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Anna Pickrell

Student, [anna.pickrell@gmail.com](mailto:anna.pickrell@gmail.com)

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**The Mary Poppins Problem:  
Enforcing Protective Legislation for Domestic Workers in America**

**Anna Pickrell**

Advisor: Mahnaz Kousha

Department of Sociology

Macalester College

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## **The Mary Poppins Problem: Enforcing Protective Legislation for Domestic Workers in America**

State-level legislation to advance employment rights for domestic workers is on the rise in the United States, but implementation is largely ineffective due to a lack of representation on behalf of employees. This study analyzes the roles of two specific types of organizations — public policy networks pushing legislation for domestic workers and employment agencies placing workers into jobs — to better understand how enforcement of existing laws in this field can be improved through the services that protective organizations provide. Can domestic workers rely on these groups to secure their rights when individual employers may not, or do they lack the agency necessary to instill change? Findings show that although these organizations supply domestic workers with a variety of resources to both guard their rights and pursue new ones, there exists a problem of enforcement that is deeply rooted in employer behavior and would be best eliminated by employer participation in a new normalization of legal cooperation.

Activism in America's second- and third-wave feminist movements has brought an ever-increasing number of women into the workplace for over 50 years and to this day is causing a shift toward an economy supported by more dual-income households. It often goes unnoticed, however, that this achievement would not be possible without the domestic workers who spend their days in the homes and with the families of working professionals across the country (Rampton 2008, Jaffe 2013). Domestic workers often perform some of the most intimate duties in the home — from cleaning bathrooms and preparing meals to caring for children or the elderly — that in the most positive scenarios can make one feel like “part of the family,” garnering them inclusion in major events and earning them personal pet names like “dear” and “angel” (Flanders 2013). This makes a work-life balance possible for those who feel that they have no choice but to outsource some portion of their domestic responsibilities. The formal market is highly dependent on the accessibility of this option; in fact, studies show that “if domestic workers went on strike, they could paralyze almost every industry in urban areas” (Poo 2011:52).

But chasing after the idea that working families can “have it all” through a carefully constructed lifestyle that measures out equal parts work and play, employers too often keep their domestic workers hidden behind the scenes, granting their work with minimum pay and neglecting their few basic rights to equal employment standards (United States Department of Labor 2013, Ludwig 2012). Without significant support from employers, domestic workers are turning to advocacy organizations that emphasize legislative action and collective bargaining to change this relationship. These agencies vary in scope and mission, but they serve primarily to represent domestic workers who lack their own economic agency.

Over 2.5 million people — predominantly female immigrants from the Caribbean and Latin America — are employed as domestic workers in the United States, serving the personal care needs of working Americans who, more often than not, are classified as upper-class citizens (Poo 2011:52). Many of these workers have tenuous, if known at all, legal status in the United States. Though some individuals arrive in the country with visas that soon expire and leave them technically “undocumented,” other domestic workers immigrate without visas at all or with false documents (UC Berkeley, 4). Some workers are also brought into the country through trafficking channels, though they have unique protections under the Trafficking Victims Protection Act of 2000 (TVPA) that put them in a unique situation in relation to government influence (UC Berkeley, 10). Even domestic workers who come to the country legally must mask their professional identity, as individual domestic worker visas do not exist (UC Berkeley, 2). For domestic employees who remain working in the country without documentation, there is no formal requirement that they reveal their immigration status when filing formal complaints with a government agency (UC Berkeley, 8). On the surface, this allows workers to report any problems that may arise in their workplace without immediate ramifications or threat of deportation. In reality, however, government agencies are well aware of the prevalence of undocumented workers in this field and oftentimes know to check on an individual’s immigration status in subsequent investigation (UC Berkeley, 8).

Defining job responsibilities in this field can be difficult: the most formally documented description covers a range from duties of live-in nannies and housekeepers to part-time caregivers for the elderly (Bureau of Labor Statistics 2012). A more specific definition remains unclear, as employees’ informal and non-unionized environment gives

their employers free range for defining these tasks. This makes for a setting in which workers are frequently susceptible to underpay and exploitation in their workplace. Such mistreatment is not new, and progress in its elimination is slow moving: domestic workers are covered by federal minimum wage (United States Department of Labor 2013), and three states — New York, Hawaii and California — have passed employment laws to protect some of their rights. This often includes anti-discrimination laws as well as rights to overtime pay after a standard eight-hour day and a set number of vacation days (Domestic Workers United 2010, Huang 2013). Other states are working toward rights to collective bargaining, but the effort necessary to obtain any of these baseline laws in so few states suggests slow movement for the future.

Yet even passing progressive legislation — a process that is proving to be slow and tenuous — will not fully address the problems facing workers in this field. More than the visible lack of laws, the greatest problem facing domestic workers is the lack of responsibility placed upon employers who often do not see themselves as expected to comply with laws specific to domestic work (Park Slope Parents 2011). With no one to be held accountable for domestic workers' well-being, achieving basic labor rights for this group is only the first, and comparatively minor hurdle advocates must jump. After that, domestic workers and their allies must find ways to assert workers' rights. The informal market complicates this as it allows employers to define their own legal responsibilities; in domestic work this is usually done with loose boundaries. With no government regulation to implement the consequences of illegal action, employers therefore find themselves in a position of power in which they are not held liable for their workers' safety (WIEGO 2013).

As exemplified in the private sector, basic legal compliance requires that employers mediate whatever regulations their state may require. Such a statement likely sounds reasonable to the average professional American, as civil society is generally held responsible for legal mediation within the private sector. But in the field of domestic work, many homeowners do not see themselves as employers and therefore do not recognize the demand for the use of a more professional demeanor in the home. With little previous research conducted on this topic, it is hard to say with certainty why this happens; for some avoiding legal compliance may be an intentional decision, for others it may be as simple as not understanding the responsibilities that come with hiring help in the home. In either scenario, the void in legal mediation leads to a slippery slope between inaction and exploitation.

