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Canada

SEDUCED AND ABANDONED:
THE LEGAL REGULATION OF DOMESTIC WORKERS IN CANADA FROM 1867 TO 1940

NICOLA CUNNINGHAM

A thesis submitted to the Faculty of Graduate Studies
in partial fulfillment of the requirements
for the degree of

Master of Laws

Graduate Programme in Law
York University
North York, Ontario

May 1991

ISBN 0-315-70413-6

Canada

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by

Nicola Cunningham

a thesis submitted to the Faculty of Graduate Studies of York University in partial fulfillment of the requirements for the degree of

Master of Laws

UNIVERSITÉ
YORK
UNIVERSITY

FACULTY OF GRADUATE STUDIES

I recommend that the thesis prepared

under my supervision by

Nicola Cunningham

entitled

Seduced and Abandoned:
The Legal Regulation of Domestic Workers in Canada
From 1867 to 1940

be accepted in partial fulfillment of the

requirements for the degree of

MASTER OF LAWS

May 1991

J. Fudge, Supervisor

Recommendation concurred in by the following

Examining Committee

S. Gavigan, Chair

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June 1991

ABSTRACT

SEDUCED AND ABANDONED:
THE LEGAL REGULATION OF DOMESTIC WORKERS IN CANADA
FROM 1867 TO 1940

(May 1991)

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This thesis examines the legal regulation of domestic workers in Canada from 1867 to 1940 with reference to immigration law and policy (specifically regarding recruitment and surveillance) and labour law (specifically master and servant law and minimum wage statutes). In the thesis, domestic work serves as a site for an analysis of the role of law in regulating human activity.

Domestics, who were recruited to Canada as both wives and servants, were one of three groups of immigrants actively solicited for emigration purposes by the Canadian government. They were protected in transit by criminal sanctions prohibiting the seduction of female passengers on ships sailing to Canada; as such, the law concerned itself with the virtue of domestics as potential mothers. Under labour law, however, the working conditions of domestics were not regulated. Domestics were treated neither as family members nor as free waged labour. Protections available to domestics under master and servant laws were inadequate, yet when new legislation

was enacted at the end of World War I offering further protection to workers, especially working women, domestics were explicitly excluded on the grounds that they were "safe" within the family.

In an attempt to improve their conditions of work, domestics unionized and lobbied the provincial governments for coverage under the minimum wage statutes, but legislators were unwilling to enact laws which would encroach on the private domain of the employing classes. The failure of domestics to obtain protection at work can be explained in terms of their location at the intersection of the private sphere of the household and the public sphere of the work world; domestics were at once considered part of neither sphere yet necessarily part of both.

ACNOWLEDGEMENTS

Many people have contributed to the development of this thesis. In particular, I would like to thank my thesis advisor, Judy Fudge, for her support and encouragement as well as her patience and helpful suggestions. I would also like to thank Hans Mohr for providing a constant intellectual challenge as well as untiring warmth and affection.

The Public Archives of Ontario and of Canada provided invaluable source material. My research was also furthered by access to the extensive collection of commonwealth legal material available at the Osgoode Hall Library. The Librarians at Osgoode were most helpful: I would like to thank Norma Eakin for diligently tracking down obscure materials and Marianne Rogers for conducting numerous computer searches. Rob Elliot generously provided me with cites gleaned during his own research. My knowledge of feminist theory was greatly enhanced through participating in a study group with Pat and Hugh Armstrong, as well as Susan Arab, Jacqueline Choiniere, Jan Kainer and Ann Porter. I would like to thank Shelly Gavigan for offering me research work which provided a delightful escape from my thesis when needed.

I am also personally indebted to the people who constituted my community and whose understanding and encouragement were as important as the academic resources. Special thanks to my parents and brothers, to Allan, Jay, Chloë, Elaine, Susan and Ken. Finally my love and thanks to Henning.

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INTRODUCTION

Historically Canadian women have performed unpaid domestic work within their own homes for the sustenance and care of their families. Similarly, women have worked for wages outside the home in industry or service occupations in order to support themselves or supplement their family income. Along with these two groups of working women, there has also existed a third group of women who worked for wages in private homes performing those domestic tasks their mistresses chose not to do. A large proportion of these women were specifically recruited from abroad as waged labour by the Canadian government. The legal constitution and regulation of this third group of workers - domestics generally and immigrant domestics in particular - is the subject of my enquiry.

Domestic work was, and still is, located at the intersection of the private sphere of the household and the public sphere of the world of paid work. This position both magnifies and calls into question a number of distinctions which have shaped gender relations over space and time. These distinctions are usually expressed in terms of a series of fixed dichotomies: productive and reproductive labour; the public and private spheres; work and family activity; waged and unwaged labour; contract and status relationships. Traditionally, productive labour has been treated separately from reproductive labour.[1] The productive world is designated as the public working world

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1 One of the earliest expressions of the difference between productive and reproductive labour was made by Friedrich Engels:

> The determining factor in history is, in the final instance, the production and reproduction of immediate life. This,

of men, where exchange value is produced through contractual arrangements between workers and employers, and where a set wage is paid for specific work. By contrast, the reproductive sphere has been the domain of women, the private world of the family, where use value is produced by women who labour for their families without receiving wages. The relationship of these women to those for whom they work has traditionally been one of status - that of a wife, a mother or a daughter. To distinguish between productive and reproductive labour in this way paints a rigid picture of human interaction, which simultaneously describes some social patterns while obfuscating others. It is in breaking down the dichotomies and examining the area which divides them that a more complex picture emerges. Paid domestic work provides an ideal site for such an investigation because it does not fit neatly into any one descriptive or conceptual category.

Although remunerated by wages, the tasks performed by domestics were those which women usually performed for their family members for subsistence and love.[2]

> again, is of a twofold character: on the one side, the production of the means of existence, of food, clothing and shelter and the tools necessary for that production; on the other side, the production of human beings themselves, the propagation of the species.

Friedrich Engels, The Origin of the Family Private Property and the State (first published in 1884) (London: Penguin, 1985) at 35-36.

2 The relationship between women's paid and unpaid work has become the subject of an ongoing theoretical debate known as the domestic labour debate. The debate stretched existing Marxist theories of class by questioning the role of domestic labour in the formal economy, thereby suggesting that traditional Marxist concepts of class must be transformed by taking into account gender relations. In particular, this theoretical debate exposed the "privatization" of women's work within the home. The debate, however, does not discuss the specific case of paid domestic workers. For an overview of the debate see

Domestic work, however, was unlike other waged labour in a variety of ways: it involved both working in an employer's home rather than in an industrial establishment or a shop and contractual terms which were elastic with respect to hours of work. These distinguishing features of domestic service left the women performing it in a curious position: as domestic workers they were neither "free" waged labourers nor members of the household.

My examination of domestic work is limited to the period from 1867 to 1940. This period begins with the passage of the British North America Act in 1867, marking the legal constitution of Canada as an independent state. Although the events surrounding Confederation did little to change the daily working lives of Canadians, they marked a change in the legal regimes operating in British North America. As such they provide an arbitrary but convenient starting point for my work.[3]

The period from 1867 to 1940 generally, and the 1890's specifically, also marks the high point of domestic work as the primary source of employment for women, especially immigrant women. It is only in the 1940's that domestic work ceased to rank first, as compared to other occupations, as a source of employment for women. The high numbers of female immigrants employed as domestic workers can be partially accounted for by an aggressive overseas recruitment policy conducted by the Canadian government in the 1890's. This policy is of interest because it designated

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Chapter Five in Pat and Hugh Armstrong, Theorizing Women's Work (Toronto: Garamond Press, 1990).

3 For a more detailed study of Canadian domestic work in the early nineteenth century see: Claudette Lacelle, Urban Domestic Servants in 19th Century Canada (Ottawa: Research Publication, 1987) and further sources cited in her bibliography.

female domestics as an independently desirable category of workers for Canada, and its success is directly related to the fact that there were few other forms of employment available to women during this time.

Domesticity

In Canada, at the turn of the century, the material reality of women's work was cloaked in an "ideology of domesticity"; according to the Victorian middle-class ideal, a woman's proper role was considered to be that of wife and mother.[4] She was supposed to spend her life in devoted selfless service to her husband and children. Women were seen as defenders of the home - not only were they to keep it in order, but were also to maintain its morality. This idealized role precluded work outside the home except on a voluntary (hence unremunerated) basis. The "ideology of domesticity" was premised on a belief in a natural distinction between the sexes which justified a sexual division of labour that relegated women to the private sphere.

The "ideology of domesticity" designated specific gendered roles for men and women - men were paid workers in the public working world whereas women were unpaid caretakers in the private household world. Yet many women, particularly working women, did not fit this ideal. In addition, not all women carried out the domestic tasks which were expected of them. Servants were hired by upper class wives who chose not to perform the domestic tasks required of other women and these

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4 See: Catherine Hall, "The Early Formation of Victorian Domestic Ideology" in Sandra Burman, ed., Fit Work for Women (London: Croom Helm 1979).

servants were paid for what working class wives did in the absence of pecuniary remuneration.[5] The working lives of female servants provides both a vehicle to question how the "ideology of domesticity" functioned and an occasion to demonstrate its flexibility: the treatment of domestics at law was justified in terms of their conformity to the domestic ideal. However, the tensions between the domestic ideal and the experience of domestic workers were resolved at the expense of domestics and for the benefit of their employers. On the one hand, domestic workers were hired for many of the same qualities valued in an "ideal wife" because, as immigrants to Canada, they were recruited both as wives and servants. On the other hand, they did not have the status of a family member since, as servants, they were relegated to the private sphere where they were deprived of the protections available to family members and were expected to accept their lot without complaint. The "ideology of domesticity", then, served to justify the division of labour while simultaneously reproducing it, and remaining flexible in application.

Although domestic servants reflected many ideals of womanhood inherent in the ideological construction of domesticity, they were also at odds with it. Domestics were paid and thereby achieved some independence - an independence expressed by them in their protests against poor treatment, which took the form of militant unionizing or simply leaving their places of employment. Yet because the work of female servants conformed more closely to the domestic ideal than that of any other workers, it was all

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5 Having said this, it is perhaps worth noting that in the late nineteenth century Canadian upper class homes and life styles made it virtually impossible for a society lady to function without help: the homes were large, there were few labour saving devices, and attending social functions was time consuming.

the more difficult for them to effectively challenge the "ideology of domesticity" and to change their working conditions.

Protective Legislation

The marginal position of domestic work in relation to the norm of paid labour also raises questions about the ambiguous nature of the "private sphere". Legal doctrine during the period under investigation was flexible with respect to what constituted the "private sphere." For the purposes of enforcing the contractual obligations of workers, remunerated work was considered public and therefore subject to state regulation. When it came to protecting workers from poor working conditions, the employment relationship was considered private and not subject to state intervention. Workers were gradually able to secure legal protection in the work place, but only when their place of work was recognized as being in the "public sphere".[6] Thus, despite this ambivalence in pin-pointing the "private sphere", once it was designated, the law was unwilling to regulate work activity occurring there. This unwillingness to regulate the "private sphere" had specific material effects for private household workers - they did not receive the same legal protection provided to other workers and their employers were not accountable for working conditions.

Legal ambivalence about regulating the "private sphere" can be illustrated through an examination of protective legislation, which has traditionally had women as

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6 See: Eric Tucker, Administering Danger in the Workplace: The Law and Politics of Occupational Health and Safety Regulation in Ontario, 1850-1914 (Toronto: University of Toronto Press, 1990).

its object. In Canada, the protections offered under immigration law covered all women, whereas the protections offered under labour law covered select female workers in select industries. As such, protective legislation reflected divisions of gender amongst workers and immigrants.

In the labour market, gender divisions were maintained by preventing women from performing certain work simply because they were women, by paying women less when they performed similar tasks to men, and by isolating women in reproductive roles in the paid work force. This segregation of work on the basis of the sex of the worker was reflected in and reinforced by labour legislation. One historically documented effect of protective legislation has been to prohibit or discourage women from performing work in the "productive" sphere and to consequently force them into "reproductive" work, for example, as laundresses and seamstresses. Usually in these cases the law took the form of prohibiting women from performing work which was considered particularly heavy, grimy or unfeminine. An early example of this type of protective legislation is the British Mines Regulation Act of 1842.[7] For other women performing "productive" work, the paternalistic nature of protective laws designated their work as "women's work", and thereby reinforced a gender division in the labour force. This division was experienced by women in a material way since "women's work" paid much less than "men's work". Industrial homework is an example of this type of sex-segregated work, and in most European countries it attracted the first

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7 Jane Humphries, "Protective Legislation, the Capitalist State, and Working Class Men: The Case of the 1842 Mines Regulation Act" (1981) 7 Feminist Review 1-34. See also: Labour Canada, The Selective Protection of Canadian Working Women (Ottawa: Women's Bureau, Labour Canada, 1989).

minimum wage legislation enacted in those jurisdictions.[8] Where women already performed work which was centered on social reproduction they were excluded from legislative protection.[9] The legal system perpetuated the conformity of domestic work to the reproductive tasks women were expected to perform for free by consistently excluding domestics from wage and hour protections, despite considerable lobbying by domestics for inclusion.

Under immigration law women were recruited and valued first as future mothers and wives and only secondly as workers. Consequently, it was women's sexuality that became the focus of "protective legislation". The enactment of sex-specific legislation designed specifically to keep women virtuous in transit, shaped and was shaped by an "ideology of domesticity" which designated the proper role of women as wives. The legislation took the form of criminal sanctions, but this protection was almost exclusively symbolic as it was rarely enforced.[10] It served to reassure prospective husbands and employers as to the virtue and respectability of their future wives and workers.

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8 Mary Lynn Stewart, Women, Work and the French State: Labour Protection and Social Patriarchy, 1879-1919 (Montreal: McGill-Queen's University Press, 1989) at 69-72.

9 This situation was not peculiar to Canada. In a survey of international legislation concerning domestic workers written in 1934, Dr. Erna Magnus noted: "as regards statutory minimum wage-fixing machinery, most of the existing laws for this purpose exclude domestics servants from their scope." See: Dr. Erna Magnus, "The Social, Economic, and legal Conditions of Domestic Workers: 1 & 2" (1934) 30 International Labour Review 190-207 and 336-364.

10 Criminal Code, 1892, 55-56 Vict., c. 29, s. 184 (Dom.) - seduction of female passengers on board ship.

Existing histories of protective legislation[11] do not adequately explain why domestics, who comprised the majority of women workers during this period, were excluded from protection under the regime of labour law but were amongst a category of women specifically protected under immigration and criminal law. My research suggests that the more closely women conformed to a traditional reproductive role in their paid work, the less likely they were to be protected under labour law. In addition, state intervention in employment relations varied inversely with the likelihood of intervention encroaching on the "private domain" of the employing classes. Yet where domestics were viewed as potential mothers, they fell under the ambit of criminal legislation which was designed to protect the virtue of all potential mothers coming to Canada. Thus, although the state was willing to enact laws which would protect women as immigrants or workers in the "public sphere", it was unwilling to protect women as workers in private homes. Preserving the sanctity of the family - especially where it was an upper or middle class family - was a more pressing state concern than protecting women workers.

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11 See: Humphries, supra, note 6; Stewart, supra, note 7; Susan Lehrer, Origins of Protective Labor Legislation for Women, 1905-1925 (Albany: State University of New York Press, 1987); Jane Ursel, "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada" in James Dickinson and Bob Russell, eds., Family, Economy and State: The Social Reproduction Process Under Capitalism (Toronto, Garamond Press, 1984); Marianna Valverde, " 'Giving the Female a Domestic Turn': The Social, Legal and Moral Regulation of Women's Work in British Cotton Mills, 1820-1850" (1988) 21 Journal of Social History 4: 619-634.

The Role of Law

Domestic work also provides a site for investigating the role of law in constructing and regulating human activity. In what follows, I will examine the process by which regulatory mechanisms are established and maintained, the varied legal forms employed and the flexible application of those forms in specific historical context. An examination of domestic service reveals how certain forms of paid labour remained resilient to legal regulation over time. Domestic work also provides an opportunity to examine the way in which law reinforces the multiple divisions and interstices of sex, race and class within the work force.

The role of law is clearly linked to the particular state formation in which it operates, but any examination of the role of the capitalist state in relations of production and reproduction should be both specific and historical.[12] That is to say, a general theory about law in an abstract capitalist state should not be generated out of the role of law in a particular state at a particular time. Similarly, too specific an account of the role of law without reference to theory can obscure any analytical impact and render a project descriptive. In order to inform a legal project with both general theory and specific description, it is useful to distinguish between levels of analysis. An institutional analysis of law examines how the role of law in a given state is organized in concrete social formations. Events which appear contradictory at the level of legal theory can often be better understood when law is treated as an institutional formation.

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12 Jane Jenson, "Gender and Reproduction, or Babies and the State" (1989) 20 Studies in Political Economy 9-46, at 12-13.

The value of an institutional analysis is that it enables us to examine how legal relations operate and change over time.

In Canada, legal academics have been engaged in a heated debate concerning the role of law, its relationship to the state and its potential for effecting social transformation.[13] Some theoreticians have characterized law as an instrument of the state, reinforcing specific social and economic interests,[14] while others claim that although essential legal relations reflect and reinforce the economic structure of a society, some laws are relatively autonomous of the state.[15] Still others stress the ideological force of law and the power of legal discourse.[16] Rather than delving into the debate, I will argue that an analysis of the role of law cannot be established *a priori*;

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13 Most recently see: Stephen Brickey and Elizabeth Cormack, "The Role of Law in Social Transformation: Is a Jurisprudence of Insurgency Possible?" (1987) 2 Canadian Journal of Law and Society 97-119; Amy Bartholomew and Susan Boyd, "Toward a New Political Economy of Law" in Wallace Clement and Glen Williams, eds., The New Canadian Political Economy (Kingston and Montreal: McGill-Queen's University Press,1989); and, Judy Fudge, "What Do We Mean by Law and Social Transformation?" (1990) 5 Canadian Journal of Law and Society 47-69.

14 For an instrumental account of the role of law in the criminal context see: Robert Martin, "The Judges and the Charter" (1984) 2 Socialist Studies 66-83.

15 For a structural Marxist account of the role of law see: Harry Glasbeek & Michael Mandel, "The Legalisation of Politics in Advanced Capitalism: The Canadian Charter of Rights and Freedoms" (1984) 2 Socialist Studies 84-124; and, Alan Stone, "The Place of Law in the Marxian Structure-Superstructure Archetype" (1985) 19 Law and Society Review 1: 39-67.

16 For an examination of the relevance of ideology to legal theory see: Allan Hunt, "The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law" (1985) 19 Law and Society Review 11-37; and, Shelly Gavigan, "Law Gender and Ideology" in Anne Bayefsky, ed., Legal Theory meets Legal Practice (Edmonton: Academic Printing and Publishing, 1988).

instead, the extent to which law is instrumental, ideological or relatively autonomous of the state can only be theorized in a specific historical context. That is to say, the flexibility of law means that it may function instrumentally or symbolically, and its modalities may be coercive or ideological under specific historical conditions. My case study of domestic work illustrates that each of these different functions and forms of law can operate simultaneously. If, however, law is indeed relatively autonomous of the state, my research suggests that it is an unreliable institutional formation through which working people might seek social transformation. That is to say, while domestic workers did pursue legal avenues to change the conditions under which they lived, the promise of law was not always fulfilled for them. In part this is because law in practice did not always reflect law in the statute books.

By examining domestic work under two separate but related legal regimes - immigration law and labour law - reference must be made to a variety of different legal forms which may work at cross purposes or in conjunction. Specifically, I will be referring to judicial decision making, statute law, and bureaucratic policy-making and administration. I will consider the role of courts in regulating domestic service through an examination of both the common law of master and servant and master and servant legislation. The role of legislators will be examined in terms of the enactment of minimum wage statutes and immigration statutes. The role of bureaucratic policy-making and administration will be examined in terms of immigration law and policy, as well as the delegation of administering policy to female immigration reform societies.

I will proceed in my analysis of the role of law in constituting and regulating domestic workers by way of historical narrative. The narrative is indebted to a number of studies concerning domestic workers written in a variety of disciplines over the past

few years. These studies have focused on domestic workers in North America,[17] South America,[18] Africa[19] and Asia.[20] None of them, however, has placed domestic workers squarely in the context of the legal regimes which regulate their conditions of employment. By analyzing domestic work in the context of these legal regimes, I hope to make a useful historical contribution to the literature on the role of law as it has

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17 Faye Dudden, Serving Women: Household Service in Nineteenth-Century America (Middletown, Conn.: Wesleyan University Press, 1983); Elizabeth Fox-Genovese, Within the Plantation Household (Chapel Hill: The University of North Carolina Press, 1988); Evelyn Nakano Glenn, Issei, Nisei, War Bride: Three Generations of Japanese American Women in Domestic Service (Philadelphia: Temple University Press, 1986); David Katzman, Seven Days A Week: Women and Domestic Service in Industrializing America (New York: Oxford University Press, 1978); Phyllis Palmer, Domesticity and Dirt: Housewives and Domestic Servants in the United States 1920 -1940 (Philadelphia: Temple University Press, 1989); Judith Rollins, Between Women: Domestics and Their Employers (Philadelphia: Temple University Press, 1985); Donna Van Raaphorst, Union Maids Not Wanted: Organizing Domestic Workers 1870-1940 (New York: Praeger, 1988).

18 Ximena Bunster and Elsa M. Chaney, Sellers and Servants: Working Women in Lima, Peru (New York: Praeger, 1985); Elsa Chaney and Mary Garcia Castro, eds., Muchas No More: Household Workers in Latin America and the Caribbean (Philadelphia: Temple University Press, 1989).

19 Jacklyn Cock, Maids and Madams: Domestic Workers Under Apartheid (London: The Woman's Press, 1980 [revised 1989]); Karen Tranberg Hansen, Distant Companions: Servants and Employers in Zambia, 1900-1985 (Ithaca: Cornell University Press, 1989).

20 Kenneth Gaw, Superior Servants: The Legendary Cantonese Amahs of the Far East (Oxford: Oxford University Press, 1988); Olinda Pereira, ed., Domestic Workers Struggle for Life (New Delhi: C. B. C. I. Commission for Justice, Development and Peace, 1984).

developed to date. I also hope to add to the growing literature on domestic workers in Canada.[21]

In the ensuing chapters, I will discuss how the Canadian government's immigration policy and recruitment efforts reinforced the gendered nature of domestic work and influenced the national and ethnic composition of the domestic work force between 1867 and 1940. In a parallel narrative, I will trace changes in provincial labour legislation as they affected domestic workers, with particular reference to master and servant law and minimum wage legislation. Chapter One sets out a general demographic description of domestic workers both as women in the paid labour force and as immigrants to Canada. As such it provides the background information necessary to a discussion of the legal regulation of domestic work. Chapter Two traces the immigration policies of the Canadian government which designated domestic workers as a "desirable" category of immigrants and discusses why domestics were

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21 The literature includes work by: Sedef Arat-Koc, "In the Privacy of Our Own Home: Foreign Domestic Workers as the Solution to the Crisis in the Domestic Sphere in Canada" (Spring 1989) 28 Studies in Political Economy 33-58; Marilyn Barber, "The Women Ontario Welcomed: Immigrant Domestics for Ontario Homes 1870-1930" (1980) 72 Ontario History 148-172; Susann Buckley, "British Female Emigration and Imperial Development: Experiments in Canada, 1885-1931" (July 1977) 3 Hecate 2: 26-40; Agnes Calliste, "Canada's Immigration Policy and Domestics From the Caribbean: the Second Domestic Scheme" in Jesse Vorst et. al., eds., Race, Class, Gender: Bonds and Barriers: Socialist Studies, Series 5 (Toronto: Between the Lines, 1989) 133-165; Jackie Lay, "To Columbia on the Tynemouth: The Emigration of Single Women and Girls in 1862" in Barbara Latham and Cathy Kess, eds., In Her Own Right: Selected Essays on Women's History in British Columbia (Victoria: Camosun College, 1980); Genevieve Leslie, "Domestic Service in Canada 1880-1920" in Janice Acton et. al., eds., Women at Work in Ontario 1850-1930 (Toronto: Women's Educational Press, 1974); and, Barbara Roberts, " 'A Work of Empire': Canadian Reformers and British Female Immigration" in Linda Kealey, ed., A Not Unreasonable Claim: Women and Reform in Canada, 1880's - 1920's (Toronto: The Women's Press, 1979).

recruited in the first place. The gendered and ethno-centric biases inherent in the recruitment policies of the Canadian government are also outlined. The limited protections offered domestic workers under master and servant law are discussed in Chapter Three, both in terms of the common law and statutory law. Chapter Four describes government delegation of the administration of female immigration to private immigration reform societies, particularly with respect to the recruitment of domestic workers for Canada. Chapter Five traces the enactment of provincial minimum wage legislation and the consistent exclusion of domestic workers. It also documents the early efforts by domestics to unionize and lobby for inclusion under minimum wage laws.

Chapter 1

DOMESTIC WORK IN CONTEXT

Domestic workers were the largest category of paid female workers in Canada from 1871 to 1941. During the same period, they were the only category of female workers designated as "desirable immigrants" by the Canadian government for immigration purposes. Demographic studies clearly illustrate the importance of domestic workers in Canadian society as paid workers, yet despite their importance in the work force, they were not protected under the regime of labour law.

At the turn of the century, the term "domestic work" had a wide meaning; it referred to persons employed to perform household tasks, in a household setting, where they "lived-in".[1] As such, domestic work was related to, but distinct from, the type of unwaged work performed by female family members in their own homes. Although the household tasks themselves were similar, the relationship between those performing the work and those for whom it was performed differed. The nature of the difference was one of family status; where the work was performed for free, the domestic worker was almost always biologically related to the other occupants of the household, whereas in the case of paid domestic work, the worker was rarely related to other household members. This difference in relations was reflected in both social practices and legal regulation.

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1 My use of the term "domestic work" will conform to this general description. The term is not used in any uniform way in the historical material on which I rely, so I will attempt, where needed, to be precise.

Domestic work was, perhaps, the archetypal form of women's paid work in late nineteenth century Canada. The material conditions under which women worked and the prevalent ideology of the day, both reflected and reinforced the gendered nature of this work. It was removed from women's "natural" work only in so far as it was paid; otherwise the tasks performed were the reproductive tasks most women were expected to perform in their own homes.[2]

Domestic workers in Canada were not exclusively female. Men were employed as domestic workers, but they were given distinct titles and distinct tasks; they were generally employed in job categories which were traditionally identified as "male", such as butler, valet, groom, chauffeur or gardener. Although constituting personal service, men's work was of a nature that allowed them to be somewhat independent of the household and also gave them authority over the female servants. Traditionally "female" job categories included work such as nursemaid, ladies maid, parlour maid, scullery maid or cook. These different categories of workers are not distinguished in census materials,[3] but the data makes it clear that few men were

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2 As Karen Tranberg Hansen has shown in the case of Zambia, domestics in other parts of the world were, in some cases, almost exclusively male. It is therefore critical to be clear about the relationship between market conditions and ideologies of gender in theorizing domestic work. That is to say, there may be specific reasons in particular historical settings as to why men might be preferred over women as domestics. For example, men may be considered more reliable since they do not get pregnant. Karen Tranberg Hansen, Distant Companions: Servants and Employers in Zambia, 1900-1985 (Ithaca: Cornell University Press, 1989) at 17-25.

