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### Gendered work and migration regimes

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## CHAPTER 3

## GENDERED WORK AND MIGRATION REGIMES

Rosie Cox

## INTRODUCTION

This paper examines the relationship between the gendering of domestic work – its construction as ‘women’s work’ – and the treatment within migration regimes of people who do such work. Research on paid domestic workers to date has highlighted that there are many examples of migrant domestic workers being subject to more stringent, limiting or invasive visa regulations than other migrant workers (see, e.g. Constable, 2003; Mundlak & Shamir, 2008; Pratt, 2004; Yeoh & Huang, 1999a, 1999b). Additionally, domestic workers can be excluded from employment protections, such as those that ensure minimum wages or maximum working hours for other groups (Hondagneu-Sotelo, 2001; Mundlak & Shamir, 2008; Pratt, 2004).

This differential treatment of domestic workers is framed by assumptions about the most appropriate ways to organise domestic work and the most appropriate people to carry out that work. Importantly, migration and employment regulations often construct domestic jobs so that they closely resemble the unpaid labour done in the home by household members. In this chapter I examine the effects of one example of this, the frequent requirement that domestic workers live in their employers’ homes. The requirement that domestic workers live in is seen as a ‘natural’ way to perform domestic and caring work because it echoes the familial relations within which unpaid caring work takes place. However, there is no necessity for domestic workers to live in, and this arrangement supports an elision between work done for pay by domestic employees and the unpaid work of family members. The gendering of domestic responsibilities and imaginings of domestic work as women’s ‘natural’ duty serves to hide the work domestic workers do and recasts their labour as something different from other forms of work.

The requirement that domestic workers live in is a nexus in the structuring of migrant domestic labour. It has practical effects, often increasing hours of work, isolating domestic workers and making it more difficult for them to leave abusive positions. It also has, in a number of countries, additional legal implications as workers who live in their employers homes are then denied other rights, for example to unionise or to limited working hours or minimum pay. The practical effects of living in have been highlighted in a large number of studies of paid domestic work (see, e.g. Búriková & Miller, 2010; Cox & Narula, 2003; Hondagneu-Sotelo, 2001; Pratt, 2004; amongst others). In this paper I stress on the links between the gendered nature of domestic labour and requirements to live in and show how these are then related to reductions in legal rights. The process of

requiring migrant domestic workers to live in and then denying them employment rights because they do, is not specific to one country but is a widespread manifestation of the way in which domestic work is constructed to be different from other forms of labour (Anderson, 2000; Mundlak & Shamir, 2008; Pratt, 2004). Migration schemes that require domestic workers to live in their employers' homes are a practical mechanism by which ideologies of women's 'natural' role are imposed upon workers whilst simultaneously making their work less visible.

The chapter considers in detail the case of au pairs in the United Kingdom, a group that is increasingly invisible and at risk of exploitation because of changes to the UK au pair scheme. Traditionally au pairs have been the cheapest form of flexible childcare available to British Families (Cox, 2006). For weekly 'pocket money' of only £65 an au pair was allowed to work for 25 hours during the day and additionally provide at least two evenings of babysitting per week. The low cost and live-in nature of au pairs have made them popular with many thousands of British households. In the last decade demand for privatised forms of childcare has grown at the same time as EU expansion has allowed easier migration to the United Kingdom from the traditional au pair-sending countries. Young people (mainly, but not exclusively women) from European countries now provide childcare and housekeeping services to UK families as au pairs, nannies, mother's helps and everything in between. Au pairing has been transformed from a cultural exchange programme for the relatively privileged and highly educated class of Western Europe into a mainstream and long-term migration route.

In November 2008, as part of a wider move to the Points Based Immigration System, the United Kingdom abolished its au pair visa and with this the only government definition of what an au pair is. The expectation was not that there would no longer be au pairs in the United Kingdom, in fact whilst numbers are very difficult to gauge, they appear to be booming (Busch, 2010),<sup>1</sup> rather the expectation was that au pairs would now come exclusively from EU countries and would, therefore, not need visas. This change has made au pairs 'invisible' to the UK authorities. They are not considered to be workers and are specifically excluded from minimum wage and working time regulations, but nor are they protected by the stipulations of a specific visa that prescribed working hours and conditions.

The chapter begins by detailing changes to the au pair scheme in the United Kingdom since 2008. It then reviews a range of migration policies developed to allow the importation of domestic labour into other countries. This highlights the particular conditions that domestic workers are subject to and the importance of gendered assumptions about domestic labour to migration policies. I then go on to show how requirements on domestic workers to live in affect their employment rights. The paper argues that the invisibility of au pairs, their lack of rights and protections, is a result of the gendering of the work that they do. The UK government has been able to overlook this group of migrants, and exclude them from the most basic protections, not only because they are hidden from sight in private homes, but also because their labour is disguised through its association with the traditional and unpaid work of women.