The best way to instigate change in such behavior is to find both a better understanding of why it exists as well as other potential sources of legal enforcement. With that in mind, this study seeks to understand how two kinds of organizations — employment agencies placing workers into the homes of private employers and public policy networks pushing legislation in favor of domestic workers rights — can serve as alternative forms of mediation in order to protect domestic workers and better engage with employers whose attitudes about domestic work must change. This study seeks to understand if domestic workers can count on these organizations as alternative forms of regulation to protect and enforce their rights, or if they lack sufficient agency to make laws as meaningful as their language intends them to be. Conclusions and suggestions for further studies begin to explore who does have sufficient authority for this enforcement.

Data from preexisting surveys of employers in New York City show that

enforcement of emerging workers rights has been difficult to achieve largely because of a lack of representation on behalf of domestic workers (Park Slope Parents 2011). Though there is an increasingly widespread understanding that exploited workers are growing restless in their search for justice, little research has been conducted to comprehend what kinds of alternative sources of protection are available to them. As a result, no one has successfully found a way to reliably implement the benefits that come out of hard-earned legislative success in this field. This is, in part, due to the informality of the market in which they work: domestic work functions outside of the formal sector, is not included in official statistics and does not require that wages be subject to standard tax withholding (Blyton and Jenkins 2007:98). Given the prominent role that socioeconomic class plays in the employer-employee relationship in this field, employers have so far succeeded in ensuring that their domestic workers continue to be employed in such a setting. This is ultimately in the employer's best interest, as many homeowners do not wish for government involvement in their private homes or the financial burden of withholding extra taxes for their personal hired services. Because of this perception, domestic workers have no way of knowing if their employer will be held responsible for enforcement of labor laws or what their basic rights and protections could include (Chen 2011:176). Regulating work for the poor and possibly undocumented members of society, however, means taxing those who cannot afford it, financially or legally. In this case, "migrant domestic workers avoid regulation and taxation because they want to remain 'invisible' if they are undocumented or they do not know which benefits or protections they are entitled to" (Chen 2011:176).

This project looks to the two aforementioned types of organizations involved in

the lives of domestic workers — employment agencies matching workers (“applicants”) with employers (“clients”) and public policy networks that advocate the rights of domestic workers — to understand if and how their services can interpret, implement and enforce domestic workers’ rights so as to fill the void left open by negligent employers. Findings from this study show that by providing legal services, protective client screening processes, safe work environments where possible, and an overall sense of community these organizations attempt to serve as an alternative to regulation for a workforce that has historically struggled to obtain basic employment rights. In a regulated market this would put any organization in a prime position to ensure that the laws being passed in favor of domestic workers are properly practiced and that employers are made aware of their responsibilities to the workers they hire in their homes.

The problem, however, is that this does not work in an informal market: because the government does not have the right to regulate the private homes in which domestic workers are employed, employment agencies and public policy networks do not have total authority in the practice of legal protections for domestic workers. That control instead resides in the hands of employers who do not often view themselves as legally bound employers but still wield the power of the enforcer, while organizations act as legal interpreters. This role is not to be overlooked, though: employers who use organizations as a form of outsourcing are able to avoid legal compliance because they can blame the organization for any legal fallout that may occur. This makes the organization’s job of interpretation highly relevant, as it is the single source of information that will reach uninvolved employers.

Findings for this study show that there exists a disconnect between the work of

organizations and the legal practices of employers. Exploitation is the consequence that sneaks through the cracks. Data overwhelmingly suggest that the problem is deeply rooted in employer behavior in a way that must somehow involve employer participation in a new normalization of legal cooperation. Solutions for this problem are still varied and not widely agreed upon, but there does exist a general understanding that the authority resides in the hands of employers who, in many cases, are not behaving in ways conducive to the well being of domestic workers.

### **Literature Review**

Legislative progress in labor rights has historically existed on the federal stage, and much of it has specifically excluded domestic workers. The 1935 National Labor Relations Act excluded domestic workers from the rights to form unions, engage in collective bargaining and participate in strikes (Caldwell 2013), and subsequent legislation excluded the same group from 44-hour/seven-day work weeks, minimum wage, and time-and-a-half overtime pay (Caldwell 2013). Today, workers “in the domestic service of any family or person at his home” are still excluded from rights to overtime pay by federal law (Homer 2013). Even some of the most momentous occasions in the history of U.S. civil rights have overlooked domestic workers: Title VII of the Civil Rights Act of 1964, which illegalized employee discrimination on the basis of race, factored domestic workers out of the equation (Caldwell 2013). More recently, the employer mandate of the Affordable Care Act does not require employers with fewer than 50 employees to provide employer-sponsored health insurance (Homer 2013). This excludes many agricultural workers and all domestic workers.

With a change of tides, the Social Security Domestic Reform Act of 1994 created

a “\$1,000 test” by which all domestic workers paid more than \$1,000 per year are formally classified as employees (US Congress 1994). The test grants workers the right to unemployment benefits, for which independent contractors are not eligible and requires that employers withhold social security and Medicare taxes for their hired employees (Hondagneu-Sotelo 1997:8). This legislation marked two crucial moments in history for domestic workers: it created compliance requirements for households hiring domestic workers — though studies suggest that such laws are not being followed (Park Slope Parents 2011) — and it began a shift in the legislative process towards the state level, where regulation exists on a more focused scale.