3 This is true except for the position of cook which was noted as a separate job class in the census of 1901. However no distinction is made between commercial cooks and those employed in private homes.

employed as domestic servants. Most households employed only one domestic and in most cases the domestic was female.

Historical records indicate that, in Canada, the most sought after domestic was a female "general servant".[4] She would be expected to care for the children and do the cleaning, dusting, laundry, ironing, cooking, baking and sewing. If she lived on a farm, she might also be allocated farm work. In all but the homes of the very rich, the maid would work together with her mistress.[5] The sexual division of labour broke down in the case of domestics employed on farms and in rural areas; where men were scarce because their paid work required them to leave home, "domestic work" was extended to include tasks, such as taking care of animals and harvesting, which would otherwise have been performed by a man.[6]

Given that women made up by far the largest percentage of the domestic work force, it is hardly surprising that domestic service was considered to be "women's

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4 National Council of Women, Women of Canada: Their Life and Work [1900] (reprinted 1975) at 412 and 422.

5 See generally: Georgina Binnie Clark, "Are Educated Women Wanted in Canada" (February - April 1910) The Imperial Colonist and Ella Sykes A Home-Help in Canada (London: G Bell & Sons, 1912) as quoted in Susan Jackel, ed., A Flannel Shirt and Liberty: British Emigrant Gentlewomen in the Canadian West 1880-1914 (Vancouver: University of British Columbia Press, 1982).

6 The acceptance and, indeed, requirement that women perform tasks which would otherwise be performed by men has received considerable attention in the context of female employment during war time. See: Elizabeth Mitchell, In Western Canada Before the War: Impressions of Early Twentieth Century Prairie Communities [1915] (Reprinted - Saskatoon: Western Producer Prairie Books, 1981); and, Ceta Ramkhalawansingh, "Women During the Great War" in Janice Acton et. al., eds., Women at Work in Ontario 1850-1930 (Toronto: Women's Educational Press, 1974).

work". However, even when the unreliability of the early census material is taken into account, the figures for women engaged in domestic service are perhaps higher than one would expect (see Table I). In 1871, 77.6% of all domestics were females and this figure remained more or less constant until the Depression. By the 1930's, domestic work had become an almost exclusively female enclave, with women comprising 94% of all domestic workers in 1931. The reasons for this rapid decline in male domestics remain somewhat obscure, but appear to be related to the shortage of male labour after the First World War and the subsequent preference given to hiring male employees in the manufacturing sectors. As women workers were made redundant by returning soldiers or economic depression, they relied on domestic work as an alternate form of employment while men took on better paying work in other sectors of the economy.

TABLE I

Statistics Relating to Women in Domestic Service* in Canada, 1871 - 1971

Year	No. of Female Domestics in Labour Force	Females as % of Total Domestics	Female Domestics as % of Female Labour Force	Female Domestics as % of Female Population	Female Labour Force as % of Female Population
1871	39499	77.6	-	2.2	-
1881	49345	78.5	-	2.3	-
1891	79473	80.7	40.5	3.3	8.3
1901	81493	83.7	34.2	3.1	9.1
1911	98128	78.1	26.9	2.9	10.8
1921	88825	77.7	18.1	2	11.5
1931	134043	94	20.1	2.6	13.5
1941	149057	95	17.9	2.6	14.8
1951	88775	89.1	7.6	1.2	16.8
1961	120392	88	6.8	1.3	19.5
1971	89290	93.5	3	0.8	27.8

* Changes in census terminology: from 1871-1921 "servants"; from 1931-1941 "domestic service; 1951 "hotel, cafe and private household workers"; 1961 "maids and related service workers"; 1971 "chambermaid & houseman", "babysitter", "personal service occupations".

Source: Census of Canada 1871 - 1971
1871 Census, Vol. II, Tables I and XIII; 1881 Census, Vol. II, Tables I and XIV; 1921 Census, Vol. IV, Table 1; 1931 Census, Vol. VII, Tables 1 and 40; 1941 Census, Vol. VII, Tables 1 and 4; 1951 Census, Vol. IV, Tables 1 and 11; 1961 Census, Vol. 3(1), Tables 1 and 17; 1971 Census, Vol. 3(1), Tables 1 Vol. 3(2) and 8.

Not only were most domestics women, but most women engaged in paid work were domestics. The census statistics indicate that at the turn of the century the large majority of women were employed as domestics. These figures, however, are likely to under-represent the numbers of women performing domestic work, since they do not account for unmarried female relatives who performed household chores in return for room and board. The importance of domestic work as a form of paid work for women cannot be overstated. Domestic work provided more women with employment than any other form of remunerated work in the early part of the century (see Table II). Over a third of the female labour force was engaged in paid domestic labour in 1901, and as late as 1941, 17% of all female employees were domestics.

TABLE II

Percentage of Canadian Female Workers in Predominantly Female Occupations,* 1891 - 1971

Year	Servants	Dressmakers & Seamstresses	Teachers	Office & Clerical Employees	Nurses	Saleswomen	As % of Total Female Workforce
1891	40.2	9.3	7.5	1.5	0.9	2.2	61.6
1901	34.3	13.5	13	3.7	0.1	1.2	65.8
1911	26.9	8.1	9.3	8.4	1.5	6.7	60.9
1921	18.1	3.7	10.2	16.1	4.3	7.4	59.8
1931	20.2	1.6	9.7	17.6	4.8	6.8	60.7
1941	17.9	1.3	7.7	18.6	4.6	6.8	56.9
1951	7.6	1.2	6.4	27.7	4.2	8.2	55.3
1961	6.8	0.9	6.7	28.9	4.7	7.6	55.6
1971	3	0.6	6.1	31.8	3.8	5.4	50.7

* Occupations in which 70% or more of the workers are women

Source: Census of Canada 1891 - 1971
1891 Census, Vol. II, Table XII; and Table 4.5 as quoted in Patricia Connelly, Last Hired First Fired (Toronto: The Women's Press, 1978) at 92-35.

The high proportion of the female labour force employed as domestics can be accounted for by examining the general employment patterns of Canadian women, and the specific economic and social conditions under which domestics worked. Although very few Canadian women were part of the paid force until 1941, their participation rate was gradually increasing (see Table 1). In 1891, women engaged in paid labour made up only 8.3% of the female population. By 1941 this figure had almost doubled, and 14.8% of the female population received remuneration for their work.

By the 1900's, upper and middle class women were forcing their way into the professions (see Table III).[7] These classes of women were also the early leaders and participants in a variety of women's organizations. Their public work was done on a largely voluntary basis, and was dependant on having "good help" at home to keep the private domestic sphere in order. It was these women who were particularly vocal in complaining about the dearth of domestic servants and played an active role in soliciting domestics from abroad.

Working class women were employed in increasing numbers in clerical and manufacturing work from the 1920's onwards (see Table II). These sectors were considered to be eminently preferable to domestic service in terms of privacy, free time and pay. In addition, women in these sectors were amongst the first to be unionized and to receive legislative protection in the form of a minimum wage. Clerical work

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7 See: Carol Lee Bacchi, Liberation Deferred? The Ideas of the English Canadian Suffragists 1877-1918 (Toronto: University of Toronto Press, 1983) at 15.

TABLE III

Numbers of Canadian Women in Selected Professional Careers, 1891 - 1971

Year	Justices & Magistrates	Lawyers & Notaries (a)	Physicians & Surgeons	Dentists (b)	Professors & College Principals (c)	Editors, Authors & Reporters (d)
1891	-	24	76	11	28	35
1901	-	10	54	23	47	52
1911	-	7	196	167	307	69
1921	2	64	152	32	223	248
1931	5	54	203	32	259	464
1941	1	129	384	45	277	714
1951	5	197	660	68	812	1621
1961	17	311	1455	235	2366	3313
1971	75	785	2890	305	3910	4160

Source: Census of Canada 1891 - 1971
1891 Census, Vol. II, Table XII; 1911 Census, Vol. VI, Tables 1 & 4;
1921 Census, Vol. IV, Table 2; 1931 Census, Vol. VII, Table 40; 1941 Census, Vol. VII, Table 4;
1951 Census, Vol. IV, Table 11; 1961 Census, Vol. 3(1), Table 17; 1971 Census, Vol. 3(2), Table 8.

(a) Census terminology : ' lawyers and other legal pursuits' - probably reflecting office clerks.
(b) The figure for 1911 is probably an error.
(c) Census terminology: 'professors and college principals' in 1891, 1901, 1941, 1951 & 1961; 'professors & lecturers' in 1911 & 1921; and, 'university teachers' in 1971.
(d) Census terminology: 'editors & reporters' in 1891, 1901,1911, 1921; 'authors, editors' & journalists' in 1931, 1941, 1951 and 1961; 'writers and editors' in 1971.

attracted increasing numbers of female employees from 1911 to 1921 and from 1941 to 1951, both being periods of war time employment opportunities for women.[8]

Most domestics were young single women between the ages of 15 and 24. They were often immigrants or from rural backgrounds with little in the way of education. Very few domestics were unionized and domestics were excluded from

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8 For a discussion of the rise of female employment in clerical work in Canada see: Graham Lowe, Women in the Administrative Revolution (Toronto: University of Toronto Press, 1987) at 50-51.

almost all protective labour legislation. Although domestics came under the purview of provincial master and servant legislation, preliminary research indicates that few domestic servants were able to use these statutes effectively to enforce their rights.

The numbers of women engaged in domestic work did not remain constant, but instead, changed in response to economic and social conditions. From 1911 to 1920, there was a slight decrease in the numbers of women engaged in domestic service. This can be explained partly by the advent of the First World War and the subsequent increased opportunities for women in jobs previously held by men. Also this period marked the transition from "live-in" maids to "live-out" maids - although the maids performed similar work, they no longer lived in the same house as their employer. In addition, there were also increased opportunities for women to perform traditional domestic work outside the home; laundries were opening in greater numbers, and milliners and seamstresses were setting up shop. During the Depression, however, the numbers of domestics increased once again as women were forced to rely on domestic service to feed their families when other sources of work became unavailable.

By 1940 there was a change in women's work patterns; of particular significance was the increase in labour force participation by women in occupations other than domestic work - occupations where there was some degree of union protection or legislative regulation of working conditions. Domestics were the only group of female workers who were explicitly excluded from state efforts to regulate female work, despite concerted attempts by domestics both to unionize and lobby government for legislation enhancing working conditions. At law, domestic work was becoming increasingly anomalous: the legal relationship between a domestic and her employer had all the contractual obligations of other paid work but none of the benefits.

From a strictly legal point of view domestic work was not desirable, and given the social conditions under which it was performed it was even less attractive for working women.

Domestic workers were, however, singled out as "desirable" and worthy of considerable attention under immigration law by virtue of their race and ethnicity. Race and ethnicity were significant for two related reasons: first, a disproportionately high number of domestics were immigrants; and second, the "desirability" of an immigrant was, in large measure, based on the immigrant's ethnic and national origin. Although this is true of a number of other Canadian workers, both male and female, the particular way in which female domestics were selected and brought to Canada is unique, and marks them as a group whose working identity was constructed by the state. As the historical narrative unfolds, it will become clear that under the regime of immigration law, female domestics were subject to constant state scrutiny, in marked contrast to their treatment under the regime of labour law.

Immigrants accounted for about one third of the female domestic workers in Canada until the outbreak of the Second World War, the remaining two thirds included a small number of Blacks (mostly former slaves)[9] as well as the Canadian-born English

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9 Slavery in Upper Canada was abolished, or, more accurately, phased out, by virtue of An Act to Prevent the Further Introduction of Slaves, and to Limit the Term of Contracts for Servitude Within this Province, 1793, 33 Geo. III, c.7 (U. C.). The Act provided that no "negro, or other person who shall come or be brought into this province after the passing of this act, be subject to the conditions of a slave". Section II, however, stated "nothing herein contained shall extend, or be construed to extend, to liberate any negro or other person subjected to such service ... or to discharge them ... from the possession of the owner ... who shall have come or been brought into this province". For a detailed study of slavery in Upper Canada see: W. R. Riddell, "The Slave in Upper Canada" (October 1919) 4 The Journal of Negro History 4 : 372-411.

and French (see Table IV). Of these female immigrants, British subjects were the preferred category until the 1940's, representing 22.4% of all female domestics in 1921 and 9.1% in 1941. European female domestics were brought into Canada in increasing numbers at the turn of the century - the only period in which low entry statistics were recorded was during the Second World War. Asian immigration remained negligible throughout the period.

TABLE IV

Percentage of Female Domestic Servants in Canada by Nativity Group, 1921 - 1971

Year	Canada	British Isles	British Possessions	United States	Europe	Asia	Other Countries	Total
1921	67.7	22.1	1.3	4.2	4.2	0.1	0.09	99.7
1931	68	18.2	1	2.8	9.6	0.1		99.7
1941	84.4	9.1	*	2.2	4.3	0.08		100.1
1951	78	9.3	*	1.8	10.4	0.1		99.5
1961	73.2	7.9	*	1.8	15.6	0.4		98.9
1971	80.5	5.3	*	1.7	8.9	0.5		96.8

* no separate category after 1931

Source: Census of Canada 1921 - 1971
1921 Census, Vol. IV, Table 6; 1931 Census, Vol. VII, Table 60; 1941 Census, Vol. VII, Table 26;
1951 Census, Vol. IV, Table 12; 1961 Census, Vol. 3(1), Table 21; 1971 Census, Vol. 3(3), Table 4.

The ethnic and national origin of these immigrant female domestics reflects the nation building immigration policy of the Canadian government in the period from 1870 to 1930. British female domestics were brought to Canada to redress the gender imbalance in western Canada and also to be the wives of prairie farmers. Once the need

for British wives became less pressing, immigration was opened up to encourage European women to emigrate, so as to serve in the homes of the rich. Asian women were not welcomed, however, because the Canadian government had an explicit policy of excluding Asians from Canada. Asian women were in some ways of more concern to Canadian immigration officials than their male contemporaries because of thier child-bearing potential. The immigration figures for female domestics clearly reflect the ethno-centric policies of the Canadian government.

The female domestic work force was constantly in flux. Women moved in and out of domestic work in response to other interests and pressures, such as marriage or employment opportunities elsewhere. Many were simply unwilling or unable to endure the working conditions of domestic service: long hours; poor wages; little privacy; and, the social inferiority which came with performing "degrading" work. Immigration was therefore used as a means to constantly replenish the dwindling supply of domestic servants.

A disproportionate number of female domestics in Canada was to be found in Quebec and Ontario; however, the policy of encouraging domestics to emigrate was one of the means used to increase the female population in the west from 1871 to 1931 (see T..bles V and VI). The female domestics recruited from the British Isles were encouraged to settle in Ontario and the western provinces where the population was small and where there was a surplus of single males in need of help at home and, ultimately, in need of wives (see Table VI). European and Asian domestics were sent instead to major urban centres where they would serve in the homes of the rich.

TABLE V

Numbers of Female Servants by Province, 1871 - 1951

Year	1871	1881	1891	1901	1911	1921	1931	1941	1951
Newfoundland	*	*	*	*	*	*	*	*	3120
Nova Scotia	5009	5681	10043		7162	7031	6748	9534	5822
New Brunswick	3779	3552	5609		4191	4491	5787	7185	4607
P.E.I.	*	1330	1650		1007	973	980	1593	864
Quebec	13996	16542	19432		20184	23112	41188	52375	26424
Ontario	16715	21635	33706		30692	25415	39327	40129	28591
Manitoba	*	471	1931		5905	5075	10120	10865	4366
Saskachewan	*	*	*		4275	5441	9409	11208	4701
Alberta	*	*	*		2803	3513	6596	8277	5174
British Columbia	*	90	823		3120	3067	6544	7833	5106
Territories	*	40	458						
Canada	39499	49345	77644		79606	78118	126699	148999	88775

* Not included in census materials prior to designation as a Province
no figures available for 1901

Source: Census of Canada 1871 - 1951
1871 Census, Vol. II, Table XII; 1881 Census, Vol. III, Table XII; 1891 Census, Vol. II, Table XII; 1911 Census, Vol. VI, Table 5; 1921 Census, Vol. IV, Table 2; 1931 Census, Vol. VII, Table 50; 1941 Census, Vol. VII, Table 12; 1951 Census, Vol. IV, Table 11.

TABLE VI

Numbers of Domestics in Major Canadian Cities, 1871-1951

Year	Halifax	Montreal	Toronto	Winnipeg	Vancouver
1871	413	3658	3877	-	-
1881	647	5898	2888	-	14
1891					
1901					
1911	1185	5962	6534	2281	1233
1921	1094	6809	5598	1983	1024
1931	1244	13111	10758	4782	3199
1941	1573	13673	7854	4013	3350
1951	1122	6557	5149	1924	2212

Numbers of Immigrant Domestics in Major Canadian Cities, 1911

	Halifax	Montreal	Toronto	Winnipeg	Vancouver
Canadian	884	3952	2759	372	182
Immigrant	301	2010	3775	1909	1051
Total	1185	5962	6534	2281	1233

no figures available for 1891 or 1901

Source: Census of Canada 1871 - 1951
1871 Census, Vol. II, Table XIII; 1881 Census, Vol. II, Table XIV; 1921 Census, Vol. IV, Table 5; 1931 Census, Vol. VII, Tables 41 and 43; 1941 Census, Vol. VII, Tables 7 and 9; 1951 Census, Vol. IV, Table 6;

Female immigrant domestic workers came to Canada for a variety of personal reasons: they hoped to "better themselves" by getting married; they wanted to escape bad relationships and "start over"; and, they were in search of alternate employment opportunities, especially higher wages. Whatever the personal reason, the single most important factor allowing them to come to Canada was the financial assistance provided by the government to facilitate their passage across the Atlantic. For Asian and Caribbean domestics, however, the reasons for coming to Canada were closely linked to a social history of colonization. That is to say these women had either escaped to Canada from conditions of slavery (as in the case of run-away slaves prior to the American civil war) or they were brought to Canada under the auspices of neo-colonial labour arrangements.[10]

In summary, during the period from 1870 to 1940, immigrant domestics were specifically selected females from working class families, whose speedy and safe arrival in Canada was encouraged through policy decisions and legislative enactments.[11] Upon arrival at their place of work, they were left without legal recourse and it was not until the 1980's that they received any comprehensive form of legislative protection under provincial labour laws.

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10 Agnes Calliste, "Canada's Immigration Policy and Domestics From the Caribbean: the Second Domestic Scheme" in Jesse Vorst et. al., eds., Race, Class, Gender: Bonds and Barriers: Socialist Studies, Series 5 (Toronto: Between the Lines, 1989) 133-165.

11 Examples of the legislation and policy decisions assisting domestics include provisions whereby they were exempted from the "head tax" payable on arrival, they were paid a bonus to come to Canada and in some cases they received money in the form of assisted passage to pay for their journey out (See Chapter Two infra).

Chapter 2

WELCOMED WITH OPEN ARMS

Immigration law has been used extensively by modern states to regulate the labour force. This has been achieved through facilitating the departure of certain workers by means of emigration or deportation and encouraging the entry of workers through immigration and colonization. Regulation of this type is both "visible" in the form of statutory enactments, such as Immigration Acts or Naturalization Acts, and "hidden" in the form of policy decisions, such as recruitment of immigrants by occupation or place of birth.

In order to understand both the visible and hidden elements of immigration law, and hence its impact on labour, it is critical to investigate the relationship between statute law and departmental policy. An examination of statutory law gives a general sense of governmental policy in immigration matters, but practical application of the law was not always consistent, especially with respect to enforcement of statutes. This flexibility in application allowed the government to respond to economic, political and social conditions, such as times of economic depression or political agitation.

For the most part, historians of Canadian immigration law have focussed their work on the study of statutory enactments, particularly in terms of deportation.[1]

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1 Donald Avery, 'Dangerous Foreigners': European Immigrant Workers and Labour Radicalism in Canada 1896-1932 (Toronto: McClelland & Stewart, 1979); Shin Imai Canadian Immigration Policy: 1867-1935 (L.L.M. thesis, Osgoode Hall Law School, 1983) [Unpublished]; Barbara Roberts, 'Shovelling Out the Mutinous': Political Deportation from Canada Before 1936"

Policy decisions facilitating the entry of certain workers into Canada, as recorded in departmental memos or letters between immigration officials, have received less attention. Yet the federal government went out of its way to en urage particular workers to settle in Canada. The immigration policies of the government were designed in response to demands by particular interest groups such as female immigration reformers, the clergy and business associations; but these policies were also vigorously opposed by other interest groups such as labour unions and social reformers aligned to the eugenics movement. Although the demands by these organizations were not always consistent regarding all categories of immigrants, their demands regarding specific immigrants remained remarkably consistent over time.[2]

Immigration law and practice provided the vehicle through which government action encouraging immigration by particular workers was achieved. Immigration law functioned as a means of reproducing a working population in a new locale by importing working classes with an established sexual division of labour. At the same time, immigration provided certain workers with the means of escaping poverty,

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(1986) 18 Labour/Le Travail 77-110; Barbara Roberts, From Whence They Came: Deportation From Canada 1900-1935 (Ottawa: University of Ottawa Press, 1989); Reginald Whitaker, Double Standard: The Secret History of Canadian Immigration (Toronto: Lester & Orpen Denys, 1987).

2 For example, organized labour (comprised mostly of male workers) was continually critical of the importation of pauper labour (fearing that their jobs might be undercut by cheap competition from foreign workers) but was largely indifferent to the immigration of domestics. On the other hand, female reformers were preoccupied with the safety of female domestic servants while travelling, but were indifferent to the safety of farm wives travelling with their husbands.

political or religious persecution and domestic turmoil.[3] Opportunities for class advancement, however, were not necessarily mirrored by changes in gender relations - the immigrant departed, arrived and settled as a gendered subject.[4]

By focussing my inquiry on the legal constitution of immigrant women as domestic workers, I hope to expose the interplay between those dominant interests in Canadian society, which reflected relations of class, gender and race, and the legal regulation of the work force. In doing this, I am mindful that many women came to Canada to "better" themselves; but the extent to which their life circumstances improved after immigration is directly linked to the legal regulation of their work upon settlement. In fact, my research suggests that upon immigration, social relations were reproduced rather than radically changed.

Historians have argued that efforts to recruit domestic workers, combined a peculiar mixture of "cultural and social imperialism"[5] as well as middle-class bourgeois self-interest. Barbara Roberts argues that the policy of recruiting domestics was imperialistic in the sense that it involved careful selection of female immigrants of suitable stock to "become and to produce the future citizens of the nation and of the

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3 Joy Parr, "The Skilled Emigrant and Her Kin: Gender, Culture, and Labour Recruitment" (1987) 68 Canadian Historical Review 4: 529-551, at 530.

4 Betty Bergland, "Immigrant History and the Gendered Subject: A Review Essay" (1988) 8 Ethnic Forum 2: 24-39.

5 Barbara Roberts, " 'A Work of Empire': Canadian Reformers and British Female Immigration" in Linda Kealey, ed., A Not Unreasonable Claim: Women and Reform in Canada, 1880's - 1920's (Toronto: The Women's Press, 1979) at 188. See also Susann Buckley, "British Female Emigration and Imperial Development: Experiments in Canada, 1885-1931" (July 1977) 3 Hecate 2: 26-40.

empire".[6] Her notion of imperialism is premised on the claim that British women were sent to the colonies to plant the seeds of British morality in Canadian homes, and thereby safeguard the future of the British Empire.

> If the family were the cornerstone of the nation the woman's role as wife and mother was the cornerstone of the family and thus key to building the nation.[7]

Suzann Buckley adds that British and Colonial imperialists encouraged the emigration of domestics as the best means of achieving this strategy of empire-building. In their capacity as domestic servants, British women would "acquire training which would be useful when they eventually became wives and mothers".[8]

The notion of imperialism employed by Roberts and Buckley is also helpful as a way of examining the significance of race and ethnicity in Canadian immigration policy. The Dominion government was anxious to encourage the growth of British families in Canada. This policy meant selecting predominantly British women (or at the very least European women) to emigrate and marry British male prairie settlers, the policy also meant actively discouraging the inter-marriage of White settlers and Native women.

The inter-marriage of Native and Mixed-blood women with White fur traders had been an accepted social phenomenon in the west until the 1860's. However, as the fur-trade declined and was replaced by a settled agrarian order, the choice of brides

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6 Roberts, 'A Work of Empire', supra, note 5 at 189.

7 Ibid. at 186.

8 Buckley, supra, note 5 at 27.

changed.[9] Whites, particularly clergy men and British women, considered Native women to be unsuitable wives for British men. They believed that Native women would pass on to their children Native rather than British traditions and, as such, were unreliable as "mothers of the Empire". Law, as embodied in government policy, reflected this change in social relations. Marriages between Whites and Natives were the subject of judicial scrutiny, especially with respect to inheritance arrangements.[10] At the same time, the government actively encouraged the immigration of single White women as domestics and brides.

Cultural and social imperialism also explains how notions of "womanhood", "domesticity" and "class status" might be transferred from one cultural context to another through what might be called "the ideology of Empire".[11] After all, a specific type of potential mother was being recruited - a working class mother. Female immigrant domestic workers had a distinct (and inferior) class position than that of their masters since they were working in the homes of the upper or middle classes, or directly for a future mate. Domestic service, perhaps more than any other type of work, symbolized class divisions. Domestics were status symbols of the ruling class, since to employ a servant was an important indicator of upward mobility. The symbolic nature of service in class relations has not disappeared, as post-war

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9 Sylvia Van Kirk, " Many Tender Ties: Women in Fur Trade Society, 1670-1870 (Winnipeg: Watson & Dwyer Publishing Ltd., 1980) at 240.

10 Ibid. at 241.

11 See also E. Hobsbawm, "Mass-Producing Traditions: Europe, 1870 - 1914" in E. Hobsbawm & T. Ranger,eds., The Invention of Tradition (Cambridge: Cambridge University Press, 1983).

immigration policy illustrates, when no longer recruited as wives or mothers, women continued to be recruited as servants.[12]

Roberts' and Buckley's notion of imperialism does not, however, explain the tension between interests in quality and quantity in the recruitment efforts of the Canadian government, nor does it explain the legal ambivalence towards female protection - why were the protections offered to female immigrants abandoned once the "mothers of the Empire" reached Canada? In short, "imperialism" alone does not adequately explain the relationship between Canadian immigration policy and labour legislation as regulatory mechanisms in the case of domestic work.

In order to explore these tensions further it is necessary to examine in some detail the post-Confederation immigration policy of the Dominion Government. This investigation reveals that an "ideology of domesticity" informed the immigration practices of the Dominion government.[13] This "ideology of domesticity", intimately connected with an "ideology of privacy" in employment and family matters, helps to explain the apparent contradiction with regards to female protection under immigration and labour laws. According to the logic of "domesticity" a woman's "natural place" was within the family, where she would be cared for - hence no need for state intervention. Thus, provided domestics could be brought safely to their new homes,

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12 Sedef Arat-Koc, "In the Privacy of Our Own Home: Foreign Domestic Workers as the Solution to the Crisis in the Domestic Sphere in Canada" (Spring 1989) 28 Studies in Political Economy 33-58; Agnes Calliste, "Canada's Immigration Policy and Domestics From the Caribbean: the Second Domestic Scheme" in Jesse Vorst et. al., eds., Race, Class, Gender: Bonds and Barriers: Socialist Studies, Series 5 (Toronto: Between the Lines, 1989) 133-165.