#### AU PAIRING IN THE UNITED KINGDOM – CONSTRUCTED INVISIBILITY

The au pair scheme in the United Kingdom, despite appearing to be a formal mechanism to allow the movement of people to provide domestic labour, is an example of a migration scheme that produces particular working conditions by overlooking, or disregarding work rather than regulating it tightly. Au pairing is an example of migration rules constructing ambivalence and insecurity for migrants, whilst providing their hosts/employers with increased access to cheap and flexible labour over which they have a high level of control. Bridget Anderson (2010) has written on how immigration controls work as a mould, producing particular types of labour with particular relations to employers. Often these immigration controls will construct insecurity and precariousness for the worker and thereby give employers additional means of control over their labour. For au pairs, increased precarity is produced through a denial of their work and their exclusion from the category 'worker'. Au pairs are not technically considered to be employed or described as carrying out 'work' but are still one of the most important sources of private childcare and housework in the United Kingdom (Búriková & Miller, 2010; Busch, 2010; Cox, 2006).

Au pairing developed in, the United Kingdom at least, as a response to the post-war servant shortage and was formalised in 1969 through the Treaty of Strasbourg. The scheme allowed young women, and it was specifically restricted to women at the start, to travel to another European country to provide 'help' to a family in return for room and board and a small amount of pocket money. From the outset au pairs occupied a contradictory position, expected to do denigrated work that had previously been done by servants in the households they went to, but also imagined as relatively privileged and flighty. Liarou (2008) has found that au pairing emerged from the post-war movement of Swiss, German, Austrian and Danish women travelled to the United Kingdom to take up domestic posts that British women would no longer fill. On one hand, au pairing was seen as a way to travel and meet interesting people, but simultaneously there was evidence of au pairs being exploited and abused. Liarou (2008, p. 221) comments:

[The] British Vigilance Association's report on the 'Au Pair situation in Great Britain' in 1958 highlighted the fact that although there seemed to be little criticism of the Labour permit system [for domestic workers], there was almost universal criticism of the so called 'Au Pair arrangement' which was intended to be an exchange system, whereby girls from abroad came to Britain, and a British girl went, in exchange, to the family of the foreign girl. In practice, as the report underlined, the 'Au Pair' system 'has become a means whereby girls under the age of 18 are employed to do almost exactly the same duties as regular domestic servants, with no insurance benefits or legal protection'. By the early 1970s this criticism amounted to what was called the 'Pink Slave Trade' as cases of economic and sexual exploitation of au pair girls were coming to light, and the government undertook to look at the arrangements for admitting them to Britain. On the other hand, au pair girls were accused of 'free-

loading, laziness, arriving pregnant or ill to take advantage of free treatment on the National Health Service'.

Au pairs were, it seems positioned as servants, but without adequate employment protection, from the first days of the scheme.

In the United Kingdom until 2008 the au pair scheme was formalised through the 'au pair visa' and details of the scheme were set out by the Home Office as the authority that issued visas. Au pair visas were available only to people from Europe and, originally only Western and Central Europe (see Cox, 2006). The au pair visa specified that au pairs must be unmarried and without dependent children; aged 17–27 years and could stay in the United Kingdom for up to two years but must leave the country within a week if they are not living with a 'host family'. In addition the Home Office stipulated that au pairs had to live in, and be engaged in cultural exchange and improving their English. They could do 25 hours of 'light housework' or childcare per week plus an additional two evenings of babysitting but should not be in sole charge of very young children. In exchange for this the au pair received 'pocket money' (the Home Office advised £65 per week in 2008. It cautioned that if an au pair was given much above this amount this would suggest that the person was 'filling the position of domestic servant or similar, which would require a work permit' (Home Office website quoted in Newcombe, 2004, p. 16)), have their own bedroom and be provided with meals. The visa was not a work permit and the official construction of the au pair avoided other tropes associated with employment – the au pair receives pocket money not pay, and lives with a host family rather than an employer.<sup>i</sup>

As the EU expanded and treaties allowed EU and European Economic Area (EEA) nationals access to the UK labour market, the number of au pairs needing a visa declined. In November 2008 the au pair visa scheme was closed as part of the United Kingdom's move to a points-based immigration system that encompasses all visa and work permit categories. Despite the fact that a relatively small percentage of au pairs needed visas by 2008, the existence of the visa, and its subsequent abolition, have been important in delineating the au pair role and the rights of au pairs. The existence of the visa required the Home Office to define au pairing, for example to set expectations on host families and au pairs, to suggest pocket money rates and to delimit the hours an au pair should work and these guidelines applied to all au pairs, not just those with visas. Official advice to au pairs and host families was provided by the Home Office through their website and in leaflets and it was a requirement that all au pairs entering the United Kingdom should be given a Home Office leaflet. The advice provided by the Home Office was recirculated by agencies and language schools as well as between au pairs and host families. Whilst there were still many abuses of the scheme and it is estimated that a minority of au pairs worked within the boundaries set out by the Home Office (Cox, 2006; Cox & Narula, 2003), their guidelines did provide an official basis for delimiting the au pair role which theoretically at least provided some legal protection.