In the past five years, as the Social Security Domestic Reform Act has been implemented over time, passing legislation for domestic workers has become slightly less of an uphill battle for players in states with large populations of domestic workers as well as high numbers of employers seeking home care. Progressively, three states have made concrete improvements in light of the changing legal climate: in 2010 Domestic Workers United (DWU) successfully pushed through a Domestic Workers Bill of Rights in the state of New York. The legislation grants privately employed nannies, housekeepers, and elderly caregivers the rights to extra vacation days, overtime at time-and-a-half after 40-hour work weeks, eight-hour work days, minimum wage coverage for elderly caretakers, and protection from sexual and racial discrimination and harassment (New York Department of Labor). Hawaii was the second state to pass a similar form of legislation, making it illegal to discriminate against domestic workers based on race, gender and sexual orientation (Garcia 2013). California’s Domestic Workers Bill of Rights, passed in September 2013, calls for overtime pay after a nine-hour workday (Huang 2013). Other

states are on the move to pass similar laws and, though not always successful, their supporters are using the aforementioned cases as examples upon which to both model and experiment with future legislation. Oregon attempted and failed to pass similar legislation specifically written for nannies in July 2013 (Bapat 2013) and is now working through the language of a new, modified bill. In Minnesota, domestic workers were recently granted the right to collective bargaining for state-compensated homecare workers and in-home childcare workers (Homer 2013). And in Massachusetts the state Senate is currently reviewing a Domestic Workers Bill of Rights that would grant the state's 670,000 domestic workers one day off per week, vacation time, 40 hours of sick time per year, guaranteed meal and rest breaks, and paid rental leave (Massachusetts State Legislature 2013). The bill also includes a clause requiring that communications between employers and employees be clearly established at the onset of employment (Massachusetts State Legislature 2013).

Though advancing in their coverage, these laws all share a distinct and common failure in that they are continuously met with resistance from employers who, consciously or not, refuse to comply. In a 2011 survey conducted to address compensation of domestic workers employed in Brooklyn, 17% — fewer than one in five — employers admitted to keeping a written record of their nanny's work hours (Park Slope Parents 2011:12). In the same survey, 63% of employers said they pay their workers completely off the books (Park Slope Parents 2011:16), 15% reported paying at least 1.5 times their official rate for overtime for more than 40-hour weeks, and nearly half (44%) admitted to not paying overtime at all (Lerner 2012). The New York Domestic Workers Bill of Rights deems such behavior illegal, and employers are

therefore unlawfully underpaying and mistreating their workers. Little research of this nature has been conducted elsewhere in the country, as most states do not yet have fair employment laws for domestic workers, but these findings are reliable empirical evidence of the problem facing legal enforcement in this field. The employment requirements that advocacy groups have spent decades working to acquire are being clearly violated, yet no large-scale legal action has been taken by a body with sufficient authority to create change.

Understanding why there exists such a disregard for legal enforcement in domestic work is best accomplished by comparing the methods of legal compliance in formal versus informal fields of work, the distinguishing factor between which is actors' understanding of their own roles within the law. Existing socio-legal and neo-institutional literature suggests that organizations mediate the interpretation of law through rationalizing its meaning, a process that makes law endogenous to the fields it means to regulate (Edelman et al. 1999). Using an organizational lens is relevant when considering that employers in this area are more than just private household owners, they serve functionally as organizations that are expected to practice laws as they pertain to mainstream employers. This is specifically true when organizations are informed in the laws that they are expected to enforce and aware of their own roles within the law; this makes actors more able to analyze the law and thus behave with respect to legal expectations and developments (Edelman and Petterson 1999). In this way, law "develops meaning through its interpretation by organized professions, and...develops substance through its application by organizational compliance officers" (Edelman and Suchman 1997:480). According to Edelman, this is key for organizations, as "those

responsible for formulating, interpreting, and enforcing the law...use their authority to construct law in a way that preserves the status quo while giving the appearance of change” (1992:1533). While employers take on this front, representatives of employment agencies and public policy networks work to create the change that employers only feign to put in place. Surveys such as that conducted by Park Slope Parents show that this is the exact situation in domestic work today; legislation that means to create change is not proving to be effective, which allows for exploitation to continue a normative action. The value in pursuing this change from an enforcement angle is that the legislative fight is already in motion and is generally picking up steam on a state-by-state basis.

Currently, studies in the field of neo-institutional law share a focus on organizations whose actors see themselves as existing within the law; in the vast setting of corporate America, highly visible organizations utilize resources such as human resources departments in order to ensure legal compliance. However, minimal research has been conducted to understand how legal mediation is practiced by figures of power that do not see themselves as existing within the law. Applying the legal implications of neo-institutional theory to domestic work, conclusions can be drawn about what such a scenario would look like: rules and regulations would be interpreted at the enforcer’s free will, and a power hierarchy between parties would build based on the personal convictions of enforcers alone. As suggested by the widespread presence of exploitation in domestic work, such a disconnect between the legal interpretation and enforcement processes is prevalent in the informal market. In domestic work, this translates into a weak relationship between employers and the law that, because of an imbalance in access to rights and level of authority, allows employers to view themselves as nothing more

than private homeowners who have outsourced their excess duties. Many argue that this is a result of misinformation (or a lack thereof) regarding existing laws meant to protect domestic workers, but there are two additional factors to which the disconnect can be attributed: the informality of part-time work scheduling and the nature of the workplace.

Quite commonly, domestic workers are employed in multiple homes that only demand their services on a part-time basis. While this system allows flexibility for workers who wish to maximize their profits through work in extra jobs and odd hours, employers can use such a fragmented schedule to legitimize their position outside of the law. Though one employee may lay claim to multiple employers, the relationship is not equally inverted and no individual can necessarily be designated as the primary employer. As such, employers can easily pass on the responsibilities to withhold taxes and enforce employment rights from one person to the next until there is no one left to take control of legal enforcement. Data show that this is an entrenched definition for employers: in a survey of 35 domestic employers, sociologist Pierrette Hondagneu-Sotelo found that, more often than not, employers do not consider themselves as full-time employers if they request domestic workers' services on a semi-regular basis, meaning weekly or bi-weekly as opposed to daily (1997:16). Without regular involvement in and oversight of these processes, no one is watching to be sure that the changes in laws to protect domestic workers are being properly implemented.