13 Catherine Hall, "The Early Formation of Victorian Domestic Ideology" in Sandra Burman, ed., Fit Work For Women (London: Croom Helm, 1979).

their welfare was no longer a pressing state matter, since they would be nurtured within "the family". In fact, were the state to intervene, it would disturb the logic of "domesticity" by suggesting the possibility that the family might not be a safe (and hence "natural") place for women. It is only by linking the ideology of "domesticity" with the state's material interest in furthering a particular form of social and biological reproduction that the Canadian government's immigration policy can be explained.

In the rest of this Chapter, I will attempt to explore the contradictions in state policies regarding immigrant domestic workers. My focus will be on the tension between the "quantity" and "quality" of immigrants in the context of female protection under immigration law.

Canadian Immigration Policy 1870-1940: "quantity" v. "quality"

Immigration to British North America was already a long-established practice by the time of Confederation, but immigration policy was "unorganized and uncontrolled".[14] In Upper Canada, a land grants policy had been in place for many years, but these lands were usually offered to friends of government officials, to loyalists after 1776, and to soldiers who had served in various wars, including the war of 1812. Although much crown land was alienated, it often remained uncultivated and unsettled.[15] Absentee land speculators also impeded settlement in New Brunswick

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14 Norman Macdonald, Canada Immigration and Colonization 1841-1903 (Toronto: Macmillan, 1966) at 90.

15 Helen Cowan, British Emigration to British North America (Toronto, University of Toronto Press, 1961).

and Nova Scotia. In addition, the arrival of large numbers of indigent Irish refugees in the late 1840's resulted in a landing tax being levied on all immigrants, discouraging them from settling in the Maritimes and forcing them inland.[16] Until 1870, Manitoba and the North-West remained in the hands of the Hudson Bay Company as fur-trade territory. This area had been relatively free of settlers, except in small communities such as Red River and Vancouver Island.[17]

The newly formed Dominion government was, however, preoccupied with promoting agrarian settlement in the west. This entailed both emigration and colonization - that is to say, transferring people of similar backgrounds and settling these select emigrants on designated lands. In the interests of rapid settlement a free grants policy was adopted in the west under the Dominion Lands Act of 1872, and the policy was advanced through the building of private railways in the 1870's and the completion of the Canadian Pacific Railway in the early 1880's. It was only in the 1930's that "the Purposes of the Dominion" with respect to settlement were deemed to have been achieved.[18]

The role of law in the process of colonizing and settling Canada was brashly instrumental. The alienation of Crown lands, seized from Native Peoples or obtained through treaty, provided the necessary land base for settlement. The remaining task was to organize an efficient settlement programme. Confederation, in effect, provided

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16 Macdonald, supra, note 14 at 154-159.

17 Ibid. at 168.

18 Chester Martin, "Dominion Lands" Policy (Toronto: McClelland & Stewart, 1973) at 227.

this opportunity and the Canadian constitution was drafted to both centralize the process of immigration and co-ordinate information gathering regarding immigrants and immigration trends. Under section 95 of the British North America Act,[19] immigration was deemed to be the subject of concurrent jurisdiction for the provinces[20] and the federal government. The arrangements between the Dominion and provinces were spelled out in detail in An Act Respecting Immigration and Immigrants.[21]

In many ways, the Immigration Act was a codification of policies and practices which already existed prior to Confederation; however, after 1867 it was the Dominion government which framed and carried out these policies. The preamble to the Act provided for provincial governments to "determine their policy concerning the settlement and colonization of uncultivated lands" and to "appoint agents in Europe and elsewhere as they may think proper, who shall be duly accredited by the Canadian Government, and also agents in their own Provinces". The federal government undertook to maintain immigration offices in Britain and Europe as well as various cities within Canada, and over time immigration became an exclusively federal affair.[22]

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19 The British North America Act, 1867, 30 & 31 Vict., c. 3 (Dom.).

20 Under s. 5 of The British North America Act, Canada was divided into four provinces: Ontario, Quebec, Nova Scotia and New Brunswick. Subsequently, six other provinces were admitted into the Union: Manitoba 1870; British Columbia 1871; Prince Edward Island 1873; Alberta and Saskatchewan 1905; Newfoundland 1949.

21 An Act Respecting Immigration and Immigrants, 1869, 32-33 Vict., c.10, (Dom.).

22 This is reflected in the Federal Ministries presiding over immigration: from 1867-1892 immigration was in the hands of the Ministry of Agriculture (during the height of agrarian settlement activity); from 1892-1917 immigration was in

The preamble to the Immigration Act reflected the persistent concern of the federal and provincial governments with low White population levels in Canada as a whole, but particularly in the western regions where land had only recently become available for settlement. Rapid territorial expansion of the Dominion of Canada with the addition of new provinces and territories and the seizure of Indian lands, corresponded to a growing urgency in the government's desire to settle the country. In addition, there was considerable fear of American expansion, and so bodies of British stock were needed to populate this newly acquired territory and immigration policy provided a means of obtaining them.

The use of immigration policy as a device to increase the White population was fraught with difficulty, in particular as expressed in the tension between an interest in the "quantity" and the "quality" of immigrants. Correspondence between the High Commissioner in London and the Canadian Minister of the Interior refers, year after year, to the need for promoting the "preferred classes" and the need to dissuade "undesirables":

> Every endeavor has been made to discourage unsuitable emigration and the public are beginning to understand clearly, from frequent reiteration of the facts, the classes which are required in the Dominion and which may hope to succeed; and further, that intending emigrants who have been pauperized, or who are tainted with crime, or who do not possess thoroughly satisfactory characters, and a capacity for hard work will not receive any

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the hands of the Ministry of the Interior; and finally in 1918 a Department of Immigration and Colonization was formed.

> encouragement but decided discouragement from the officers of your Department.[23]

"Quality control" was reflected in a series of amendments to the Immigration Act by which certain types of immigrants were prevented from entering Canada or were deported after they arrived. In the period between 1869 and 1910, restrictions were imposed on the entry of immigrants classified as physically or mentally disabled, diseased, paupers, criminals, prostitutes, pimps, and political subversives.[24] These same classes of people were subject to deportation under the provisions of the Immigration Acts of 1906 and 1910.[25]

Historians have shown that deportations were uneven and coincided with economic or political upheaval. Selective enforcement of the Immigration Act served two purposes: on a symbolic level immigration laws suggested that Canada wanted as citizens immigrants of the "best" types, further implying that Canada had virtuous citizens who might be contaminated by the "undesirables"; on an instrumental level, the Act provided a legitimate means, during difficult times, to rid Canada of "trouble makers" or extra mouths to feed. There was, however, no need to enforce the Acts

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23 J. D. Cameron The Law Relating to Immigration, (D. Phil. thesis, University of Toronto, 1943) [Unpublished] - Vol. II, Book II, Departmental Reports 1867-1917: Report of the High Commissioner for Canada, Sir Charles Tupper, (1888), Appendix J, 1887, at 2.

24 An Act Respecting Immigration and Immigrants, 1869, 32-33 Vict., c.10 (Dom.) and amendments thereto.

25 An Act Respecting Immigration and Immigrants, 1906, 6 Edw. VII, c.19 (Dom.) and An Act Respecting Immigration and Immigrants, 1910, 9-10 Edw. VII, c. 27 (Dom.).

rigorously during times of prosperity and consequently many so called "undesirables" managed to make their way into Canada.

Pauper emigration had been the subject of serious public concern in Canada as early as the 1830's.[26] Emigration provided a means for the British Isles, and Ireland in particular, to remove its "surplus" or "redundant" population; but these settlers were not welcomed by Canadians who feared they would bring disease, crime and disorder. The regulation of pauper immigration was achieved in various ways. Immigrants were sometimes required by law to possess money upon arrival in Canada, thus discouraging paupers from setting out.[27] If they arrived without money, or if they became a "public charge" during times of economic crisis, they were then deported.[28]

Immigrants who arrived in less than perfect physical condition were similarly frowned upon.[29] There was a perception amongst social reformers that immigrants who were physically disabled would contribute to "race degeneracy" in Canada.

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26 R. Braehre, "Pauper Immigration to Upper Canada in the 1830's" (1981) 14 Social History 339-367.

27 These requirements were usually made in times of economic crisis: eg, 1880 and 1908-1910.

28 Deportations peaked during four periods 1908-09, 1913-14, 1921-24 and 1929-30. The major reason provided justifying deportation was "public charge". There is nothing to suggest that critics of pauper immigration were any more articulate or persuasive during these periods than at any other time. It is of interest to note, however, that these periods coincided with periods of severe economic depression in Canada. Roberts, From Whence they Came, supra, note 1 at 47-8.

29 Barbara Roberts, "Doctors and Deports: The Role of the Medical Profession in Deportation Policy and Practice, 1900-1936", (1987) 18 Canadian Ethnic Studies 3: 17-36; and, Alan Sears, "Immigration Controls as Social Policy: The Case of Canadian Medical Inspection 1900 - 1920" (Autumn 1990) 33 Studies in Political Economy 91-112.

Consequently, the entry of such emigrants was monitored, and those suffering from diseases (as determined by medical inspections) were often deported. Medical causes accounted for deportation in almost all cases of deportation until 1909.[30]

The provisions of the Immigration Act regarding political subversives were drafted in response to working class militancy in the late 1890's, the rise of communism in the Soviet Union in 1917, and the Winnipeg General Strike of 1919.[31] The changes in the Immigration Act reflected the growing perception of a danger to the state through political activity. Initially, the Act only provided for deportation of those who "advocated overthrow by force or violence of constituted law and authority".[32] In 1919, however, the purview of section 41 was expanded to include any person who was "a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government."[33] This paved the way for extensive deportations of socialists and communists in the 1930's.

Other immigrants, particularly the Chinese, were designated as "undesirable" on the grounds of race. From 1885 to 1945, Chinese immigration was restricted by a heavy head tax payable on each immigrant[34] and later by further amendments to the

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30 Roberts, From Whence they Came, supra, note 1 at 46-7.

31 See: Roberts, 'Shovelling Out the Mutinous', supra, note 1.

32 An Act Respecting Immigration and Immigrants, 1910, 9-10 Edw. VII, c.27, s. 41 (Dom.).

33 An Act Respecting Immigration and Immigrants, 1919, 9-10 George V, c.25, s. 41 (Dom.).

34 The Chinese Immigration Act, 1885, 48-49 Vict., c.71 (Dom.) a head tax of $50 was required under s.4 ; The Chinese Immigration Act, 1900, 63-64 Vict.,

Chinese Immigration Act such that the limited categories for entry virtually excluded all Chinese immigrants.[35] In addition, Chinese immigrants were required to have large sums of money upon landing, effectively excluding all but the very rich.[36] Chinese domestic servants were the only group of female domestics whose entry into Canada was not actively encouraged by the Canadian government.[37]

These regulatory policies had the support of many elements of Canadian society, including labour organizations and social reformers. Their interests in the regulation of the work force through the exclusion of "undesirable" immigrants under immigration law has received considerable attention elsewhere.[38] My focus will be on classes of immigrants considered "desirable", the conditions of this "desirability", and the recruitment policies and legislative means pursued to encourage their emigration.

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c.32 (Dom.) the head tax was raised to $100 under s.6; The Chinese Immigration Act, 1903, 3 Edw. VII, c. 8 (Dom.) the head tax was raised once more to $500 under s.6.

35 The Chinese Immigration Act, 1923, 13-14 Geo. V, c. 38 (Dom.). The restriction on Chinese immigration has received considerable scholarly attention - see particularly: Imai, supra, note 1; Peter Ward, White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia (Montreal: McGill Queen's, 1978); John Munro, "British Columbia and the "Chinese Evil": Canada's First Anti-Asiatic Immigration Law" (November 1971) 6 Journal of Canadian Studies 4 : 42-51; also a special issue of Canadian Ethnic Studies published in 1987.

36 For example: Asiatics required to have $200 upon arrival Order-in-Council, P.C. 1255, dated 3 June, 1908; Asiatics required to have $500 upon arrival Order-in-Council P.C. 32, dated 7 January, 1910; Chinese merchants required to have $5000 upon arrival Order-in-Council P.C. 840, dated 8 March, 1921.

37 See: Tamara Adilman, "A Preliminary Sketch of Chinese Women and Work in British Columbia 1858-1950" in Barbara Latham & Roberta Pazdro, eds., Not Just Pin Money (Victoria: Camosun College, 1984).

38 See in particular Roberts, From Whence They Came, supra, note 1, and additional sources cited in her bibliography.

The Desirable Classes

Farm families and single male farm labourers along with single female domestics constituted the "preferred immigrants". In fact, the Dominion Government's London Immigration Agency reported in 1879:

> The efforts of this agency have been directed to sending out the classes of emigrants most welcomed. Capitalists who may invest in Canadian securities or in agricultural pursuits. Tenant farmers, female domestic servants; no encouragement is afforded to the indigent or unproductive classes.[39]

Female domestic servants ranked amongst the group of preferred immigrants throughout the period from 1870 to 1945. They were the only class of exclusively female workers actively recruited by the federal and provincial governments during this time. Historical accounts indicate that domestics were recruited to Canada for two primary reasons: to fill a shortage in the supply of domestic servants in wealthy Canadian homes, and to provide a supply of wives for Canadian men, particularly those settling in the prairie regions.[40]

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39 Report of London Agency (England) For 1879, in Cameron, supra, note 23, Appendix J, 1879, at 2.

40 Genevieve Leslie, "Domestic Service in Canada 1880-1920" in Janice Acton et. al., eds., Women at Work in Ontario 1850-1930 (Toronto: Women's Educational Press, 1974) at 107. See also Marilyn Barber, "The Women Ontario Welcomed: Immigrant Domestics for Ontario Homes 1870-1930" (1980) 72 Ontario History 148-172; and Jackie Lay, "To Columbia on the Tynemouth: The Emigration of Single Women and Girls in 1862" in Barbara Latham and Cathy Kess, eds., In Her Own Right: Selected Essays on Women's History in B.C. (Victoria: Camosun College, 1980).

Upper class women's organizations were constantly complaining about the short supply of domestics. In 1900, the National Council of Women noted:

> There is at present a deplorable discrepancy in the immigration of the sexes, the number of the men being double that of the women; this, in spite of the fact that unemployed women are unknown, and from Vancouver to Halifax the same complaint is urged - that there are not enough women either to make wives for our settlers or to supply service in our homes.[41]

The immigration of single women to Canada was left largely in the hands of these private women's organizations until the 1920's. The organizations accepted the responsibility for administering the immigration of domestics particularly in terms of selection and care of immigrants. They also lobbied the government for financial support. Their efforts to procure domestics will be examined in more detail in Chapter Four.

The efforts by male settlers to secure domestics as future wives were encouraged by the clergy and other social reformers, and were actively supported by the government. Various private schemes were put into effect. A particularly notorious scheme involved the so called "brides ships", the Tynemouth in 1862 and the Robert Lowe in 1863. These ships were sent to British Columbia to provide domestics as future wives to those men who had emigrated as gold prospectors.[42] The clergyman who arranged the voyages explained his reasoning in the following way:

> Dozens of men have told me they would gladly marry if they could. I was speaking one evening on the subject

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41 National Council of Women, Women of Canada: Their Life and Work (1900) [Reprinted 1974] at 422.

> of the dearth of females and mentioned my intention of writing to beg that a plan of emigration may be set on foot; whereupon one member of the company exclaimed, 'Then Sir, I pre-empt a wife', and another and another, all round the circle of those listening to me earnestly exclaimed the same. Fancy the idea of pre-empting a wife! Yet, I assure you this touches the root of the greatest blessing which can now be conferred upon this colony from home. Think of the 600,000 more women at home than there are men.[43]

A similar concern with the disproportion between the sexes also existed in Manitoba, and can be illustrated by reference to correspondence from Mr. William Weeks of Cleverton, Chippenham, England to the Canadian High Commissioner in London. In 1896 Mr. Weeks wrote:

> Several of the farmers ask for girls. One farmer says 2000 young farmers want wives and can't get them, and when I was in Canada I often heard how scarce female help was. There are any quantity of girls willing to go if the applicants would pay expenses. If you think well of it, you could insert a notice that if 20 or more people who want female help or wives will pay a deposit of £15 at the Dominion Lands Office, Winnipeg to cover the expense of a second class ticket and a share of the expense of a matron who must accompany them to Winnipeg, and give a full description to me of what kind of a girl they want, and if I cannot supply all the applicants, their money will be returned to them by the Government.[44]

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42 Lay, supra, note 40 at 25 and 37.

43 Ibid. at 20-21.

44 Extract of letter from Mr. William Weeks of Cleverton, Chippenham, England to the Canadian High Commissioner, dated January 4, 1896 : PAC, RG76, Vol 113, File 22787, # 18672.

Following this letter a notice appeared in the Winnipeg Free Press on March 26, 1896:

> farmers who are in want of female help, or wives should communicate with [Mr. Weeks]. He says that there are any quantity of girls willing to come if their expenses are paid.[45]

These types of immigration appeals were by no means isolated incidents, and are reminiscent of the exportation of "les filles du roi" from France to Quebec from 1663 to 1673.[46]

Treated as commodities, it was important that these women were to arrive in pristine condition. A female emigration department was established at Quebec in 1883 in an effort to promote and control the emigration of domestics.[47] This office co-ordinated the selection of the most suitable immigrants, and then supervised each stage of the immigrant's journey, from the point of recruitment to arrival at the home of the employer. The female immigrants were herded into large parties of up to one hundred young women and they travelled under the strict supervision of a matron provided by the government or the female immigration reform societies active at the time. This stringent surveillance of female immigrants was justified as a means to protect their virtue while in transit.

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45 Winnipeg Free Press, March 26, 1896.

46 See: Gustave Lancotot, Filles de Joie ou Filles du Roi (Montreal: Chantecler, 1952); Silvio Dumas, Les Filles du Roi en Nouvelle-France (Quebec: La Societe Historique de Quebec, 1972); and Nelson Dawson, "The Filles du Roy Sent to New France: Protestant, Prostitute or Both?" (1989) 16 Historical Reflections 1:55-77.

47 Annual Report of the High Commissioner For Canada - Cameron, supra, note 23, Appendix J, 1883, at 2.

Surveillance of domestics in transit and upon arrival in Canada also served another purpose. Many young women emigrated with their passage pre-paid by their employer on the understanding that the employer would be paid back in the course of employment. It was reported that in some cases the young women either left their situations before fully paying their passage, or failed to show up for work in the first place. Employers were very concerned about these cases, especially given the shortage of domestic help available, and they consequently relied on the strict surveillance to eliminate the possibility of this breach of contract. The system, in effect, provided for a form of indentured servitude, at least until the passage money was paid.

Sex-specific protective immigration legislation was enacted as early as 1872. The Immigration Act was amended by the addition of two provisions designed to protect the immigrant women against seduction by crew members during the trans-Atlantic voyage:

> Every master or other officer, seaman, or other person employed on board of any vessel, who, ... under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment for a term not exceeding one year, or by a fine not exceeding four hundred dollars; provided that the subsequent intermarriage of the parties seducing and seduced, may be pleaded in bar of conviction.[48]

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48 An Act to Amend the Immigration Act, 1872, 35 Vict., c. 28, s. 11 (Dom).

A second provision prohibited all contact between female passengers and crew members. No crew members could

> entice or admit any female immigrant passenger into his apartment, or visit or frequent any part of such ship or vessel, assigned to female immigrant passengers, except by the direction or permission of the master or commander of such vessel.[49]

In 1892, the prohibition against seducing a female passenger on board a ship could be found in the Canadian Criminal Code.[50] The offence can be traced directly to the provisions in the Immigration Act. The debates of the House of Commons leading to the inclusion of this section in the new Criminal Code reveal the peculiar nature of the provision. Mr. Davies, a Member of Parliament from Prince Edward Island, criticized the new provision in these terms:

> The intention of the draftsman of the original section was an excellent one. It was supposed to be confined to ships bringing immigrants to this country, and to apply to a class of passengers more or less in a helpless condition, many of them not being able to speak English. These immigrants are very largely under the control of officers of the ship, and it was deemed necessary that stringent regulations should be passed. If we are determined that the mere act of seduction is to be a crime, there is no reason in the world why it should be confined to offences committed by seamen on board an ordinary ship. I can well understand the motives which prompted those who drafted the Immigration Act to these very stringent restrictions around the protection of female immigrants. I think, however, it is a mistake to incorporate that provision in a general Act and to make it

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49 Ibid., s. 12.

50 Criminal Code, 1892, 55-56 Vict., c. 29, s. 184 (Dom.) seduction of a female passenger was an indictable offence with a penalty of up to two years in prison.

> a crime on board an ordinary ship, when it is not a crime when the same people are on shore.[51]

It is unclear whether these provisions of the Criminal Code or the Immigration Act were ever enforced, and it is also unclear how many convictions, if any, resulted from violations of either Act.[52] While these provisions may not have served the function of preventing seduction, they instead served the symbolic function of protecting the virtue of future mothers of the Empire. In addition, the law had symbolic value for prospective husbands, who had a direct interest in the virtue of their soon-to-be brides. Whatever the symbolic impact of the legislation, it had the practical effect of justifying the surveillance of immigrating domestic workers with the result that they would be less able to breach their contract of employment upon arrival in Canada.

Financial Incentives

Most domestic workers immigrating to Canada were working class women who were not financially independent: in fact, the only condition under which they could emigrate was with outside financial support. In an effort to increase the volume of "preferred immigrants", particularly in the face of competition for immigrants from the

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This section was repealed in 1987 under s.3 of An Act to Amend the Criminal Code, S.C. 1987, c. 24.

51 The reference to immigrants who cannot speak English may relate to an erroneous perception that most female immigrants were from Continental Europe or Mr. Davis may be specifically referring to the French immigration to Quebec. Canada, House of Commons, Debates, (1892), Vol. 35, at 2971.

52 I have been unable to find evidence of convictions or enforcement procedures during my research.

United States, Australia, New Zealand, South Africa and South America, the Dominion government offered financial incentives designed to promote emigration.

Starting in 1892, "preferred immigrants" were eligible to receive assisted passage under the "passenger warrant system", which meant that about one third of the cost of the steamship trip to Canada was subsidized by the Government.[53] The policy was heavily criticized by Canadian labour organizations on the grounds that it encouraged paupers to emigrate, thereby providing cheap competition for and depressing the value of native labour.[54] These organizations sent petitions to the Dominion Parliament throughout the period from 1884 to 1888 praying for the abolition of the system of granting "assisted passage".[55] In the early 1880's, criticism of assisted passage forced the government to suspend the policy for farm families and farm labourers but the policy continued in place for domestics.[56] Apparently, the reason for the suspension was that domestics were believed to have "neither means nor inclination to go travelling about" - in other words, they were very likely to settle in Canada, and were considered reliable in paying back any money which had been lent to

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53 Macdonald, supra, note 14 at 108-9.

54 Ibid. at 109 and 140-43.

55 The Knights of Labour were particularly vocal in opposition to the "passenger warrant system" See: Canada, House of Commons, Sessional Papers, (1884-1888).

56 The rate paid for domestics was £4 : Evidence of John Lowe, Secretary of Department of Agriculture, Before the Select Standing Committee on Immigration and Colonization, (19 March 1880), Journals of the House of Commons of Canada, Appendix No. 3, at 6.

them for the purpose of travelling.[57] Moreover, it appears that when assisted passage was discontinued for continental Europeans, domestics from those countries continued to receive assistance, particularly domestics from Scandinavia and Germany.[58]

Eventually, in the face of adverse public opinion, the government was forced to withdraw the subsidies completely on April 27, 1888.[59] Under the Empire Settlement Act of 1922,[60] assisted passage to Canada from Britain was renewed and made available to the traditional "preferred classes" including:

> Women with some household experience, going to household work in city, town or country. These should be in good health, of good character and between the ages of 18 and 48 years.[61]

Policies exempting preferred immigrants from financial entry conditions imposed on other types of immigrants reinforced the financial incentives offered to domestic workers. In 1880, domestic workers were exempted from a requirement that all immigrants have $20 upon arrival in Canada at Halifax and in 1908, they were

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57 Ibid. at 9.

58 Report of Special Mission of Hon. W. McDougall - Cameron, supra, note 23, Appendix J, 1873, at 7.

59 Evidence of John Lowe, Secretary of Department of Agriculture, Before the Select Standing Committee on Immigration and Colonization, 1890, Journals of the House of Commons of Canada, Appendix No. 5, at 44.

60 Empire Settlement Act, 1922 (U.K.), 12 & 13 Geo. 5, c.13.

61 John Marriott, Empire Settlement (London: Oxford University Press, 1927) at 113.

exempted from a similar $25 requirement.[62] When the landing requirements were increased in 1910 such that all immigrants have $25 in the summer and $50 in the winter, domestics were again excluded.[63] In 1921, the amount required for entry was increased to $250 but domestics were again exempted.[64]

Financial rewards were also provided to other organizations engaged in promoting emigration to Canada. Beginning in 1872, the government paid the steamship company booking agents a commission for each domestic procured.[65] The policy was only discontinued twice, from 1875 to 79 and from 1889 to 90: in both cases the discontinuance was due to a commercial and financial depression in Canada. In 1890, a "bonus" was offered to steamship companies for promoting immigration to homesteaders who agreed to settle in Manitoba and the North-West.[66] Periodically, the federal "bonus" was supplemented by one from the provinces.[67] The bonus system was interrupted by the outbreak of war in 1914.

These policies, which were designed to encourage emigration by the "preferred classes", came under continued attack from various sides of Canadian society. Labour organizations were concerned with the importation of cheap male labour and middle-

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62 Order-in-Council, P.C. 656, dated 27 March, 1908.

63 Order-in-Council, P.C. 924, dated 9 May, 1910.

64 Order-in-Council, P.C. 959, dated 21 March, 1921.

65 Macdonald, supra, note 14 at 46-47.

66 Order-in-Council, P.C. 2243, dated 27 Sept., 1890.

67 Macdonald, supra, note 14 at 47 and 109.

class racial purists wanted as co-citizens the financially independent "better classes", not the destitute who were judged to be immoral, thriftless, lazy, unskilled, unhealthy, and likely of the criminal classes.[68] For the most part, however, the criticisms were not directed at the immigration of domestics, since domestic workers did not threaten working men's wages and the demand for their services consistently exceeded the supply. In addition, female reformers were constantly asking the government for exemptions, as well as increased financial assistance, for domestics. These efforts were in large measure successful.

Despite criticisms, the government managed to maintain and increase the volume of immigration through a series of creative legal moves. It attempted to provide financial support for certain classes of immigrants while appearing to address the concerns of those opposing its policy. The government also enacted legislation restricting immigration for certain immigrants, but did not consistently enforce it. Moreover, the government declared that it had abandoned its policies of financial assistance, but then replaced these policies with others which were similar in effect.

The role of immigration law was clearly instrumental. Statutes and policy decisions were modified to placate those elements in Canadian society which objected to the encouragement of certain immigrants. At the same time, new provisions came into force which expanded the possibilities for large numbers of immigrants to enter Canada, by offering them various forms of financial assistance.

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68 An illustration of this Canadian sentiment is the reaction of Canadian society to the arrival of 80 women from the Irish poor houses in 1865, see Wesley Turner, "80 Stout and Healthy Looking Girls" (1975-76) 3 Canada: An Historical Magazine 2: 36-46.

