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# Servant of One's Own: The Continuing Class Struggle in Feminist Legal Theories and Practices

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## Review/Essay

# **A Servant of One's Own: *The Continuing Class Struggle in Feminist Legal Theories and Practices***

**MRS. WOOLF AND THE SERVANTS: AN INTIMATE HISTORY OF DOMESTIC LIFE IN BLOOMSBURY** by Alison Light. New York: Bloomsbury Press, 2008. 376 pp. \$30 hardcover.

**Reviewed by Ruthann Robson<sup>†</sup>**

### I. INTRODUCTION

Virginia Woolf is a feminist icon. The author of classic essays such as *A Room of One's Own* and *Three Guineas*, novels such as *To The Lighthouse*, *The Waves*, and *Mrs. Dalloway*, and volumes of diaries, letters, and essays,<sup>1</sup> her popularity has only increased since her death by suicide in 1941. She is an object of study in academia: the International Virginia Woolf Society has branches in the UK, Canada, and the United States,<sup>2</sup> and sometimes it seems as if no conference is complete without a panel discussing some aspect of Virginia

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<sup>†</sup> Copyright © 2008 by Ruthann Robson, Professor of Law and University Distinguished Professor, City University of New York School of Law. I am grateful to Anna Krieger and the membership of the Berkeley Journal of Gender, Law & Justice for their nurturing of this project. I am thankful to my colleagues Janet Calvo and Shirley Lung for not only reading a draft of this essay, but also for their intelligent conversations about work, class, and feminism over the years. I am appreciative of the research assistance of Deborah Rubin, class of 2009, and preliminary work by Insha Rahman, class of 2010, of CUNY School of Law. Finally, I am indebted to Sarah Valentine, for support and encouragement.

1. For a complete list of Virginia Woolf's works, see B.J. KIRKPATRICK & STUART N. CLARKE, A BIBLIOGRAPHY OF VIRGINIA WOOLF (4th ed. 1997). Various compilations of Woolf's work continue to be published.
2. The International Virginia Woolf Society, <http://www.utoronto.ca/IVWS>.

Woolf. Citations to her work show up frequently in law review articles.<sup>3</sup> She is the subject of numerous biographies investigating not only her public and writing lives, but her sexual lives, including the possibility of her abuse as a child, her long and seemingly less than passionate marriage to Leonard Woolf, and her lesbianism.<sup>4</sup> She features in joint biographies with other Bloomsbury notables, with Vita Sackville-West, with her sister the painter Vanessa Bell, and with other women writers.<sup>5</sup>

Additionally, Virginia Woolf employed servants.

*Mrs. Woolf and the Servants* by Alison Light probes “the servant problem” in the work and life of Virginia Woolf. More than most writers in her era, Virginia Woolf paid some attention to women workers, including servants. However, as has long been obvious, Woolf’s feminism—like much feminism—has a distinct upper-class perspective. Woolf does not advocate that a servant woman is entitled to a room of one’s own; Woolf’s arguments for equality are mostly focused on “the daughters of educated men.”<sup>6</sup> Alison Light’s task is to

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3. Many of the over three hundred law review citations of “Virginia Woolf” occur in articles about law and literature and feminist legal theory. A sampling of others published recently include Robert F. Blomquist, *Concurrence, Posner-Style: Ten Ways to Look at the Concurring Opinions of Judge Richard A. Posner*, 71 ALB. L. REV. 37, 55 (2008) (taking inspiration for a “kaleidoscopic technique” from the biographer of Winston Churchill and John F. Kennedy who took inspiration from a diary entry of Virginia Woolf describing her ambition for her novel *The Waves*); I. Bennett Capers, *Cross Dressing and the Criminal*, 20 YALE J.L. & HUMAN. 1, 19-20 (2008) (referencing Virginia Woolf’s novel *Orlando*); Gregory J. O’Meara, *The Name is the Same, but the Facts Have Been Changed to Protect the Attorneys: Strickland, Judicial Discretion, and Appellate Decision-Making*, 42 VAL. U. L. REV. 687, 712 n.128 (2008) (referring to Susan Sontag’s description of Virginia Woolf’s ideas about photography, which correspond to a notion of facts as “simply” given in judicial construction of facts); Carl E. Schneider, *Patients as Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 MICH. L. REV. 643, 651 (2008) (quoting Virginia Woolf’s essay *On Being Ill*).
  4. See, e.g., QUENTIN BELL, *VIRGINIA WOOLF: A BIOGRAPHY* (Hogarth Press 1990) (1972); JULIA BRIGGS, *VIRGINIA WOOLF: AN INNER LIFE* (2005); LOUISE DESALVO, *VIRGINIA WOOLF: THE IMPACT OF CHILDHOOD SEXUAL ABUSE ON HER LIFE AND WORK* (1989); LYNDALL GORDON, *VIRGINIA WOOLF: A WRITER’S LIFE* (rev. ed. 1991); HERMIONE LEE, *VIRGINIA WOOLF* (1997).
  5. See, e.g., ALISON BOOTH, *GREATNESS ENGENDERED: GEORGE ELIOT AND VIRGINIA WOOLF* (1992); JANE DUNN, *VIRGINIA WOOLF AND VANESSA BELL* (2001); CHRISTINE FROULA, *VIRGINIA WOOLF AND THE BLOOMSBURY AVANT-GARDE* (2005); GEORGIA JOHNSTON, *THE FORMATION OF 20TH-CENTURY QUEER AUTOBIOGRAPHY: READING VITA SACKVILLE-WEST, VIRGINIA WOOLF, HILDA DOOLITTLE, AND GERTRUDE STEIN* (2007); PATRICIA MORAN, *VIRGINIA WOOLF, JEAN RHYS, AND THE AESTHETICS OF TRAUMA* (2007); WILLIAM PRYOR, *VIRGINIA WOOLF & THE RAVERATS: A DIFFERENT SORT OF FRIENDSHIP* (2004); SUZANNE RAITT, *VITA AND VIRGINIA: THE WORK AND FRIENDSHIP OF V. SACKVILLE-WEST AND VIRGINIA WOOLF* (1993); KARYN Z. SPROLES, *DESIRING WOMEN: THE PARTNERSHIP OF VIRGINIA WOOLF AND VITA SACKVILLE-WEST* (2006).
  6. See *VIRGINIA WOOLF, THREE GUINEAS* (Mark Hussey ed., ann. ed., 1st ed. 2006) [Hereinafter *THREE GUINEAS*]. As Woolf explained her use of the term “daughters of educated men”:

Our ideology is still so inveterately anthropocentric that it has been necessary to coin this clumsy term—educated man’s daughter—to describe the class whose fathers have been educated at public schools [i.e. private schools in Great Britain] and universities. Obviously, if the term “bourgeois” fits her brother, it is grossly incorrect to use it of one who differs so profoundly in the two prime characteristics

fill this gap. Through meticulous research, Light brings the voices of the women who served as domestic servants to Virginia Woolf to the forefront. Light also situates the individual servants in broader social contexts of class, migration, and gender.

As Alison Light asserts, “[f]or century after century most women expected either to be servants or to keep servants. Yet change did come.”<sup>7</sup> Virginia Woolf was born to the class that were keepers of servants, but during her lifetime she observed that “human relations” were changing, including the relationships between masters and servants.<sup>8</sup> Despite the assertions of change by Alison Light and Virginia Woolf, “the servant problem” persists.

More than a half-century after Virginia Woolf’s death, the United States Supreme Court in *Long Island Care at Home, Ltd. v. Coke*<sup>9</sup> upheld a regulation that exempted certain employees in “domestic service” from minimum and overtime wage laws even if they were hired by a company rather than by individuals. Also in 2007 and also originating on Long Island, the United States prosecuted and a jury convicted a woman and a man for “forced labor” and other crimes relating to two women from Indonesia in *United States v. Sabhnani*.<sup>10</sup> While the relations of “master and servant” now appear different from those Virginia Woolf encountered in Great Britain in the twentieth century, many of the problems persist in the United States in the twenty-first century.

This essay/review explores the role of feminist legal theories and practices in confronting the continuing issue of domestic service. Part one discusses *Mrs. Woolf and the Servants*, including both the particularities and larger social aspects of Virginia Woolf’s employment of domestic workers. Part two examines the United States government’s response to domestic workers as exemplified by *Long Island Care at Home, Ltd. v. Coke*. Part three considers the criminal prosecution in *United States v. Sabhnani* relating to two domestic servants. Part four analyzes the commonalities in these mistress/servant relationships, despite the seeming disparities, and looks more broadly at the notion of service. Finally, the conclusion argues for a more pronounced engagement of feminists with the problems posed by “domestic service,” as well with issues arising from “servants” outside the domestic realm.

## II. THE SERVANTS AND MRS. VIRGINIA WOOLF

As Alison Light demonstrates, Virginia Woolf’s “feminist sympathies”

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of the bourgeoisie—capital and environment.

*Id.* at 8 & 172 n.2.

7. ALISON LIGHT, *MRS. WOOLF AND THE SERVANTS: AN INTIMATE HISTORY OF DOMESTIC LIFE IN BLOOMSBURY* 4 (2008).

8. *Id.* at 5.

9. 127 S. Ct. 2339 (2007).

10. 566 F. Supp. 2d 139 (E.D.N.Y. 2008). The prosecution resulted in a few reported decisions and some available pleadings, as well as many newspaper reports. See *infra* notes 152-184 and accompanying text.

led her to argue for the importance of women who were domestic servants.<sup>11</sup> Indeed, in her two most feminist—and most famous—essays, Woolf interjects domestic servants. In *A Room of One's Own* Woolf asks:

[I]s the charwoman<sup>12</sup> who has brought up eight children of less value to the world than the barrister who has made a hundred thousand pounds? It is useless to ask such questions; for nobody can answer them. Not only do the comparative values of charwomen and lawyers rise and fall from decade to decade, but we have no rods with which to measure them even as they are at the moment.<sup>13</sup>

In *Three Guineas*, Woolf trenchantly states: “It is much to be regretted that no lives of maids, from which a more fully documented account could be constructed, are to be found in the *Dictionary of National Biography*.”<sup>14</sup>

From such passages, one might expect Virginia Woolf's work to validate the lives of domestic servants. Yet even *A Room of One's Own* falls woefully short. In the essay's opening salvo, servants are mentioned in a list of otherwise inanimate “amenities” such as wine and sofas.<sup>15</sup> Later in the essay, the question about the life of the “average” Elizabethan woman includes the query “would she be likely to have a servant?”<sup>16</sup> and not whether the “average” woman would, in fact, be more likely to *be* a domestic servant. Additionally, as Alison Light argues, Woolf's “lives of the maids” appear, yet just as quickly recede in her own writing. For example, one of Woolf's novels describes a servant as “‘typical of the great army of her kind—the inscrutable, the all-but-silent, the all-but-invisible servant maids of history,’” but according to Alison Light, Woolf's writing does not endow the servant with speech or presence, but silences and elides her.<sup>17</sup>

Whatever the shortcomings of Woolf's public writing, they pale in comparison to what Alison Light calls the “obnoxious views” of her servants

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11. LIGHT, *supra* note 7, at xvii.

12. In the hierarchy of servants, the charwoman, or sometimes simply the char, occupied the lowest rung. Light notes that Virginia Woolf “used the word ‘char’ indiscriminately, often as a put-down, which showed how much caste distinctions still mattered.” *Id.* at 235. The charwoman worked not only in homes, but also in offices, hospitals, and hotels, “scrubbing floors and sinks, cleaning lavatories.” *Id.* at 253. She was an icon of motherliness and poverty, as well as the “butt of jokes,” especially as live-in servants became less common. *Id.* at 252-53.

13. VIRGINIA WOOLF, *A ROOM OF ONE'S OWN* 39-40 (Mark Hussey ed., ann. ed., Harcourt 2005) (1929) [hereinafter *A ROOM OF ONE'S OWN*]. Alison Light includes a shortened version of this passage, LIGHT, *supra* note 7, at xvii.

14. *Supra* note 6, at 93 & 196 n.36. As Alison Light observes, the *Dictionary of National Biography* was the magnum opus of Virginia Woolf's father. LIGHT, *supra* note 7, at 220.

15. As Woolf writes: “So obviously we cannot have wine and partridges and servants carrying tin dishes on their heads, she said. We cannot have sofas and separate rooms. ‘The amenities,’ she said, quoting from some book or other, ‘will have to wait.’” *A ROOM OF ONE'S OWN*, *supra* note 13, at 20.

16. *Id.* at 45.