Of similar importance is the way in which domestic work turns the private home into a workplace without also creating a change in the way homeowners view their legal responsibilities, thus upsetting the balance between symbolic and substantive change in employer behavior (Edelman and Petterson 1999). Because households do not have the

same large-scale capabilities as large organizations, employers tend to view themselves as a separate entity less responsible for legal cooperation within what they still call the home, as opposed to the workplace. As a result, employers turn to employment agencies and public policy networks to find workers and make the match. In many cases, however, the lack of regulation means that this outsourcing ultimately counteracts attempts to achieve employer compliance with workers' rights because it divides the processes of formation, interpretation and enforcement of laws amongst multiple bodies.

These factors make for an unusual relationship between power and authority in domestic work as it pertains to employers who do not associate themselves with legal compliance. Max Weber defines authority as the most durable form of power, by which "individuals accept and act upon orders that are given to them because they believe that to do so is right" (Best 2002:1964). Exerting power to do what is morally "right" is rare in domestic work, as studies suggest that employers more often view themselves as outsourcers rather than legally responsible employers (Park Slope Parents 2011: 16).

What is necessary now is a better understanding of how alternative sources of regulation can serve to alter employers' legal behavior and still ensure that domestic workers are protected under the laws they have fought to earn. Given evidence that employers are not complying with the law, compounded with the fact that domestic work exists indefinitely in an informal market, there is sufficient reason to believe that employment agencies and public policy networks are the best hope that domestic workers have for such a source of protective representation. It is therefore relevant to recognize how the legal and professional services as well as networking opportunities that these groups provide can be used as methods with which to instigate systemic change in

employer behavior.

It is also relevant in the application of neo-institutional theory to understand how representatives of these organizations view their roles in the professional and personal lives of domestic workers. In the types of labor that are granted unionization, the collective group of union members acts as a tool for community building that can create subgroups of workers who share certain interests that are based on their mutual work but exist outside of the workplace (Fine 2005:154, 185). Understanding how employment agencies and public policy networks similarly fit into the lives of domestic workers, both on the job and in everyday life, can help to comprehend their role as a form of “community union” (Fine 2005:155) that can mediate between employees and employers.

When viewed as alternative sources of protection for domestic workers, employment agencies and public policy networks should be analyzed under a lens of organizational theory grounded in the idea that “organizations [help] society solve adaptive problems by providing instruments capable of getting work done and attaining specific goals” (Donaldson:3). According to sociologist Talcott Parsons, this is a three-step process. First, organizations must obtain the appropriate economic and financial means to face their challenges (Parsons 1956:63). With the advantage of non-profit status, many public policy networks have so far surpassed this step in the path towards a change in the norms of employer behavior. The organization must next insert itself into the context of “policy decisions, allocative decisions, and coordinating decisions” (Parsons 1956:63). For public policy networks, creating legislative language is the core of their most important work; for employment agencies, acting as a type of middleman for domestic workers and their employers means being constantly surrounded by changes in

policy. Finally, the body must create a structure that “integrates the organization with others, centering on contract, authority, and the institutionalization of universalistic rules” (Parsons 1956:63). This is the point at which domestic work is now stuck: public policy networks and employment agencies are connecting with one another more and more every day to form a larger network supported by a basis of strength in numbers and resources.

Literature suggests that the next necessary step for domestic workers is a reinvigoration of education regarding the topic of fair employment. According to Hondagneu-Sotelo, this process will require state-level government support and a new method with which to educate employers. This, she says, “would lead to greater recognition of paid domestic work as an occupation, one that merits the protections and regulatory guidelines governing other jobs” (1997:130). But as findings from this study suggest, this is problematic in that it only scratches the surface of the problem. According to the organizations that most closely protect domestic workers, educating employers about the laws they ought to be following doesn’t dig much deeper than creating the laws themselves. Ultimately, the employer enforcement problem delves into an unaddressed ethical component of this field. The organizations included in this study help to begin to uncover some of these unknown factors, as they provide new information regarding the source of the disconnect between legal interpretation and enforcement. Representatives of these groups are the people handling the protection of domestic workers, but what comes to the surface is that they are not the final step in the enforcement process.

## **Methods**

This project uses data from interviews with a combination of owners, managers

and volunteer workers at two distinct kinds of organizations that serve domestic workers in the United States. The first, employment agencies, serve to match domestic workers with clients seeking household services in their private homes. The employment agencies studied cover a variety of socioeconomic backgrounds on both sides of the transaction: one agency located in California accepts only highly experienced applicants and provides for “über-wealthy” clients, as one subject referred to them. Another agency based in Minnesota provides a variety of nannying services to clients who can afford anything from a live-in nanny to a summertime caregiver.

The other type of organization studied, private policy networks, addresses the legal-political side of the field of domestic work. The list of criteria to qualify as a public policy network includes any organization in the country, non-profit or not, that works on behalf of domestic workers to pass or enforce laws protecting their rights, as well as to educate and train either workers or employers on the safe practice of domestic employment. Many of these organizations also provide domestic workers with legal guidance when seeking retribution for exploitation at the hands of their employers and/or opportunities for job training. These organizations were chosen for this study because they are the most likely resource to protect the rights of domestic workers given that their professional success depends largely on the success of the domestic workers who use their services. Additionally, employment agencies and certain employer-focused advocacy groups are a unique resource given that they interact with employers and employees alike throughout the matching process. Findings show that engagement with the former is crucial for the change necessary to eliminate exploitation of the latter.

Data collected for this project covers six phone interviews, each ranging from 20

minutes to an hour, with representatives from such organizations. Questions asked in these interviews cover topics relating to how representatives view their roles in their organizations, how they view their relationships with domestic workers, what kinds of services they provide for domestic workers, what they see as the largest legal and legislative problems facing domestic workers, how they plan to solve those problems, and where they see employers fitting into the puzzle from beginning to end. In some cases data are supplemented with information from organizations' official websites when available, so as to gauge their public presence. The organizations included are largely private agencies and nonprofits, which reflects the overarching lack of government involvement in this field.