European Recruitment

Increasing the flow of domestics to Canada was not only achieved through providing financial aid; domestics were also being recruited from outside the United Kingdom. It appears from literature published by the Department of Immigration that British domestics were encouraged westward into the arms of lonely prairie farmers, whilst continental European domestics were directed to urban centers to serve the upper and middle classes. This policy was not always successful since the movement of domestics within Canada was more difficult to monitor than their journey to Canada.

Although the Dominion government was under pressure to encourage the British to emigrate to Canada, it sought out suitable immigrants from continental Europe, in particular Scandinavia, Germany, Austria, Bavaria, Bohemia, Northern Italy, Switzerland and France. Immigration officials noted that some immigrants being sent from Britain were not necessarily well suited to Canadian conditions, unlike the European "stalwart peasant". In 1900, Mr. Preston, Inspector of Agencies in Europe wrote to the High Commissioner for Canada in London:

> I take it for granted that the people of Canada desire their unoccupied lands to be settled upon by a hardy, thrifty and industrious population. I am well aware that the desideratum of the people of Canada, in the first place, is Anglo-Saxon immigration. The outlook, I fear, is not favourable for their wishes in that particular to be largely fulfilled. The class that might be disposed to emigrate from Great Britain is not possessed of the means which events have proved that the peasant emigrating class of Europe possess. Notwithstanding, however, that the prospects are not favourable in Great Britain, yet no resources should be spared to secure as many emigrants from Great Britain as can possibly be had, and yet, while untiring energy may be exercised, it will be found that

larger proportions of emigration must come from the continent and Scandinavia.[69]

In fact, the difficulty faced by Canadian immigration officials in Europe was hostility from foreign governments to the immigration of their subjects. The most striking evidence of this was the 1881 provision of the Imperial German Criminal Code making it a crime to entice German subjects to emigrate "by setting untrue facts before them", punishable by two years imprisonment.[70]

Of the European domestics successfully recruited to Canada by the Dominion government, the Finns have perhaps received the most attention.[71] The migration of Finns to Canada was particularly high from 1914 until the 1930's. In 1931, Finnish immigration to Canada was temporarily halted, except in the case of wives and children. This policy was prompted both by the worsening depression which had resulted in a surplus of unemployed Canadian workers including domestics, as well as the Finnish communist connection. Despite this, the government launched a scheme to encourage Scandinavian and Finnish Domestics to emigrate in 1937.[72] The women who came from Finland did not always stay in domestic service. Many of them had

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69 Cameron, supra, note 23 Appendix J, 1900, at 6.

70 Ibid., Appendix J, 1881, at 17.

71 Joan Sangster "Finnish Women in Ontario, 1890-1930" (1981) 3 Polyphony 2: 46-54; Varpu Lindstrom-Best, " 'Going to Work in America': Finnish Maids, 1911-1930" (1986) 8 Polyphony 1: 17-20; Varpu Lindstrom-Best, " 'I Won't be a Slave' - Finnish Domestics in Canada, 1911-1930" in Jean Burnet, ed., Looking Into My Sister's Eyes: An Exploration in Women's History (Toronto: The Multicultural History Society of Ontario, 1986); and, Varpu Lindstrom-Best, Defiant Sisters: A Social History of Finnish Immigrant Women in Canada (Toronto: The Multicultural History Society of Ontario, 1988).

72 Varpu Lindstrom-Best, 'Going to Work in America', supra, note 14 at 18.

other skills, but found it easiest to enter Canada as domestics and then move into alternate forms of work. Nonetheless, an overwhelming number of single Finnish women in Canada were employed as maids. In Toronto and Montreal during the 1920's, over 66% of Finnish immigrant women in paid work were maids.[73]

There were also small numbers of domestics recruited from places other than Europe. Some were brought to Canada for ostensibly humanitarian reasons, others simply to be servants. During the genocide of the Armenian peoples in Turkey, thousands of refugees fled and sought refuge in other countries. Canada offered asylum to 1,200 of these refugees in the period from 1919 to 1930.[74] The female orphans amongst these refugees were channelled into domestic service. Armenians had been designated as Asiatic by immigration authorities, and as such their entry was strictly regulated. Despite this, exceptions were made for those orphans who came to Canada as domestics; even so, very strict conditions governed their employment in Canada. They were not allowed to enter if they had close relatives in Canada or the United States, or if they had relatives still in Armenia who might follow them later.[75] Presumably this ensured that they would not leave service and would not bring potentially "undesirable" relatives to Canada.

From 1910 to 1911, the first Caribbean domestic scheme brought 100 women from Guadeloupe to Quebec on the condition that they were single and between the

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73 Ibid. at 17.

74 Isabel Kaprielian, "Refugee Women as Domestics" (1989) 10 Canadian Woman Studies 1:75-79.

75 Ibid. at 77.

ages of 21 and 35. During that same year seven of the women granted entry were subsequently deported for being single parents.[76] Black immigration was prohibited in August 1911, but was rescinded in October of that year due to procedural irregularities.[77] Black immigration was again restricted in 1922 with the exception of domestics and farm labourers who had prearranged employment.[78] The Caribbean women who emigrated were recruited specifically as servants and, once they had completed the terms of their contracts, they were forced to leave Canada. Despite the constant cry for domestics in Canada, racism appears to have outweighed economic interests; during the entire period from 1904 to 1931 a total of only 2,363 Caribbeans were admitted to Canada.[79]

Conclusion

This investigation of Canadian immigration law and policy reveals that the term "immigrant", attaching to immigrant domestic workers during this period, collapses important distinctions between the categories of immigrants. Since domestic workers were brought to Canada both as workers and as wives, there was an inherent tension in

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76 Calliste, supra, note 12 at 137.

77 Order-in-Council, P.C. 1324, dated August 12, 1911 and Order-in-Council, P.C. 2378, dated October 5, 1911.

78 Order-in-Council, P.C. 717, dated May 9, 1922.

79 Calliste, supra, note 12 at 138.

the interests of Canadian employers as articulated in the debate over "quantity" and "quality" of immigrants.

"Quality" was expressed in the desire for British women who were a necessary component of the Empire-building project of the dominion government. This rationale for promoting immigration was, however, in tension with the concern for "quantity". The mere existence of unmarried Canadian men did not produce swarms of eager women set on emigrating from the British Isles. In addition, the "marriage policy" aspect of immigration promotion undermined the interests of those who only required women as servants. Given the propensity for young women to leave domestic service for marriage and other jobs, the government was constantly in the position of seeking out domestics. Thus, the targeting of English, Scottish and Irish girls for recruitment was balanced against the interest in increasing the numbers of domestics generally.

The tension between "quality" and "quantity" was expressed at law in terms of the ideology of domesticity. Where the immigrants were recruited as potential wives, they were expected to be virtuous and protective legislation was enacted in the form of criminal provisions prohibiting seduction. Where domestics were recruited only as servants, their role was one of service and policy decisions were made encouraging non-British women to emigrate in order to increase the volume of domestics in Canada. On the one hand, domestics were recruited as virtuous wives and "mothers of the Empire"; on the other hand they were recruited as servants and their nationality did not matter.

The countries from which domestics were recruited determined, to a large extent, their future roles as either wives or servants and they were encouraged to settle in different places depending on this role. Domestics were given financial incentives to

emigrate, and they were told in government immigration literature that in Canada their life circumstances would change for the better. They were led to expect higher wages and those British women moving West were enticed with possibilities for social advancement through marriage to prairie land owners.

Seduced by these promises, women came to Canada in the thousands with the idea of working, for a while at least, as domestics. Upon arrival, however, they found little in the way of government protection during the time in which they worked hard to "better" themselves. This lack of state intervention in the employment contracts of domestic workers and their employers will be the subject of Chapters Three and Five.

Chapter 3

IN BUT NOT OF THE FAMILY

Upon arrival in Canada, domestic servants came under the regime of private law.[1] Private law provided the only means for domestic workers to claim legal recognition for basic employment rights. These rights could be secured either by recourse to common law[2] principles governing the relations between masters and servants, or under statutory schemes, specifically master and servant legislation.

At common law domestic servants were located in the intersection of the family and labour, a site of considerable tension in legal doctrine, as the case law will illustrate.[3] The legal rights and obligations of domestic workers were defined largely through the workings of contract and tort law.[4] Historically, the legal relationship between masters and servants (like that of parent and child, or husband and wife) was one of status. Rights and

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1 The term "private law" is used here to refer to law which governs the relations between private individuals as opposed to rights or obligations which individuals might have vis-à-vis the state. By contrast, criminal law is considered to be "public law" because, in addition to regulating the relations of individuals, it embodied, through the state, the notion of public opprobrium.

2 The term "common law" is used here to refer to unwritten, non-statutory, judge-made law. By virtue of the constitutional arrangements between Canada and Britain, British common law was treated as precedent in Canada.

3 The case law cited in this Chapter does not provide a comprehensive overview of all the relevant Canadian cases. Instead, the case law outlines the origins of certain doctrines and the contradictions manifested by them.

4 Contract law being the enforcement of rights and obligations arising out of agreements and tort law being obligations arising from wrongs independent of agreements (ie. assault, battery, slander, fraud, conspiracy, nuisance etc).

obligations were determined and fixed according to one's position in society. Gradually, the principles of contract law were extended to the master and servant relationship, in theory, establishing freedom to arrange hours of work, wages and terms of service. In the courts, while judges consistently deprived servants of status rights they extended rights based on principles of status to masters. This erosion of status rights was compounded by the judiciary's insistence on vigorously upholding the contractual obligations of servants.

The statutory law of master and servant contained similar problems. The law codified existing legal inequalities by creating a regime in which masters and servants were subject to different penalties in cases of statutory breach: servants were subject to criminal sanction while masters were deemed only to have committed a civil breach. Only in the case of servants was punishment meted out in the "public sphere" of criminal law, suggesting that for legislators non-payment of wages was not as serious a matter as deserting employment. In addition, the statutes were enforced in an uneven manner. Police court records indicate that under the legislation servants were prosecuted more often than masters despite the fact that more claims against masters were registered.

The law, in effect, provided redress for servants only under heavily circumscribed conditions. The flexibility in application of legal doctrine and the enforcement practices of police magistrates under statute, illustrate both the contradictory workings of law and the unreliability of law as a tool for social transformation, specifically in terms of improving the working conditions of servants.

Domestics Under Common Law

Domestic servants, though party to a contract, lived in the domain of the family, which continued to be governed by the common law rules of status well into the twentieth century. Due to their close connection to the family, and often being described as "part of the family", domestics were able to claim only limited benefits on the basis of contractual principles. Yet, because they were not strictly "of the family", they were also excluded from the common law benefits accorded by virtue of status: typically this meant provision of board, lodging, food, and necessities. While masters used the more modern contract principles to limit obligations owing to domestics, they relied on traditional status principles to justify actions in tort for loss of service through seduction. Justifications very reminiscent of status principles were also relied on by policy makers to exclude domestics from the purview of protective legislation extended to other workers in contractual relations.[5]

The ambiguity surrounding domestic service and its position under contract law, raises questions about the indeterminate nature of the private sphere. As the subsequent case law will show, the ideology of privacy was used by judges to limit the obligations of masters and to limit the rights of domestic workers. Domestics were either considered to be so deeply embedded in the private sphere that they were in no need of state protection, or were relegated to the public sphere and thus too distant from the family to be deserving of attention.

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5 See Chapter Five.

Any examination of case law involving domestic workers must take into account the reality that the cost of litigation was prohibitive for most servants. In addition, few servants were aware of the circumstances which might give rise to a cause of action. Furthermore, even if they had this knowledge, many servants, particularly immigrants, were afraid to challenge their employers formally through litigation. Consequently, there are very few historical records of court cases brought by servants. Finally, given that most judges employed at least one servant, they were not necessarily predisposed to be sympathetic in those cases where domestics sued their masters.

The term "domestic servant" referred at common law to personal service and the personal character of services rendered. Under the common law, both servants and masters had a variety of duties towards one another. Servants historically had a duty to obey, to exercise reasonable care and skill in performing duties, and to exercise good faith towards their masters. Masters had a duty to provide board, lodging, food and medical services, to provide work and to pay wages. While servant's duties remained intact, the common law duties of masters were gradually eroded over time, such that provision of shelter, food and medical services were no longer considered to be common law obligations. In the British case of Scarman v. Castell in 1795, it was held by Lord Kenyon that a master had "a legal as well as a moral obligation" to provide medicine and attendance to his servant while the servant remained under his roof as part of the family.[6] By 1802, the British Law Lords thought better of this, and in Wennall v. Adney, masters were found to have no common law duty to provide medical service to servants.[7]

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6 Scarman v. Castell (1795), 1 Esp. 270.

7 Wennall v. Adney (1802), 3 Bos. & P. 247.

In 1893, the case of The Queen v. Brown [8] caused the Ontario Court of Appeal to consider the common law duty to provide medical service for a domestic in a Canadian context. Brown was charged with manslaughter in the death of William White, a fourteen year old servant, who had died of severe frostbite while in service to Brown. The Court noted that in return for faithful services rendered, the boy was to have "a good home" including clothing, board, and lodging, but no money wages. The Court found that:

> the evidence warranted the learned trial Judge so finding, that at common law the prisoner was bound to supply care and attention reasonably suited to the lad's condition, in which he failed, and for want death was accelerated.[9]

Five years later, in Regina v. Coventry,[10] Justice Wetmore of the Ontario Court of Appeal backed away from an expansive reading of The Queen v. Brown, finding that a common law duty to provide medical attention existed only in cases where a servant had died. In this case the servant was John Sargent, a twelve year old boy, whose toes were amputated as a result of frostbite. In lieu of wages, Coventry had agreed to provide board, washing, lodging, clothing and necessaries, but the only clothing he had given Sargent was a pair of large moccasins with holes in the heels and toes. The Court found no duty on a master to provide for non-relatives and it quashed Coventry's conviction.

By the early 1800's in Britain, and by the late 1890's in Canada, it became clear that servants could not claim common law rights to food, board, lodging or medical attention. A

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8 The Queen v. Brown (1893), 1 Terr. L.R. 475.

9 Ibid. at 482.

10 Regina v. Coventry (1898), 3 Terr. L.R. 95.

servant's rights at common law were gradually being defined as distinct from those of the family. At the same time, however, a servant's status as quasi-family member was used by courts to justify an action in tort for seduction by a master against a third party and also provided grounds for the exclusion of domestics under provincial minimum wage legislation.

Under British common law, the tort of seduction required proof of loss of service, which was usually construed as evidence that the young woman resided with her master for whom she provided service,[11] and that she was in fact pregnant.[12] Traditionally the right had been exclusively that of the father as master of the household, but under common law the right was extended to cover other relationships of service. Over time the British case law came to include claims made by family members[13] as well as non-relatives.[14]

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11 The right to sue was extended in Canada to parents who lived abroad in Cromie v. Skene (1869), 19 UCCP 328.

12 In cases where the young woman did not get pregnant, the action for seduction was denied to her parent, the rational being that the master experienced no loss of service: see, Harrison v. Prentice (1896), 28 O.R. 140.

13 See: Edmonson v. Machell (1787), 2 T.R. 4 where an aunt was awarded damages for the seduction of her niece; Irwin v. Dearman (1809), 11 East 23 where a man was awarded damages for the seduction of his adopted daughter; Marvell v. Thomson (1826), 2 C & P 303 where an uncle was awarded damages for the seduction of his niece; and Howard v. Crowther (1841), 8 M &W 601 where a brother was awarded damages for the seduction of his sister.

14 See: Fores v. Wilson (1791), Peake, 55 where a master was awarded damages for the seduction of his domestic servant to whom he was not related in any way.

The early Canadian case law on the tort of seduction[15] focused primarily on the rights of various family members to sue for seduction. In Nickells v. Goulding the plaintiff had adopted the seduced girl at the age of two and he and his wife "treated her as their child". The court allowed the action, inferring from the evidence that both natural parents were dead, and upheld damages in the amount of $425[16] In Paterson v. Wilcox,[17] a brother was successful in securing $200 in damages for the seduction of his sister, on the grounds that both parents were dead and could not sue, and a relationship of service existed between himself and his sister. The court dismissed the argument that damages above mere loss of service were unwarranted given the distance of the relationship, noting:

> We may assume the plaintiff here to be, as it were, the head of the family, both parents being dead. When the brother assumes that position, we are not prepared to say that, where his sister living under his roof and presumed protection, and acting as his servant, may be seduced, and he thereby lose some service, the damages must necessarily be confined to the mere pecuniary value of the services so lost.[18]

In 1876 the Ontario Court of Appeal had cause to hear Abernethy v. McPherson,[19] in which the relationship between the plaintiff and the seduced girl was even more distant.

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15 In 1837 a Seduction Act was passed in Ontario with the intention of broadening the parents' rights to sue: Seduction Act , 1837, 7 Will. IV, c. 8 (U.C.). Under section 3 the rights of those who could traditionally make claims under the common law were preserved, with the proviso that the parents' right took precedence.

16 Nickells v. Goulding (1862), 21 Q.B. 366.

17 Paterson v. Wilcox (1870), 20 U.C.C.P. 385.

18 Ibid. at 388.

19 Abernethy v. McPherson (1876), U.C.C.P. 516.

In this case, the person bringing the action was the seduced girl's uncle. The young girl had no family to speak of, her father was resident in the United States, and when she was ten years old her mother died and entrusted her to her aunt, her aunt subsequently married the plaintiff. In upholding a jury award of $400 damages the court noted:

> [T]he girl Jessie Hallock was living with the plaintiff rendering acts of service, not indeed under any contract of hiring, but as an inmate and a relation in her uncle and aunt's house she was subject to the reasonable orders of the head of the house, the plaintiff. By rendering the services which she did render, it is apparent that she recognized the just right of her uncle and aunt to these services. She was then *de facto* rendering services to the plaintiff, of the benefit of which services the plaintiff has been deprived by the act of the defendant to precisely the same extent *as if the girl was living with the plaintiff under a specific contract of service* [my emphasis].[20]

It is remarkable in this case that the judge was insistent on using contractual language to ground the claim for damages in tort in a relationship between family members, particularly given the reticence of judges to make similar efforts where the family member was making a claim in contract.

By 1878, the courts were willing to uphold extensive damages for loss of service in cases where there was no biological relationship between the seduced girl and her master. In Ford v. Gourlay,[21] Ellen Ladbury was employed by the plaintiff as a domestic servant, receiving full wages from him, for several years. Her mother had died and her father had left the country fifteen years before. In upholding damages of $500 the Court noted:

> The master's house has been violated by the defendant. He was received by the plaintiff as a suitor for the young

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20 Ibid. at 522.

> woman, and he ended by debauching her. The plaintiff himself, it appears, had a daughter at home, who had to do the work of the girl while she was unwell, and while she was absent for her confinement. And the defendant's conduct was injurious to the good name of the plaintiff's household, and may have had a prejudicial effect upon the young women of the plaintiff's family.[22]

Justice Wilson goes on to note, however, that the amount of damages to be properly awarded depended on the position in the household of the person who is called a servant:

> A mere menial servant who did not in any way associate with the members of the family, or who had been in her place for only a little while, might not, by her seduction, be supposed to entail much loss, if any, upon her master; while a governess associating with the young women of the family, or a respectable girl in a farmer's family in the country, who associated freely and upon almost equal terms with the members of the family, as is usual in such cases, if seduced might, it is evident, cause very serious prejudice in that household.[23]

These cases illustrate that while duties owed by masters to servants were being eroded under common law, a master's right to sue for seduction was in fact being expanded, and grounds for larger awards for damages were being established. The seduction cases are particularly interesting because status rights were broadened to include non-family members as beneficiaries. Judges were very willing to award people in paternal roles the rights traditionally held by fathers. Judges were, however, remarkably ungenerous in their reading of common law rights when it came to cases of servants suing for payment of lost wages. They were particularly outraged at the notion that service

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21 Ford v. Gourlay (1878), 42 Q.B. 552.

22 Ibid. at 558.

23 Ibid. at 558.

rendered by family members should require remuneration in the absence of a contract of hiring. In other words, while masters were extended the rights traditionally held by fathers, fathers or father figures were not expected to assume the obligations traditionally owed by masters.

The problems encountered by servants who were employed by family members can be illustrated through case law. The common law had traditionally provided for a right to payment in arrears, an issue which typically arose upon the death of a master after periods of long service where wages had not been paid for several years. The law was clear, however, that family members could not sue for wages unless there was an express contract to the effect that a master and servant relationship existed.

The Canadian case law on this point illustrates that judges were preoccupied with the proper role of women and children in selfless service to family members. In 1843, Chief Justice Robinson of the Queen's Bench in Upper Canada heard the Case of Sprague and Wife v. Nickerson.[24] It involved a dispute between a brother and a sister upon the death of their father, where the sister claimed a master and servant relationship with the father and hence an entitlement to wages in arrears from his estate. Justice Robinson, outraged at the prospect, lectured the court at length:

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24 Sprague and Wife v. Nickerson (1843), 1 Q. B. 284.

> It is, in my opinion, of very dangerous tendency that, after the father of a family has died, his children, and more especially his daughters, who have lived with him as members of his family, should be encouraged to bring actions against the estate, upon a claim for services rendered to their parent. Where there is an express contract between a father and a daughter, that the latter living with him, and being above twenty-one years of age, shall serve him on wages, as any other hired person would do, of course there can be no reason why effect should not be given to the contract. But here is an unmarried female, living for years in a house with her father, because he is old and infirm; she brings, after his death, an action for several years' wages, not shewing that any specific contract of hiring had taken place, but founding her claim on some loose expressions, heard in casual conversation, that he meant to make her compensation. The evidence was not clear - the amount allowed was exorbitant, I think. This young woman could not be living any where else more properly than with her aged and infirm parent; and if she did acts of service, instead of living idly, it is no more than she ought to have done in return for her clothes and board, to say nothing of the claims of natural affection which usually lead children to render such service.[25]

In 1857, Justice Robinson decided Perlet v. Perlet,[26] a similar case involving a suit for wages brought by a young man of about twenty-one (and therefore still legally a minor), against his mother, a widow, for two years of farm work. Still firm in his view that family members should not have rights to wages against one another, Justice Robinson held:

> Is she [his mother] not entitled to the labour of her infant children while they live with her and are supported by her? I had certainly a strong impression that she was so entitled, and that it must follow as a consequence, that any agreement by her infant son to labour for her must

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25 Ibid. at 284-5.

26 Perlet v. Perlet (1857) 15 Q.B. 16.

> be held to be a contract not sustained by any valuable consideration.
>
> It seems to me that there are strong reasons of policy, as regards the due maintenance of domestic relations, against the supporting such a contract as binding on the parent.[27]

This line of reasoning was upheld in similar cases by later judges. In the 1868 case of Redmond v. Redmond,[28] Justice Hagerty of the Court of Queen's Bench, heard an action for work and labour brought by a sister against a recently married brother, with whom she had been living for eleven years previously. Justice Hagerty found no evidence of hiring and held:

> nothing was more natural [than] that an unmarried young woman should live with and keep house for her brother, especially while he was also unmarried, and that without the idea of hiring or wages entering into the minds of either.
>
> It would be we fear a mischievious doctrine to lay down, in every case in which a niece, or cousin, or sister in law is proved to be living in a farmer's house, treated in every way as one of the family, and assisting in the work of doing all or most of the house-work, she could, in the absence of any evidence whatever as to hiring or wages, be held entitled to the direction of a judge that the law in such a case implied a promise to pay.[29]

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27 Ibid. p.167.

28 Redmond v. Redmond (1868), 27 Q.B. 220.

29 Ibid. at 223-4.

Following this line of cases in which the courts were concerned to distinguish family duties from contractual rights, in Robinson v. Shistel[30] the courts found that where services were performed in expectation of marriage no implied common law duty to pay wages arose. In this case the plaintiff was an unmarried woman who lived with her father next door to the defendant. She looked after his shop for him until he married another woman, at which point she sued him.

The common theme running through these early cases is that judges resisted any attempt by family members, upon the breakdown of relationships, to characterize the relationship as contractual. Thus, the large numbers of unmarried women performing domestic tasks for family members had no recourse in law for lost wages in situations where no provisions were made for them by those whom they served. The case law illustrates how the courts reinforced the distinction between contractual and status relationships. The work performed by domestics was technically contractual in nature, involving an express or implied contract of hiring. In cases where family members were involved, claims of status superseded those of contract, resulting in women being forced to render services without receiving remuneration. Under tort law, however, the right of a master to sue for seduction (irrespective of biological connection) was based on principles derived from status. When it came to an obligation to provide necessities, these same claims of status were shrugged off.

At common law, the relationship between a domestic and her employer had elements of both status and contract, yet these elements were slanted by judges to benefit the master. The legal discourse employed by judges was not consistent but depended upon the context

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30 Robinson v. Shistel (1873), 23 C.P. 114.

in which it was employed. In this way legal discourse was flexible and malleable; apparent contradictions could be obfuscated by distinguishing context. As contractual language took hold, traces of status language remain and the distinction between the public and private spheres becomes increasingly murky. The judges themselves appear to be oblivious to the growing contradictions in their development of the common law principles of tort and contract. Common law protections were clearly not available to domestic servants. The only other legal recourse they had was the limited protection provided by master and servant legislation. As the subsequent narrative will show, these protections were also of limited value.

Domestics Under Master and Servant Law

In nineteenth century Canada the provincial Master and Servant Acts provided the only legislative protection regarding the conditions of work available to domestic servants. These Acts, however, had not been crafted with the intention of offering much in the way of protection for workers. They served instead as a means for masters to maintain the employment relationship at will. Specifically, these Acts allowed employers to enforce contractual relations with domestic servants in a perennially tight job market. The Acts also provided a means to ensure that masters could sue in cases where servants attempted to avoid payment of passage money upon emigrating to Canada.[31] Since domestics were

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31 The use of master and servant legislation to enforce contracts made between masters and immigrants was, in effect, a form of indentured servitude and politicians were aware of this. In 1890, the Select Standing Committee on Immigration and Colonization discussed assisted passage and mechanisms for repayment of monies loaned. Mr Daly, a member of the Committee, noted:

excluded from all other early labour legislation,[32] the Master and Servant Acts offered the only recourse for domestics outside their common law rights. But what little protection they provided was not, in practice, enforced with any enthusiasm by the local police. As such, the historic development of these Acts and the subsequent enforcement practices of police magistrates require some comment.

The early provincial Master and Servant Acts were modeled on British statutes which were re-enactments of medieval, Tudor and Stewart legislation.[33] Although some British Acts had the force of law in pre-confederation Canada, it was often unclear to judges, lawyers, politicians and litigants which of these Acts were in force. To remedy this

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> We have a statute in force in Manitoba that any contract made with a domestic servant in Great Britain and Ireland can be enforced; it can be enforced summarily before a justice of the peace. The great difficulty we find, is that shortly after they get there they invariably become smitten by a young man and eventually get married. It is then a very difficult matter how the law applies; but so far as male servants are concerned, there is not that difficulty, although female servants are more reliable and likely to remain in one place.

In response to his comment another member of the Committee stated that there should be no ties on immigrants coming to Canada, since such ties smacked of slavery. See: Select Standing Committee on Immigration and Colonization, (1890), Journals of the House of Commons of Canada, Appendix No. 5, at 49.

32 For example in Ontario under s.14 of the Trades Arbitration Act, 1873, 36 Vict., c.27 (S.O.), the Act was to be construed so as not to extend to domestic servants in disputes between masters and servants. Similarly s. 3 of the Workmen's Compensation Act, 1886, 49 Vict., c.28 (S.O.) barred use of the Act to domestic servants.