17. LIGHT, *supra* note 7, at 220 (quoting and discussing VIRGINIA WOOLF, *FLUSH* (1933)).

that Woolf expressed in her letters and diaries.<sup>18</sup> And obnoxious views they are. Woolf found it “detestable, hearing servants moving about,”<sup>19</sup> “degrading” to write about servants,<sup>20</sup> and was sickened by “the timid spiteful servant mind.”<sup>21</sup> A particular servant, aged twenty-nine, is both an “honest, crusty old maid” and “incurably fussy, nervy, insubstantial,”<sup>22</sup> while a different servant who was an unmarried mother and had given her child to the nuns is dubbed “the prostitute.”<sup>23</sup> Servants “dont [sic] understand humor,”<sup>24</sup> “like rules,”<sup>25</sup> talk too much,<sup>26</sup> and have “no manners” especially when they ask for a raise.<sup>27</sup> Talking to servants produced in her a “wild misery” and servants were a cancer that had been allowed to grow on the shoulders of her class.<sup>28</sup> To call a member of her own class a “housemaid” was a favorite insult.<sup>29</sup> One servant is described as having become “a mongrel,”<sup>30</sup> and another is a “merry” mongrel.<sup>31</sup> Indeed, servants are often likened to dogs,<sup>32</sup> as in the term “dogsbody” for servant.<sup>33</sup> Like dogs, servants’ names were bestowed by their masters: Virginia Woolf consistently misspelled the name of a woman who worked as her cook for eighteen years,<sup>34</sup> her husband elided the surnames of his servants,<sup>35</sup> while others “changed” servants names.<sup>36</sup> In Woolf’s circles, servants

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18. *Id.* at xvii.

19. *Id.* at 64.

20. *Id.* at 115.

21. *Id.* at 173.

22. *Id.* at 171.

23. *Id.* at 131.

24. *Id.* at 260.

25. *Id.* at 131.

26. “The difficulty about these people is their flow of language; personal history must be told at length. I believe it is a form of good manners.” *Id.* at 201.

27. *Id.* at 142.

28. *Id.* at 205.

29. *Id.* at 147.

30. *Id.* at 176.

31. *Id.* at 231. Light reports that Virginia Woolf thought Louie Everest, a village woman in Sussex, a “merry little brown mongrel.” There is nothing to indicate that Ms. Everest was brown-complexioned, including her photograph. See LIGHT, *supra* note 7, at 288.

32. *Id.* at 264-66 (discussing “Gypsy, the Mongrel,” a story that Virginia Woolf wrote in 1939); *id.* at 71 (discussing *The Years*, a novel that Virginia Woolf published in 1937). Yet Virginia Woolf herself was critical of this equation between servants and dogs. As Light points out, in a diary entry in 1940, Woolf “noted a tribute in the newspapers to someone ‘for sixteen years housekeeper & faithful friend,’” and then added, “Note the doglike attribute.” *Id.* at 262.

33. *Id.* at 50, 266.

34. As Light notes, “Nelly Boxall,” Virginia Woolf’s cook for eighteen years, who features so prominently in her diaries, was “‘Nellie’ on her birth and death certificates, she always signed herself as ‘Nellie’, and that is how relatives spelt her name.” *Id.* at xiii. Interestingly, when Virginia Woolf included her servant’s name in her spoof acknowledgements to her novel *Orlando*, it was listed as “Miss Nellie Boxall,” spelled correctly. *Id.* at 174.

35. As Light reports, in Leonard Woolf’s autobiography, which he spent his last years writing before his death in 1969, with one exception, the women servants were not “granted surnames in his index,” nor was Percy Barthlomew, who he called “my gardener” living in “my cottage” who “cultivated my garden for twenty-five years.” *Id.* at 284.

36. *Id.* 27-28 (“The practice of giving servants more suitable names” was another way, in addition to the requirement that they wear uniforms, of making servants anonymous. Jane

were “‘lent,’”<sup>37</sup> “‘borrowed,’”<sup>38</sup> “‘poached,’”<sup>39</sup> and “‘offered.’”<sup>40</sup> At times servants seem inferior to dogs and merely, as Alison Light contends, part of the furniture.<sup>41</sup>

Moreover, it is not only Virginia Woolf's snobbish sentiments that conflict with her inspiring feminist texts. There is also the reality of Woolf's treatment of her servants. Virginia Woolf's “prosaic conclusion” in *A Room of One's Own* that it is necessary to have five hundred pounds a year and a room with a lock on the door,<sup>42</sup> seems less “prosaic” in light of the fact that she paid her full-time servants fifty pounds a year or less,<sup>43</sup> her relegation of them to a small, shared, and unhealthy room in a basement or attic,<sup>44</sup> and her outrage when she was asked to leave a servant's room.<sup>45</sup> The story Alison Light tells, however, is not simply one of exploitation and hypocrisy.<sup>46</sup> Working for Virginia Woolf or other members of the Bloomsbury circle was better than most domestic service positions.<sup>47</sup> The servants in the Bloomsbury circle had relationships amongst themselves, calling themselves “the click.”<sup>48</sup> There was also sincere emotional

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Carlyle, the wife of the eminent critic Thomas Carlyle, for example, abbreviated “Florence” to “Flo” because the former was “‘too long and romantic a name for household use.’”

Light also comments about changing the surnames of “foundlings” such as Lottie Hope by the adopters preparing such girls for entering domestic service. *Id.* at 98 (“All the orphans – including a Betty, Kate, Gertrude, Polly and Patty – were given the surname ‘Hope’”); *id.* at 87 (referring to Lottie Hope's “fictitious surname”); *id.* at 1 (discussing general practice of changing servants' names).

37. *Id.* at 140-41.

38. *Id.* at 141.

39. *Id.* at 228.

40. *Id.* at 216, 229.

41. *Id.* at 114.

42. A ROOM OF ONE'S OWN, *supra* note 13, at 103.

43. See, e.g., LIGHT, *supra* note 7, at 135 (reporting that in 1916, Lottie Hope and Nellie Boxall were earning about £38 year each, and probably about £40 per year by 1921); *id.* at 144 (“Even at his most penurious Leonard Woolf received £30 a year unearned income, far more for doing nothing than the woman who scrubbed his floors.”); *id.* at 176 (noting that “the Woolfs were modest payers”; by the late 1920s Nellie Boxall was earning about £50 per year, when the average wage for a cook was £56 per year, although the Woolfs were “generous” with the new luxuries, including a wireless in her room); *id.* at 207 (noting that in the early 1930s, the Woolfs earned £4,000 per year and paid the servants £40 per year).

44. See, e.g., *id.* at 135 (mentioning the servants' bedrooms in the attic “where the paneling ran out” and the underground basement kitchen where the servants spent most of their time); *id.* at 178 (remarking on the single room Nellie Boxall and Lottie Hope shared “without proper heating and ventilation”); see also *id.* at 32 (describing the “insanitary basement” in Virginia Woolf's childhood home that was for six or seven maids, which a maid declared was “‘like hell’”).

45. *Id.* at 192-93.

46. *Id.* at 303 (a granddaughter of Vanessa Bell (Virginia Woolf's sister) calling Vanessa Bell's treatment of her servant of fifty-two years “‘exploitation’”).

47. *Id.* at 155-56 (discussing ways in which Virginia Woolf's household was easier for servants to work in than other households: uniforms were not required; the home was comparatively informal, resulting in less work for servants; and they were “decent” to servants who were unmarried mothers).

48. *Id.* at 157 (“[I]n a pathetic tribute to Bloomsbury, mirroring the cliquish world in which they moved, the servants called themselves ‘the click’ [sic].”).

connection between employer and servant, and at times, it seems there was even friendship.<sup>49</sup> Yet the emotional terrain is always fraught. As for the employers, their “guilt, pity and rage” were intermingled.<sup>50</sup> Rage may seem at first inexplicable, but Light connects it with denigration and dependency of the flesh. Servants were known as “the glory of the British basement.”<sup>51</sup> Light argues that this architectural topography was an “inevitable metaphor for bourgeois identity, with the lower orders curtained off, relegated to the bottom of the house,” like a “symbolic ordering of the body.”<sup>52</sup> Thus, servants were associated with shameful animal needs, with the life of the body rather than the mind.<sup>53</sup>

Some of the most revealing passages in Light’s book concern the household tasks servants actually performed and the inability of the employers—meaning the mistresses of the house<sup>54</sup>—to function. Certainly, at times the employers’ “inability” was actually refusal: it does not take much expertise to empty a chamber pot<sup>55</sup> or to answer a doorbell.<sup>56</sup> At other times, however, the employers’ inability resulted from a lack of experience and training.

The preparation of food seemed especially formidable. Cooking was done in the basement kitchen, which lacked running water, gas, and electricity; water had to be pumped in and the stove was kept going with wood or coal, which “had to be fetched even before a cup of tea could be made.”<sup>57</sup> Meals were served four times per day, often for numerous guests, many of whom were unannounced.<sup>58</sup> Virginia Woolf could not cook for most of her life. During World War I, with both servants and food supplies in short supply, she learned about cooking from her cook; she was making semolina (“[t]ry it with a spoonful of lard for supper,” Virginia Woolf advised) and baking bread.<sup>59</sup> But it was only in 1929 at the age of 47 that Virginia Woolf really learned to cook, as

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49. *Id.* at 174 (away on a trip, Virginia Woolf scribbled “‘Love to Nelly’” at the bottom of her letter to her husband, Leonard Woolf; “not many mistresses were so openly affectionate to their cooks”).

50. *Id.* at 72 (analyzing Woolf’s novel, *The Years*).

51. *Id.* at 220.

52. *Id.* at 75.

53. *Id.*

54. *See id.* at 134, 185, 234 (discussing the small role men played in doing household work in Bloomsbury).

55. Plumbing came late. *See* May N. Stone, *The Plumbing Paradox: American Attitudes Toward Late Nineteenth-Century Domestic Sanitary Arrangements*, 14 WINTERTHUR PORTFOLIO 285 (1979) (reporting that plumbing took longer to become widespread in England than in the United States); *see also* LIGHT, *supra* note 7, at 183 (discussing the correlation between wealthy Britains’ “emotional” need to be served and lack of modernization in homes). Plumbing was considered by Virginia Woolf’s father an unnecessary luxury and mildly corrupting, LIGHT, *supra* note 7, at 34-35, and by those in Virginia Woolf’s generation as more expensive than paying servants to empty the slop-buckets, *id.* at 136, 183.

56. *Id.* at 234 (noting that the poet Siegfried Sassoon refused to see visitors rather than open the front door himself when he did not have a servant).

57. *Id.* at 170, 188.

58. *Id.* at 171-72.

59. *Id.* at 137.



she finished *A Room of One's Own* and the Woolfs replaced “the old solid fuel kitchen-range, which ate up wood or coal and needed plenty of manual labor to stoke it and nurture it, with a modern oil stove.”<sup>60</sup> Virginia Woolf fantasized about being sufficiently independent to be able to feed herself and live without servants, although it was a state she never achieved. By 1933, she could bake bread adeptly, cook mushrooms, prepare fruit for stewing, and pare cold mutton for a hot pot.<sup>61</sup> She later graduated to “soups, [meat]pies and roasts, rice pudding, curry” and a “scratch supper” of macaroni and cheese and bacon fry.<sup>62</sup> By then, her houses featured electricity and refrigerators, although the cottages the Woolfs owned for their “live-out” servants did not have these amenities.<sup>63</sup>

The Woolfs always had servants. As Alison Light observes, their claim that they were servantless was “one of the fibs they told themselves.”<sup>64</sup> Not only would Virginia Woolf magically find a “‘nice dinner put away in the corner of the fridge,’”<sup>65</sup> but her efforts generally did not extend to the cleaning required after cooking and eating.<sup>66</sup> In addition to daily household help, she always had a daily servant to clean, as well as additional servants “‘to do the rough’”—the scrubbing of floors, sinks, and lavatories—and to dust and polish, as well as to do the laundry.<sup>67</sup>

Virginia Woolf did take up scrubbing floors during her final mental breakdown, alarming her sister.<sup>68</sup> After a stint at carpet-beating, Woolf wrote in a letter that she had had no notion, “‘having always had a servant, of the horror of dirt.’”<sup>69</sup> Before walking into the river Ouse with stones in her pockets on a March afternoon, Virginia Woolf spent time dusting alongside her servant.<sup>70</sup> The image of Virginia Woolf wielding a duster on the last morning of her life assumes a special pathos given her “horror of dirt.” The servant, Louie Everest, “looking back years later, thought it very strange: ‘I had never known her want

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60. *Id.* at 188.

61. *Id.* at 207.

62. *Id.* at 233. Many of Virginia Woolf's contemporaries were not as accomplished. There is a bleak humor in Alison Light's description of the feminist writer Katherine Mansfield, who “wept when the congealed fat from a leg of mutton could not be washed away with cold water, blocking the sink and coating the cutlery.” *Id.* at 234.

63. *Id.* at 207. Although, the houses of the servants in Sussex, which they owned, were furnished with plumbing until after World War II. *Id.* at 231.

64. *Id.* at 234.

65. *Id.* at 233.