In light of the struggle to grant these workers with federal-level rights similar to those in New York, Hawaii and California, there is a clear need for an alternative source of representation for these workers by which someone can vouch for domestic workers' worthiness of fair treatment. Acknowledging that there is no regulation to this work, this study aims to determine whether or not we can reasonably look to these bodies as sources of reliable support for domestic workers. Further, regulating domestic work would be detrimental to the many workers in this field with unstable citizenship status: as of 2000, 58% of workers in "personal and related services" in the United States are migrants from Latin America (United Nations Population Fund 2006). It would be beneficial to know if the services that these groups provide render them viable alternatives to bridge the gap between legal interpretation and enforcement.

Findings show that while these organizations do prove to fill supportive roles that domestic workers lack because of their situation in an informal market, they are not able

to very effectively enforce existing laws meant to grant employment rights to domestic workers. The main problem, ultimately, is not as much a lack of laws as it is their reliable enforcement upon employers.

### **Findings**

In looking at the ways in which employment agencies and public policy networks understand and practice their work, data collected for this study show that there exists a combination of securities and setbacks within the field. Though these types of organizations are able to provide domestic workers with a variety of services to both protect their rights and pursue legislation for those to which they do not currently have access, there is a disconnect between the way organizations interpret the law and the degree to which employers practice them. This is causing an enforcement problem that, according to sources, is deeply rooted in employer behavior and must somehow create a new normalization of legal cooperation. This concept is so new to the field that no widely accepted solution for its achievement exists yet, but there is a general consensus that employers must be involved in both understanding and implementing the law.

### *Forms of Protection*

Employment agencies and public policy networks are two of the most influential bodies in the field of domestic work in the services they provide, personal connections they create, and methods of communication they foster with both domestic workers and employers. Their roles as protectors are immediately apparent in the ways that their organizers talk about the work that they do: as a kind of professional matchmaker for domestic workers, employment agencies often provide domestic workers with a highly personal job search that Internet sources like Craigslist and Care.com cannot recreate.

One such employment agency included in this study is located in the Minneapolis/St. Paul metro area and run by two young mothers who both have experience as nannies. These women started their company two years ago out of frustration with their own experiences finding work through employment agencies; they have been on the other end of the process before and found it full of shortcomings and disappointments that made finding work in the right home to be both confusing and disorganized. As such, this agency's practices are not grounded in much legal background; instead, what these women have to offer for domestic workers is an improved matching process that is catered to the needs of workers based on the experiences of former nannies themselves. For these women, getting to know their applicants is the most important part of creating a successful and unintimidating process for applicants:

We call them [nannies], we both work from home so we have them come in our home, meet with them, just get to know them good and go through their application, so if we have any questions or anything. That way we can get a good feel for what kind of family they'd like to work for, some of their hobbies, their interests.

These women also visit the homes of employers before making matches, so as to ensure that they are only placing nannies into "safe environments." Only when nannies and employers alike have confirmed that they are comfortable with a pairing do the organizers draw up an employment contract.

Such agencies also all require screening processes for both applicants and clients. When asked to compare these processes, managers of employment agencies consistently place more weight on the worker's application in a way that suggests they are more interested in watching out for workers. An employment agency in California, for

example, does not manage a high volume of applicants but requires a screening process on both sides to ensure that a) applicants are qualified for the work they are pursuing, and b) clients are well intentioned in their planned methods and levels of payment, as well as in treatment of their hired work. The agency's director suggests that he finds the latter of these points to be the most important factor in a successful professional match. If, for example, clients who wish to pay their employees in cash cannot provide a justifiable reason for doing so, the agency will refuse to work with them. "Justifiable" here is measured by the director's own experience with clients, which is not quantifiable and leaves the situation up for some interpretation — it could mean anything from insufficient credit to a desire to leave no paper trail that could require an employer to withhold taxes. But, he believes, the caliber of both workers and clients that his organization deals with leaves less room for clients to get away with exploitation because they can afford to learn how to do it right:

It's attitude, it's almost like they're [clients] doing it [underpaying workers] for sport. Relative to wealth it would cost them pennies to do it right. It would be a big benefit to them as the employer to do it right, and for some reason they choose more of an oppressive arrangement.

This was a general trend: subjects interviewed for this project all work in some way on behalf of clients in search of domestic workers, but they generally show what seems to be a subconscious tendency to place the blame of the field's setbacks on employers. In this particular case significant emphasis is placed on the idea that practicing safe employment is a choice, which is a testament to the power that employers wield. This point of view addresses a high-status clientele which is not a universal situation, but socioeconomic status aside this provides validation for the idea that those who have made the decision to

hire domestic work would benefit from following through on the responsibilities required of them as employers.

As far as the other half of the project is concerned, public policy networks that work with domestic workers are often able to offer an environment that creates a feeling of support. In many ways they are the closest option to unionization that exists for domestic workers. These groups work primarily with domestic workers, and occasionally with employers, to advance legislation such as the New York, Hawaii and California Domestic Workers Bill of Rights. Many of the groups are linked together across state lines to form a cohesive network that fosters an atmosphere and sense of purpose in the movement toward fair labor standards. Some of the larger public policy networks in the country are also able to offer legal advice to workers seeking retribution for incidents of exploitation at the hands of employers. One such non-profit in New York offers free legal assistance, referrals, immigration advice and organizational support to domestic workers through a legal clinic. Finally, many organizations also offer leadership and job training courses to better prepare and qualify them for the child and home care duties they fulfill on the job. Though not individually distinguished in this project, there also exist many culturally specific networks that foster ethnic ties in domestic work advocacy. These services create personal connections between workers and organizers. In some cases they also foster relationships between employers and organizers that can begin to build bridges between employers and employees.