33 See generally: Daphne Simon, "Master and Servant" in John Saville, ed., Democracy and the Labour Movement (London: Lawrence and Wishart Ltd., 1954); and, D.C. Woods, "The Operation of the Master and Servants Act in the Black Country, 1858-1875" (1982) 7 Midland History 93-115.

confusion, provincial master and servant legislation was enacted and the British Master and Servant Act of 1823[34] provided virtually word for word the text of the early Canadian legislation.

The legislature of Prince Edward Island passed a Master and Servant Act in 1833,[35] Upper Canada passed a similar Act in 1847,[36] and Lower Canada passed an Act the following year.[37] New Brunswick and Nova Scotia did not follow this trend. Both provinces relied on legislation passed prior to 1800 governing the relationship between masters and servants. New Brunswick passed an Act in 1786 regulating the employment of indentured servants,[38] followed in 1858 by an Act regulating minors and apprentices.[39] In 1787, Nova Scotia enacted a statute regulating "bound and hired" servants, with the express stipulation that any other laws of the province (presumably including British law)

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34 Master and Servant Act, 1823, 4 Geo. IV, c. 34 (U.K.).

35 Master and Servant Act, 1833, 3 Will. IV, c. 26 (P.E.I.) - repealing An Act for Regulating Servants, 1795, 35 Geo. III, c. 4 (P.E.I.).

36 Master and Servant Act, 1847, 10, 11 Vict, c. 23 (U.C.).

37 An Act Respecting Master and Servants in the Country Parts, 1848, 11, 12 Vict, c. 55 (L.C.).

38 An Act for Regulating Servants, 1786, 26 Geo. III, c. 37 (N.B.) amended by An Act for further Regulating Servants, 1826, 7 Geo. IV, c. 5 (N.B.). The 1826 amendment provided that where indentured servants deserted employment or misbehaved they were subject to criminal sanctions with a penalty of up to one month in jail.

39 Minors and Apprentices Act, 1854, 17, 18 Vict., c.134 (R.S.N.B.). The Act set out the requirements for a contract of indenture where children were hired as apprentices. The Act provided that an apprentice who deserted his or her employment was subject to a jail term of no more than one month.

were not to be "abrogated or altered by this present Act".[40] Nova Scotia subsequently passed an Act regulating employment relations between masters, servants and apprentices in 1864.[41]

The Acts of P.E.I. as well as Upper and Lower Canada, like the earlier British Act of 1823, made servants liable to criminal prosecution for deserting employment. The penalties suffered by servants could take the form of fines or imprisonment for up to two months[42] Masters on the other hand were only subject to civil suits where they were found to have engaged in misusage, refusal of necessary provisions, cruelty, ill treatment or non-payment of wages. Where masters were found in violation of the Acts they could be ordered to pay wages of up to five pounds but, since there was no criminal liability , they could not be fined or jailed.[43] The Acts were enforced by local magistrates and, in Upper Canada there was a provision for a right of appeal to the Court of Quarter Sessions in cases of non-payment of wages or desertion.

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40 An Act for Regulating Servants, 1787, 28 Geo. III, c. 6 (N.S.).

41 Masters, Servants and Apprentices Act, 1864, 27, 28 Vict., c.122 (R.S.N.S.). The Act specifically addresses contracts of indenture regarding children and provided that where a child broke the contract of indenture the penalty could take the form of up to twenty days in jail. Christopher Tomlins notes that, in New England, servants were overwhelmingly children. In examining early nineteenth century Massachusetts statutes he finds a consistent tendency to identify service with youth. Without having researched the demographic breakdown of servants by age in Nova Scotia, I suspect that a similar situation prevailed there, hence the statutory reference to minors and the lack of Master and Servant legislation. See: Christopher Tomlins, "The Ties That Bind: Master and Servant in Massachusetts, 1800-1850" (Spring 1989) 30 Labor History 193-227, at 203-9.

42 P.E.I. : 1 month, s. 3; Upper Canada: 2 months or a fine of five pounds, s. 6; Lower Canada: 30 days or a fine of twenty dollars, s. 8.

43 P.E.I. : a fine of five pounds, s. 4; Upper Canada: a fine of five pounds, s. 6; Lower Canada: a fine of twenty dollars, s. 8.

The debates surrounding enactment of these statutes indicate that the provincial parliaments explicitly contemplated covering domestic servants. When the Master and Servant bill of Upper Canada was introduced into the legislature in 1847 by Henry Smith of Frontenac, it was declared to be:

> intended chiefly to apply to servants in the lumbering business, with whom so much difficulty occurred, but it would embrace household and out-door servants generally.[44]

The bill was considered to be particularly repressive since it was widely regarded to apply primarily to domestic servants. Section eleven of the bill specifically noted that it applied to females as well as males.[45] This created considerable consternation amongst the local press and caused the editor of The Globe to write:

> As Mr. Baldwin very justly observed, it professes to be a Bill to enforce good faith between masters and servants but in truth, it only enforces *from the servant*, the master is bound to nothing. It it [sic] is considered that the Bill is chiefly pointed at household servants, and consequently for the main part females, it must be scouted with indignation by every man of ordinary feeling. Who does not know that in the never ending disputes between master and servant, the master is generally at least as much to blame as the servant? And who does not admit that compulsory service is worse than useless - that servants must be kept to their duty by self-interest and good treatment, and not by terrors.[46]

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44 Elizabeth Gibbs, ed., Debates of the Legislative Assembly of United Canada (1847) Vol. 6, at 669.

45 This is one of the earliest examples in Canada of legislative insistence on "formal equality".

46 "Provincial Parliament - Editorial Correspondence - #XXVI", The Globe, July 14, 1847.

The bill was, however, supported by some members of Parliament for the very reason that they believed it would give them increased control over their domestic realm. Colonel Prince, speaking in favour of the bill in the legislature complained:

> He lived in the wild Western country, where he had a plain farmer's home, and in that home he found one of the greatest annoyances, an annoyance many honorable members could not conceive, was the difficulty of getting and keeping servants. It would frequently happen to him that he would engage a fine buxom lassie as a servant girl who would agree with him by the month, and, after she had entered his establishment, would turn round and inform Mrs. Prince, for he never interfered in those matters, that she would take instant leave of her place, because she wasn't called a "help" instead of a servant, or invited to the family table instead of being left to dine in the kitchen. His was an old English family, and he was very old-fashioned in his notions, and did not admire those American ideas of independence, moreover, he could not accustom his tongue to the word "help," in preference to the old and scriptural name of servant. He did not like to be subjected to the caprices of the fine young girls. He spoke of the majority of them, for many of them were very pretty, although some few were frightfully ugly (the latter words uttered in a tone of mock regret, called forth loud laughter on both sides of the House). The only cure he saw for the evil he described was, to send any young lady he saw so acting for a month to jail, and he therefore cordially supported the bill.[47]

The confusion over whether the statute was limited to the regulation the work of domestics and lumberers, was remedied by an amendment in 1855, which made it clear that other workers came under the purview of the Act.[48] Recent historical studies on the

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47 Gibbs, supra, note 44 at 699-670.

48 An Act to Amend the Act respecting Master and Servant, 1855, 18 Vict., c. 136 (U.C.).

enforcement of master and servant laws in Britain and Canada indicate, however, that the statutes were in fact used primarily by employers to regulate male workers in industrial centers, particularly during times of industrial unrest.[49]

The most startling inequity of these early statutes was the distinction between civil penalties for masters and criminal penalties for servants. This inequity was magnified at the time of enactment since, according to the criminal procedure of the time, an accused could not give sworn evidence in his or her own defence, whereas in civil claims (ie. for non-payment of wages) both parties were allowed to introduce evidence.[50] An amendment to the Master and Servant Act of Upper Canada in 1865 removed this procedural disparity by also allowing defendants in criminal proceedings to introduce evidence.[51]

At the time of Confederation in 1867, master and servant law had both civil and criminal elements, and as such, fell under both provincial and dominion jurisdiction. The Dominion parliament, however, repealed the criminal provisions of each provincial Master and Servant Act in 1877 by means of the Breaches of Contract Act.[52] Explaining the rationale for this measure, the member of parliament who introduced the bill said:

> There were on the Statute books of several of the Provinces - Quebec, Ontario, and Prince Edward Island - certain labour laws framed upon the antiquated models in

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49 Britain: Simon, "Master and Servant", supra, note 33; and, Woods, "The Operation of the Master and Servants Act ...", supra, note 33; Canada: Paul Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario", in David Flaherty, ed., Essays in the History of Canadian Law: Volume 1 (Toronto: University of Toronto Press, 1981); and Gregory Kealey, Toronto Workers Respond to Industrial Capitalism 1867-1892 (Toronto: University of Toronto Press, 1980).

50 Craven, "The Law of Master and Servant", supra, note 49 at 189.

51 An Act to Amend the Act respecting Master and Servant, 1865, 29 Vict., c. 33 (U.C.).

> England, in which breaches of contracts of service were made criminal offences punishable by fine and imprisonment. The modern spirit of the law was not to treat such offences as criminal, but to deal with them, as in point of fact they were, as civil matters.[53]

It would appear then that by 1877 the criminal characterization of a breach of contract was obsolete. Yet, despite the formal repeal of these provisions, local police continued to enforce them: police records for Toronto after 1877 indicate that servants continued to be apprehended and summoned for desertion of employment until 1890. A lone servant was apprehended as late as 1898 (see Table VI).[54] Warrants in the first instance were issued as late as 1891, and then in 1901 and 1902 respectively.[55]

The statistics indicate that servants complained of failure to pay wages more consistently than masters complained of desertion. Of those apprehended or summoned, servants outnumbered masters as complainants in all years except 1867 and 1870-74. Despite the large numbers of complaints issued against masters, warrants in the first instant were issued in very few cases: one in 1877; one in 1880; one in 1884; two in 1885; four in 1922; two in 1923; one in 1924; two in 1925; two in 1926. The figures make it clear that

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52 Breaches of Contract Act, 1877, 40 Vict., c. 35 (S.C.).

53 "First Reading of Bill 68: Breaches of Contract Bill", Canada, House of Commons, Debates, (March 7, 1877) at 524.

54 In Toronto, Police Magistrates had enforcement powers under the Master and Servants Act. Claims for non-payment of wages or desertion were laid before the magistrates who issued summonses delivered by the police. See: Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-1880", in David Flaherty, ed., Essays in the History of Canadian Law: Volume II (Toronto: University of Toronto Press, 1981) at 264.

55 I am unaware of how representative the Toronto records are for other parts of the country, but I suspect they provide a general indication of enforcement practices across Canada.

the Act was enforced more stringently against workers. Prosecutions against workers were heaviest in years of industrial unrest[56] and depression. Claims by servants were greatest during periods of economic downturn, the highest number recorded being in 1931 when 1102 claims were made by servants for non-payment of wages.

The Toronto police records do not specify the occupation of the servant and so it is difficult to determine how many female domestic servants laid charges or had charges laid against them. The records are, however, quite helpful as a general indicator of the uses made of the Master and Servants Acts. On its face, the law appeared to offer protection to servants. Yet in practice the inherent difficulties for working class people in bringing an action in the courts were simply compounded by the problems with the enforcement of statutory rights. In application, the law was flexible enough so that magistrates could use their discretion in whom to prosecute. The statistics indicate that masters consistently benefited from these enforcement practices even after the criminal sanctions were repealed.

Conclusion

Master and servant law, under both the common law and statute, illustrates the central tension between the public and private distinction in law. Under the common law it was evident that judges were reluctant to extend contractual rights to servants, preferring instead to treat them as extension of the family, thereby ensconcing servants in the private sphere. At the same time, judges expanded notions of status to allow distant relatives to sue for loss of service in cases of seduction. This characterization of domestic servants had the

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56 Kealey, supra, note 49 at 148.

effect of pushing them more deeply into the private sphere as quasi-family members. The implication being that it was their duty to serve and it was their masters' right both to enjoy such service and to be compensated where such service was interfered with by pregnancy. Having constructed a quasi-family status for domestics within the private sphere, judges failed to find that the obligation to provide necessities for family members traditionally owed by masters to their dependents extended to domestics. At common law domestics were told by the courts that they belonged to the family, but that they were owed none of the protections expected by other family members. "Safe" within the middle-class family, domestics were abandoned by law.

At law, the only context in which domestics were actors in the public sphere was when they were being punished for breach of contract. The legislative provisions of Master and Servant Acts treated the contractual relationship between masters and servants as a serious public matter, to the extent that contractual breaches by servants were, under the legislation, criminal in nature. Further, the peculiar enforcement practices of the police magistrates ensured that the flexible administration of the law benefited masters. Since the law treated breaches by masters as civil wrongs, the leniency afforded to masters by courts under common law was codified by parliament in statute. Under the statute, it was clearly masters and not domestics who were protected.

The material effects for servants of these tensions in legal discourse was to gradually erode their rights while enforcing their obligations. At law, they became trapped within the domestic realm and their brief forays into the public sphere were confined to the purpose of punishment. The attempts by domestics to escape from the domestic realm and secure employment rights under labor legislation will be examined in Chapter Five.

TABLE VII

Statistical Report of Employment Related Crimes Committed in the City of Toronto, 1859-1936

			APPREHENDED OR SUMMONED						WARRANTS RECEIVED		
			Deserting Employment			Non-Payment of Wages			Deserting Employment	Non-Payment of Wages	
Date	Apr.	Police Chief	Male	Female	Total	Male	Female	Total	Total	Total	Legislation
1859	2	Stratton Prince	15		15	35		35			(a) (b)
1860	187		2	1	3	7	1	8			
1861	No statistics recorded										
1862	3				0	70	8	78			
1863	4		4	2	6	61	10	71			
1864	2		9	1	10	52	8	60			
1865	5		15		15	39	3	42			
1866	4		20	3	23	25	5	30			
1867	8		27	1	28	21	3	24			
1868	4		15	2	17	44	1	45			
1869	3		17	4	23	49	5	54			
1870	10		37	9	46	40	3	43			
1871	6		46	9	55	36	2	38			
1872	4		39	9	48	34	1	35			
1873	7		26	8	34	17	2	19			
1874	13	Draper	18	4	22	12	4	16			
1875	62		12	7	19	34	3	37			
1876	115		18	2	20	56	7	63	22		
1877	41		3	1	4	40	7	47	3	1	(c)
1878	4		6		6	47	6	53	2		
1879	5		7		7	41	3	44	2		
1880	5		4	1	5	35	4	39	1	1	(d)
1881	5		7	1	8	54	4	58	2		
1882	5		3	4	7	29	6	35			
1883	3		1		1	42	3	45			
1884	7		4		4	42	3	45	3	1	(e)
1885	7		2		2	53	7	60		2	
1886	5	Grasett	4		4	45	10	55			
1887	7		9		9	79	16	95			
1888	9		3		3	131	23	154	4		
1889	11					138	12	150			(f)
1890	10		4		4	110	31	141	3		
1891	11					317	37	354	1		
1892	9					239	24	263			
1893	10					283	26	309			
1894	11					246	35	281			
1895	11					233	29	262			
1896	12					279	36	315			(g)
1897	11					203	44	247			
1898	10		1		1	221	28	249			
1899	10					220	32	552			
1900	10					215	44	259			
1901	9					227	23	250	1		
1902	9					165	20	185	6		
1903	10					222	16	238			
1904	10					183	25	208			

TABLE VII (continued)

Statistical Report of Employment Related Crimes Committed in the City of Toronto, 1859-1936

			APPREHENDED OR SUMMONED						WARRANTS RECEIVED		
			Deserting Employment			Non-Payment of Wages			Deserting Employment	Non-Payment of Wages	
Date	App	Police Chief	Male	Female	Total	Male	Female	Total	Total	Total	Legislation
1905	11					234	22	256			
1906	12					196	23	219			
1907	12					190	18	208			
1908	12					280	34	314			
1909	11					263	31	294			
1910	12					223	16	239			
1911	11					231	18	249			
1912	10					323	9	332			
1913	10					266	17	283			
1914	11					402	32	434			
1915	10					356	46	402			
1916	10					167	11	178			
1917	8					104	10	114			
1918	8					82	8	90			
1919	10					56	7	63			
1920	13					92	11	103			
1921	15	Dickson				158	10	168			
1922	15					142	15	157		4	
1923	14					165	14	179		2	
1924	14					175	23	198		1	
1925	13					207	21	228		2	
1926	16					183	24	207		2	
1927	21					140	32	172			
[illegible]8	19	Draper				120	27	147			
1929	20					214	33	247			(h)
1930	26					358	32	390			
1931	25					567	60	627			
1932	29					1015	87	1102			
1933	23					540	64	604			
1934	24					395	41	436			
1935	48					271	46	317			
1936	53					332	48	380			
		TOTAL: M/F	378	69		13218	1518				
		TOTAL			449			15028	50	16	

(a) Master & Servant Act (1847) 10,11 Vic., c. 23 (U.C.) -
(b) Master & Servant Act (1855) 18 Vic., c. 136 (U.C.) -
(c) Breaches of Contract Act (1877) 40 Vic., c. 35 (S.C.) - reduced from criminal to civil wrong
(d) Divisional Court Act (1880) 43 Vic., c. 8 (S.O.) - appeals under M & S Act made to Divisional Court s. 50
(e) Master & Servant Act (1884) 43 Vic., c. 21 (S.O.) - proceedings 1 month after: wages due or employment ceases
(f) Enforcement of Orders Act (1889) 52 Vic., c. 22 (S.O.) - police magistrate has powers of Divisional Court
(g) Master & Servant Act (1896) 59 Vict., c. 38 (S.O.) - contracts waiving application of M & S Act be void
(h) Statute Law Ammendment Act (1929) 18 Geo. V., c. 23 (S.O.) - police order for payment of money as per Criminal Code s.739

Source (1859 - 1878): Annual Reports of Chief Constable - Toronto City Council Minutes
Source (1879 - 1936): Annual Reports of Chief Constable - Police Museum

Chapter 4

SOCIAL REFORMERS AND OTHER BUSY BODIES

In Canada, immigration and colonization were the responsibility of the Dominion government, and laws regulating immigration were enacted primarily for nation building purposes. Despite the public nature of immigration, the law was in fact administered in large part by private charitable organizations. Amongst these organizations were female immigration societies whose focus of concern was the emigration of women suitable as servants in Canadian homes. The membership of these organizations was made up of largely upper and middle class society women.

Prior to the first world war, women's organizations were consistently delegated the responsibility of administering state policy within the domestic sphere in the belief that they were better suited to such a task than public institutions. Women's organizations were active in temperance work and child welfare reform, as well as social and moral reform more generally.[1] As such, these reform movements were characterized by a form of "maternal feminism"[2] and were informed by upper middle class notions of "domesticity" and the proper role for women in the private sphere.

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1 See: Carol Lee Bacchi, Liberation Deferred? The ideas of the English -Canadian Suffragists, 1877-1918 (Toronto: University of Toronto Press, 1983).

2 By this I wish to suggest an interest in and support of women's involvement in society, but on the basis that the home needed protection and, as the natural protector of the home, so did women generally. Ibid. at viii.

With respect to immigration reform, female immigration societies were decidedly self interested. The women active in these organizations wanted servants in their own homes to fulfill that part of the domestic role they chose not to assume.[3] The qualities they valued in servants were the very qualities extolled as those of a virtuous wife: obedience, industriousness and loyalty. The ideal servant was not expected to complain about the conditions under which she lived, but instead, to perform her work quietly and carefully. Although many women's organizations fought for the recognition of women's rights under the banner of the suffrage movement and through the reform of married women's property laws, their activism was focussed on attaining rights which would directly benefit women of their own class. Securing rights for servants was not a pressing concern to these women and, in fact, was in direct conflict with their own interests.

An examination of the work of female immigration societies is important because it underscores the class conflict inherent in the relationship between mistresses and

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3 Despite the responsibilities involved in their reform work, under the common law, married women were considered to be under a legal disability so far as being capable of entering into or being held liable in contractual relations. This meant that a married woman, as the mistress of the household, hired servants merely as an agent of her husband. He was then bound to pay the servant wages. The wife, in effect, had no independent role as a master at law. This meant that while women involved in immigration reform administered the law they were also disentitled under the law. Women were first able to make separate contractual arrangement with respect to property under The Married Woman's Property Acts. See: in Manitoba: The Married Woman's Property Act, 1891, R.S.M. c. 95; in British Columbia: The Married Woman's Property Act, 1887, 50 Vict., c. 20, s.2 (B.C.); in Ontario: The Married Woman's Property Act, 1884, 47 Vict., c. 19, s.2 (S.O.).

maids.[4] That is to say, although mistresses were active in arranging for the mass migration of women from Europe to Canada, they were only interested in helping women who lived up to their image of the ideal servant - a truly "domesticated" employee. This meant that their notion of what constituted the right "quality" of immigrant was tailored to their needs as mistresses.

Female emigration remained largely in the hands of the private sector on both sides of the Atlantic until after the First World War. The governments of Canada and Great Britain provided funds to support the work of private philanthropic organizations, but the selection and care of immigrants was left to social reformers, the express proviso from the Canadian government being that only the "desirable immigrants" be encouraged to leave Europe for Canada.

The reticence of the Canadian government to intervene directly in the immigration process can be explained in a variety of ways. First, the government was more interested in the quantity rather than the quality of immigrants. Regarding servants, quality was monitored by the female immigration societies, the members of which were often well connected with government officials or bureaucrats through marriage or birth. Government monitoring of the activities of these organizations consequently took an unofficial form. Second, immigration reform work was performed by volunteers with a stated commitment to quality emigration. They were willing to provide, almost free of charge, services the government would otherwise have had to pay for. Third, the government retained control with respect to licensing immigration reform societies,

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4 The class conflict between mistresses and maids will be examined further in Chapter Five in the context of efforts by domestics to unionize.

following the enactment of The Immigration Aid Societies Act of 1872 and its subsequent amendments.[5] As such, if any society pursued policies which were inimical to government interests, their licences might not be renewed.

The transition from private charitable immigration to government controlled immigration took place at more or less the same time in both Great Britain and Canada (1917-1920), during a period when state intervention in the economy was increasing.[6] As state intervention in immigration increased, however, the numbers of emigrating domestic servants decreased. This can be explained in part by a more restrictive immigration policy during the Depression. But the drop in numbers might also be explained by the fact that female reformers in Canada had a vested interest in obtaining domestics in a way that government bureaucrats did not, with the result that bureaucratically administered immigration was not as aggressive as immigration administered by the women's organizations. In fact, Canadian female immigration societies consistently lobbied government to exempt domestic servants from the financial requirements demanded of other immigrants and were adamant that government assistance for passage be maintained in the case of domestic workers. The societies recognized that female immigrants provided the most reliable source of suitable servants for their personal needs and for other women of their class in Canada.

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5 An Act to Provide for the Incorporation of Immigration Aid Societies, 1872, 35 Vict., c. 29 (S.C.).

6 An example of increased state intervention during this time period is the enactment of minimum wage laws in Canada from 1918 to 1922.

Emigration of women from Britain was promoted in the belief that it would solve the problems of overpopulation, social disorder, unemployment and "surplus women".[7] Since, in the colonies, women were needed as servants and wives, British and Colonial interests appeared to coincide. In fact, these interests were only partially compatible. The British reformers were anxious to export two classes of women: destitute women and "redundant" educated middle-class women. The Canadian reformers, instead, wanted competent domestic servants - neither the "dregs" of British society nor "ladies" unsuited or unwilling to perform the work expected of Canadian women. The Canadian view was expressed by organizations such as the National Council of Women:

> It is never the scum or dregs of a population, but its legitimate overflow only, which ought to be emigrated.[8]

> There is always a demand for domestic servants and trained workers; but practically none for educated British women.[9]

The lobbying activities of female immigration societies in Canada, and their sister societies in Britain, provide an explanation for the policies of the Canadian government with respect to female immigrants generally and domestic workers in particular. These societies took an avid interest in immigration matters and were able to secure government

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7 Genevieve Leslie, "Domestic Service in Canada 1880-1920" in Janice Acton et. al., eds., Women at Work in Ontario 1850-1930 (Toronto: Women's Educational Press, 1974) at 101.

8 National Council of Women, Women of Canada: Their Life and Work (1900) [Reprinted 1974] at 411.

9 Report on Immigration resented at the Twentieth Annual Convention of the National Council of Women in 1913, Labour Gazette, June 1913, at 1372.

support for a variety of different projects involving domestic workers, including setting up hostels for domestics in a number of Canadian cities. By contrast, they showed little interest in securing protections for domestic workers under labour law. They lobbied for government support and funding to bring the best girls to Canada, but once these young women arrived and were settled in the homes of the Canadian middle and upper classes, the government was not expected to enquire into the conditions under which they worked.

Immigration Efforts Before 1916 - Philanthropy

There were a number of organizations in Britain devoted to female emigration.[10] The most prominent of these societies was the United British Women's Emigration Association (UBWEA) which was formed in 1884.[11] The UBWEA had branches throughout England, Scotland and Ireland and, beginning in 1902, it produced a monthly journal The Imperialist Colonist.[12] The members of the UBWEA were, for the most part

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10 In 1886, societies promoting emigration from the British Isles included: The United British Women's Emigration Association; The British Ladies' Female Emigrant Society (established in 1849); The Female Middle-Class Emigration Society (established in 1862); The Girls' Friendly Society; The Westminster Working Women's Home; The Women's Emigration Society; The Young Women's Christian Association and The Aberdeen Ladies Union. See: W.A. Carrothers, Emigration From the British Isles [1929] (reprinted - New York: Augustus M. Kelly, Bookseller, 1966) at 319.

11 The UBWEA was originally known as the United English Women's Emigration Association. This society in turn emerged from the Women's Emigration Society formed in 1880. James Hammerton, Emigrant Gentlewomen: Genteel Poverty and Female Emigration 1830-1914 (London: Croom Helm, 1979) at 148-9.

12 Ibid. at 149.

upper class women. These women saw their work as charitable work - a duty to their country and its colonies. They were also "progressive" in the sense that they deeply believed women should be able to engage in remunerated work. A central part of their work was directed towards improving employment opportunities for women.[13]

The UBWEA was particularly interested in promoting the emigration of middle and upper class women who had been trained as a governess, a teacher or a nurse but who could find no opportunities for employment in England and who were unable, or unwilling, to marry. These were the "superfluous" women who were the subject of considerable concern, as well as scorn, in England.[14] The principle concern was that, because of the scarcity of men, these women would not fulfill their expected role as mothers and wives. As such they would be without the protections and care women were deemed to need. To compound matters, public opinion in Britain lamented that these women were over-educated and without the proper means to support themselves.[15]

The genteel emigrant, however, posed a particular problem for British reformers. Class barriers designated domestic service as unsuitable employment for a "lady", and a "lady" was unlikely to have the training that would make her suited to domestic service. The reformers developed a two-fold project - on an ideological level to persuade women of the "better classes" that domestic service was an appropriate occupation, and, on a practical level to train them for domestic service before they left Britain.

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13 Hon. Mrs. Joyce, "Forewords" (January 1902) 1 Imperial Colonist 1: 3.

14 See the novel Phineas Finn written by Trollope in 1869: Anthony Trollope, Phineas Finn (Harmondsworth: Penguin, 1972).