66. As Light notes, quoting from a letter by Virginia Woolf to Vita Sackville-West:

On a rare occasion when Virginia found herself doing the dishes, she was amazed at the effort: ‘I’ve been washing up lunch – how servants preserve either sanity or sobriety if that is nine 10ths of their lives – greasy ham – God knows.’

*Id.* (quoting Letter from Virginia Woolf to Vita Sackville-West (Sept. 6, 1934), in 5 THE LETTERS OF VIRGINIA WOOLF, 1932–1935, at 328 (Nigel Nicolson & Joanne Trautmann eds., Harcourt Brace Jovanovich 1982) (1977)).

67. *Id.* at 234–35.

68. *Id.* at 275–76.

69. *Id.* at 275.

70. *Id.* at 276.

[sic] to do any housework with me before.”<sup>71</sup>

Alison Light's project is to give voice to Louie Everest, the servant whom Virginia Woolf had called a merry mongrel, and the other women and few men who worked for Virginia Woolf and her family. It is a daunting task. But as Alison Light demonstrates, not an impossible one. The servants left their share of records. It was not true, as Virginia Woolf and others in her family seemed to believe, that servants were always uneducated,<sup>72</sup> and they were certainly not always illiterate.<sup>73</sup> Similarly, it was not true, as Virginia Woolf proclaimed, that literary pursuits were beyond the horizons of working class women, including servants.<sup>74</sup> Moreover, recorded oral histories, spoken testimonies, and BBC interviews began to preserve the memories and lives of women and men who had been servants.<sup>75</sup> Additionally, Alison Light interviewed neighbors and relatives who provided especially revealing details about the former servants'

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71. *Id.* at 7.

72. For example, Virginia Woolf thought Lydia Bartholomew, her occasional cook and char (and wife of Percy Bartholomew, Leonard Woolf's gardener) to be “an uneducated spray.” *Id.* at 236. Light remarks that Virginia Woolf never seems to have discovered that Lydia Bartholomew “had grown up with servants, been to boarding school and learnt French.” *Id.*

The label “uneducated” is a vexed one in the work, life, and times of Virginia Woolf. As Light asserts, Woolf often called herself “uneducated,” meaning that she did not have formal schooling, but Woolf's assertion played down “the advantages that growing up in a bookish, articulate home had conferred on her.” *Id.* at 177. Light provides numerous instances in which Woolf and her sister, Vanessa Bell, bemoan the status of their servants as “uneducated.” *See Id.* at 142, 177-78.

Light briefly discusses the history of compulsory education in Great Britain, *id.* at 103-07, noting that ironically, until the 1880s “the workhouse or charity child was one of the few Victorian infants” legally required to receive schooling. *Id.* at 103.

73. Although certainly her servants did not produce the volumes of diaries, letters, and essays or the novels that Virginia Woolf wrote—few people have—her servants were not illiterate. Sophie Farrell, the servant of Woolf's childhood and young adulthood, who became the “old retainer,” *id.* at 66, bestowed with a small pension, wrote letters to Virginia Woolf and letters to Virginia Woolf's family on hearing of her suicide. *Id.* at 76-77. As Light observes, the “pension which Virginia had sent Sophie remained unspent. . . . All those thank-yous Sophie had written in reply, saying how much difference it made to her and how ‘usefull [sic] it was in these lean times’, turned out to be her own piece of fiction. She wanted instead to leave the money to a niece.” *Id.* at 77-78.

Lottie Hope, a servant for Woolf and other members of the Bloomsbury circle for almost all her life, wrote letters while she recovered in the hospital, including “long letters, from friend to friend” to Virginia Woolf. *Id.* at 84. Lottie Hope's letters were “lost”; apparently Virginia Woolf did not save them. As Light notes, “[h]ardly any letters from the Woolfs' servants were kept.” *Id.* at 13.

74. In writing an introduction to a collection of testimonies by working women—a task that Woolf likened to sewing canopies around chamber pots—Woolf declared “It is not from the ranks of working-class women that the next great poet or novelist will be drawn,” although this was later “toned down” to read “Poetry and fiction seem far beyond their horizons.” *Id.* at 203-05. However, Woolf would have been aware of the literary aspirations of a governess working for her sister, Vanessa Bell; when the governess left, Bell discovered a “half-written novel” and was “amazed by its ‘extraordinary bitterness.’” *Id.* at 142.

75. *See Id.* at 310-11. Light's discussion of the BBC interview recorded with Nellie Boxall and Lottie Hope in 1956—fifteen years after Virginia Woolf's death—is especially noteworthy. *See Id.* at 221, 283-84, 289. Light notes that much of the servants' laughter and comments were edited out for the broadcast. *Id.* at 284.

later years.<sup>76</sup>

While much of Light's book focuses on the "ferocity of the feelings"<sup>77</sup> between Virginia Woolf and her servants—the "hidden heart of domestic service" as the subtitle to the British edition announces—Light also seeks to situate the servants and the employers within their broader social conditions. For example, Light pursues what she calls a "clue" about Lottie Hope, a longstanding servant of the Woolfs, whom Virginia Woolf described both as a "wild but in some ways admirable character"<sup>78</sup> as well as "my palourmaid," a "Miss Sichel's foundling."<sup>79</sup> Light discovers that like others, Lottie Hope acquired her surname courtesy of Edith Sichel's Home, where she was adopted and enrolled in 1900 at age 10.<sup>80</sup> Light locates Lottie Hope's life and Edith Sichel's philanthropy (or "slumming"<sup>81</sup>) in the context of Great Britain's workhouses populated in large part by children.<sup>82</sup> Lottie Hope was an orphan, a "foundling," expected to reward her care by becoming an excellent domestic servant.<sup>83</sup> While child labor was prohibited in factories, it was permissible in the "wholesome atmosphere of the home."<sup>84</sup> Admittedly, there were cases of maltreatment: "girls kept in rooms as small as broom-cupboards, half-starved to death; of others severely beaten or disfigured."<sup>85</sup> And if not every child had been—strictly speaking—an orphan,<sup>86</sup> her morality was certainly endangered by her poverty.<sup>87</sup>

Additionally, Light suggests certain dynamics of race and migration that inflected domestic service—even in the largely white-Anglo and relatively limited geography of Great Britain in the last decades of the nineteenth and first decades of the twentieth centuries. For example, Sophie Farrell, born in 1861 in

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76. *Id.* at 347 (explaining interview process). From World War II until Nellie Boxall died in 1965, Nellie Boxall and Lottie Hope lived together. According to Light most likely they did not live as lovers. After Nellie Boxall's death, Lottie Hope lived in the house Nellie Boxall had purchased, and then in a home for the aged, until her own death in 1973. *Id.* at 289-97.

77. *Id.* at xiv.

78. *Id.* at 84.

79. *Id.* at 85.

80. *Id.* at 101.

81. *Id.* at 95.

82. *Id.* at 87 ("A census on New Year's Day in 1889 revealed that of the 192,000 in Britain's workhouses, no fewer than 54,000 were aged under sixteen"). According to British statistics, the total population of England and Wales in 1899 was approximately 32 million. *Preliminary Report [to Parliament] England and Wales, 1901*, at viii tbl.2 (1901), <http://www.histpop.org/> (search for "Preliminary Report England and Wales 1901"; then follow "Preliminary Report, England and Wales, 1901 (including document title)" under "Results"; search "viii" under "Viewing Options") (last visited Oct. 20, 2008).

83. LIGHT, *supra* note 7, at 99. However, workhouse girls, who had never lived in houses and in some cases had never seen stairs, were not always model servants. *See id.* at 92-93.

84. *Id.* at 89.

85. *Id.* at 91.

86. *See id.* at 87-88 (reporting that many children were "not deserted at all but separated forcibly from parents, despite the best efforts of neighbours and friends to protect or hide them"); *id.* at 89 (noting that only a third of the 80,000 children shipped overseas were "orphans proper").

87. *Id.* at 89 (stating that the "ultimate aim" was saving girls from entering prostitution).

Lincolnshire, traveled “hundreds of miles to the city to live and work in a stranger’s house.”<sup>88</sup> Born three decades later, the place of Lottie Hope’s birth was uncertain, but once she resided in the country in Surrey, she was expected to enter domestic service, migrating back to the city (like so many other country girls) to enter domestic service.<sup>89</sup> Had she not gone to London, she might have been among the tens of thousands approved for emigration and shipped to Australia or Canada to become a domestic servant.<sup>90</sup> Lottie Hope was described as “dark-complexioned” and thought to be a “gypsy or have foreign blood.”<sup>91</sup> The city slums where many of the children originated was ““darkest London”” and likened to Africa.<sup>92</sup>

Light also repeatedly unravels the divisions among women. She raises, but regrettably does not expand on or adequately source, a brutal class division in British feminist legal history, stating that “[w]hile Virginia [Woolf] was supporting the suffrage, one single woman in three was still a domestic servant and would not get the vote with her mistress in 1918.”<sup>93</sup> Indeed, the Representation of the People Act of 1918 provided that a woman was entitled to be a parliamentary elector if she were thirty years of age, not subject to any legal incapacity, and was entitled to be registered “in respect of the occupation in that constituency of land or premises (not being a dwelling house) of a yearly value of not less than five pounds or of a dwelling house, or is the wife of a husband entitled to be so registered,” or in another subsection if she were thirty and had a university education.<sup>94</sup> While both Virginia Woolf and her servants did not possess university educations, Virginia Woolf was a married woman who owned a house—two houses, in fact. The servants were neither married nor homeowners. It would take another ten years for woman servants to be granted suffrage.<sup>95</sup>

Alison Light also briefly discusses legislative benefits for domestic servants and the backlash it produced:

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88. *Id.* at 14, 318-19. According to [maps.google.co.uk](http://maps.google.co.uk), the distance between West Barkwith in Lincolnshire, where Sophie Farrell grew up, and London, is 151 miles (243 km); the estimated driving time in 2008 is three hours and forty-one minutes. See Google Maps UK, <http://maps.google.co.uk/> (follow “Get Directions” hyperlink; search “Barkwith, Lincolnshire” and “London”) (last visited Oct. 20, 2008).
  89. According to [maps.google.co.uk](http://maps.google.co.uk), the distance between the hamlet of Hambledon in Surrey and London is forty miles (64 km); the estimated driving time in 2008 is one hour and twelve minutes. See Google Maps UK, <http://maps.google.co.uk/> (follow “Get Directions” hyperlink; search “Hambledon, Surrey” and “London”) (last visited Oct. 20, 2008).
  90. LIGHT, *supra* note 7, at 89.
  91. *Id.* at 85.
  92. *Id.* at 93-94.
  93. *Id.* at 61.
  94. Representation of the People Act, 1918, 7 & 8 Geo. 5, c. 64 (Eng.) available at <http://www.parliament.uk/documents/upload/1918%20Rep%20people%20Act.pdf> (giving the vote to six million out of thirteen million adult women). See Kristin Brandser, *Alice in Legal Wonderland: A Cross-Examination of Gender, Race, and Empire in Victorian Law and Literature*, 24 HARV. WOMEN’S L.J. 221, 252 n.176 (2001) (citing JOAN PERKIN, VICTORIAN WOMEN 243 (1993)).
  95. Representation of the People (Equal Franchise) Act, 1928, 18 & 19 Geo. 5, c. 12 (Eng.).

[The] National Insurance Bill in 1911, inviting contributions from mistress and maid which then entitled servants to free medical treatment and sickness benefit like other manual workers. Thousands of mistresses and some maids said they would never join the scheme since it belittled the trust on which service was based. . . . Lady Hawarden was one of many who warned against the dangers of invading “women’s own domain” forcing “obnoxious legislation upon it.”<sup>96</sup>

This gendered perception of domestic service continued to thwart attempts at organizing for legal and social rights.<sup>97</sup> Light also notes the xenophobia among the domestic workers themselves: when the National Union of Domestic Workers was finally established in 1938, it “harden[ed] its ranks” against refugees from the rest of Europe, including Jewish women refugees from Germany and Austria.<sup>98</sup>

The discourse of democracy inflects Alison Light’s—and Virginia Woolf’s—consideration of the “servant problem.” In Victorian views, domestic service exemplifies Christian and perhaps feudal values.<sup>99</sup> Yet even while World War II loomed, the British were still “exercised about domestic service” because of their concerns about the meanings of social democracy—as an exhibition banner proclaimed ““Good Domestic Service is the foundation of National Health and Happiness.””<sup>100</sup> Democracy was invoked to convince young women to become domestic servants and be less individualistic.<sup>101</sup> The shortage of domestic servants was certainly not new; even at the end of the nineteenth century women who might have entered domestic service were choosing employment in factories, shops, and offices.<sup>102</sup> However, although domestic service was the least desirable employment by the 1930s, it continued to be the largest occupation of women. As Light comments, poverty and migration patterns persisted as forces driving women into domestic service.<sup>103</sup> For Virginia Woolf, despite her feminist and progressive politics, the smell of democracy was ““unpleasant to the nose.””<sup>104</sup> She imagined herself as the ““charwoman”” to her husband Leonard’s prime minister posturings.<sup>105</sup> In her famous essay *Three Guineas*, Woolf conflates the position of “the daughters of educated men” with

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96. LIGHT, *supra* note 7, at 61.