Ultimately, communication between these regimes and both employees and employers alike is the most important way in which organizers running these regimes feel they can protect and defend domestic workers. This is specifically true for employment

agencies after matches are made; every agency studied for this project emphasized that they put great effort into following up with both applicants and clients. For the employment agency in California,

We stay in touch with just about everyone we place. We have really invested relationships over time: we're always following up with the clients, we're following up with the employees to make sure they're happy and all promises have been kept. We're almost a virtual HR department. Someone will call us six months into the job and ask for a raise that we talked about in the beginning. We almost don't have to actively follow up.

In this act of maintaining communication even beyond the point of duty, most public policy networks studied seem more likely than employment agencies to express concern with moral justice. Yet, the fact that all employment agencies represented in this study come from backgrounds in domestic work plays a crucial role in their definition of what is "fair" and what is expected of those who are meant to protect domestic workers. In some cases, organizers are also finding that interaction with employees when something is not going right in the workplace can trickle down to changes in employer behavior. In the case of the employment agency in Minnesota, the organization's intervention can make a difference:

We had heard from one nanny specifically that the parents kept being late and she mentioned something and still [they were late], so we're always happy to get involved if the nannies want us to. So in a polite way we sent out a mass email to all our families saying "it's Nanny Appreciation Week, these are the main ways to keep a nanny happy and the biggest concerns we hear from nannies about being late"... We didn't get a huge response back from families but we've heard from the nanny that was having the concern and she said "wow the email made a difference. They were on time, they were a lot more conscientious." And then we

also had another family that did respond and they were like, “we’re so sorry, we didn’t even know it was nanny appreciation week” and they actually went out and bought the nanny a present. So I think it made a difference.

This idea of “Nanny Appreciation Week” is a tool in and of itself that shows that, in some cases, employers know how to react to a complaint of poor treatment while still avoiding legal practice. The response “we didn’t even know” suggests that the employer in this scenario was unaware of what was legally expected of him/her, which appears as a common trend throughout the study. Unique to this situation, however, is the voluntary act of gift giving which suggests that in some cases clients are actually deferential to the people they work with. But this does not suggest that employers are actively seeking to fulfill legal compliance; in fact, most do not tend to instigate communication with employment agencies once the contract has been signed, specifically when the worker rather than the employer brings problems that arise to the agency’s attention. In cases where employers do get in touch with the agency, it is often not about money or what is legally due to workers. This is clearly true in the case above, and it is not an isolated incident: employers do not commonly seek out more than a surface-level appreciation of the work that is done in their homes.

#### *Enforcement and the Education Problem*

Beyond the services provided for domestic workers, data collected for this project most notably shows that the issue of employers defining legal compliance is, in fact, true in the case of domestic work: less than deciding what the laws mean, they are dictating to what extent they must be followed. This is, in some ways, an economic problem. As one subject puts it, “the issue of affordability still haunts this work. One of the many reasons that men and women are in the workforce is that families need two incomes. So the

affordability issue is very tough.” But she also says that it is a stretch to say that all employers pay off the books because it is the only way they can afford to have hired help in the home; for some, “paying people fairly is honestly just a matter of readjusting their family priorities. You may not be able to buy as many clothes or take a Caribbean vacation if you’re going to pay somebody fairly.” For this study the term “fair pay” is defined by subjects themselves and their preconceived notions of what is “fair.” For many, the lowest acceptable definition is minimum wage, which acts as a kind of legal basis. For others, market-based definitions are applied when effort is put into calculating how much domestic workers would be paid if their work was regulated, which is done by making a comparison between domestic work and similar forms of regulated labor. When thinking about the notably wealthy clients that his company serves, the director of an employment agency in California sees the problem as one of poor surveillance that is not necessarily specific to domestic work, but plagues the field no differently than other forms of deviance:

You have a double-edged sword, where employers feel like it’s not so important that they’d get caught or penalized...I don’t know how to describe it. Why do people speed? Why do people claim things on their taxes that they shouldn’t? It’s really a situation of supply and demand: who’s checking, what are the penalties, what are the chances of getting caught.

The outcome? Worker exploitation. Data suggest that this is not a result of poorly written laws, nor does it have to do with the scarcity of such laws. According to same director in California, “there usually are plenty of laws, regulations and enforcement available. I don’t believe that is the root of the problem.” Instead, results suggest, it is a consequence of the lack of legal enforcement upon employers who are, ultimately, the people most in

control of the well-being of domestic workers. Speaking from her own experience as a child caregiver, one of the founders of the aforementioned employment agency in the Twin Cities says that underpay has always been a consistent problem in domestic work:

Most of our nannies work more than 40 hours because it's a 40-hour work week for the family plus travel time, so it's more like 45 or 50 hours a week. But some families don't feel like they need to pay time and a half, that they can just do a set hourly rate. In my past I've only had one position out of the seven families...that I was actually paid time and a half, and that was because they used a [tax] service. I got paid time and a half over 40, but I think that a lot of nannies don't [get that]... Nannies should be entitled to that just like other employees.

That these women have come to create a successful agency based off of real worker experience in a state with no specific laws to protect domestic workers goes to show that the employers who use these kinds of services are more likely to abide by measures of fair pay according to some kind of regulation, even if it is not a state law and especially if the majority of the work is done for them. This provides a possible solution to the enforcement problem: use of an agency ought to be required, and these agencies should make use of tax services obligatory. Given that most companies have a usage fee for clients, embedding the cost of a tax service — which these women made clear come in a variety of options in terms of what they provide and what they cost — into the price of working through an agency in the first place is a feasible way to bridge the gap between organizational definitions and employer practices of the law. The problem with this, however, is consistent with the rest of this study: a lack of regulation makes it nearly impossible to require that employers make use of these services.