15 F. Musgrove, The Migratory Elite (London: Heinemann, 1963) at 32.

The campaign to make domestic service acceptable to genteel emigrants began in earnest with a change in terminology. The genteel domestic servant was re-named a "home-help", a "companion-help" or a "lady-help" to distinguish her from domestic servants of the working classes.[16] Guide books were written to encourage women of the middle and upper classes to emigrate to Canada.[17] Domestic service was presented as a transitory stage in the movement from British lady to Canadian lady. As Georgina Binnie Clarke wrote in 1910:

> no domestic who is any good remains a domestic in the Colonies. They prosper, rise in life, set up establishments of their own and require domestic help for themselves.[18]

The reformers also set up schools for the domestic arts, partly to upgrade the status of domestic work and partly to provide much needed training to upper and middle class women unfamiliar with domestic work. In 1900, the UBWEA established "A

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16 Hammerton, supra, note 10 at 155.

17 See extracts reproduced in Susan Jackel, ed., A Flannel Shirt and Liberty: British Emigrant Gentlewomen in the Canadian West 1880-1914 (Vancouver: University of British Columbia Press,1982): Jessie Saxby's chapter "Women Wanted" in West Nor'-West published in 1890, Ella Sykes' A Home-Help in Canada published in 1912, Georgina Binnie Clark's article "Are Educated Women Wanted in Canada" published in The Imperial Colonist in 1910, and Emily Poynton Weaver's chapter "The Woman Canada Needs" in Canada and the British Imrnigrant printed in 1914. See also: Mrs. Sillitoe "Lady-Helps in British Columbia" (August 1904) 3 Imperial Colonist 32: 102-104; Archdeacon Lloyd, "Lady Workers Wanted in Saskatchewan" (April 1906) 5 Imperial Colonist 52:50-52; Ellen Joyce "On Openings for Educated Women in Canada" (July 1906) 5 Imperial Colonist 55:100-104.

18 Georgina Binnie Clark "Are Educated Women Wanted in Canada?" (February - April 1910) 8 The Imperial Colonist 22-24, as quoted in Jackel, supra, note 16 at 162.

Colonial Training Home" at Leaton in Shropshire.[19] The British training colleges soon increased in numbers and eventually spread to the colonies. The first Canadian college was the School of Domestic Science, opened in Hamilton in 1894.[20]

The recruiting efforts of the UBWEA were very successful prior to the First World War. The UBWEA established a fund to assist women who wished to emigrate, on the understanding that the women would pay back these loans in the course of employment - large numbers of women took advantage of this arrangement. The loans were withheld, from women who were already engaged as domestic servants in Britain,[21] since domestic servants were in short supply and the self interest of members of the UBWEA mitigated against encouraging these women to leave. The women sent abroad under the auspices of the UBWEA travelled with a matron who protected them during transit and who arranged for their care upon arrival. Sister societies in the colonies ensured that the female immigrants were housed in suitable accommodation and, where necessary, were sent across the country under proper supervision.[22]

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19 See Hammerton, supra, note 10 at 158. See also: "The Training of Women in the Domestic Arts for Home or Colonial Life" (May 1902) 1 Imperial Colonist 5:42-43; and , "Where to Train, and How to Train" (October 1902) 1 Imperial Colonist 10:92-94.

20 See: Bacchi, supra, note 1 at 95. See also: Miss. Vernon, "A Canadian Training College" (February 1905) 6 Imperial Colonist 38:15-16.

21 Hammerton, supra, note 10 at 154.

22 Amongst the Canadian female immigration reformers were the Women's Protective Immigration Society of Montreal (founded in 1881), the National Council of Women (founded in 1893), and the Women's Domestic Guild of Canada.

In Canada, the movement towards the formation of female immigration societies, began in 1879; immigration committees organized by local women were set up in Ottawa, Montreal and Toronto. The primary interest of these committees was to secure domestic help in Canada:

> [B]y general co-operation therewith by those principally interested - that is to say, by the ladies of Canada - a means will be realized by which one of the most serious drawbacks to the comfort of domestic life, the difficulty of getting good and honest servants, will be very greatly ameliorated.[23]

After its formation in 1893, the National Council of Women (NCW) coordinated much of the philanthropic immigration work performed by women's organizations in Canada. These efforts were undertaken in close co-operation with British immigration societies, especially the UBWEA. The Local Councils of the NCW, located in major cities across Canada, formed immigration committees to which the existing female immigration societies affiliated. The hostels set up for the care of immigrants were also listed as affiliates of the Local Councils.[24]

The Canadian female immigration societies were active in lobbying their government on three different fronts: to secure funding for hostels to house female immigrants upon arrival; to ensure government funds for the assisted passage of

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23 Resolutions of the First Meeting of the Central Committee, Reception and Protection of Female Immigrants in Canada (1879), (Pre 1956 Imprints, v. 92: 697) at 14.

24 See affiliates of the National Council of Women and its Local Councils listed in the National Council of Women Year books - 1894 to 1920.

domestic workers; and to maintain exemptions for domestics from requirements made of other classes of immigrants that they possess money upon landing in Canada.

The societies were successful in persuading both the provincial and federal governments to fund hostels which would provide housing and care for female immigrants, almost all of whom were domestics. The hostels were not set up simply for the benefit of maids, they also served the interests of mistresses since they provided a reliable means to locate domestic help. Hostels were established in a number of Canadian cities: Montreal in 1882, Winnipeg in 1896, Toronto in 1905 and Calgary in 1906.[25]

The first Canadian female immigration society to establish a hostel was the Women's Protective Immigration Society of Montreal.[26] It had the backing of the most influential men in Montreal and its members had close ties with government. In 1882, the society succeeded in obtaining a $1,000 annual grant from the government to operate a home for female immigrants arriving in Montreal. The grant was maintained more or less consistently until 1916 when it was substantially reduced.[27] The home provided shelter for immigrants free of charge for their first two nights in Canada, after that a

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25 See: Marilyn Barber, "The Women Ontario Welcomed: Immigrant Domestics for Ontario Homes 1870-1930" (1980) 72 Ontario History 148-172, at 156; and National Council of Women Yearbooks 1894 to 1920.

26 The Women's Protective Immigration Society was founded in 1881. It affiliated with the National Council of Women in 1893. It was re-named The Women's National Immigration Society in 1898 and ultimately closed in 1917. See: Barbara Roberts, "Sex, Politics and Religion: Controversies in Female Immigration Reform Work in Montreal, 1881-1919" (1980) 6 Atlantis 1: 25-38, at 25; and National Council of Women Yearbook, 1894.

27 The grant was raised to $1,500 in 1903 and to $2,000 in 1912, but in 1916 it was reduced to $1,000. Roberts, supra, note 26 at 28-32.

minimal fee was charged. The home also functioned as an employment bureau for domestics and their employers.

Working on a similar basis as the Montreal hostel, the Girls' Home of Welcome was established in Winnipeg in 1896. The home was supported by a local philanthropist, Miss Fowler, and by the provincial government - both paying $500 to the upkeep of the hostel.[28] Its objects were:

> to establish a home for girls engaged in domestic service, or otherwise earning their livelihood, who immigrated to this country. But secondly, the Directors hope to widen their sphere of labour and make it a training school for domestics.[29]

The annual reports of the home indicate that most of the women arriving in Winnipeg were British and over half of them were sent out by the UBWEA.[30]

A committee of the National Council of Women, working closely with the UBWEA, decided that a similar hostel was necessary in Toronto for the purposes of securing lodgings and obtaining situations for domestics coming to Ontario from Britain. A hostel was opened in September 1905 in Toronto, thanks to a grant of $1,000 from the province of Ontario.[31] The home provided shelter for female immigrants free of charge for 24 hours, with a subsequent charge of 50¢ a day. The hostel also acted as an employment exchange, since for a small fee, employers were able to apply to the hostel to

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28 First Annual Report of the Girls' Home of Welcome Association, Winnipeg, Manitoba, 1898.

29 Ibid. at 5.

30 Ibid. at 12.

31 Labour Gazette, April 1908, at 1237.

secure domestic help. Similar hostels were established in Calgary and Halifax, both of which were supported by grants of $500 from the federal government.

In addition to establishing hostels for the housing and care of domestics, the immigration societies were also active in lobbying government to extend assisted passage and maintain exemptions for domestics from landing dues. Until the First World War, the immigration societies maintained a firm position regarding the necessity for financial aid to female immigrants and free passage within Canada to their points of destination. They were less firm regarding the bonus system. On the one hand they supported the system of granting a bonus to those philanthropic societies which were concerned with the emigration of the "desirable classes" of emigrants - specifically the UBWEA and its sister societies. On the other hand they were somewhat wary of the agents employed by the steamship and railway companies. These agents were considered unscrupulous characters who were preoccupied with profiting from immigration work and who were not deemed to have the best interests of Canada at heart. They were thought to be principally responsible for any "undesirables" who arrived in Canada.

As early as 1879, the Central Committee of the Society for the Reception and Protection of Female Immigrants sent a petition to the Dominion government asking for funding and recognition. The petition demanded that the government recognize the Central Committee in Ottawa, and its sister committees as the proper agents for the reception, protection and distribution of female immigrants coming to Canada duly recommended by corresponding committees in Europe. The organization suggested a five point plan for female immigration to be adopted by the Dominion government. The principal features of this policy were:

a. That the Government continue to grant $5 bonus for such immigrants.

b. That the Government endeavor to obtain from the Ontario government the continuance of their grant of $6 each, as also the allowance (as is done in Toronto) of $2 for a week's board, each, on arrival in Ontario of such immigrants.

c. That the above bonuses may be allowed and paid for intermediate passengers as well as for steerage passengers, so as to provide for a superior class of person, such as nursery governesses, children's nurse &c., who could not well be expected to go in the steerage.

d. That the bonus vouchers may be placed in the hands of the several committees in Europe in correspondence with this committee.

e. That the Government continue to give a free passage through this country to those immigrants who come recommended by the several committees in Europe.[32]

When assisted passage to preferred immigrants was abolished in 1888, the immigration societies in their reports to government were quick to point out the decline in numbers of immigrants, blaming the decline on government policy:

> The figures given by the Board of Trade show a falling off in the numbers of British emigrants ... The stoppage

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32 Reception and Protection of Female Immigrants in Canada, supra, note 22 at 15.

> of the Government assisted passage to Canada has no doubt principally caused this decrease.[33]

In the 1890's the societies complained that it would be impossible to secure large numbers of domestic servants unless something was done to lessen the cost of passage. They also noted that proper supervision was required in transit and also upon arrival in Canada. In particular, they were concerned that domestics' accommodation before placement be supervised.[34]

Where the societies feared that other private immigration schemes were providing Canada with unsuitable immigrants they were vocal in their opposition to government policy. The controversial issue was the government bonus to steamship company agents of £5 on each "preferred immigrant" procured. The female immigration societies accused the steamship companies of charging too much for the passage fare and of sending out unsuitable emigrants.[35]

The most restrictive position taken by the NCW was at the end of the first world war when Canadians feared a massive influx of war widows from Britain. The NCW passed a resolution "that there shall be no grants to transportation companies or private agencies and no bonuses for immigrants".[36] In 1920, immigration to Canada was restricted by the federal government: immigrants were required to possess money upon

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33 "Report of Montreal Women's Protective Immigration Society, 1889", Canada, House of Commons, Sessional Papers, (1890), Vol 23, Paper No. 6, Appendix 26, at 141.

34 National Council of Women Yearbook, 1896, at 201.

35 National Council of Women Yearbook, 1912, at 92.

36 National Council of Women Yearbook, 1917-18, at 73.

landing in Canada, but exemptions were made for domestics and farm labourers.[37] This policy is particularly interesting because, in effect, it restricted the immigration of those women not engaged in traditional female employment. The only women who were able successfully to emigrate were those who worked in the domestic sphere.

In general, the lobbying efforts of Canadian female immigration societies were well-coordinated. The societies were extraordinarily successful in securing government support for the emigration of domestic servants, particularly in terms of securing funds for hostels and for prospective immigrants. The societies also found employment for large numbers of women brought over from Europe and in so doing they satisfied the needs of the Canadian establishment. Much of their success was due to their co-operative arrangement with British sending societies as well as their own personal influence with government.

Immigration Efforts After 1916 - Government Involvement

In Britain after the First World War there was an encroachment by the state into the arena of female immigration. The primary reason for this was the attempt by the government to promote Imperial unity while addressing the severe social and economic problems brought about by the war - of particular concern were the thousands of women left widowed.[38] In an effort to control the nature of this encroachment, and to ensure

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37 National Council of Women Yearbook, 1921, at 165.

38 Brian Blakeley, "The Society for the Oversea Settlement of British Women and the Problems of Empire Settlement, 1917-1936" (1988) 20 Albion 3: 421-444, at 421-22.

that they were not left out of future projects, British female emigration societies joined to form the Joint Council of Women's Emigration societies in 1917.[39] The founding members of this organization included the UBWEA, the South African Colonization Society (SACS)[40] and the Colonial Intelligence League (CIL).[41] In 1918, they were joined by the Girls' Friendly Society (GFS) and the YWCA. The next year a meeting was convened by the government which included sixteen organizations active in female emigration. The conference resulted in the formation of the Society for the Oversea Settlement of British Women (SOSBW).[42] It was this organization which was largely responsible for the emigration of women under the Empire Settlement Plan of 1922, which provided free passage to the colonies for those people who had served Britain during the war.

As a quasi-governmental organization, however, the SOSBW did not operate in the same spirit of co-operation with overseas societies as did its predecessor organizations; instead, the 1920's saw an increase in demands for control of quality immigrants by colonial governments. The Canadian government requested that immigrants be screened by Canadian officials and that ship matrons accompanying

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39 Ibid. at 426.

40 The South African Colonisation Society was formed as an offshoot of the UBWEA at the conclusion of the Boer War to promote the emigration of single women to South Africa. Ibid. at 423.

41 The Colonial Intelligence League was formed in 1910 "to promote the emigration of a better class of woman". Ibid. at 426.

42 The SOSBW was formed in the summer of 1919 and continued operations until 1966. Ibid. at 430.

immigrants be approved by Canada.[43] These demands by Canada reflect a corresponding growing government involvement in immigration matters.

In Canada, the gradual involvement of government in female immigration corresponded to a tightening of immigration matters generally. There was a fear that Canada would be swamped with immigrants from Britain after the war and that these immigrants would be of the wrong type. The government's concerns were shared by the female immigration societies who were anxious that the post-war emigration from Europe would not be suitable for Canada. The immigration societies were particularly concerned about the emigration of war widows and "independent" women who had worked in non-traditional jobs during the war. These women were considered to be unlikely candidates as domestics and domestics were the only class of female workers in demand in Canada.

In Canada, the movement towards government involvement in immigration matters was welcomed by the female immigration societies. They had been suggesting the formation of a national network to coordinate female immigration for a number of years. In an effort to harness the energies of these organizations and to coordinate their efforts, the federal government arranged two conferences which were held in 1919, and were devoted exclusively to examining the post-war scarcity of domestic workers. The cordial relationship between the government and the female immigration societies can be explained partly because the women playing a leading role in these organizations were closely linked by marriage to politicians. The conferences were organized by the

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43 Ibid. at 434.

Ministry of Immigration and Colonization and were chaired by Vincent Massey,[44] who was married to Alice Vincent Massey, the convenor of the Immigration Committee of the National Council of Women.

The first conference, held on the 14th of May, 1919, was devoted to questions concerning the care and housing of women immigrants. The recommendations to government included the need for increased financial assistance to hostels already operating in Canada and funding for new hostels. Those in attendance included representatives of various women's organizations (the Young Women's Christian Association, the National Council of Women, the Imperial Order of the Daughters of the Empire, the Women's Christian Temperance Union, the Social Service Council, the Federated Women's Institutes and the Interprovincial Farm Women) as well as the Great War Veterans' Association and the National Committee on Mental Hygiene.[45]

The second conference, held in September 1919, resulted in the creation of the Canadian Council of Immigration of Women for Household Service. The Council was composed of a member of each organization represented at the conference, a representative of each of the provinces (except Prince Edward Island), as well as a representative of the Trades and Labour Congress of Canada.[46] The primary objects of the organization were:

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44 Vincent Massey was also the cousin of Charles Massey who was shot by his domestic servant Carrie Davies on February 8th, 1915 for attempted rape. At her trial which ended on February 27 1915, Davies was acquitted by the jury. See Leslie, supra, note 7 at 94.

45 Labour Gazette, Oct. 1919, at 1121.

46 Labour Gazette, March 1921, at 387.

a. Undertaking the supervision of existing hostels for the reception and care of immigrant women for household service.

b. Arranging for the establishment, control and supervision of new hostels as need arises.

c. The control and administration of such Federal or other financial aid as may be granted.

d. Studying the question of immigration of women for household service, and making to the Department of Immigration and Colonization from time to time such recommendations as may be deemed advisable in the general interests of Canada and the immigrant.[47]

The conference was considered a huge success and members of the Council diligently agreed to perform the work necessary to conform to the agreed objects, including carrying out an international survey on the conditions of domestic work in selected countries. The immediate work of the Council was greatly helped by federal government grants in the amount of $11,680.[48]

The Council did not report to the federal government until March 1921. After considerable research and consultation with foreign countries on the question of domestic service, the Council concluded that "standardization of domestic service" was the solution to the "servant problem". The recommendations of the Council included designating housekeeping as part of the school curriculum for girls beginning at age 10, and raising

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47 Ibid., at 387.

48 Order-in-Council, P.C. 1891, dated 12 August 1920 and Order-in-Council, P.C. 3191, dated 27 December 1920.

housework to the status of a profession through "training schools, standards of efficiency, certificates and diplomas".[49] Despite the recognition of poor working conditions, there was, however, no demand for a minimum wage for domestics.

The Canadian Council of Immigration of Women next convened in March 1922. It was reported that the hostels were successful in caring for female immigrants and that a Women's Department of Immigration had been set up by the government and was in operation. It was resolved that the Council, having accomplished the work for which it was established, would not be required to meet unless a meeting was called by the Minister responsible for Immigration.[50] The resolutions passed by the Council indicate that there was still considerable concern over immigration. The Council endorsed the Minister's declaration for the continuation of restrictions on immigration and agreed that the quality rather than the quantity of immigration should be the first consideration. In particuar, medical and mental examination for immigrants before embarkation were recommended. Finally, "in view of the need for a continued restrictive and selective immigration policy", the Council urged the Department not to delegate to any nongovernmental body its rights of selection and admission; and that urged that no grants be made to any such body for the purpose of inducing immigration.[51]

The Minister Responsible for Immigration reconvened the Council six years later under pressure from various organizations, acknowledging that the greatest problem the

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49 Labour Gazette, March 1921, at 397-8.

50 Labour Gazette, May 1922, at 498.

51 Ibid. at 498.

Department faced was the selection of the "right type of people".[52] Delegates from each of the provinces noted that the demand for domestic servants still greatly exceeded the supply. The Conference addressed certain key issues: (1) the recruitment of immigrants; (2) agencies subsidized or bonused; (3) placement and distribution by province and occupation; (4) contract labour; (5) procedure before sailing; (6) supervision during voyage; (7) follow-up work and Canadianization; and (8) naturalization.

In response to criticism of the Empire Settlement Act of 1922, the government spokesman at the meeting pointed out that assistance was only offered to British and Irish emigrants. He explained that transportation companies had increased the price of passage rates to such an extent that even the cheapest rates were prohibitive to many would-be immigrants and that consequently the government had inaugurated the scheme of assisted passage.[53] Furthermore, he noted that other agencies recruiting domestics, such as railways and steamship companies, were required to present prospective emigrants for inspection by Canadian officials before these emigrants were granted assisted passage.[54] More generally, he pointed out that loans were still offered to houseworkers for rail fares, but that they were expected to posses at least £2 upon arrival in Canada. The Council was also informed that only experienced houseworkers were recruited and inexperienced women were accepted when nominated by employers.[55]

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52 Minutes of: A Conference of the Canadian Council of Immigration of Women February 27-19, 1928. (Ottawa: The King's Printer, 1928) at 5.

53 Ibid. at 19.

54 Ibid. at 16.

55 Ibid. at 15.

After hearing the government report, the Council praised the increased involvement by the government in securing medical examinations overseas and for extending to unaccompanied foreign women protections offered to British women. The Council also considered the issue of assisted passage and made the following recommendation:

> Your committee recommends that special attention should be given by the constituent bodies of this Council to the question of assisted and reduced passage schemes.[56]

The vague language of this recommendation reflects the different views of delegates: the Trades and Labour Congress were opposed to assisted emigration generally, while the women's organization were in favour of assistance for domestics and other preferred emigrants. Since no agreement could be reached they resolved to reconsider the issue at a later date.

By 1930, immigration was firmly in the hands of government, and the immigration societies active before the war now functioned merely in an advisory capacity. In addition, the membership of the Council set up to advise government was divided on certain topics, such as assisted passage, and consequently the demands of female immigration reformers were diluted. In particular, financial protections offered to domestics were gradually eroded.

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56 Ibid. at 40.

Conclusion

Although, in Canada, immigration was the responsibility of the federal government, the government was able to delegate the administration of immigration policy to charitable organizations. This delegation was monitored on an informal basis since the women in leadership positions within the charitable organizations were also often the wives, daughters or friends of Ministers. As such, the work of these private organizations was intimately connected with that of government.

In Canada, the female immigration societies effectively controlled the immigration process for domestics until 1920 when they voluntarily cooperated with the government in forming a national immigration network. The women's organizations were successful in lobbying for government funding for hostels as well as passage assistance for domestics. Although this work was presented as philanthropic, it was undoubtedly self-interested since it centered on securing domestic help for their own homes. The immigration societies played a central role in determining the "quality" of female immigrants and their member's notions about a "good servant" informed the selection process for domestic workers.

Despite an apparent community of interests, female immigrants and female immigration reformers were divided along class lines. Immigration reformers were vocal in calling for government protections for immigrant women coming to Canada, but were silent when it came to protecting domestic workers under their contracts of employment. Their class interests as mistresses precluded them from supporting the claims of maids and, instead, they voiced considerable concern over the creation of domestic workers'

unions. The efforts by domestics to secure protection in terms of minimum wages and hours will be examined in the next chapter.

Chapter 5

EXCLUDED FROM PROTECTION

In the first part of the twentieth century, working women in Canada became the subject of a lively debate over the merits of protective legislation. The debate centered on the desirability of protecting women from potentially hazardous working conditions which might pose a threat to their reproductive systems or their moral virtue - in particular, concern was voiced over the length of hours women worked and the low wages which they were paid. The perimeter of this debate was restricted to the public work environment and focussed on those women working outside the home in industrial establishments. The working conditions of women employed in private homes were never a subject of serious consideration, despite the dangers women encountered there.[1]

Protective legislation for women workers was justified, by those interest groups which promoted it, on the grounds that women needed to be protected as women, not as workers. It was the location and type of work rather than work *per se* which was deemed to pose the threat. As a result, domestic work which was located in the private sphere and regarded as women's "natural work" remained marginal to the debate. Despite this marginal status, domestic workers and their unions have fought to be included under minimum wage provisions since the early 1900's. While they were being consistently excluded from protections by

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1 Apart from the dangers associated with performing domestic tasks, (such as burns, cuts and scrapes, arthritis and exhaustion) domestic workers were also subject to seduction and rape.

government, they received little or no support from female social reformers, male unionists and other activists.

Female social reformers were, for the most part, the employers of domestic workers with a vested interest in maintaining low wages and long hours. In their eyes, the ideal maid was polite, hard working and submissive. The possibility that maids would organize and lobby for better wages was somewhat shocking. It was intolerable, however, that the state might enter their private domain to regulate working conditions.

Traditional male unionists regarded female workers generally as passive and helpless. Their stereotypical view of women was unfounded - since some women workers, including domestics, were in fact militant.[2] Despite evidence of a feisty spirit amongst industrialized female workers, many male unionists were reluctant to support efforts by these women to unionize and demand better working conditions, and they recognized domestics' unions only after the difficult work of organizing had been done. Domestics tended to focus their efforts on attempting to unionize and on lobbying for legislative change, rather than engaging in dramatic action like strike activity. This was largely because they were employed in private homes, often as the sole employee. As such, traditional collective action was almost impossible to coordinate and efforts at securing legislative change held more promise. Because domestics diverged so greatly from the norm of industrial worker, their organizing efforts received little attention from male unionists. More support was offered to the domestics' cause in the

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2 For evidence of working women's militancy in Canada see: Mercedes Steedman, "Skill and Gender in the Canadian Clothing Industry, 1890-1940" in Craig Heron and Robert Storey, eds., On the Job (Montreal: McGill-Queen's, 1986); and, Linda Kealey, "No Special Protection - No Sympathy" Women's Activism in the Canadian Labour Revolt of 1919" in Deian Hopkins and Gregory Kealy, eds., Class, Community and the Labour Movement: Wales and Canada 1850-1930 (Wales, Cambrian News, 1989).

1930's, but it was not consistent or forceful, and came primarily from Communist organizations which were themselves marginal.

Domestics were left to their own resources and, not surprisingly, found it very difficult to secure legislative reform. In Canada, it was not until the 1980's that legislation was enacted which included domestic workers under wage and hour protections - a time when their struggle to obtain a minimum wage and maximum hours was almost a century old.[3] In order to explain the state's long reluctance to regulate domestic work by providing and enforcing legislative standards, it is necessary to trace the social, economic and political history of the fight for minimum wages in Canada.

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3 Provincial legislation covering domestic workers:
British Columbia: Employment Standards Act Regulation (B.C. Regs. 233/89) s. 3(2)(b) - minimum wage of $40 a day for domestics.
Manitoba: Domestics Regulation Under the Employment Standards Act, 1982, (M. Regs. 222/82) and, Domestic Workers Regulation Under the Employment Standards Act., 1987, (M. Reg. 99/87) minimum wage where domestic is employed more than 24 hours a week.
Newfoundland: The Labour Standards Regulations, 1982, (N. Reg 1446/82) and, The Labour Standards Regulations, 1988, (N. Reg 254/88) s. 8 - minimum wage is $3/hr.
Ontario: Domestics Regulation Under the Employment Standards Act, 1980, (O. Regs. 1013/80) and, Domestics, Nannies and Sitters Regulation Under the Employment Standards Act, 1987, (O. Reg 308/87) s.3 - minimum wage is $4.75/hr.
Prince Edward Island: Minimum Wage Order,1985, (EC126/85) s.1 - domestics exempt from minimum wage if caring for children in private homes.
Quebec: Regulation Respecting Labour Standards,1981, (O.C. 873/81) and Regulation Respecting Labour Standards Act,1988, (O.C. 1285-90) s.5.- minimum wage is $202 a week if domestic "lives-in".
Yukon: Labour Standards Act Minimum Wage Regulation, 1988, (OIC 1988/63) s. 3.
In the provinces of Alberta, New Brunswick, Saskatchewan: and Nova Scotia as well as the North West Territories, domestic workers are excluded from wage and hour protections.

Historians have shown that minimum wage legislation in Canada was generated through political struggle[4] in which a variety of interest groups were engaged.[5] These interest groups included female social reformers, social gospel reformers, trade unionists and employers' associations. I will argue that the exclusion of domestic workers from minimum wage legislation resulted from their marginal status as political actors. As marginal political actors their demands for inclusion under minimum wage legislation were destined to remain part of a marginal discourse.