97. *Id.* at 241.

98. *Id.* at 251.

99. *Id.* at 37 (“Service was not simply a throwback to a pre-industrial past; for the mid-Victorians, it was an ideal, suffused with the Christian belief in self-forgetfulness and dedication to others.”).

100. *Id.* at 250.

101. *Id.* at 251.

102. *Id.* at 37.

103. *Id.* at 228 (“Younger servants still tended to come from the villages, especially in the south and west of England, where they had fewer options than in industrial areas.”).

104. *Id.* at 255 (quoting Virginia Woolf diary entry in July 1937).

105. *Id.*

that of kitchen maids;<sup>106</sup> ironically, this is in the context of a discussion about protecting culture and intellectual liberty by “ensuring the democratic ideals of equal opportunity for all.”<sup>107</sup> She breezily declared that even if servants and other working class women achieved their attempts at reform, she would be unaffected; she failed to acknowledge that her writing life depended on the work of other women.<sup>108</sup> Even more airily, writing for the American magazine *Cosmopolitan* in 1938,<sup>109</sup> in her piece entitled “America, Which I Have Never Seen Interests Me Most in This Cosmopolitan World of Today,” Virginia Woolf cheekily imagined that in the forward-looking democratic United States, there would be no servants.<sup>110</sup>

“Imagination, with all her merits, is not always strictly accurate,” she

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106. Responding to the hypothetical letter seeking support for an effort to prevent war by protecting culture and intellectual liberty, Woolf writes:

[I]t is still more surprising to be asked to help you in the rather abstract terms of your manifesto to protect culture and intellectual liberty. Consider, Sir, in the light of the facts given above, what this request of yours means. It means that in the year 1938 the sons of educated men are asking the daughters to help them to protect culture and intellectual liberty. And why, you may ask, is that so surprising? Suppose that the Duke of Devonshire, in his star and garter, stepped down into the kitchen and said to the maid who was peeling potatoes with a smudge on her cheek: “Stop your potato peeling, Mary, and help me to construe this rather difficult passage in Pindar,” would not Mary be surprised and run screaming to Louisa the cook, “Lawks, Louie, Master must be mad!” That, or something like it, is the cry that rises to our lips when the sons of educated men ask us, their sisters, to protect intellectual liberty and culture. But let us try to translate the kitchenmaid’s cry into the language of educated people.

THREE GUINEAS, *supra* note 6, at 102-03.

107. *Id.* at 119.
108. LIGHT, *supra* note 7, at 205. Virginia Woolf was not the only woman writer to rely upon servants and express the tension between domestic service and democracy. Edith Wharton, born twenty years before Woolf and dying four years before her, was neither as feminist nor as progressive as Woolf, perhaps explaining why she was more comfortable with her reliance upon servants. Wharton’s life as a writer had two “essential underpinnings”: “her money and her servants”—at least according to Hermione Lee, who wrote biographies of both Edith Wharton and Virginia Woolf. HERMIONE LEE, EDITH WHARTON 525 (2007); LEE *supra* note 4. Wharton’s access to money and servants, however, did not prevent her from noticing gender inequities. She complains in a letter to a fellow male writer that everything his “all-beneficent” wife does for him, she must do for herself: “household, cheque book, publishers, servant questions . . .” *Id.* at 419. Like Woolf, Wharton bemoaned the difficulty of finding the “old type of quiet lady’s maid” after World War I, an attitude summed up by Hermione Lee as “[s]ocialism, she thought, had a lot to answer for.” *Id.* at 528. By the eve of World War II, employing servants had become even more difficult. A correspondent to Wharton, comparing Wharton’s elderly and loyal servant, Catherine Gross, to the reality of 1932 remarked: “They don’t make Grosses any more. Democracy wouldn’t tolerate them.” *Id.* at 690.
109. Alison Light’s text reports that Virginia Woolf received “£1,500 for 200 words.” LIGHT, *supra* note 7, at 250. However, Woolf’s diary entries reflect an offer of £200 for 1,500 words, VIRGINIA WOOLF, THE DIARY (Vol. 5, at 106, August 11, 1938) (Anne Olivier Bell ed., 1977), and later “paid 200 by *Cosmopolitan*.” *Id.* at 120 (Nov. 30, 1938).
110. Virginia Woolf, *America, Which I Have Never Seen Interests Me Most in This Cosmopolitan World of Today*, HEARST’S INT’L-COSMOPOLITAN, Apr. 1938, at 21, 144-45. Describing her imagining of the houses in which people live, Woolf writes: “There are no dark family portraits hanging in shadowy recesses. Nor, although it is dinnertime, does a parlormaid in cap and apron bring in a silver-covered dish.” *Id.* at 21.

observed at the close of her piece.<sup>111</sup> Indeed, any imagining of the United States as a land without servants is woefully inaccurate.

### III. MS. EVELYN COKE AND THE UNITED STATES SUPREME COURT

The servant at the “heart” of the United States Supreme Court’s 2007 decision in *Long Island Care at Home, Ltd. v. Coke* is Evelyn Coke.<sup>112</sup> In the opinion, written by Justice Breyer for a unanimous Court,<sup>113</sup> Evelyn Coke is as obscure as Virginia Woolf’s servants born in the 1800s. The Court describes Evelyn Coke only as “a domestic worker who provides ‘companionship services’ to elderly and infirm men and women.”<sup>114</sup> The Court, like some employers of servants,<sup>115</sup> elides her name. Only once, when the Court provides its description, does “Evelyn Coke” appear.<sup>116</sup> In the same paragraph, she is referenced twice more, but only by her surname, with no title; she is simply “Coke.”<sup>117</sup> Thereafter she loses even her surname; she is “respondent.”<sup>118</sup>

There are two good reasons for Evelyn Coke to be obscure in the Court’s opinion. First, as the lower court opinions make clear, the record is relatively devoid of factual development.<sup>119</sup> Second, and related, the issue Ms. Coke presented was solely one of legal interpretation. Ms. Coke argued her employer, Long Island Care at Home, a corporation, had failed to comply with the minimum wage and maximum hours overtime provisions of the Fair Labor Standards Act (FLSA).<sup>120</sup> The employer argued it was exempt from FLSA. Thus, Ms. Coke’s personal history was not central to the analysis.

Deciding whether FLSA covered Ms. Coke’s relationship with her

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111. *Id.* at 145.

112. 127 S. Ct. 2339 (2007).

113. *Id.*

114. *Id.* at 2345.

115. See *supra* notes 34-36 and accompanying text. See also Brief for the Urban Justice Center, Brennan Center for Justice, et al. as Amici Curiae Supporting Respondent at 24, *Long Island Care at Home, Ltd. v. Coke*, 127 S. Ct. 2339 (2007) (No. 06-593), 2007 WL 950948, at \*24 (domestic workers are “called ‘girl’ and by the first names while they, themselves, must still address their employers and their employer’s children as ‘ma’am’ or ‘sir’ or ‘Miss Jane’”).

116. 127 S. Ct. at 2345. Of course, her name also appears in materials external to the opinion, such as the caption.

117. *Id.*

118. *Id.* at 2345-52. The opinion refers to “respondent” approximately fifteen times.

119. The Second Circuit in *Coke* stated:

Unlike most, if not all, of the other courts that have considered the issues in this appeal, we review Coke’s case before the summary judgment stage and, thus, without any factual development. All we know is that Coke filed this action under the FLSA, alleging that she was employed as a ‘home healthcare attendant’ by defendants, who did not pay her minimum wage or overtime compensation.

376 F.3d 118, 122 (2d Cir. 2004) (footnote omitted).

The district judge stated the “pleadings provide little factual background” and could not consider Ms. Coke’s affidavit in ruling on defendant’s Motion for Judgment on the Pleadings under FRCP 12(c). 267 F. Supp. 2d 332, 334 (E.D.N.Y. 2003).

120. 29 U.S.C. §§ 206, 207 (2008).

employer, Long Island Care at Home, Ltd., implicated a complex statutory and regulatory scheme with an equally complex history. When originally passed in 1938, FLSA encompassed only workers in interstate commerce, presumably excluding domestic and household workers,<sup>121</sup> unless such workers were employed by third-parties, that is, employers other than the families or households using the services.<sup>122</sup> The issue of including domestic workers employed by private households within minimum wage and maximum hour protections continued to be controversial. By the 1970s there was momentum for such an inclusion, but the matter was far from resolved. The overwhelming majority of the fifteen women legislators in Congress advocated for coverage for domestic workers, writing a letter to the Chairman of the Subcommittee on Labor that they had “heard rumors” that the subcommittee was “under pressure” to drop the extension of minimum wage and stating: “As women legislators, this is of great concern to us. Although we represent a variety of political attitudes and approaches and do not normally vote as a block, we are all very disturbed about this measure.”<sup>123</sup>

As passed, the 1974 amendments brought domestic work within the ambit of FLSA with an explicit Congressional finding “that the employment of persons

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121. See Fair Labor Standards Act of 1938, ch. 676, § 2, 52 Stat. 1060 (codified at 29 U.S.C. § 202 (2008)); see also Molly Biklen, *Healthcare in the Home: Reexamining the Companionship Services Exemption to the Fair Labor Standards Act*, 35 COLUM. HUM. RTS. L. REV. 113, 117 n.20 (2003) (citing 19 Cong. Rec. 24,796 (1973) (statement of Sen. Dominick) (noting that “if domestic workers are in interstate commerce by virtue of the fact that they use vacuum cleaners, then the commerce power indeed has no limits”)); Susan B. Mettler, *Federalism, Gender, & the Fair Labor Standards Act of 1938*, 26 POLITY 635, 644-47 (1994) (discussing Roosevelt Administration’s narrow view on interstate commerce and quoting FDR as stating, “[n]o law ever suggested intended a minimum wages and hours bill to apply to domestic help.”).

122. As the Second Circuit in *Coke* noted:

When Congress sought to amend the FLSA in 1974, it desired to expand FLSA coverage to “domestic service employees,” and to exempt from coverage only those “domestic service employees” engaged in “companionship services.” At the time, persons who were employed by a third party were outside the category of “domestic service employees” and were protected by the FLSA before the 1974 amendments. See *Homemakers Home & Health Care Servs., Inc. v. Carden*, 538 F.2d 98 (6th Cir. 1976); 39 Fed. Reg. 35,385 (Oct. 1, 1974) (DOL finding that “[e]mployees who are engaged in providing . . . companionship services and who are employed by an employer other than the families or households using such services . . . [were] subject to the [FLSA] prior to the 1974 Amendments”); 66 Fed. Reg. 5485 (Jan. 19, 2001).

376 F.3d at 133.

123. LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1974, at 151-52 (1976). The letter contained statistics, as well as declarations that “women are at the bottom of the economic ladder,” and “[c]ontrary to popular opinion, women work not for ‘pin money’ but because they have to. They are either the head of the household or contribute substantially to their family’s income.” *Id.* The letter was signed by all but two of the fifteen women in Congress. Martin Tolchin, *Mrs. Chisholm Led Fight for Domestics’ Base Pay*, N.Y. TIMES, June 21, 1973, at 45 (noting that the two women who declined to sign were representatives Margaret M. Heckler, a Massachusetts Republican, and Corrine Boggs, a Louisiana Democrat).



in domestic service in households affects commerce.”<sup>124</sup> Yet the 1974 amendments did not encompass all domestic service; the amendments exempted from this new coverage domestic service employment “to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves,” and exempted any employees who resided in a household where they were employed.<sup>125</sup>

Pursuant to the statute, the Department of Labor promulgated regulations defining terms in the exemption provision. One regulation, entitled “General Regulations,” defined domestic service employment.<sup>126</sup> An additional regulation, entitled “Interpretations,” defined “companionship services” to include those workers employed by a third party employer or agency “other than the family or household using their services.”<sup>127</sup> This regulation thus had the effect of excluding certain domestic workers who had been covered before the 1974 amendments from FLSA coverage after the 1974 amendments, a result seemingly inconsistent with the purpose of the amendments.<sup>128</sup> This inconsistency was recognized by the Department of Labor itself. The validity of

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124. Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, 88 Stat. 55 sec. 7 (codified at 29 U.S.C. §§ 201-219 (2008)).

125. *Id.* at 29 U.S.C. §§ 201-219 (2008).

126. Application of the Fair Labor Standards Act to Domestic Service; Subpart A; General Regulations; Domestic Service Employment, 40 Fed. Reg. 7405 (Feb. 20, 1975) (codified at 29 C.F.R. § 552.3).

As used in section 13(a)(15) of the Act, the term domestic service employment refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed. The term includes employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. It also includes babysitters employed on other than a casual basis. This listing is illustrative and not exhaustive.