But the problem with enforcement of the laws meant to protect these workers is

not rooted in poor education of employers. Though no quantitative evidence has been collected to understand how well these laws are being taught, interviewees for this study say that the employer demographic is generally well educated enough to be held responsible for safely employing a domestic worker:

You get a lot of people who just aren't being honest in terms of saying 'I don't know what the rules are.' That's a poor excuse. The rules are pretty simple. You call your accountant, and you say 'I'm employing this person for this amount of hours, how do I pay them properly?' It's not complex.

This is a crucial step in the gap between interpretation and enforcement of law. In general, when it comes to practicing the law there must exist some way to ensure that those to whom it applies know what the law requires of them. This is commonly the government's role: learning how to drive a car, for example, involves a thorough process in which one must prove that he or she understands the legal compliances inherent in becoming a licensed driver. In domestic work, the informal or intimate market — which is broadly recognized as separate from the formality of law and economy (Zelizer 2000:823) — makes this nearly impossible; employers do not wish for their private homes to be seen as legal settings, and as such there does not exist a system by which employers can be trusted to know the law. That said, subjects for this study are much less concerned about the well-being of clients: this idea that education is not an excuse for poor treatment of workers is backed up by an argument that ethics are a major factor.

There is a moral component of fairness in this field that, as one volunteer from a public policy networks in New York sees it, is unavoidable when considering terms of fair treatment that, because of a lack of laws, are highly subjective in many states. Speaking on behalf of her organization, which works with employers in New York City,

she argues that “there’s a legal part of it which is not clear. But the ethical part...when you employ someone and say ‘I allow this person in my home,’ I have a hard time to understand how people can’t think that out for themselves.” This is a nearly universal sentiment amongst representatives of public policy networks in this study, which begins to suggest that there is a divide between the motivations for these groups and employment agencies. When considering the financial motivations for the latter, it is reasonable to begin to suspect that public policy advocates are more likely to include ethics as a resource for fair treatment.

### *Finding a Solution*

Because these organizations do not have total authority to regulate the homes of employers, legal enforcement is left up to employers. But the sentiment that education is not considered the root of the problem leaves these organizations somewhat stranded for where to turn next. If they cannot trust that teaching employers how to be more ethical and lawful employers will lead to the results that domestic workers deserve, what are they supposed to do? One outlier in the data collected, a representative of a public policy network in northern California, suggests that education — which is nearly always provided by advocacy groups such as this one — is still necessary, even if others consider it an insufficient excuse for exploitation:

Part of what we do is to identify what the standards of care are that we want to start practicing in the home. Part of it is the protections in the domestic worker bill, we educate about that, but we also educate about what the other requirements are that are on the books. Part of that education happens via word of mouth, and we’re also creating some educational material that is going to be a series of trainings meant to train domestic employers and domestic workers to be trainers

of other people so they can reach out and orient and support the implementation, on the employer end as well as on the domestic worker end.

This particular organization works at a grassroots level to reach out to members of the community interested in changing how domestic work functions, which does not work universally but does lead into a variety of suggestions for how to increase enforcement, none of which can at this point be considered a magical solution to end the problem of exploitation in domestic work. Methods to reach that point are the area in which subjects studied for this project disagree the most. A variety of solutions were suggested in the interviews conducted: in the past, many public policy networks have targeted workers on a case-by-case basis to help them out of problematic work situations. This also works to some degree for employment agencies, seeing as they have experience working with both applicants and clients and can have a better sense than anyone else of whether or not either party could potentially cause legal problems. One employment agency director notes that he has a responsibility to notice where bad treatment could occur and end it promptly. In the end, he says,

The better solution always is to just go somewhere else [if you are dealing with an exploitive employer]. False promises and bad behavior doesn't need to be tolerated, unless you're stuck. And that's the people I would point to, people who are stuck in a job because if they quit they'll starve.

Other organizers suggest that this approach does not come soon enough in the process and does not provide a solution to the systemic problem at hand. These groups are in search of more proactive answers to the problem of exploitation in the workplace.

A more immediate solutions to the problem is the suggested use of employee contracts, signed by both employers and employees to ensure mutual understanding of

employment standards. The aforementioned employment agency in Minnesota has so far found that most people who use these contracts have fewer incidents between employees and employers than those who don't, saying that families who use the Internet or phonebook to find workers have no security because no part of their agreement is in writing. Though not widely used in the United States, contracts can decrease the need for outside enforcement and eliminate an employer's ability to blame exploitative habits on legal ignorance. In New York, Hawaii and California, where contracts could uphold the laws that have been made specifically for domestic workers, there is concern that contracts are currently being used as general guidelines rather than a strict obligation to compliance because there is no one to ensure that they are being followed. At no point did the employment agency representative from Minnesota, whose agency is the only one in this study that requires the use of employment contracts, say that her company follows up with employers specifically to ensure that contracts are being followed. This brings new meaning to the fact that the agency does not often hear of problems arising: simply because workers are not complaining about unfair pay does not mean that it is not happening.

Finally, nearly all of these organizations — whether they realize it or not — are working with employers directly to increase their positive support of domestic workers. This does not necessarily come in the form of education so much as grassroots involvement. Some kind of a written commitment, some say, is what is most necessary to solidify success in that on-the-ground work. In the case of an employer-focused public policy networks in New York, it means getting out into the community and finding employers to convert to a more safe employment process:

We're focusing on something called a Code of Care, which would be a set of norms and commitments that we'd ask people to pledge to follow. And there aren't many, many, many details in that because the more you add the more you get people saying 'I agree with 80% but the other 20% I don't.' So this is what I would call a scaffolding of a commitment, which is 'I agree to obey the laws and I will try to give a living wage.' We're building towards that moment where, for example, we would actually reach out to ministers and other religious leaders, rabbis, imams, and ask if we could come and...explain what we're trying to do, which is gather a visible commitment to paying domestic workers fairly, to constructing work agreements with them that are respectful, trying to offer them the kind of package of benefits that most of us expect when we go to work. And we know for most people it's tough to hire someone to work in your home.