The dominant political discourse embedded in the early minimum wage laws of Canada relegated domestic service to the "private sphere" where it would remain unregulated by the state. However, this relegation did not occur without resistance. In order to understand why the demand by domestics for coverage under minimum wage laws remained a subordinated discourse, several factors will be considered: first, the influence of economic policy and minimum wage legislation in foreign states; and second, within the Canadian context, the actors involved, their status and central interests.

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4 Jane Jenson argues that the nature of political struggle is such that it results in "a universe of socially constructed meaning":

> Within this universe, the parameters of political discourse are established by the process of limiting the set of actors accorded the status of legitimate participants; the range of issues considered within the realm of political debate; the policy alternatives considered feasible for implementation; and, finally, the alliance strategies available for achieving change.

Jane Jenson, "Gender and Reproduction: Or, Babies and the State" (Summer 1986) 20 Studies in Political Economy 9-46, at 26.

5 Margaret E. McCallum, "Keeping Women in Their Place: The Minimum Wage in Canada, 1910-25" (1986) 17 Labour/Le Travail 28-56, at 29-41.

Before embarking on this project, it is perhaps of value to consider the contradictory nature of domestic service in the context of other work forms covered by protective legislation so as to understand why it might be at the margin of debates about work in the first place. Domestic service lay uncomfortably between "productive" and "reproductive" work. Although domestic service constituted waged labour, it involved providing service, not producing things to be bought and sold. Though it was performed for an employer, it was performed in the employer's home, and not in a factory or shop. Though a domestic contracted for a set wage and could change employers, her hours of work were elastic. These factors made the domestic a somewhat anomalous "free" waged labourer. At the same time, she did not fit neatly into the "reproductive sphere" for, although she worked to maintain a home and a family, they were not her own and she was paid for her service. Domestic workers were neither "industrial workers"[6] nor "family members". Although most work covered by minimum wage legislation was "productive", the Acts did cover the service work performed in laundries[7] and some other types of "personal service".[8] In effect, the legislation

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6 Domestics did attempt to get recognition as industrial workers in the hope that it would elevate their status (see infra).

7 British Columbia award of the Board dated March 31, 1919; Manitoba award of the Board dated July 27, 1918; Ontario award of the Board dated May 1, 1921; Saskatchewan award of the Board dated October 1, 1919, see Table V in Kathleen Derry and Paul Douglas, "The Minimum Wage in Canada" (1922) 30 Journal of Political Economy 155-188.

8 British Columbia award dated August 16, 1919 relating to public housekeeping, including: waitresses; attendants; housekeepers; janitresses; cooks and kitchen help in restaurants, hotels and tea-rooms; chambermaids in hotels, lodging-houses and apartments - the rate set at was $14 a week for experienced employees and $12 a week for inexperienced employees , with up to an $8 deduction for food and lodging. Award dated September 15, 1919 relating to personal service occupations, including: manicuring; hairdressing and barbering - $14.25 experienced or $10 inexperienced. Labour Gazette, October 1919, at 1238.

covered a variety of work forms which resembled domestic work; the distinguishing fact was that this work was performed outside the home for profit.

Once enacted, the minimum wage statutes reflected an ideology of "privacy" with respect to domestic workers. That is to say, the state became more reticent to intervene in employment relations the more that intervention appeared to impinge on the "private domain" of the employing classes. With respect to domestic work, the employing classes were, of course, the same classes which dominated political discourse; most politicians, lawyers, judges and reformers employed domestic servants. Servants were therefore forced to rely on ineffective remedies provided under the common law or master and servant legislation - where domestics were working under exploitative conditions (long hours and low wages) these legal remedies were useless.

The Development of Minimum Wage Theory

The writings of economists, which generated and justified the minimum wage statutes which were enacted by 1918, provide important background as to the nature of the debate concerning minimum wage legislation as it occurred in Canada. Writing at the turn of the century, economists who supported the minimum wage argued that such legislation was designed to fulfill two major objectives: briefly, these were the prevention of "sweating" and the promotion of industrial peace.[9]

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9 J.H. Richardson, A Study on the Minimum Wage (London: George Allen & Unwin, 1927) at 16-28.

Sidney and Beatrice Webb drew attention to the problem of "sweating" as early as 1882. In these early discussions, "sweating" had a very narrow meaning, referring to the process by which workers' wages were reduced to the barest minimum under the system of subcontracting. By 1915, the term had come to have a broader meaning. Subcontracting was no longer an essential factor, and "sweating" had come to mean low wages, excessive hours and unsanitary working conditions.[10] The "anti-sweating" economists presupposed an industrial work environment, and argued that sweating encouraged "parasitic labourers" who, in order to maintain themselves, relied on the wages of other workers (and hence on other industries). This parasitic labour was condemned as promoting industrial inefficiency and national degradation (in the form of unhealthy workers and mothers), as well as simply being inhumane.[11] Female workers were seen as being particularly susceptible to "sweating" and its evils. For these reasons, the prevention of "sweating" became the primary justification for minimum wage laws, particularly in jurisdictions where sex specific legislation was enacted.

Together with the prevention of "sweating", minimum wage legislation was also supposed to prevent industrial strife. This objective was of more relevance in those jurisdictions where minimum wage legislation applied to male as well as female workers, since male workers were more likely to engage in strike activity over low wages during this period. Before enacting minimum wage legislation, New Zealand and Australia experienced a rash of violent strike action over low wages. In order to promote stability and pacify the workers,

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10 E. M. Burns, Wages and the State (London: P. S. King & Son, 1926) at 8-9.

11 Sidney Webb, "Economic Theory of a Legal Minimum Wage" (December 1912) 20 Journal of Political Economy 10: 973-998, at 986-989. This position was supported in Canada by Mackenzie King who denounced sweated labour in the 1890's. See: Paul Craven, 'An Impartial Umpire': Industrial Relations and the Canadian State (Toronto: University of Toronto press, 1980) at 70-77.

minimum wage legislation was introduced.[12] The rationale being that if this type of measure would pacify male workers it may as well be extended to those female workers employed in the same trades.

In the early 1900's, there were several arguments levelled against the minimum wage. The main argument being that the minimum wage created a wage ceiling rather than a floor. For some critics this fear appears to have been related to the belief that minimum wage legislation constituted a revival of the mediaeval practice of fixing wages.[13] Other critics recognized that in order to maximize profits some employers would pay no more than they had to and therefore the minimum wage would become, in effect, the maximum wage. Miss Murray, a female trade unionist wrote:

> Men know that a minimum wage established by law is apt to become the maximum wage. They shout for it for women, but there is not a whisper of it as a means of helping men. Instead, men organize, and when they

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12 Richardson, supra, note 9 at 26-8.

13 In the fourteenth century, Britain, like most of Europe, was devastated by the bubonic plague. As a result of the many deaths, there was a severe shortage of labour and those workers who survived began to charge higher rates for their labour. In an attempt to stop this practice The Statute of Labourers (1350) Edward III, Statute I, was enacted. The preamble read as follows:

> Whereas late against the malice of servants, which were idle and not willing to serve after the pestilence without taking excessive wages, it was ordained by our Lord the King, and by assent of the prelates, earls and barons and others of his Council, that such manner of servants as well as men and women should be bound to serve, receiving salary and wages accustomed in places where they ought to serve.

> have settled among themselves what they think is a right wage, they bring pressure to bear upon employers until they get that rate.[14]

Similarly, minimum wage legislation was criticized on the grounds that it would lead to the unemployment of those workers who had only been able to secure work in very low paying jobs:

> It appears that in many sweated trades it is only by its very cheapness that the labour can hold its own against the competition of capital, represented chiefly by machinery in factories .... [this] will increase the probability that the labour hitherto earning less than the minimum will be left without employment.[15]

It was also argued that foreign trade would be adversely affected by the increased cost of production due to a minimum wage:

> It seems difficult to escape the fact that a rise in the cost of a commodity causes, other things being equal, a fall in the demand for it. A rise, therefore, in the cost of all the commodities produced for foreign consumption will cause a fall in demand for them - that is, a diminution of exports.[16]

A wage scale was introduced for various occupations and the Justice of the Peace was authorized to enforce it, such that the rates paid were comparable to those prevailing before the plague.

14 This article was part of a two part series on protective legislation printed in the early issues of Chatelaine. E. M. Murray, "Do Women Want Protection? No!" (August 1928) 1 Chatelaine 6, at 45.

15 H. B. Lees Smith,"Economic Theory and Proposals for a Legal Minimum Wage" (December 1907) 17 Economic Journal 504-512, at 512.

16 Ibid., at 510.

Other criticisms were not so much principled objections to the minimum wage, as criticisms of the process designed to establish the wage rate itself. These criticisms tended to concern the appropriate amount for a "living wage" for three different types of employees: a male bread-winner, a female bread-winner and a single woman with no dependents. In jurisdictions where there was sex-specific legislation, critics were particularly concerned that minimum wage laws which were designed to meet the circumstance of single women would leave female bread-winners without sufficient wages to support their families.

The Canadian legislation was enacted relatively late, after the debates in other countries had run their course. The general consensus abroad favoured the minimum wage and proponents of the legislation in Canada used this to their advantage. Consequently, the major objections to minimum wage legislation were easily distinguished or ignored, and the passage of minimum wage laws *per se* did not receive serious opposition in the provincial parliaments. There were, however, debates as to the type of legislation which was to be enacted. In order to understand the context of this debate it is first useful to survey the legislation adopted in other countries.

Legislation in Other Countries

Minimum wage legislation varied from jurisdiction to jurisdiction in terms of coverage. Some jurisdictions had sex-specific legislation, some only covered certain types of industries, and others only covered homeworkers. By the time the debate over the minimum wage in Canada gathered full force in 1918, legislation regulating wages and work hours had been enacted in several other countries. These foreign statutes were used as models for the Canadian acts and played an important role in framing the terms of the debate concerning

minimum wages in Canada. Although a detailed discussion of the peculiarities of each national context at the time of enactment is beyond the scope of this chapter, a brief overview of the foreign acts provides some insight into the legislative models available to Canadian legislators in 1918.

The earliest minimum wage law was New Zealands' Industrial Conciliation and Arbitration Act of 1894.[17] It was followed by a series of Australian statutes[18] and by the British Trades Board Act of 1909.[19] The New Zealand, Australian and British statutes applied to men as well as women, and were enacted both to prevent "sweating" and to prevent industrial unrest. The first minimum wage laws enacted in European countries only covered industrial home-work, which had the lowest wages and the poorest working conditions.[20] A

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17 Industrial Conciliation and Arbitration Act, 1894, 58 Vict. No. 14 (New Zealand)

18 Factories and Shops Act, 1896, 60 Vict., No. 1445, s. 16 (Victoria)

Factories Amendment Act, 1900, 63 & 64 Vict., No. 752, s. 13 (South Australia)

Industrial Disputes Act, 1900, 64 Vict., No. 20, s. 28 (Western Australia)

Industrial Arbitration Act, 1901, 1 Edwd. VII, No. 59, s. 36 (New South Wales)

Wages Board Act, 1908, 8 Edwd. VII, No. 8, s. 3 (Queensland)

Wages Board Act, 1910, 1 Geo. V, No. 62 (Tasmania)

19 Trade Boards Act, 1909, 9 Edw. VII, c. 22, s.4 . The original Act only covered four industries: tailoring, box-making, lace-making and chain-making.

20 France 1915 Home-work Act; Norway 1918 Home-work Act; Austria 1918 Home-work Act; Czechoslovakia 1919 Home-work Act, see Burns, supra, note 10 at 102-108. See also Mary Lynn Stewart, Women, Work and the French State: Labour Protection and Social Patriarchy, 1879-1919 (Montreal:McGill-Queen's University Press, 1989).

number of American states also developed minimum wage legislation, but for the most part these acts only applied to women, or to boys under a certain age.[21]

Minimum wage legislation differed not only in terms of coverage but also as to how the wage was set. Two different models for setting wage rates were adopted in these early forms of minimum wage legislation. One model was known as the "flat-rate" or "fixed-minimum", since it designated a "flat-rate" across industries without distinctions. The other model was known as the "board or arbitration system", since power was given to a wage board or arbitrator whose responsibility it was to deal with each industry separately and designate a minimum within that industry.[22] Wages were normally set after an investigation as to industry conditions and the cost of living.

Most countries enacting minimum wage legislation in this period adopted the "board system". A number of economists recommended this model, criticizing the fixed minimum wage on three counts: first, for failing to promote industrial peace; second, for failing to benefit workers who received wages that, though unsatisfactory, were above the level of the set wage; and third, for offering little protection where the rate was set too low, or was not changed according to the rise in the cost of living.[23]

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21 1912 Massachusetts; 1913: California, Colorado, Minnesota, Nebraska, Oregon, Ohio (men and women), Utah, Washington, Wisconsin; 1915: Arkansas, Kansas;1917 Arizona; 1918: District of Columbia (declared unconstitutional by the U.S. Supreme Court in 1923 in the case of Adkins v. Children's Hospital 216 U.S. 525). For a discussion of the enactment of protective legislation in the United States see: Susan Lehrer, Origins of Protective Labor Legislation for Women, 1905-1925 (Albany: State University of New York Press, 1987).

22 Burns, supra, note 10 at 25-37.

23 Ibid. at 239.

The one universally shared feature of the various forms of minimum wage legislation was that none of them covered domestic workers. The justifications advanced for the omission of domestics were that they were already well paid, and "lived-in" making legal regulation of their work inappropriate or unenforceable. Since domestics were unlikely to cause "industrial unrest" there was also no need to pacify them through wage regulation.[24]

In Canada, the provincial labour ministers took into account the different minimum wage systems in existence in drafting their minimum wage acts, but there was no international precedent for including domestic workers under minimum wage legislation prior to 1920. Those groups lobbying for minimum wage legislation were also aware of foreign developments, and urged the provincial governments to enact laws which would provide similar protections to Canadian women as those afforded overseas.

Interest Groups Lobbying for Minimum Wage Regulation

Canadian historians have argued that that there was little resistance to the enactment of minimum wage legislation in Canada. Margaret McCallum identifies four main interest groups which played a prominent role in the debate: business, labour, social gospel reformers and women's groups.[25] Her analysis shows that although these groups had different interests they were, by and large, compatible; their compatibility, however, was also antithetical to the interests of domestic workers.

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24 Ibid. at 181-3.

25 McCallum, supra, note 5 at 29.

McCallum identifies central themes in the demands of these different groups. The response of business groups hovered between "laissez-faire" rhetoric and the recognition that minimum wage legislation could have the effect of warding off industrial unrest and reducing "unfair" competition from "sweated" industries. The pragmatic response of business was to favour minimum wage legislation for women, but not for "workers".[26]

Although there were a variety of labour groups with somewhat different interests, the Trades and Labour Congress (TLC) was the most influential labour coalition.[27] The TLC's primary interest was protecting male wage rates from cheap female labour. Strategies ranged from demanding equal pay for equal work to demanding a minimum wage so as to "protect" women who were viewed as helpless, timid, and unable to organize into unions. Ultimately the TLC supported a minimum wage for women, but relied on collective bargaining to increase male wage rates.[28]

The social gospel reformers advocated wage regulation in order to preserve working class morals and to ward off the "social evils" of poverty. Wage regulation for women workers was considered necessary in order to "safeguard the physical and moral health of themselves, the community and future generations".[29]

Canadian women's groups were primarily motivated by "maternal feminism". They considered minimum wage laws to be a means to provide a "living wage" for those women

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26 Ibid. at 36-37.

27 For an institutional account of the TLC see: Harold Logan, Trade Unions in Canada: Their Development and Functioning (Toronto: MacMillan Co., 1948).

28 McCallum, supra, note 5 at 37-38.

29 Ibid. at 38.

who were widowed or could not find mates. The female reformers also believed that by raising the standard of living for women workers, the legislation improved the conditions of mothering for women generally. [30]

Reviewing the effects of minimum wage legislation in Canada in 1924, J. W. MacMillan, Chair of the Minimum Wage Board in Ontario, notes:

> It was upon the plea of the prevention of low wages that all minimum wage legislation in Canada came to be enacted. In no Province did any overt antagonism show itself at the time the laws were presented to the several legislatures. The supporters of these laws have championed them on the ground that they guaranteed and defended a wholesome subsistence for a class of workers who are economically feeble. They were not sought by those who are most directly to benefit from them. No working women lobbied on their behalf. Perhaps if they had shown themselves capable of such organized and concerted effort the compassion of the community would not have been so readily excited on their behalf.[31]

Given the interests motivating the dominant political actors who lobbied for minimum wage legislation, it is perhaps not surprising that they did not concern themselves with domestic workers. Domestics were not considered to be "sweated" labourers and they were engaged in work where they did not compete with male workers. Furthermore, domestics were employed by women dominant in politics in their capacity as lobbyists or as wives, daughters and mothers of male politicians. Finally, employers were reticent to pay higher wages and offer better conditions of employment to domestics, when the same type of work

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30 Ibid. at 33-39.

31 J. W. MacMillan, "Minimum Wage Legislation in Canada and its Economic Effects" (1924) 9 International Labour Review 507-537, at 516-7.

was performed by many other women in their own homes for free. In effect, the status of domestics as women, working for women, doing women's work, situated them so deeply in the private sphere that their demands for a minimum wage were barely audible in the thick of political struggle.

Demand for Minimum Wage by Domestics

Domestics themselves were adamant about the need for a minimum wage. Although historians have argued that wage-earning women did not lobby for minimum wage legislation,[32] this was not the case for domestic workers. The organizations which they formed represented only a small number of the domestics employed in Canada, but they were quite vocal in lobbying for change. The demand for a minimum wage by domestics was directly related to the conditions under which they worked. Most commentators agreed that domestic work had some particularly unattractive features as compared to other forms of work available to women. Writing in 1892, Jean Thomson Scott noted:

> The general reluctance of girls to go into service in Canada has been much discussed. Many point out that they are really better off than girls working in factories or shops so far as wages and comfort are concerned. On the other hand the factory or shop girl has certain hours; and when her work time is over her time is her own. Then too, many prefer to work where there are a number of other girls employed ... Moreover, there can be little

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32 McCallum, supra, note 5 at 38.

> doubt that the social barrier which exists between mistress and maid deters many from service.[33]

By 1900 conditions had not changed. A report on the women of Canada, produced by the National Council of Women for the Paris International Exhibition, stated:

> The great reluctance of girls to enter domestic service in Canada arises from a variety of causes, the greatest one being perhaps the ease with which women can obtain employment in stores, shops, factories, printing offices and other similar establishments. In these places girls have stated hours for work, and, as a rule, are not called upon for night duty. This gives a feeling of greater freedom and independence.[34]

In 1892, wages in Ontario for a "general" servant ranged from $6 to $14 a month, whereas, in factories at this time the range in wages was from $2 to $9 a week.[35] By 1900, a "general" servant was paid from $8 to $14 a month in Eastern Canada and from $10 to $20 in Western Canada. Laundresses earned from $16 to $20 a month, but it was noted that "this is in a way skilled labour".[36] General servants living in Toronto were paid from $8 to $15 a month in April 1913, while typists were paid $10 a week.[37] Although the wages paid to domestic workers were generally less than those paid to other female workers, Thomson Scott's assertion that domestics were "better off", supposedly reflected costs for board and food.

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33 Jean Thomson Scott, The Conditions of Female Labour in Ontario (Toronto: Warwick & Sons, 1892) at 19.

34 National Council of Women, Women of Canada: Their Life and Work, [1900 (reprinted 1975)] at 108.

35 Thomson Scott, supra, note 33 at 20-21.

36 Women of Canada, supra, note 34 at 108.

37 Labour Gazette, April 1913, at 1077.

However, the issue for domestic workers was not the monthly wage, but the terms and conditions of employment: when the long and unpredictable hours of service were computed in, the hourly wage rate was in fact very low.

Domestic Workers' Unions and the Minimum Wage

The conditions of domestic work, especially the long hours and low wages, provoked demands for change by domestic workers and resulted in their attempts to unionize. Domestics have, however, been notoriously difficult to organize. They have always worked more or less alone in small, separate work places isolated from other domestic workers.[38] Collective action has therefore been difficult to coordinate and most unions formed by domestic workers have been short lived. But despite these problems, as early as 1901 domestics formed associations and engaged in collective action to protest their poor treatment.[39]

Unions formed by domestics had a range of institutional forms. Some organizations were informal clubs, some were independent unions and others had formal affiliation with provincial federations of labour or with women's organizations. The unions served both as social clubs and as political associations. Domestics affiliated with unions engaged in a number of different political activities ranging from rare instances of collective action to

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38 Rachel Epstein, "Domestic Workers: The Experiment in B.C." in Linda Briskin and Lynda Yanz, eds., Union Sisters: Women in the Labour Market (Toronto: Women's Press, 1983) at 228.

39 Table VIII sets out the record compiled by Federal Department of Labour of the unions formed by domestics in the period from 1911-1940 according to city.

legislative lobbying, but lobbying for minimum wages appears to be a common theme for all these organizations.

The earliest evidence of a maidservants' union in Canada is the Household Workers' Association (also known as the Servant Girls' Association) which was set up in Ottawa in March 1901,[40] and appears to have been in existence until at least December 1902.[41] The Association had about 225 members,[42] and its principal demands were a shorter working day and time off on Sunday for religious devotion. The association also established a sick benefit plan for its members. In response to the creation of this union, employers threatened to hire Chinese workers, but the Association "looked lightly on this threat".[43] There is some evidence to suggest that members of the Association periodically engaged in a type of strike activity; one group of servants walked out on their employer while Cabinet Ministers were being entertained![44] Despite some indication of agitation, however, the objectives of the group and their views on the labour legislation of the time remain a mystery.

By 1913, recognizable maids' unions had been formed and were actively lobbying for a minimum wage and a shorter working day. The Home and Domestic Employees' Union was formed in Vancouver on March 31st,1913 and by August 1913 it claimed 65 women as

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40 Labour Gazette, April 1901, at 450.

41 Labour Gazette, December 1902, at 443.

42 E. Forsey, Trade Unions in Canada 1812 - 1902 (Toronto: Toronto University Press, 1982) at 321.

43 Ottawa Citizen, June 13, 1901.

44 Forsey, supra, note 42 at 321.

members.[45] The objects of the organization were: (1) a nine hour day; (2) a minimum wage; and (3) recognition as a body of industrial workers.[46] It achieved its third aim when the British Columbia Federation of Labour endorsed the union at its Fourth Annual Convention in January 1914, and passed a resolution "pledging hearty co-operation and demanding that any eight-hour law enacted shall include domestic employees in its scope".[47] On August 21, 1914, the union became an affiliate of the Vancouver Trades and Labour Council.[48] In the same year, the Home and Domestic Employees' Union was instrumental in lobbying for An Act Relating to the Employment of Domestic Employees which would have set a 9 hour working day and a 54 hour work week, but the bill did not progress beyond second reading.[49] Despite this failure, domestics in the province continued to organize. The Domestic Home Workers' Union appears to have folded in 1915; however, in 1916, the Progressive Home Workers' League was set up and was active in British Columbia until 1919.[50] The Home Workers League was instrumental in demanding that domestics be included under the British Columbia Minimum Wage Act in 1919, but was unsuccessful in its efforts.

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45 Labour Gazette, August 1913, at 152 and Star Rosenthal "Union Maids: Organized Women Workers in Vancouver 1900-1915" (1979 Spring) 41 B. C Studies 36-55, at 50. See also Table VIII.

46 Labour Gazette, March 1914, at 1071.

47 Labour Gazette, February 1914, at 954.

48 Labour Gazette, September 1913, at 266.

49 Labour Gazette, April 1914, at 1163.

50 B.C. Federationist, 21 March 1919 and June 3 1919. See also Table VIII.

In Calgary, the Housekeepers' Association, an affiliate of the Calgary local of the National Council of Women and the YWCA, was formed in 1916,[51] and was active until at least November 1919.[52] The Association stated its objectives as the "securing of a better recognition of the position of servants or housekeepers and the obtaining of proper conditions of work, including a standard wage and a maximum day".[53] The methods proposed to achieve these objectives were set out in the union's constitution:

> (1) A printed contract form, to be used by members of the association in accepting positions with employers; (2) a course in Household Science for which a certificate shall be given to successful candidates; (3) a minimum wage and a maximum day. If more time than the maximum day is required it shall be counted as overtime and shall be paid for as provided in the By-laws; (4) a uniform dress with a distinction to indicate whether the wearer is certified or uncertified.[54]

The by-laws provided for: a minimum wage of $15 per month; a maximum day of 10 hours; overtime to be paid at the rate of 15 cents per hour.[55]

Maids' unions were set up in other cities across Canada prior to and during the enactment of minimum wage legislation. The Hotel and Houseworkers' Federal Labour Union

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51 Rev. Mahaffy, "Experiment in Calgary" (Nov. 1916) Woman's Century, at 16.

52 "Mistress and Maid" (Nov. 1919) Woman's Century, at 4. See also Table VIII.

53 Labour Gazette, November 1916, at 1696.

54 Certification was significant for domestics because it suggested a distinction between skilled and unskilled workers. "Professionalization" was important in terms of self esteem, it also justified higher wages and better treatment. Ibid. at 1696.

55 Ibid. at 1696.

#58, an affiliate of the TLC, was active in Winnipeg from 1918 to 1920.[56] A Housemaids' Union was formed in Sydney, Nova Scotia in March 1919.[57] The Labor Party of Ontario organized a Domestic Workers' Union in Toronto in 1919.[58] In addition, the Hotel and Restaurant Employees' Union organized the Domestic Employees' Union, #599 which was active in Toronto from 1918 to 1920.[59] These and other organizations lobbied for the inclusion of domestic workers under the provincial minimum wage statutes, arguing for standardization of hours and of wages.

During this lobbying activity, domestics did not receive support from other groups which were lobbying for the enactment of minimum wage legislation. With no public outcry over the exclusion of domestics, the provincial legislatures had little incentive to break with the precedents set in other countries. And so, despite the pioneering efforts to organize and lobby for wage protections, domestic workers' unions were unsuccessful in securing their demands.

Minimum Wage Legislation in Canada

The marginal status of the demands made by women engaged as domestics can be explained in part because factory work was the sole focus of the earliest minimum wage provisions enacted in Canada. The Alberta Factories Act of 1917 set a flat-rate minimum

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56 See Table VIII.

57 "Domestic Workers Organize" (March 1919) Woman's Century, at 6.

58 "The Domestic Service Problem" (April 1919) Woman's Century, at 37.

59 See Table VIII.

which applied nominally to men as well as women.[60] It was followed by the Manitoba Minimum Wage Act of 1918. Manitoba had a Board-set rate specific to each industry but still only covered employees in shops, factories or mail-order houses. The rate was to be determined by assessing what was "adequate to support the necessary cost of living".[61] This model was followed by the provinces of Saskatchewan, Quebec and Nova Scotia.[62]

British Columbia and Ontario adopted legislation which purported to apply to all female employees, but these statutes explicitly excluded domestics and farm labourers.[63] The legislative debates leading to the enactment of minimum wage acts in these two provinces are informative because, unlike debates in other provinces, they specifically addressed the

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60 Although other provinces had Factory Acts prior to Alberta, the Alberta statute was the first to set a minimum wage: Factories Act, 1917, c.20 - s. 221 set a flat-rate minimum of $1.50 per shift. Alberta later abandoned the flat-rate, and in 1922 adopted a Board-set rate: Minimum Wage Act, 1922, c.81 (assented to March 28, 1922) provision excluding domestics 2(c).

61 Manitoba: Minimum Wage Act, 1918, c. 38 (assented to March 6, 1918) applied to employees in shops, factories or mail order houses s. 2 (e).