127. Application of the Fair Labor Standards Act to Domestic Service; Subpart B; Interpretations; Third Party Employment, 40 Fed. Reg. 7407 (Feb. 20, 1975) (codified at 29 C.F.R. § 552.109).

(a) Employees who are engaged in providing companionship services, as defined in §552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act’s minimum wage and overtime pay requirements by virtue of section 13(a)(15). Assigning such an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

(b) Employees who are engaged in providing babysitting services and who are employed by an employer or agency other than the family or household using their services are not employed on a “casual basis” for purposes of the section 13(a)(15) exemption. Such employees are engaged in this occupation as a vocation.

(c) Live-in domestic service employees who are employed by an employer or agency other than the family or household using their services are exempt from the Act’s overtime requirements by virtue of section 13(b)(21).

128. See 376 F.3d at 125 (quoting and citing Application of Fair Labor Standards Act to Domestic Service, 66 Fed. Reg. 5481, 5483 (proposed Jan. 19, 2001)).

this controversial<sup>129</sup> “Interpretations” regulation is the crux of the issue in the *Coke* litigation. If the regulation is valid, then Long Island Care at Home need not comply with FLSA in paying its employees who perform so-called companionship services for the elderly and infirm.

The arguments on behalf of Ms. Coke that the “Interpretations” regulation was invalid constitute a survey of administrative law: the regulation was beyond the scope of the agency’s authority as delegated by Congress; the regulation was inconsistent with other agency regulations; the regulation was an interpretative regulation not warranting judicial deference under *Chevron*;<sup>130</sup> and the promulgation of the regulation was procedurally improper because the final regulation was not a “logical outgrowth” of the proposed regulation.<sup>131</sup> The United States Supreme Court rejected each of these arguments. In sum, the Court granted the Department of Labor near-total authority to decide whether companies were required to pay their companionship/domestic worker employees minimum or overtime wages.<sup>132</sup>

The unanimous opinion in *Coke* fails to recognize Ms. Evelyn Coke. Even considering the limited record in this facial and complex legal challenge to a Department of Labor regulation, the elision of Ms. Coke is noteworthy. During oral arguments in the case, Ms. Coke sat in her wheelchair in the United States Supreme Court courtroom.<sup>133</sup> Ms. Coke must have heard the laughter when

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129. As the Court in *Coke* noted, the Interpretations regulation was itself controversial and the Department of Labor considered narrowing the exemption three times but ultimately declined to do so. 127 S. Ct. at 2345 (citing 58 Fed. Reg. 69,310, 69,310-12 (Dec. 30, 1993); 60 Fed. Reg. 46,798 (Sept. 8, 1995); 66 Fed. Reg. 5481, 5485 (Jan. 19, 2001); and 67 Fed. Reg. 16,668 (Apr. 8, 2002)).

130. See *Chevron*, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984).

131. The “logical outgrowth” requirement derives from the Administrative Procedure Act’s requirements of notice and comment for rulemaking. See 5 U.S.C. §553(b)(3). As the Court in *Coke* stated:

The Administrative Procedure Act requires an agency conducting notice-and-comment rulemaking to publish in its notice of proposed rulemaking “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)(3). The Courts of Appeals have generally interpreted this to mean that the final rule the agency adopts must be “a ‘logical outgrowth’ of the rule proposed.” *National Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (C.A.2 1986). See also, e.g., *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1221 (C.A.D.C. 1980), cert. denied sub nom. *Lead Industries Assn., v. Donovan*, 453 U.S. 913 (1981); *South Terminal Corp. v. EPA*, 504 F.2d 646, 659 (C.A.1 1974). The object, in short, is one of fair notice.

127 S. Ct. at 2351.

132. The authority is not absolute; Congress could certainly amend the statute. Indeed, a few months after the opinion, bills entitled the Fair Home Health Care Act were introduced in both the House of Representatives and the Senate to clarify the exemption and override the Secretary of Labor’s rule. See H.R. 3582, 110th Cong. (2007); S. 2061, 110th Cong. (2007).

Nevertheless, absent Congressional action, the Court’s combination of granting the conclusive deference of *Chevron* to an interpretative regulation because it was promulgated with notice and comment processes, and deeming this interpretative regulation to be a “logical outgrowth” of the proposed rule, even when, as the Second Circuit concluded, the final rule “provided exactly the opposite” of the proposed rule, grants the Department of Labor virtually absolute authority. 376 F.3d at 132.

133. See Steven Greenhouse, *Day in Court for Queens Home-Care Aide*, N.Y. TIMES, Apr. 17,

Justice Scalia asked the counsel for her employer, "What's a footman? I don't even know what a footman is."<sup>134</sup> Ms. Coke must have heard Justice Breyer express concern to her own counsel about the economic consequences to the families of the elderly needing care,<sup>135</sup> and perhaps she waited in vain for Justice Breyer to express some concern about the economic status of home care workers such as herself.

The Supreme Court opinion does not acknowledge, even implicitly, the realities of the respondent, Ms. Evelyn Coke, who sat in the courtroom as they heard oral arguments. At seventy-three years of age, Evelyn Coke was herself elderly.<sup>136</sup> And she was disabled, not only was she sitting in her wheelchair in the Courtroom, but she required dialysis treatments three times a week.<sup>137</sup> For twenty years, the immigrant from Jamaica had "cared for clients in their homes, bathing them, helping them dress and take their medications."<sup>138</sup> In an interview, she said: "I loved my work, but the money was not good at all."<sup>139</sup> She worked sixty to seventy hours per week, including twenty-four hour shifts, for people in the Long Island suburbs.<sup>140</sup> She did not earn minimum wage, overtime pay, or

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2007, at B2, available at <http://www.nytimes.com/2007/04/17/nyregion/17homecare.html> [hereinafter *Day in Court*]; see also CourtArtist.com, *Evelyn's Day in Court*, [http://www.courtartist.com/2007/04/evelyn\\_cokes\\_da.html](http://www.courtartist.com/2007/04/evelyn_cokes_da.html) (last visited Oct. 22, 2008).

134. In the oral argument, Justice Kennedy stated: "So if you have a maid or a cook or a footman, who doesn't provide companionship," then the regulation would be inapplicable. Attempting to answer, Mr. Farr, counsel for Ms. Coke, stated, "That would be true. Now that would be inapplicable --," when Justice Scalia interrupted:

JUSTICE SCALIA: What's a footman? I don't even know what a footman is.

(Laughter.)

JUSTICE SCALIA: What is a footman?

MR. FARR: I think that may be beyond my expertise, Justice Scalia.

Transcript of Oral Argument at 6-7, *Coke*, 127 S. Ct. 2339 (No. 06-593), 2007 WL 1135530 at \*6-7.

135. Later in the oral argument, Justice Breyer proposed a hypothetical:

Justice BREYER: . . . [Say] I live in San Francisco. My mother lives in Massachusetts. Now, if I hire a companion to live in Massachusetts, that companion does not work about a private home of the person, me, by whom she is employed. So if we're being literal and if you win this case, I don't see how—and I'm worried about this, obviously—however—and I think it's probably very common, that all over the country it's the family, the children, the grandchildren, an aunt, an uncle, maybe a good friend, maybe they're not even related, who is paying for a companion for an old, sick person so they don't have to be brought to an institution. And if you win this case, it seems to me suddenly there will be millions of people who will be unable to do it and, hence, millions of sick people who will move to institutions. Now, if I were to say that that isn't totally a legal point, it is of course a legal point because it's a question of what people intended, but a worrisome point, I would be telling the truth. It is a very worrisome point.

*Id.* at \*27-28.

136. Steven Greenhouse, *Justices to Hear Case on Wages of Home Aides*, N.Y. TIMES, Mar. 25, 2007, at 31, available at <http://www.nytimes.com/2007/03/25/nyregion/25aides.html> [hereinafter *Justices to Hear Case*]; *Day in Court*, *supra* note 133.

137. *Justices to Hear Case*, *supra* note 136; *Day in Court*, *supra* note 133.

138. *Justices to Hear Case*, *supra* note 136.

139. *Id.*

140. See *id.* (listing communities on Long Island); Steven Greenhouse, *High Court Rules Against*

benefits such as health insurance.<sup>141</sup> She was one of the approximately 1.4 million “home health care workers” in the United States.<sup>142</sup>

More than sixty-five years after Virginia Woolf’s death, feminists might be expected to value “the lives of the maids.” But the feminist Justice on the United States Supreme Court, Ruth Bader Ginsburg,<sup>143</sup> did not call attention to Ms. Coke, or to the feminist aspects of the case in oral argument or in a separate opinion. Justice Ginsburg did not address the feminist arguments in the amicus brief filed on behalf of the Older Women’s League or other amicus briefs.<sup>144</sup> After the decision was announced, feminist reaction to the case was muted. The National Women’s Law Center, which had joined in an amicus brief supporting Ms. Coke, issued a press release criticizing the opinion.<sup>145</sup> The Feminist Law

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*Home Aide on Wages*, N.Y. TIMES, June 12, 2007, B3, available at <http://www.nytimes.com/2007/06/12/nyregion/12home.html> [hereinafter *High Court Rules*].

141. *Justices to Hear Case*, *supra* note 136.

142. *Id.*; *Day in Court*, *supra* note 133.

143. In a bibliography on her work, Ginsburg is described thusly:

Ruth Bader Ginsburg changed the face of American jurisprudence. She is best known as the architect of the litigation strategy that made gender constitutionally relevant and, in the process, changed the way women are viewed in American society. Currently an associate justice of the U.S. Supreme Court, she has been called the Thurgood Marshall of the women’s rights movement.

Sarah E. Valentine, *Ruth Bader Ginsburg: An Annotated Bibliography*,

*Bibliography*,

7 N.Y. CITY L. REV. 391, 392 (2004). Ginsburg herself embraces the feminist label. See Ruth Bader Ginsburg, *Excerpt from Remarks Given at the International Women’s Forum Lunch* (Oct. 15, 1999), in 10 COLUM. J. GENDER & L. 25 (2000).

144. See Brief Amici Curiae for AARP and the Older Women’s League (OWL) as Amici Curiae Supporting Respondent, at 8, *Long Island Care at Home v. Coke*, 127 S. Ct. 2339 (2007) (No. 06-593), 2007 WL 922217 at \*8 (“[H]ome care workers are more likely to be women, non-white, and unmarried with children. The typical home care worker is a single mother between the age of twenty-five and fifty-four, economically disadvantaged, with low levels of educational attainment.” (citations omitted)); Brief for the Urban Justice Center, Brennan Center for Justice, et al. as Amici Curiae Supporting Respondent at 7, *Long Island Care at Home, Ltd. v. Coke*, 127 S. Ct. 2339 (2007) (No. 06-593), 2007 WL 950948, at \*7 (contending that “home health care work is performed by a labor force that is overwhelmingly female, with women from racial and ethnic minority backgrounds disproportionately represented” and that “[m]any of these women are heads of households, with responsibilities for young children”).

145. Press Release, National Women’s Law Center, Supreme Court Rules Minimum Wage, Overtime Protections Don’t Apply to Home Care Workers (June 11, 2007) available at <http://www.nwlc.org/details.cfm?id=3059&section=newsroom>. The Press Release stated in part,

The Court’s ruling is another blow to struggling, low-wage women,” said Nancy Duff Campbell, Co-President of the National Women’s Law Center. “It means that home care workers, who are overwhelmingly low-income women of color, will continue to be unfairly treated despite providing essential services to our growing elderly and disabled population. Employers in the home care industry should, like other businesses, be required to comply with modest, but vital, labor protections.

A portion of the Press Release is quoted in *High Court Rules*, *supra* note 140. The Service Employees International Union, which had likewise filed an amicus brief supporting Ms. Coke, also issued a press release, but it emphasized the negative impact the decision would have on workers and on those needing home health care:

More than one million home care workers in the United States provide help with activities of daily living such as dressing, bathing, cooking, cleaning and transferring. But while home care work is listed as the fastest growing occupation

Professors blog had a mention,<sup>146</sup> but other feminist blogs ignored the case.<sup>147</sup> Domestic workers, despite the fact that they are overwhelmingly women, seem to continue to fall outside the ambit of mainstream feminist concerns.