This particular organization gives the best insight into what working closer with employers would look like for public policy networks, which at the moment seems largely undefined. In creating such a flexible "Code of Care," organizations such as this one allow employers plenty of room to decide their own methods and levels of legal involvement. It is unclear whether or not such an approach will lead to the results that this group is searching for, though history shows that employers are not often quick to do "the right thing" (Park Slope Parents 2011). In the meantime, preexisting literature shows that this kind of community involvement has been key in achieving legal compliance in regulated organizations (Edelman, Leachman and McAdam 2010). There is no reason to believe that such activity would not similarly work for unregulated fields.

All of these solutions are, on some level, both practical and feasible ways to create widespread change in the way domestic workers are treated. But looking at the work that these organizations do raises the question of whether or not the suggested solutions increase organizational authority enough to put legal enforcement in the hands

of employment agencies and public policy networks. The tone of data collected for this study suggests not, because if they were they would be doing it and this wouldn't be an issue. It's somewhat unclear what is keeping them back, and it is likely case-specific: in all states other than New York, Hawaii and California, they have no legal rights to enforce. In those three states, the issue is still one of authority: no one is required to use their services, so the power to make people adhere to the laws is not something that comes naturally. Whether or not that power is attainable is another question entirely, and interviews for this study do not address this issue enough to make conclusions about what would need to happen for that kind of a shift.

Ultimately, data overwhelmingly suggest that even if authority resides in the hands of employers there must be a systemic change somehow in the way that employers treat their workers. What these organizations can create more than a legal change is a social shift in how norms regarding domestic work are perceived on a widespread scale. According to the volunteer at the New York-based public policy network,

For change to happen for domestic workers in the United States there have to be changes in norms so that, for example, the norm of hiring a worker and giving him or her a week of vacation, that starts to change in peoples' heads... the norms are pretty low. For example, there are countries in the world where you couldn't hire somebody to work in your home without a contract; that's public policy but it's also the norm. And then practice has to change. You can have a change in the norms...but it's not enough just for the norms to change, the actual practice has to change.

Whether this happens on the state or national level will be determined by how these regimes work together to create deep changes. This does not necessarily mean that these

groups all have to agree on an infallible method with which to move forward, but what the process will look like currently remains unclear.

## **Conclusions**

When looking to the organizations included in this study as a solution to the problem of domestic worker exploitation it is important to separate the services they provide from the changes they have the potential to create. For many workers these groups create a strong sense of community and act as a reliable source of communication and protection that can be called upon when relationships with employers prove to be problematic; in providing care, professional training, legal advice and community building for domestic workers, these groups are the strongest advocates in the field. But what these organizations still seek is a way to use these services to eliminate worker exploitation from the equation; domestic workers allow their employers to live the lives they desire in order to be professionally and economically successful, but the favor — which in the best cases comes in the form of legal compliance with workers' rights — is rarely returned. The goal that these organizations aspire to achieve is the removal of that gap between interpretation and enforcement of the law through a shift in the way employers view themselves in relation to the law. This study's participants show that this can, and likely will be done in a myriad ways: from employer contracts to written "codes of care" to community outreach, there is more than one plausible method by which to alter the way employers legally engage with their employees. The key necessity in all of these possibilities is that employers become more actively involved in the legal process as these groups work to create a new normalization of legal compliance in the informal market. Subjects show that when this happens, employers will gain a better understanding

of their roles within the law and begin to more responsibly rationalize and act upon the laws by which they are expected to comply.

This study is not without its limitations, the most prominent of which is that employers are almost as hard to find as employees. When it comes to the work of public policy networks seeking out employers to create educational and structural change in the way that domestic work is treated in the home, those who are willing to take part in the action are generally those who either are unlikely to be mistreating their workers or genuinely do not know how to follow the laws that apply to their roles as employers but wish to make a change. This creates a possibility for bias in employer samples, as it hides the real problem of legally unwilling employers. More often than not, this topic did not come up in the interviews conducted for this study. In the cases where it did, organizers tended to brush the concept off as a kind of stage-two obstacle that cannot yet be addressed because there is not a sufficient understanding of why employers behave outside of the law in this field. This is an ethical component of domestic work that should be addressed in further research regarding the issue of fairness in the field, but for now does not change the nature of the problem that this study seeks to address. Whether or not there is a universal understanding of the reason behind employer noncompliance or an even sample pool of employers, domestic workers are still being exploited despite legislative improvements in their legal protections.

Seeing as employers are widely recognized as the root of the legal enforcement issue, it would be reasonable for future research in this field to study employer behavior through quantitative methods so as to better understand the source of their noncompliance. Such studies ought to inquire about employers' knowledge and

comprehension of, potential resistance to and likelihood to adhere to the specific domestic employment laws that apply to them. One study conducted in a borough of New York two years ago began to get to this point of understanding, but there are two major problems with this research that could be addressed with a new study. First, the survey was conducted only one year after the Domestic Workers Bill of Rights was passed in New York. This gave little time for employers to learn about and grow accustomed to the new laws. Now that two more years have passed, it makes reasonable sense to see what kinds of changes have been made as a result of the efforts of organizations seeking to educate employers on their legal duties. Second, the study has no point of comparison to a different geographic region with a similarly sized domestic worker population. This can be fixed by conducting a similar study in other major cities across the country. Ultimately, what must be understood in order to successfully expand upon and fully enforce the rights of domestic workers is the way that employers view their legal responsibilities in this professional relationship.

Findings suggest that there are many ways in which organizations can protect domestic workers and change the way in which employers view the rights of domestic work: from reactive forms of legal assistance to proactive requirements for written forms of legal compliance, subjects included in this study show that the best way to reach that end is through small steps towards a systemic redefinition of the norms associated with domestic work. Such changes would not necessarily redistribute the authority in this field — that is a rather unfeasible approach to work in an informal market — but they would likely reinforce the importance of fair labor practice in ways that employers could

understand and be willing to enforce.

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