62 Saskatchewan: Minimum Wage Act, 1918-19, c. 84 (proclaimed in force May 1,1919) applied to employees in shops and factories only.
Quebec: The Women's Minimum Wage Act, 1919, c.11 (proclaimed in force March 17, 1919) applied to industrial establishments only.
Nova Scotia: Minimum Wage for Women Act, 1920, c.11 (assented to May 15, 1920) applied to employees in shops and factories only s. 2 (f).

63 British Columbia: Minimum Wage for Women Act, 1918, c. 56 (assented to April 23, 1918) provision excluding domestics s.15.
Ontario: The Minimum Wage Act, 1920, c.87 (proclaimed in force October 1, 1920) provision excluding domestics s. 24.
The British Columbia and Ontario model were adopted later by other provinces:
New Brunswick: The Minimum Wage Act,1930, c. 11 (assented to April 10, 1930) provision excluding domestics s. 24.
Newfoundland: Became a province in 1949. Minimum Wage Act, 1952, c.260 (R.S.N.).
PEI: No Minimum Wage Act.

exclusion of domestics. The debates illustrate the difficulty experienced by politicians in rationalizing the exclusion of domestics. Domestics were, after all, female workers working in low paying jobs. The major factor distinguishing them from other low paid female workers was that they worked in private homes rather than commercial establishments. The legislative debates also illustrate that politicians relied on arguments justifying the exclusion of domestics which were directly related to their notions about the inviolability of the "private sphere". In the end it was considered improper to have a government body investigating working conditions in private homes.

In British Columbia a Minimum Wage Bill was introduced by Mrs. Mary Ellen Smith, a noted suffragist and Member of Parliament for Vancouver. Her bill did not include domestics. In a meeting with the Attorney General on March 6, 1918, Mrs. Wakefield, president of the Progressive Homeworkers' League, asked that domestics not be overlooked. A month later, during second reading, Mr. Fisher, M.P., criticized Mrs.Smith's bill for its failure to include domestics. Despite this, when the bill was given royal assent on April 23, 1918, domestics had been excluded.[64]

In Ontario, the Minimum Wage Bill was introduced after the victory of the Farmer-Labor Alliance over the Conservatives in the election of 1920. The Hon. Mr. Walter Rollo, Minister of Labour and Member of Parliament for Hamilton West, who introduced the bill, originally included domestic workers. This was a radical move since there was no international precedent for this provision. Rollo had intended his bill to have broad application:

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64 British Columbia Sessional Clipping Board, reports of March 7, 1918, April 5 1918 and April 23, 1918.

> The Hon. Mr. Rollo declared that the board would have the power to fix the minimum wage for any class of workers who needed it, but that they would start with those who were in the greatest need of help. He also wanted to emphasize that it was not planned to help the organized workers, as he felt that they were able to look after themselves.[65]

Mr. H. H. Dewart, the Liberal Leader, criticized the Bill arguing that domestics should not be included:

> He thought it should be obvious that the industrial workers are in quite a different position from the domestics and the farm helpers. The latter are provided with their keep, which is more than happens to the industrial workers, and therefore, they did not need the attention of the Government to the same extent.[66]

Dewart's criticism represents a backlash against legislation which was judged to be excessively interventionist in a period when many liberals and conservatives were proponents of "laissez-faire" capitalism. Dewart had himself drawn up a bill which was modeled on the Manitoba statute and which applied exclusively to "industrial workers".[67] He was clearly caught off guard by the government bill and, as a form of protest, attacked the provision including domestics as being too broad an application of the legislation.

Rollo wanted to push the bill through the Legislature and, rather than generate more opposition, he chose to mollify Dewart by excluding domestics. When the bill returned from

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65 "Bill to Protect Female Workers", The Mail and Empire, May 21, 1920.

66 Ibid.

67 Ibid.

Committee after second reading, domestics and farm labourers had been excluded. The Toronto Globe, however, quoted Mr. Rollo as saying:

> If all domestics were used as well in the city as they are on the farms there would be no need for a Minimum Wage Bill.[68]

The implication of this statement was that the familial environment for domestics in farm settings was not replicated in the city, hence there was a need to provide them with legal protection in the same way as other female employees. In the case of the Ontario legislation, domestics were sacrificed in the name of political compromise. Rollo was determined to see his bill pass through the legislature, even if it meant abandoning his principled stance. Ultimately, he succeeded in securing a broad-based minimum wage act in Ontario at the expense of the single largest class of women engaged in remunerated work.

Lobbying Activities of Domestics' Unions After 1920

Despite their failure to be included under minimum wage legislation when it was first introduced, domestics continued to organize and lobbied for changes to the legislation. They were particularly vocal during the depression years, but there was also some evidence of lobbying by, or on behalf of, domestics during the 1920's.[69] Briefly, from 1926 to 1928, the Home Service Association #16, (an affiliate of the Trades and Labour Council) was active in

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68 "Farm Labor and Domestics Excluded From Wage Bill", The Toronto Globe, May 26, 1920.

69 An attempt to organize domestics by the Communists is noted in 1926, but it is unclear if this effort was successful: (July 1926) 1 The Woman Worker No.1, at 10.

Vancouver.[70] In the late 1920's, there appears to have been Finnish maids' unions, mostly organized by Finnish Communists, in Montreal, Toronto, Sudbury,[71] Sault Ste. Marie, Timmins and Vancouver. A central demand of these Finnish unions was the enactment of minimum wage laws.[72] In 1928, the Chinese communities of both Toronto and Vancouver also established a union of domestic workers.[73]

When the full force of the Great Depression hit Canada in the 1930's, domestics began to organize in earnest. The Communists were the most actively involved in organizing domestics in Ontario and British Columbia. While it is clear that the Communists experienced more difficulty organizing domestics than any other group of workers, they also appear to have met with a number of successes, in particular through the efforts of the Workers' Unity League (WUL).

In Ontario, most attempts by the Communists at organizing domestics were made in the context of other labour events. The Woman's Department of the Communist Party, produced a number of posters linking calls to demonstrations with an organizing campaign. A poster distributed in Timmins, Ontario, advertising May Day 1930, was directed specifically at domestics:

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70 "Domestic Workers Organize" (May 1927) 1 The Woman Worker No.11, at 1. See also Table VIII.

71 A letter from Elizabeth Este to The Woman Worker in 1928 notes 30 members of the Domestic Servants' Union in Sudbury: (Nov. 1928) 3 The Woman Worker No. 5, at 14.

72 Varpu Lindstrom-Best, " 'I Won't Be a Slave!' - Finnish Domestics in Canada, 1911 - 30" in Jean Burnet, ed., Looking into my Sister's Eyes: an Exploration of Women's History (Toronto: The Multicultural History Society of Ontario, 1986) at 48-49.

73 Ibid. at 48.

> You women who are domestic workers, have you ever stopped to think of the conditions under which we are living? Our working hours are from ten to thirteen hours daily, not including the evenings we are expected to stay in. It is true that we have been able to get one afternoon a week. The wages we get vary from twenty to thirty five dollars a month. The few getting the higher wages usually have to room elsewhere and pay room rent. Domestic workers, wake up, only by organizing, will it be possible to get better conditions. The Communist Party, the Party that leads all men and women workers in the struggle for better conditions calls upon you to organize into a union and demand:
> 1. 8 hour work day
> 2. 5 day work week
> 3. Uniforms to be supplied by employer.
> BE SLAVES NO LONGER, ACT AS MILITANT WORKERS![74]

Another poster, titled "Workers, Mothers, Domestic Servants! Organize!", was distributed in Toronto on July 13, 1930.[75] The poster is startling because it addresses both paid and unpaid workers and, as such, attempts to break down the public/private distinction by showing how the interests of productive and reproductive workers are linked.[76] This was part of the WUL strategy of organizing the unemployed - particularly men in relief camps.

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74 PAO RG 4, Appendix 3, MS 367, Reel 8, Document # 11 C 3105: Poster - probably written by Elsa Tynjala a militant Finnish domestic worker from Timmins, who was part of a delegation of women workers sent to the U.S.S.R. by the Communist Party of Canada in 1930.

75 PAO RG 4, Appendix 3, MS 367, Reel 20, Document # 21 H 0951: Poster.

76 Despite good intentions, the communists were never very successful in actually breaking down the distinctions and historians such as Joan Sangster have suggested that the ideals espoused were not particularly well cultivated within the party itself. Joan Sangster, Dreams of Equality Women on the Canadian Left, 1920-1950 (Toronto: McClelland & Stewart, 1989).

While the success of these specific Labour Day campaigns is unclear, considerable attention was generated by a militant domestics' union known as the Domestic Servants' Local Union (DSU) or Houseworkers' Union, active in Toronto throughout the 1930's. This union probably emerged from the Domestic Servants' Industrial Union of Canada (an affiliate of the Workers' Unity League of Canada), which existed at least as early as March 1st, 1931.[77] The DSU appears to have been an active affiliate of the Workers' Unity League, participating in its National Convention and proposing resolutions demanding minimum wages and maximum hours.[78] The union had a broad membership base including "all women in domestic service, domestic cooks, maids, washerwomen, charwomen etc., working in private homes and office buildings either as permanent or day workers".[79] The aims of the organization were unequivocal:

> Against victimization in the Labour Exchange.
> For sanitary boarding conditions and wholesome food.
> All day women workers paid at minimum rate of $3.00 per day.[80]

To illustrate how radical the demands of the union were, it is informative to compare its demands with the "code for domestic workers" proposed by the Toronto Local Council of

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77 PAO RG 4, Appendix 3, MS 367, Reel 22, Document # 21 H 1438: Membership card.

78 Worker's Unity, the official newspaper of the Workers' Unity League of Canada, notes the Domestic Servants' Union as a revolutionary affiliate in June 1932: (June 1932) 2 Worker's Unity, No. 10, at. 2. A delegate from the Domestic Servants' Union attended the First National Convention of the Workers' Unity League that same year: (Aug/Sept 1932) 2 Worker's Unity, No. 12, at 24. Resolutions concerning the DWU were passed at the Third National Convention of the Workers' Unity of League of Canada held November 9-11, 1935: resolution #16.

79 PAO RG 4, Appendix 3, MS 367, Reel 22, Document # 21 H 1438: Membership card.

80 Ibid.

Women which included: a 69 hour week; a minimum wage of $15 a month (inexperienced) or $20 (experienced); and overtime pay or extra time off.[81] By contrast, the DSU demanded: a 48 hour week or 8 hours a day for 6 days a week; minimum wages ranging from $30 (inexperienced) to $70 (butlers); overtime for excess hours to be paid at an hourly rate; and, workmen's compensation and unemployment insurance compensation.[82]

In addition to encouraging servants to negotiate with their employers for higher wages, benefits and improved working conditions, the DSU lobbied the government directly. In December 1935, a delegation from the Houseworkers' Union, met with the Hon. David Croll, Minister of Labour, to discuss the need for a minimum wage and maximum hours.[83] Their efforts, together with those of other lobbyists, placed considerable pressure on the government to introduce a bill amending the minimum wage to include domestics.

A variety of individuals also lobbied the Ontario government on behalf of domestic workers. Miss. Smith, a working women, writing to the Minister of Labour in December 1935, noted that houseworkers in Belleville received $2 to $3 a week:

> If they put a minimum wage for factories and restaurants why can't it go throu [sic] for housework which is harder work? ... It is no wonder young girls are getting ruined and are going to beer parlours for they can't get a

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81 Harriet Parsons, "Codes for the Kitchen" (March 1936) Chatelaine at 72.

82 Ibid. at 72.

83 PAO RG 7, Series 1(1), Box 6, File: Domestic Service 1935-37; Letter dated Nov. 20th, 1935, from Thos. A. Ewen (General Secretary of the Workers' Unity League of Canada) to David Croll (Minister of Labour) and letter dated Nov. 28, 1935 from Croll to Ewen.

> decent living wage for they are used like slaves and niggers.[84]

Miss. Smiths' complaint is interesting because it reflects a concern for the moral purity of women workers generally and domestic workers in particular. Her reference is likely to those domestics who turned to prostitution in times of economic need.[85] Her comment also brings out the divisions amongst the working class along lines of race, by suggesting that conditions which were intolerable for a white domestic might non-the-less be acceptable for Blacks.

The Minister of Labour also received correspondence from the Hon. H. H. Stevens M.P. who had been lobbied by his constituents for the inclusion of domestics under minimum wage legislation. Stevens suggested to Croll that an amendment to the legislation could be made. Croll replied stating:

> The minimum wage for domestics has been under consideration by my department for a considerable time and we have by no means abandoned our hopes of introducing it. At the same time, you will realize the immense difficulties which would confront us if we sought to enforce a schedule for this class of worker. The opportunities for violation are very great. If we can see our way to a solution of the problem, we shall be ready to do our best to correct a situation which undoubtedly holds very grievous abuses.[86]

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84 PAO RG 7, Series I (1), Box 6, File: Domestic Service 1935-37; Correspondence dated Dec. 6, 1935 between Miss Florence Smith and David Croll.

85 See: Lori Rotenberg, "The Wayward Worker: Toronto's Prostitute at the Turn of the Century" in Janice Acton et. al., eds., Women at Work Ontario, 1850-1930 (Toronto: Women's Educational Press, 1974) at 39-41.

86 PAO RG 7, Series I (1), Box 6, File: Domestic Service, 1935-37. Correspondence dated Nov. 26, Nov. 30, Dec. 4, Dec. 6, 1935.

In late December 1935, Croll enquired of his Deputy Minister, Marsh, as to his recommendations with reference to "a correction in the low wage situation as it applies to domestic servants ... from the legislative standpoint."[87] Marsh replied that the domestic servant was a problem governments had been side-stepping "for obvious reasons." He suggested that the Department of Labour should endeavor to make the question a live issue through press and radio propaganda and arouse public interest which might be sympathetic towards improving wage and hours of work standards for household workers. He added:

> [T]he administration of legislation providing for minimum wages for household workers would be very difficult and I consider it should not be undertaken except as a last resort.[88]

Although enough political pressure was generated by 1937 for the Ontario Ministry of Labour to draft an amendment including domestics under the Minimum Wage Act, the measure was never introduced.[89] The Department of Labour Minimum Wage Board report of 1937 noted:

> Application has been made by representatives of organized domestics requesting that an order be issued fixing minimum wages for all employees in private homes but the act specifically exempts domestics and agricultural workers. The difficulties of administration, the fact that most of such workers who are poorly paid receive board and room, and the apparent attitude of the general public in connection with government

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87 PAO RG 7, Series II - 3, Vol 8, File: Minimum Wage Act, 1937 (Men and Women); Memo from Croll to Marsh dated December 6, 1935.

88 PAO RG 7, Series II - 3, Vol 8, File: Minimum Wage Act, 1937 (Men and Women); Memo from Marsh to Croll dated December 13, 1935.

89 PAO RG 7, Series II - 3, Vol 8, File: Minimum Wage Act, 1937.

> intervention in private homes makes it inadvisable to recommend such action at present.[90]

Lobbying by various labour groups in Ontario on behalf of domestics continued during the Second World War. From 1937 to 1942 the Ontario Trades and Labour Council demanded that domestics be included under the Minimum Wage Act in its annual memorandum of legislative requests to the Provincial government.[91] Similarly, in a meeting in Brantford on May 24, 1938, the Convention of the Labour Education Association proposed amendments to the Minimum Wage Act to include domestics.[92] These efforts were all unsuccessful.

Ontario was not the only site of agitation in the 1930's; in Vancouver, domestics were also organizing. A Domestic Servants' Union was active from 1934 to 1935 under the auspices of the Workers' Unity League.[93] In 1936, the Domestic Workers' Union #91, was formed and obtained a charter to affiliate with the TLC in December.[94] The union called for minimum wages, a union hiring bureau to regulate standards of work, protective legislation and training programmes, as well as health insurance and accident compensation.[95] By 1937,

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90 Ontario, House of Commons, Sessional Paper, (1937), No.10, at 42.

91 Labour Gazette: February 1937, at 169; February 1938, at 167; March 1939, at 292; February 1940, at 118; March 1941, at 294; February 1942, at 184; February 1943, at 262 (note: in this year the demand was somewhat modified and related only to "domestic help employed in commercial establishments such as rooming and boarding houses").

92 Labour Gazette, June 1938, at 614.

93 See Table VIII.

94 Sara Diamond, "You can't scare me .. I'm Stickin' to the Union: Union Women in British Columbia during the Great Depression" (June 1979) Kinesis 13-17, at 16. See also Table VIII.

95 Ibid. at 17.

400 out of the 1,500 domestics in Vancouver had signed up with local #91.[96] During 1937 and 1938 public meetings were held condemning low wages and urging the inclusion of domestics under the Female Minimum Wage Act. The union was able to secure a $10 per month raise in wages, a room charge of $2 to $3, and time and a half for overtime. It failed, however, to secure inclusion of domestics under the Female Minimum Wage Act.[97] An attempt to amend the British Columbia statute to include domestics was defeated in February of 1939.[98]

Domestics were also organizing in other Canadian cities. In Montreal, the Workers' Unity League organized a Domestic Servants' Union which was active from 1934 to 1935.[99] In Halifax an independent Domestic Workers' Union was active from 1936 to at least 1940.[100] During 1937, the Halifax Union sent a delegation to lobby Mr. E. B. Paul, Deputy Minister of Labour, to demand improved conditions for domestic workers, without success.[101] Even in cities where there is no evidence of an active domestic workers' union there were periodic efforts to include domestics under the Minimum Wage Acts during the 1930's and 1940's. The Saskatchewan Provincial Executive of the Trades and Labour Congress of Canada proposed legislation including domestic workers under the Minimum Wage Act on December

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96 Ibid. at 17.

97 Ibid. at 17.

98 Labour Gazette, February 1939, at 165.

99 See Table VIII.

100 See Table VIII.

101 Labour Gazette, April 1937, at 423.

21, 1939.[102] The New Brunswick Federation of Labour urged that domestics be included under the Minimum Wage for Women and Girls Act in 1940.[103] A bill, introduced in Manitoba, to extend the Female Minimum Wage Act to include domestics, failed in May 1943.[104]

Conclusion

Protective legislation enacted in Canada explicitly excluded domestic workers on the grounds that they were already well taken care of within the family. This justification reflected the state's unwillingness to interfere in the "private sphere" and meant that the one legal avenue which offered the promise of better working conditions was denied to domestics. Unwilling to accept the inevitability of exclusion, domestics lobbied government to extend legislative protections to cover their work.

The story of resistance outlined in the preceding narrative is only the story of a small number of servants. For the most part, domestics expressed resistance by talking back, disobeying orders, or by quitting. Many domestics simply complied with their emp oyer's demands. The vast majority of domestics were unorganized and, where they were organized, their unions were short-lived. However, there is clear evidence that at least some of these women were militant and refused simply to accept their lot.

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102 Labour Gazette, February, 1939, at 167.

103 Labour Gazette, February 1940, at 120.

104 Labour Gazette, May 1943, at 510.

Where domestics were organized they existed in all female unions, or were affiliated with the Communists or labour organizations. Domestics' unions were difficult to maintain partly because many workers were transients - they changed geographic location frequently and moved out of domestic service into other occupations or into marriage. In addition, because domestics were typically individual workers isolated in private homes, conventional collective action was not successful. Lobbying for minimum standards was, however, a sensible strategic option given the difficulties they faced with collective action.

Legislators were reluctant to enact laws permitting the state to intervene in private homes. Furthermore, working women were disregarded as political actors during this time, and the Communists were actively persecuted.[105] Domestics and their unions also had few people with political status and prestige as backers. Given these factors it is remarkable that domestics were able to generate any government response and it is understandable that their demands remained unheard.

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105 Donald Avery, 'Dangerous Foreigners': European Immigrant Workers and Labour Radicalism in Canada 1896-1932 (Toronto: McClelland & Stewart, 1979).

TABLE VIII

UNIONS FORMED BY DOMESTICS: 1911-1940*

Name of Union	Afiliation	Formed	Dissolved	President when formed
VANCOUVER				
Home and Domestic Employees' Union	Independent	1913	1915	Lillian Coote
The Progressive Homeworkers' League	Independent	1916	1919	Miss K McColl
Home Service Association, 16	T.L.C.	1926	1928	Miss K. Morrison
Domestic Servants' Union	W.U.L.	1934	1935	
Domestic Workers' Union, 91	T.L.C.	1936	1939	Miss Mary Johnson
CALGARY				
Housekeepers' Association	Y.W.C.A.	1916	1918	Miss. S.G.Manning
WINNIPEG				
Hotel & Houseworkers' Federal Labour Union, 58	T.L.C.	1918	1920	Miss Mary Inch
TORONTO				
Domestic Employees' Union, 599	H & R.E.U.	1918	1920	Miss M. Walley
Domestic Servants' Local Union	W.U.L.	1933	1935	Miss Helen Hill
MONTREAL				
Domestic Servants' Union	W.U.L.	1934	1935	
HALIFX				
Domestic Workers' Union	Independent	1936	1940	Miss Kathleen Doohan

* Informal domestic unions or associations were not included in the government data

Source: Annual Report on Labour Organizations 1911-1940, Department of Labour, Canada.

CONCLUSION

An examination of the legal regimes regulating domestic workers illustrates the varied forms of law which govern human activity and the function which law serves. Domestic workers were the focus of certain legal regimes whilst being ignored by others: they were a central subject of immigration law and policy but were explicitly excluded under labour legislation. This different treatment experienced by domestic workers suggests that law functions both instrumentally and symbolically, and that the form law takes may be either coercive or ideological. The functions and form of law, however, are grounded in specific historical context and they can only be explained through an examination of the political, economic and social forces at work in a given state at a given time.

Domestics coming to Canada were offered a variety of incentives to emigrate, including the promise of marriage and financial assistance. Upon arrival, however, they were left with few legal protections at law, and their attempts to seek further protection were ultimately unsuccessful. Under immigration and labour law, the regulation of domestic service effectively favoured the interests of buyers rather than sellers of such services, for reasons which lie at the intersection of class, gender and race.

Immigration law and policy served the Empire-building function of securing potential mothers for the new dominion of Canada. By facilitating the emigration of women as domestic workers the government avoided outright "bride selling" but at the same time only welcomed women who, by occupation, were considered to be well suited to motherhood; the transition from performing domestic tasks for pay to

performing them for free was, after all, one of relative ease. Empire- building also entailed a selective recruitment policy with respect to the nationality of emigrants. The most suitable "mothers of the Empire" were considered to be British women, and, consequently, recruitment efforts focused on encouraging single British women to emigrate to Canada.

In addition to the state's nation-building interest in domestic workers, there were also large numbers of Canadian society women who saw immigration as the most reliable means of obtaining a continuous supply of servants. These women were active in the immigration reform movement for decidedly self-interested reasons, and their ideal of the perfect servant became the yardstick for measuring the suitability of future immigrants.

Once domestics were no longer recruited as wives, their national origin became less significant; by the 1920's larger numbers of European women were able to enter Canada as maids. These women were encouraged to remain in large urban centres where the need for live-in servants was greatest. The national origin of domestics was directly linked to their future status; British women were viewed as potential brides, whereas the Europeans and the small numbers of Asian women who entered Canada were never seen as being more than servants.

Immigration law and policy effectively ensured that the nation-building project of the Canadian elite would be achieved while at the same time providing servants for their homes. The qualities sought in servants were in many respects similar to those valued in a "good wife", and so the dual functions of immigration law were compatible with respect to recruitment efforts. At the same time, however, the ideology of "domesticity" which fueled the recruitment policy divided women along class lines:

domestic work was performed by servants in order to relieve mistresses of those daily chores. As such, domestic service was women's work, but work which had low status and low value. Because few women voluntarily pursued this low status work there was a continuous need for more immigrants to replace servants who chose to take on other jobs or to get married. As fewer British women expressed an interest in or a need for employment in domestic service, employers were forced to look further afield. Immigration restrictions, however, made contractual arrangements with certain non-British women take on particularly oppressive qualities - once the contract was over these women were forced to leave Canada. Thus, class divisions between mistresses and maids were reinforced by divisions of race and ethnicity.

The divisions of class and race become more apparent when domestic work is examined in the context of labour law. Although master and servant law, both in terms of common law doctrine and statute, purported to protect servants from contractual breaches, the law was not actually well suited to addressing the poor working conditions many domestics faced. Under common law doctrine, domestics were constructed as quasi-family members with contractual obligations. That is to say, although they had traditional contractual duties, the nature of their work meant that they did not have the same contractual rights enjoyed by other employees with respect to arranging hours or terms of service - they were always on call and they were delegated responsibility for a wide range of tasks. In effect, domestics were required at law to fulfil their employment contracts by behaving in the selfless way expected of female family members. At the same time, the common law status rights of medical care and the provisions of necessities traditionally enjoyed by family members were gradually denied to domestics, even while status principles were expanded to provide masters

with rights to sue in cases of seduction. As servants' rights under the common law were eroded, masters' rights were expanded - legal doctrine effectively pushed servants deeper into the unprotected private sphere.

Under statute law prior to 1877, contractual breaches by servants were treated as criminal wrongs with severe penalties, while statutory breaches by masters were merely considered as civil wrongs. Police enforcement practices were uneven, with more prosecutions recorded against servants despite the fact that servants consistently registered more complaints. These factors suggest that statutory law did more to protect masters than servants. In addition, the exploitation of servants in terms of long hours and low pay was not remedied by master and servant legislation - the statutes did little more than address failure to pay wages.

The protections offered under minimum wage laws provided a potentially effective means to fill the legal void surrounding domestic work; yet, the protective legislation enacted in Canada was either directed at female workers in industrial establishments or purported to cover all women while explicitly excluding domestic workers. The state was unwilling to extend legislative protections to those women working in the "private sphere". Encroachment on the private domain of the Canadian elite was politically risky and, in addition, the Victorian "ideology of domesticity" designated the "private sphere" as safe, and hence, not in need of regulation.

In an effort to improve their working conditions and secure legislative provisions extending minimum standards for hours and wages, domestics organized into unions and demanded inclusion under minimum wage laws. Where they were able to form unions, domestics were surprisingly militant. Traditional collective action was almost impossible to coordinate given the isolation of domestics in private homes and

therefore their strategy of lobbying the government to extend minimum wage protections was a better tactic. Their efforts were unsuccessful, largely because they were unable to muster sufficient political clout to persuade legislators to regulate the conditions of work in private homes. In addition to their lack of political support, domestics' complaints were levelled against a powerful group of adversaries - namely the wives, mothers and daughters of the Canadian elite. The combination of little support and a strong adversary ultimately resulted in defeat for the political efforts of domestics.

The fact that domestics organized at all is heartening. Chosen for their "domestic" attributes - submissiveness, obedience and loyalty - their militant organizing activity seems all the more subversive, despite its ultimate failure. This case study of domestic workers under immigration and labour law serves to illustrate the seductive promise of law; while offering a plethora of possibilities, law also presents insurmountable obstacles. The unsuccessful struggle by domestic workers for protection under minimum wage legislation illustrates both how particular subordinate groups envision legal possibilities for ameliorating unequal relations and how difficult it is for these groups to make legal possibilities into social realities.

In the final analysis, domestics were "seduced and abandoned". They were wooed with financial incentives to emigrate and then given paltry protection as workers upon arrival. The law played a very clear role in maintaining and redefining the status of domestics as "private household workers". It is the contradictions of this role that my work has attempted to uncover.

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