As for Ms. Coke, she did not publicly react to the unanimous Supreme Court opinion finding against her: she was “too ill to comment.”<sup>148</sup> Maryann Osborne, “a vice president” of Long Island Care at Home<sup>149</sup>—who is the owner and sole shareholder of the company<sup>150</sup>—did react. She was “elated”: the decision would “help us keep our costs down.”<sup>151</sup>

#### IV. SAMIRAH, ENUNG, AND MRS. VARSHA SABHNANI

In the pleadings and decisions of *United States v. Sabhnani*, the servant women have only first names, Samirah and Enung, and in the beginning of the case they are the anonymous Jane Doe #1 and Jane Doe #2.<sup>152</sup> In an order in July 2008, the district judge found that Samirah was entitled to net back pay of \$310,371.91 and liquidated damages of \$310,371.91; Enung was entitled to back pay of \$157,901.20 and liquidated damages of \$157,901.20.<sup>153</sup> In making this order under FLSA, the judge acknowledged that although domestic workers are covered by FLSA under the 1974 amendments, FLSA does not apply to “any employee who is employed in domestic service in a household and who resides in such household.”<sup>154</sup> Although Samirah and Enung did not reside elsewhere

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by the Dept. of Labor’s Bureau of Labor Statistics, its low wages and lack of health insurance, sick and vacation time has led to high turnover in the industry. For the millions of seniors and people with disabilities who live independently at home instead of more costly institutions, these employment conditions have made it difficult to find and keep caregivers.

Press Release, Service Employees International Union, Caregivers and Consumers Lose as Supreme Court Rules Against Overtime and Minimum Wage for Home Care Workers (June 11, 2007), <http://www.archive.org/web/web.php> (search “Take Me Back” for “[http://www.seiu.org/media/pressreleases.cfm?pr\\_id=1423](http://www.seiu.org/media/pressreleases.cfm?pr_id=1423)”; then follow “Nov 02, 2007” hyperlink).

146. Feminist Law Professors, <http://feministlawprofs.law.sc.edu/> (June 11, 2007, 13:59 PM). The blog entry includes a link to the opinion, a link and quote from the New York Times article, and a link to another law professor blog.

147. For example, a search for “Coke” on the following blogs retrieves no relevant entries: Ms. Magazine Online, <http://www.msmagazine.com/>; Blaglash.com, <http://blaglash.com/>; Jezebel, <http://jezebel.com/>; Feminist Blogs, <http://FeministBlogs.org/>; Feministing <http://www.feministing.com/>; Feminist Philosophers, <http://feministphilosophers.wordpress.com/>; The Happy Feminist, <http://happyfeminist.typepad.com/>; Bitch Ph.D. <http://bitchphd.blogspot.com/>; Brownfemipower – “La Alma de Fuego...”, <http://brownfemipower.com/>; and Feministe <http://www.feministe.us/blog/> (all sites last visited Oct. 23, 2008). Thanks to Deborah Rubin for assistance with this research.

148. *High Court Rules*, *supra* note 140.

149. *Id.*

150. *Coke v. Long Island Care at Home, Ltd.*, 267 F. Supp. 2d 332, 333 (“Osborne is the owner and sole shareholder, as well as a director and officer” of the company).

151. *High Court Rules*, *supra* note 140.

152. 566 F. Supp. 2d 139, 147 (E.D.N.Y. 2008).

153. *Id.*

154. *Id.* at 142 (citing 29 U.S.C. § 213(b)(21) (2008)).

during the respective five and two years they worked at the Sabhnani household,<sup>155</sup> the judge found they did not “reside” in the household because they were not afforded the type of “home-like environment” contemplated by the Department of Labor.<sup>156</sup> Instead, the women were “kept in confinement.”<sup>157</sup>

The women’s conditions and circumstances had led to a multi-count criminal indictment against Varsha Sabhnani and Mahender Sabhnani, the employers. The federal government charged the defendants with the substantive and conspiracy crimes of forced labor, harboring aliens, peonage, and document servitude, as well as seeking forfeiture of properties.<sup>158</sup> A jury returned a verdict of guilty as to both defendants on all counts.<sup>159</sup> The facts revealed at trial, as recounted by the district judge in the memorandum decision denying the defendants’ post-conviction motions,<sup>160</sup> and by the government in its Memorandum in Opposition to Defendants’ Post-Conviction Motions, portray a horrific life for the domestic servants in which they are held hostage, physically abused, and humiliated.<sup>161</sup> Samirah and Enung, residents of Indonesia, had each met relatives of the Sabhnanis in Indonesia, who had provided training in domestic service and procured visas to the United States.<sup>162</sup> Samirah arrived in the United States in February 2002 and Enung arrived in January 2005. Varsha and Mahender Sabhnani met each woman when she arrived at the airport and drove her to their home in Long Island.<sup>163</sup> The Sabhnani home was a three-story residence with an attached office.<sup>164</sup> The women were given access to a small closet beneath the basement stairs where they stored their few possessions, although they slept on the floor of one of the kitchens on sections of carpet.<sup>165</sup> The Sabhnanis took both women’s passports and never directly paid either woman.<sup>166</sup>

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155. See *United States v. Sabhnani*, 539 F. Supp. 2d 617, 620 (E.D.N.Y. 2008); see also Gov’t Memorandum of Law in Opposition to Defendants’ Post-Conviction Motions, *United States v. Sabhnani*, 2008 WL 471622 (E.D.N.Y. 2008) (No. 07 CR 429 (S-1) (ADS)) (stating that Samirah arrived in New York on February 5, 2002, and was taken to the Sabhnani household, and that Enung arrived in New York on January 2, 2005, and was taken to the Sabhnani household). Samirah and Enung ceased to work for the Sabhnani household in May 2007. See *id.*

156. *Sabhnani*, 566 F. Supp. 2d. 139, 142.

157. *Id.*

158. See Superseding Indictment, *United States v. Sabhnani*, 2007 WL 3193987 (E.D.N.Y. 2007) (No. 07 CR 492(S-1) (TCP)).

159. See Gov’t Memorandum of Law in Opposition to Defendants’ Post-Conviction Motions, *Sabhnani*, 2008 WL 471622; see also Corey Kilgannon, *Long Island Couple Convicted of Enslaving 2 Domestic Workers for Years*, N.Y. TIMES, Dec. 18, 2007, available at <http://www.nytimes.com/2007/12/18/nyregion/18slave.html>.

160. *Sabhnani*, 539 F. Supp. 2d 617.

161. See Gov’t Memorandum of Law in Opposition to Defendants’ Post-Conviction Motions, *Sabhnani*, 2008 WL 471622.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* Apparently a payment of \$100 per month was sent to each woman’s family in Indonesia.

During the period that Samirah was the lone servant, Varsha Sabhnani often “punished” her by

pulling Samirah’s ears while digging her fingernails into the flesh behind the ears causing bloody wounds that never completely healed . . . ; throwing boiling water on Samirah . . . ; cutting and pricking Samirah with a knife . . . ; pinching and twisting the flesh on Samirah’s forearms until they bled . . . ; hitting Samirah with objects including an umbrella . . . , a broom . . . , and a wooden rolling pin . . . ; wrapping Samirah’s nude body and face in cellophane tape . . . ; and forcing Samirah to eat large quantities of hot chili peppers . . . , take repeated cold showers . . . , and run up and down flights of stairs,

as well as cutting her hair and shaving her pubic hair.<sup>167</sup> Varsha Sabhnani also threatened to have her son kill Samirah and forced Samirah to write humiliating letters to her family confessing various misdeeds.<sup>168</sup> In another incident, a humiliating photograph was taken of Samirah with the threat to send it to her family in Indonesia.<sup>169</sup> When Enung arrived, Varsha Sabhnani struck her on several occasions.<sup>170</sup> Both women asked to return to Indonesia, but were told they would have to pay the expenses the Sabhnanis had incurred bringing the women to the United States.<sup>171</sup>

The employers contested the Government’s—and servants’—version of the facts. One of their arguments was that Samirah was mentally unstable and had inflicted the injuries herself, perhaps as part of witchcraft rituals.<sup>172</sup> Another

*Id.*

167. *Id.*

168. *Id.* According to the Government’s Memorandum, the statements included admissions that Samirah (a follower of Islam who does not eat pork for religious reasons) ate pork, was a ‘crazy person,’ urinated and defecated in the residence and on herself, ate her own vomit, walked around naked for other persons to see, wanted to be cast out to live with ‘bad men’ and a statement that Samirah wished to ‘die’ and that she cursed or cast a spell for her children to die.

*Id.*

169. Again, according to the Government’s post-trial memorandum, the testimony at trial showed that

Samirah was not provided with sufficient amounts of food and on one occasion drank milk directly from a plastic container because she was hungry. . . . One of the Sabhnani daughters, Dakshina Sabhnani, saw Samirah drink the milk and reported it to Varsha Sabhnani. . . . Immediately thereafter, Varsha Sabhnani beat Samirah and poured hot water on her arm as punishment for drinking the milk and directed her to pose so that a photograph could be taken of her drinking from the plastic container. . . . Dakshina Sabhnani took the photograph which Varsha Sabhnani told Samirah would be sent to her family in Indonesia to prove that Samirah was a thief. . . . The photograph was kept instead inside a locked cabinet.

*Id.*

170. *Id.*

171. *Id.* The Government’s Memorandum states that this figure is \$100 million rupiahs, *id.*, which at present rates would be about US \$10,000, *see* Currency Converter—Yahoo! Finance, <http://finance.yahoo.com/currency> (last visited Oct. 23, 2008).

172. Memorandum of Law, *United States v. Sabhnani*, 2007 WL 3193988 (E.D.N.Y. 2007) (No. 07 CR 429 (TCP)) (requesting a court-ordered psychological examination of Jane Doe #1).

argument was that Enung had an “overwhelming desire for wealth,” which tainted her credibility.<sup>173</sup> Less explicitly, they made the argument that Samirah and Enung strategically claimed to be victims of trafficking in order to improve their immigration status.<sup>174</sup>

The trafficking claim relates to the Victims of Trafficking and Violence Protection Act (TVPA) of 2000, and its subsequent reauthorization, which allow for special visas for victims of trafficking rather than initiating a process of deportation.<sup>175</sup> However, in feminist circles “trafficking” most often connotes sex trafficking rather than domestic service trafficking, an assumption validated by statistics.<sup>176</sup> The statistics, however, are based on prosecutions—it seems that the Department of Justice generally prosecutes at least twice as many defendants for engaging in adult sex trafficking as in adult domestic servitude.<sup>177</sup> This disparity between attention to sexual matters and attention to nonsexual labor and class issues is a familiar one for feminists.

Class is contentious and divisive. The employers in *Sabhnani* argued that they could not receive a fair trial given the inflammatory pretrial publicity in Long Island and the metropolitan New York area; in their reply they stated: “Whether the publicity, including the mocking references to Mrs. Sabhnani as ‘Cruella,’ is fueled by racial prejudice or class bias or both, it has been virulent and unrelenting.”<sup>178</sup> While the memorandum does not give any examples of

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173. Defendant Varsha Sabhnani’s Memorandum of Law in Support of Her Motions for (1) a Judgment of Acquittal Under Rule 29 of the Federal Rules of Criminal Procedure and (2) a New Trial Under Rule 33 of the Federal Rules of Criminal Procedure, *United States v. Sabhnani*, 2008 WL 219177 (E.D.N.Y. 2008) (No. 07 Cr 429 (ADS)).
  174. Several of the press reports mention that the defense argued that Samirah and Enung strategically claimed to be victims of trafficking in order to improve their immigration status. *See, e.g.*, Kilgannon, *supra* note 159.
  175. Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. § 7101 et seq. (2000); Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).
  176. *See* Kevin Shawn Hsu, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL’Y 489, 490 (2007) (citing FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL., BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 14 (2004)) (46.4% of all U.S. human trafficking cases involve prostitution or sex slavery; 27.2% involve domestic servitude; and 10.4% involve agricultural work).
  177. In May 2008, the Department of Justice reported that in 2007, it had filed twenty cases against defendants accused of sex trafficking and twelve cases against defendants accused of labor trafficking; in 2006, twenty-two and ten respectively; in 2005, twenty-six and nine respectively; and in 2004, twenty-three and three respectively. These numbers exclude child sex trafficking. *See* ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS  

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<http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf>.
  178. Reply Memorandum of Law in Support of Defendants’ Motion for a Change of Venue, *United States v. Sabhnani*, 2007 WL 3193984 (E.D.N.Y. 2007) (No. 07 cr 429 (TCP)) (Aug. 10, 2007). The characterization of Varsha Sabhnani as “Cruella De Vil,” the villainess of “101 Dalmations,” *see* DODIE SMITH, *THE HUNDRED AND ONE DALMATIANS* (1956); *ONE HUNDRED AND ONE DALMATIANS* (Walt Disney 1961), seems to have begun with the tabloid the New York Post, attributing the statement to prosecutors, *Cruella – Feds Bust Evil*



racial prejudice—Varsha Sabhnani and Mahemder Sabhnani, both United States citizens, are from India<sup>179</sup>—the memo does quote news reports referring to the Sabhnanis as a “wealthy Long Island couple,” and a statement from an Assistant United States Attorney during the bail hearing that the defendants could afford to buy a plane (and thus, presumably, flee). The defendants’ memo also characterizes a statement that the defendants’ daughter, “Pooja Sabhnani left in a \$60,000 Porsche SUV without speaking to reporters” as “showing a lack of balance as well as incitement of class bias.”<sup>180</sup>

The realities of class disparity—even if it is termed “bias”—are inherent in any relationship of domestic service. Bracketing the ghastly treatment the women received (if that is possible), the issue of their payment merits discussion. Objecting to the back pay calculations under FLSA proffered by the government as the required restitution, Mahender Sabhnani argued that the annual salaries for each of the domestic servants calculated at approximately \$70,000 were, “on their faces, unrealistic.”<sup>181</sup> He further argued that as live-in domestic servants the women were exempt from FLSA protections, that the domestic servants were entitled, at most, to minimum wage, and that their food and housing allowance should be deducted from their pay. As to the hours worked, he contended:

Realistically, we do not believe that the evidence at trial supports the contention that Samirah and Enung actually worked 19 hours per day. Objectively, there was simply not enough work in the house to occupy two persons for 19 hours a day, seven days per week. Indeed, Samirah testified that after Enung arrived her only duties were to clean the garage and the basement. . . . Similarly, while Samirah and Enung assisted with prep work in the kitchen, both maids testified that the actual cooking was done by Varsha.<sup>182</sup>

Based on these arguments, Sabhnani calculated that Samirah would be entitled to \$46,608 in back pay for the five years she worked, while Enung would receive \$18,664 for the three years she worked;<sup>183</sup> the trial judge ordered substantially more and doubled it by including a liquidated damages provision—so that Samirah was entitled to approximately \$620,743 and Enung was entitled

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*Slave Mistress*, N.Y. POST, May 16, 2007, front page, at 1, available at 2007 WLNR 9254712 (“Feds bust evil slave mistress Millionairess Varsha Mahender Sabhnani, in custody yesterday, is Long Island’s own Cruella De Vil, the feds say. She allegedly unleashed ‘incomprehensible brutality’ on her household help—turning the terrified women into slaves.”); see Selim Algar, *\$3.5M Bail for Cruella and Hubby*, N.Y. POST, May 18, 2007, news, at 23, available at 2007 WLNR 9393808.

