, MN: University of Minnesota Press.
- Ray, R., & Qayum, S. (2009). *Cultures of servitude: Modernity, domesticity, and class in India*. Palo Alto, CA: Stanford University Press.
- Rollins, J. (1985). *Between women: Domesticity and their employers*. Philadelphia, PA: Temple University Press.
- Sanford, V. (2004). *Buried secrets: Truth and human rights in Guatemala*. London, UK: Palgrave.
- Semple, K. (2013, June 25). Housekeeper in New Jersey accuses Peruvian diplomat of human trafficking. *New York Times*, p. A20. Retrieved from http://www.nytimes.com/2013/06/26/nyregion/housekeeper-accuses-a-peruvian-diplomat-of-human-trafficking.html?_r=1&
- Smith, C. (1996). Race, class, gender ideology in Guatemala: Modern and anti-modern forms. In B. Williams (Ed.), *Women out of place: The gender of agency and the race of nationality* (pp. 50–78). New York, NY: Routledge.
- Smith, D. (1988). *The everyday world as problematic: A feminist sociology*. Boston, MA: Northeastern University Press.

- Solari, C. (2006). Professionals and saints: How immigrant careworkers negotiate gender identities at work. *Gender and Society*, 20, 301–331.
- Staab, S., & Maher, K. (2006). The dual discourse about Peruvian domestic workers in Santiago de Chile: Class, race, and a nationalist project. *Latin American Politics and Society*, 48, 87–116.
- Stephen, L. (1997). *Women and social movements in Latin America: Power from below*. Austin, TX: University of Texas Press.
- Swider, S. (2006). Working women of the world unite? Labor organizing and transnational gender solidarity among domestic workers in Hong Kong. In M. Ferree & A. Tripp (Eds.), *Global feminism: Transnational women's activism, organizing, and human rights* (pp. 110–140). New York, NY: New York University Press.
- Tokman, V. (2010). *Domestic workers in Latin America: Statistics for new policies*. Paper prepared by former ILO regional director for Latin America and the Caribbean and Women in Informal Employment: Globalizing and Organizing.
- Tronto, J. (2002). The “nanny” question in feminism. *Hypatia*, 17(2), 34–51.
- Valladares, D. (2009). *Domestics finally gain (limited) rights*. Retrieved from <http://ipsnews.net/news.asp?idnews=48051>.
- Westwood, S., & Radcliffe, S. (1993). Gender, racism, and the politics of identities in Latin America. In S. Westwood & S. Radcliffe (Eds.), *“Viva”: Women and popular protest in Latin America* (pp. 1–29). London, UK: Routledge.