179. See Presentence Memorandum on Behalf of Mr. Sabnani, *United States v. Sabhnani*, 2008 WL 2547721 (E.D.N.Y. 2008) (No. 07CR00429).

180. Reply Memorandum of Law in Support of Defendants’ Motion for a Change of Venue, *United States v. Sabhnani*, 2007 WL 3193984 (E.D.N.Y. 2007) (No. 07 cr 429 (TCP)).

181. Presentence Memorandum, *Sabhnani*, 2008 WL 2547721.

182. *Id.* (citations to transcript omitted; emphasis in original).

183. *Id.*

to \$315,802.<sup>184</sup>

The difference between the pay the women had been receiving (the \$100 per month sent to their families in Indonesia), the recalculation by their employer in a restitution memo, and the amount the judge ordered are vast. The wages represent points along a continuum of domestic servitude, domestic service, and valued work. Yet as important as wages are, there are also other considerations that mark points along this continuum.

## V. MISTRESSES AND SERVANTS

The realities of class disparity are endemic to any relationship categorized as “servant” and “master,” even when the “master” is a “mistress,” and even when the master/servant dichotomy is viewed as a relatively equal contractual relationship rather than one based on status. Across nations, races, nationalities, and time periods, economic inequality is at the “heart” of any notion of domestic service.

This is not, of course, to argue that nation, race, nationality and time period are irrelevant or even marginal. Indeed, race—and the history of slavery—deeply mark the master/servant relationship in the United States. As legal scholar Peggie Smith has demonstrated, domestic service in the United States has been considered a “despised calling,” “the lowest rung of legitimate employment,” and “bore an indelible badge of racial inferiority.”<sup>185</sup> Moreover, intimations of racial inferiority are apparent in Virginia Woolf’s England as described by Alison Light,<sup>186</sup> despite the relative unpopularity of slavery in Great Britain,<sup>187</sup> if not in the British Empire.<sup>188</sup>

Indeed, comparing the situations of Virginia Woolf and her servants, Long Island Care at Home, Ltd. and its servants, and Varsha Sabhnani and her servants reveals many similarities. The “small closet under the basement stairs” that the Sabhnanis reserved for Samirah and Enung’s use<sup>189</sup> is not unlike Lottie Hope and Nellie Boxall’s basement rooms in the Woolfs’ home.<sup>190</sup> The reality of

184. *United States v. Sabhnani*, 566 F. Supp. 2d 139, 147-48 (E.D.N.Y. 2008).

185. Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 877 (1999). Accord Dorothy Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51, 59-62 (1997).

186. See *supra* notes 91-92 and accompanying text (describing Lottie Hope as “dark-complexioned” and “darkest London” slums likened to Africa).

187. Chattel slavery of Africans did occur in Great Britain as a consequence of the slave trade. JAMES WALVIN, *BRITAIN’S SLAVE EMPIRE* 59-61 (2000). British traders returned from the slave colonies or from slave vessels accompanied by enslaved domestic workers. *Id.* at 59. Persons, however, were also offered for sale. *Id.* at 60-61. While the number of enslaved people is disputed, “there can be no dispute over the basic fact that for the best part of two centuries—perhaps even longer—black slaves were to be found in Britain.” *Id.* at 60.

188. See generally, JAMES WALVIN, *BLACK IVORY: SLAVERY IN THE BRITISH EMPIRE* (2d ed. 2001).

189. Gov’t Memorandum of Law in Opposition to Defendants’ Post-Conviction Motions, *United States v. Sabhnani*, 2008 WL 471622 (E.D.N.Y. 2008) (No. 07 CR 429 (S-1) (ADS)) (citations to the Transcript omitted).

190. See *supra* notes 44, 51 and accompanying text.

servants as migrants—whether they migrated a few hundred miles from the English countryside to London, from a Caribbean island to the United States, or more than ten thousand miles from Indonesia to New York—implicates global capitalism.<sup>191</sup> The treatment of servants as objects to be “loaned” was not only a habit of the Bloomsbury group, but also of the Sabhnanis,<sup>192</sup> and perhaps a third party contractor such as Long Island Care at Home is not far removed from this practice. The portrayal of servants as “greedy” is also a constant. Servants are not demanding a fair wage, but rather extorting an excessive and unreasonable payment. The payment is disproportionate to the work, which is depicted as mundane and simple: the servant is actually a “loyal retainer,” a “companion,” with few duties. Indeed, the servant is fortunate to be employed in this position, especially considering her lack of education, her superstitious nature, her moral laxity and her unsuitability for other professions. Her role is to take care of the bodily needs of others; her own physical dependencies, including aging, are inconvenient irrelevancies. At her best, she is invisible.

Of course, there are presumably anomalous situations in which a servant is abused<sup>193</sup> or a servant is mentally unstable,<sup>194</sup> or an employer is mentally ill. Virginia Woolf's precarious mental and emotional states are well documented.<sup>195</sup> While little is known about Maryann Osborne, the owner of Long Island Care at Home, it is entirely predictable that many clients of the company experienced mental health issues. Varsha Sabhnani's own “bizarre actions” may have been attributable to a “metabolic imbalance” from her own “starvation diet” resulting in a weight loss of approximately 170 pounds.<sup>196</sup>

Yet anomalies should not be deflections. Interrogating the “mistress”

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191. Compare *supra* notes 88-90 and accompanying text (migration from English countryside), and note 138 and accompanying text (Evelyn Cook as a migrant from Jamaica to New York), with note 162 and accompanying text (Samirah and Enung as migrants from Indonesia to New York).

192. Compare *supra* notes 37-38 (Bloomsbury practice), with Government's Memorandum of Law in Opposition to Defendants' Post-Conviction Motions, *Sabhnani*, 2008 WL 471622 (“Rosie Wadhvani, a friend of Varsha Sabhnani, testified that Varsha Sabhnani brought Samirah and Enung to work at Wadhvani's home in 2006 and refused to allow Wadhvani to pay for their work.”).

193. See *supra* note 85 and accompanying text.

194. See LIGHT, *supra* note 7, at 151-55 (describing the situation of Mary Wilson, a “housemaid” working for Vanessa Bell, Virginia Woolf's sister, in 1920). Light observes that while Woolf commented in her diary about the “servant's hysteria,” Virginia Woolf had many of the same symptoms, although when she too was “carted off ‘raving,’” Woolf went to a private, expensive nursing home rather than the “old union workhouse.” *Id.* at 153.

In *Sabhnani*, the defendants sought a psychological examination of Samirah (as Jane Doe #1) to determine whether she was “engaged in the practice of self injury,” alleging that she suffered “from a long history of mental illness.” Memorandum of Law, United States v. Sabhnani, 2007 WL 3193988 (E.D.N.Y. 2007) (No. 07 CR429 (TCP)).

195. See *supra* note 4.

196. See Robert E. Kessler, *Lawyers: Two Kind to Others*, NEWSDAY, June 26, 2008, at A03 (crediting sources familiar with sealed court papers including a psychiatrist's report); Robert E. Kessler, *Lawyers Seek Mercy for Slavery Couple*, DAILY HERALD, June 25, 2008, available at [http://www.heraldextra.com/component/option,com\\_contentwire/task,view/id,61556/Itemid,53](http://www.heraldextra.com/component/option,com_contentwire/task,view/id,61556/Itemid,53) (crediting sources familiar with sealed court papers including a psychiatrist's report).

portion of the mistress/servant relationship is a vital concern for feminist legal theories and practices. While it is important not to erase individual women, it is also important not to limit inquiries to particular circumstances and stories. Some “mistresses” and employers—like some servants and employees—are certainly better than others, but it is also imperative to situate individual women within their broader social and political circumstances.

One of these broader circumstances is undoubtedly gender roles. The often unacknowledged power of men reverberates throughout the relationships of mistresses with servants. In the case of Virginia Woolf, her husband Leonard, like the other men of Bloomsbury, assumed little household responsibility, but had much to say about the servants.<sup>197</sup> There is little information about Maryann Osborne, although one news article briefly mentions “her banker and partner,” without revealing details.<sup>198</sup> As for the Sabhnanis, the husband’s abdication of

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197. This view of Leonard Woolf, as reported by Alison Light is instructive:

Leonard, however, remained a stickler for proper service. Mabel [Haskins]’s indifferent cooking – all those soups and salads for vegetarians, perhaps – occasioned argument, only this time between the Woolfs. Weak coffee, ‘a badly cleaned fish’ at lunch; then Mabel broke the gramophone, a ‘terrible faux pas’. Leonard, resentful, called her ‘your cook’ to Virginia, which annoyed her, and he reduced Mabel to tears, which Virginia put down to his ‘despotic’ temperament and ‘extreme rigidity of mind’. His severity with everyone was partly, she thought, due to his not being ‘a gentleman’: ‘uneasiness in the presence of the lower classes; always suspects them, is never genial with them’. She seemed to have forgotten her own attacks on the suspicious ‘servant mind’ of Nellie [Boxall]. The row provided a good excuse for sacking Mabel but Virginia sided with her against Leonard. Eventually the coffee and the cooking improved: Mabel was sent, as Nellie Boxall had been, to Marcel Boulestin for cookery lessons. Virginia suggested that Louie [Everest, another servant] go locally to classes organized by Brighton Corporation and in 1936 Louie achieved a Diploma in Advance Cooking. Both became adept at the French additions to English cookery, the crèmes, soufflés and fresh sauces, which the Woolfs favoured. Then Mabel irritated Leonard again by asking for a rise [raise].

Virginia concluded that Leonard’s dislike of Mabel was instinctive and physical, therefore not rational or likely to change. At the same time she saw his autocratic behaviour as an inevitable by-product of his masculinity and his class. His brothers were the same, she wrote. ‘His desire, I suppose, to dominate. Love of power,’ though she noted, ‘And then he writes against it.’ In the mid-30s domestic despotism was much on her mind. She was gathering material for ‘The Next War’, one of several early titles for what was to become her anti-fascist pamphlet, *Three Guineas*, in which she would make connections between the authoritarian personality abroad and ‘Hitlerism’ at home.

LIGHT, *supra* note 7, at 236-37.

198. Ross Daly, *U.S. Supreme Court Backs Home-Health Aide Rule*, LONG ISLAND BUSINESS NEWS, June 15, 2007, available at [http://findarticles.com/p/articles/mi\\_qn4189/is\\_20070615/ai\\_n19305914](http://findarticles.com/p/articles/mi_qn4189/is_20070615/ai_n19305914). The article stated:

Maryann Osborne held her breath Monday as she took the call from her attorney, and didn’t exhale until he broke the news.

“Thank God!” she exclaimed, and as her banker and partner looked on, she didn’t need to explain. “They kind of knew from my reaction.”

Osborne et al. were waiting for word in the Westbury office of Long Island Care at Home Ltd., an agency that places home-health aides with patients. Ruling in a case involving the agency, the U.S. Supreme Court decided the nation’s 1.4 million home-health workers are not eligible for overtime pay under federal law.

responsibility regarding his wife's obvious mistreatment of Samirah and Enung was seen as justifying his comparatively lighter sentence.<sup>199</sup>

Because gender roles make women responsible for domestic work, professional—including feminist—women hire others (usually women) to accomplish this work, freeing themselves for more “important” and “rewarding” work. Virginia Woolf is able to be a writer, Maryann Osborne is able to be an entrepreneur, and Varsha Sabhnini is able to devote time to charities in Indonesia.<sup>200</sup> Even in cases in which the mistresses might be described as feminists, their feminism is inflected with individualism and class privilege. As Alison Light describes the feminists of 1920s Britain, although they “might campaign for the poor, few were strictly egalitarian and plenty assumed that housework was beneath them or that others were more suited to it.”<sup>201</sup> According to Light, while they might argue that the majority of people in Britain did not have servants and that modern young women did not want to be domestic servants, “middle-class feminists rarely did without servants themselves.”<sup>202</sup> Discussing American efforts at reform in the early twentieth century, Peggie Smith notes that reformers tailored their strategies to accommodate the needs of white middle-class families,<sup>203</sup> maintaining the employer's superiority to her servants.

Using a more contemporary example, Smith discusses the 1993 controversy surrounding Zoe Baird, President Clinton's nominee for United States Attorney General, whose candidacy was derailed by revelations that she and her husband violated federal laws regarding the employment of domestic workers.<sup>204</sup> As Smith asserts, the numerous explorations of the controversy failed to include discussions of worker protection.<sup>205</sup> However, the private sphere of the family was invoked.<sup>206</sup>

Feminists have long criticized the private and public division of separate spheres. For domestic workers within the home, the romanticization of the private sphere is obdurate. Alison Light's observation regarding the exemption of child labor laws for domestic servants working in a home-like atmosphere<sup>207</sup>

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*Id.*

199. Robert E. Kessler, *Three Years for Slave-Case Husband*, *NEWSDAY*, June 28, 2008, at A03 (stating that Mahender Sabhnani had been sentenced to three years and four months in federal prison and reporting that Varsha Sabhnani had previously been sentenced to eleven years in prison).

200. Kessler, *supra* note 196 (discussing charity work).

201. LIGHT, *supra* note 7, at 186.

202. *Id.*

203. Smith, *supra* note 185, at 904-05.

204. *Id.* at 920-23. Zoe Baird and her husband had failed to comply with social security and immigration laws. *Id.*

205. *Id.* at 922-23.

206. *Id.* at 922 (citing STEPHEN L. CARTER, *THE CONFIRMATION MESS: CLEANING UP THE FEDERAL APPOINTMENTS PROCESS* 179-82 (1994) (arguing that application of Social Security laws to the paid household relationship represents an unconstitutional infringement on the privacy of employing families)).

207. See *supra* note 84 and accompanying text.

is echoed in the FLSA provisions regarding domestic servants and companions.<sup>208</sup> While the “home” can be deployed positively—the district judge in *Sabhnani* used “home-like” as a standard, finding it had not been met because of the women’s atrocious living conditions, and thus finding FLSA applicable<sup>209</sup>—invocations of “home” are nevertheless paternalistic. The “home” has been an obstacle not only to workers’ rights, but the ability of “isolated” domestic workers to organize.<sup>210</sup> However, as Peggie Smith contends, domestic work “no longer seems so anomalous when considered against the shifting economic landscape.”<sup>211</sup> She compellingly argues that household workers can, and must avail themselves of traditional organizing on behalf of workers’ rights, including unionizing, workers’ cooperatives, and picketing.<sup>212</sup>

Smith discusses the successful union organization of home-care workers in California as a potential model for domestic workers throughout the United States, observing that home-care workers and domestic workers are extremely similar.<sup>213</sup> The organization of home-care workers, be they health workers such as Evelyn Coke, or domestic workers, such as Samirah and Enung, would essentially extend the reach of the public labor model into the private home. However, the Court’s decision in *Coke v. Long Island Care at Home, Ltd.* not only halts that extension, but reverses it. As the opinion and oral arguments illustrate, home is an elastic sentimentality that can easily be enlarged to

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208. See *supra* notes 124-126 and accompanying text.

209. See *supra* notes 156-157 and accompanying text.

210. Peggie Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 46-48 (2000).

211. *Id.* at 47.

212. *Id.* at 46-110.

213. *Id.* at 73-80. As Smith notes,

In February 1999, the SEIU successfully organized 74,000 home-care workers in Los Angeles, achieving the largest union victory in the United States since 1937. The result of a decade-long battle, the campaign was hailed as indicative of organized labor’s “new commitment . . . to focus on women, minorities, and low-wage workers.” The SEIU’s victory is particularly instructive because of the close connection between home-care services and paid household work. Similar to domestic service, home-care work exists as a form of women’s work that employs disproportionate numbers of women of color. Both types of work occur within the privacy of individual homes and involve a range of personal service activities necessary for maintaining people on a daily basis. In paid household work, these activities include preparing and serving food, laundering and repairing clothing, and maintaining furnishings and appliances. Home-care work encompasses many of these same activities, but, as an occupation that primarily serves disabled and elderly clients, it entails more personal hygiene care, such as helping individuals with bathing and dressing. . . . [H]ome-care services are a “disguised [form of] domestic work.” The primary distinction between the two is that home-care workers are employed through an agency, whereas private household workers are employed directly by household members.

Home-care work also closely resembles paid household work in terms of labor conditions. Most home-care workers receive minimum wages and work on a part-time, contingency basis. Benefits such as health insurance and pensions are rare.

*Id.* at 73-74 (citations omitted). Smith expands her argument linking domestic service and home care in Peggie Smith, *Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century*, 92 IOWA L. REV. 1835, 1850-60 (2007).

encompass a for-profit corporation. The contemporary “privatization” of public employment and services, often inflected with religious justifications similar to those that supported earlier constructions of domestic service, serve to further encroach upon the public sphere of workers’ rights.<sup>214</sup> Yet even within the firmly entrenched conception of the public sphere of work, the “servant problem” surfaces.

Some of the “servants” outside the domestic sphere may not be immediately recognizable as “servants,” but they are no more invisible than the servants in Virginia Woolf’s childhood home that were half-secreted behind the British convention of the “green baize door.”<sup>215</sup> A few instances from one of my own recent days might be revelatory. Arriving at the law school, I encounter scrubbed floors, clean bathrooms, and the garbage carted away. I buy coffee in the law school cafeteria from a woman who is renowned for knowing the name of everyone at the law school. I interact with the woman who has been (who has served as?) my “secretary/support person/administrative assistant” for more than fifteen years. I have a conference with one of my research assistants, to consult about this very article. I hear yet again about how a feminist law professor who has become an administrator is berating her assistants. I review a union proposal (that will fail) regarding the status of adjunct professors.

Although I do not teach Labor Law, Immigration, or the Rights of Low Wage Workers, like some of my colleagues, I nevertheless encounter a “servant problem” in a Sexuality and the Law case: *Price Waterhouse v. Hopkins*.<sup>216</sup> Anne B. Hopkins had been refused partnership in the accounting firm of Price Waterhouse and brought a sex discrimination claim under Title VII.<sup>217</sup> Her claim was that she was discriminated against because she was a woman, but perhaps even more precisely, because she did not conform to gendered notions of being a woman.<sup>218</sup> Influential for the Court (and the district judge), was the advice from an emissary of the Policy Board who denied her promotion that she should “walk more femininely, talk more femininely, dress more femininely, wear

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214. For example, in *Lown v. Salvation Army*, plaintiffs challenged the Salvation Army’s termination of employees on the basis of religion and sexual minority status where the state of New York contracted with the Salvation Army to provide social services for children, including foster homes. 393 F. Supp. 2d 223, 227-33 (S.D.N.Y. 2005). The district judge found that there was not sufficient state action to hold the employer to constitutional standards, *id.* at 242-43, despite the fact that the agency of the Salvation Army employing the plaintiffs received ninety-five percent of its funding from the state and ninety percent of its clients were involuntarily committed by the state, *id.* at 228.

215. As Light discusses, in mid- to late-nineteenth century Britain when live-in service was at its peak, the servants were meant to be as unobtrusive as possible, and thus “relegated to basements and attics, using separate entrances and staircases,” and their activities “muffled and hidden behind the famous ‘green baize door.’” LIGHT, *supra* note 7, at 1. However, by 1920, the “green baize door” and the practice of secreting servants was more difficult in semi-detached smaller houses and flats. *Id.* at 180.

216. 490 U.S. 228 (1989).

217. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2000).

218. *Price Waterhouse*, 490 U.S. at 235, 250-51.

make-up, have her hair styled, and wear jewelry.”<sup>219</sup> There was also the advice that she should attend charm school; she was too aggressive.<sup>220</sup> And then there is this:

On too many occasions, however, Hopkins’ aggressiveness apparently spilled over into abrasiveness. Staff members seem to have borne the brunt of Hopkins’ brusqueness. Long before her bid for partnership, partners evaluating her work had counseled her to improve her relations with staff members. Although later evaluations indicate an improvement, Hopkins’ perceived shortcomings in this important area eventually doomed her bid for partnership. Virtually all of the partners’ negative remarks about Hopkins—even those of partners supporting her—had to do with her “interpersonal skills.” Both “[s]upporters and opponents of her candidacy . . . indicated that she was sometimes overly aggressive, unduly harsh, difficult to work with and impatient with staff.”<sup>221</sup>

The discussion in class easily surfaces the gender stereotypes that label the same action abrasive when committed by a woman that is masterful when committed by a man. Yet the Court’s statements regarding the staff members are troubling. In our discussion, we readily assume that a male partner candidate’s relationships with the staff would not be of much concern to the Policy Board, although we have no facts to support our assumption. We more hesitantly consider whether the staff members hold a woman supervisor to a different standard than a male supervisor. We quickly realize that we assume that “the staff” are women—and then debate whether that makes a difference or not. We do not assume Anne B. Hopkins is a feminist<sup>222</sup>—but we debate whether that should make a difference in the way she treated “the staff.”

## VI. CONCLUSION

As Virginia Woolf wrote, “the public and the private worlds are inseparably connected; . . . the tyrannies and servilities of the one are the

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219. *Id.* at 235 (quoting *Hopkins v. Price Waterhouse*, 618 F. Supp. 1109, 1117 (D.D.C. 1985)).

220. *Id.* at 235.

221. *Id.* at 234-35 (quoting *Hopkins*, 618 F. Supp. at 1117).

222. Writing before the United States Supreme Court decision, the *New York Times* reported:

Increasingly, the case is bringing national attention to Hopkins as a symbol of the women’s movement. And that, says her friend Ruth Hopper, “is not a cloak that she wears easily.”

Says Hopkins, settling into her living-room chair: “I just believe that every person makes a difference. And the fact that it’s not part of a movement, or doesn’t appear to be part of a movement, doesn’t matter very much. Some people have hills to die on, and some people don’t.” At 44, Ann Hopkins has found hers and, slowly, she is growing comfortable there.

William Glaberson, *Determined to be Heard*, N.Y. TIMES, Oct. 2, 1988, § 6, available at <http://query.nytimes.com/search/sitesearch> (search “‘Determined to Be Heard’ Glaberson”; then follow “Determined to Be Heard” hyperlink), and at 1988 WLNR 1295377.



tyrannies and servilities of the other.”<sup>223</sup> This mirroring means, at the very least, that civil respect and even affection among people—among women—is a worthy goal and a wonderful practice. It is vital that we treat each other as human beings, recognizing each other’s individuality and inherent worth.

But personal efforts are partial solutions. While Virginia Woolf and individual feminists might be expected to act more consistently with their principles, such individual attempts are not a substitute for the necessary structural changes that must occur, and which feminism unevenly advocates.

As Alison Light argues in *Mrs. Woolf and the Servants*, Virginia Woolf was deluded in her belief that equality for working class women, including servants—including her servants—would not “touch one hair” on her “comfortable capitalist head.”<sup>224</sup> In one of the most affecting passages in the book, Light writes:

In the published version of her speech, ‘Professions for Women’, Virginia returned to her earlier conceit: ‘you are earning your five hundred pounds a year . . . the room is your own but it is still bare’. ‘How are you going to furnish it?’ she asked her imaginary female listener. ‘With whom are you going to share it?’ She did not ask who would clean it. In [Virginia Woolf’s novel] *The Waves* the empty rooms which shimmer in the sunlight are miraculously free of dust. The ideal room, like the ideal body, would be free of dirt and waste.<sup>225</sup>

Neither ideal bodies nor ideal rooms are possible. What is possible is a world that does not maintain a hierarchy of mistresses and servants. What is necessary is a feminist legal theory that works much harder to achieve the goal of substantive equality, so that no woman is ever a servant. Even if that means that no women can be a mistress, or even a master.

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223. THREE GUINEAS, *supra* note 6, at 168.

224. LIGHT, *supra* note 7, at 205.

225. *Id.* at 206.