Since November 2008 au pairs in the United Kingdom have been integrated into Tier 5 of the Points Based Immigration System. This is the tier that covers youth mobility and temporary workers. While au pairs are now mentioned in those roles covered by the Tier 5 Youth Mobility Scheme (YMS), there is no longer any detail given by the Home Office on what 'au pairing' does or does not involve; no suggestion of pocket money, appropriate tasks or living conditions. The government's own impact assessment for Tier 5 concluded that no one was expected to enter the United Kingdom as an au pair through this route (UK Border Agency, 2008, p. 5), and government formally stated that its goal was that all 'low skilled' jobs would be taken by EU nationals (Home Office, 2006).

Government sources of information, including the Home Office website, now refer to a voluntary organisation, The British Association of Au Pair Agencies (BAAPA), for a definition of au pairing and there no longer appears to be a government designation of what an au pair is. However, BAAPA is a non-government organisation and the information they disseminate, while closely resembling that which was previously supplied by the Home Office, is both out of date (it has not changed since the ending of the au pair visa) and beyond the control of government. Additional confusion comes from the fact that Home Office rules for the YMS point potential applicants to the BAAPA definition of au pairing(<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5youthmobilityguidance.pdf>), which highlights cultural exchange and studying English, while few people from non-English speaking countries are eligible to apply through this route.

Despite the UK government no longer offering its own definition of or guidelines around au pairing, other legislation, including the National Minimum Wage (NMW) specifically mentions that au pairs are not covered by their provisions. For example, information on the NMW states 'If you are not a member of your employer's family but you live in their home and share in the household's work and leisure activities, for example if you are an au pair, you are not entitled to the NMW' (Direct.gov, 2010). Guidance on holiday entitlement states that in order to have a right to holiday a person has to be considered a 'worker', a status which au pairs do not clearly have.

In theory au pairs who are not treated as family members are entitled to the minimum wage, and one employment tribunal case in 1990 was won by a domestic worker because it was found that she was not treated like a family member. The tribunal was shown that despite being new to the country she was given no extra attention or help, shown little kindness and only one photo of the worker with the family could be produced despite the fact she had been with them for 12 years. The domestic worker was awarded back pay equivalent to being paid the NMW for the whole time she was with the family (Newcombe, 2004). Yet many au pair 'host families' readily admit that they do not want an au pair who is a member of the family and studies suggest it is the minority of au pairs who would regularly be included in family meal times or leisure activities (Cox & Narula, 2003; Newcombe, 2004). The invisibility of au pair/host family relationships, behind the closed doors of the home, meant that even when the Home Office spelt out the conditions of au pairing in the United

Kingdom, few host families felt any anxiety about breaking these rules or acting against the spirit of the scheme.

Without specific guidelines from government about what an au pair is, we now have a situation where, in theory at least, once someone is described as an 'au pair' they do not have key protections in pay or working conditions which do cover other people carrying out similar, or perhaps identical work (while live-in domestic workers lack the full protections given to other workers they do at least have the right to a minimum wage). While there was a government definition of au pairing (through the Home Office), au pairs and host families had official guidelines available which could be used to limit the hours worked or duties performed and as a last resort could be appealed to in an employment tribunal. Without clarity from the government about the nature of au pairing there is scope for people living as au pairs to be both excluded from protection as employees, and without the limits on their working hours or tasks given by earlier definitions of au pairing. Without any guidelines on the nature of the relationship, host families have immense power to control the lives of young women who are living in their homes.

Au pairs in the United Kingdom seem always to have occupied an ambivalent and liminal position. Even under the au pair visa their status was unclear – some combination of domestic worker language student and working holidaymaker (Newcombe, 2004) – and this position was even more thoroughly muddled in the gap between official discourse and the practices au pairs found in their host families. The abolition of the au pair visa means that au pairing has become still more unregulated and au pairs have been constructed into a yet more marginal place. They are still not officially workers but they are no longer defined as anything else either and this puts them further beyond the official gaze. Under the visa au pairs were limited to staying in the United Kingdom for a total of two years, and this added to their similarity to working holiday makers. With deregulation au pairing is not time limited making it less of a temporary sojourn and more a form of paid domestic labour that the authorities do not care to control.

The blind eye that is turned on au pairs is highly beneficial to au pair hosts as they are able to access extremely cheap, unprotected and flexible labour, without any of the responsibilities of being an 'employer'. As an au pair is not an 'employee' s/he is not liable for National Insurance contributions and au pair hosts do not have to go to the trouble of ensuring National Insurance is paid, or that they are complying with any other employment law. For the au pair the outcome of this 'non-worker' status is exclusion not only from employment protections, which domestic workers also face, but also welfare rights. In the UK a number of welfare benefits are paid only to people who have been officially employed and paying National Insurance, including maternity allowance. Au pairs find themselves in a situation which is more akin to that of undocumented workers than any other group. The difference is that there is nothing illegal, informal, grey or



undocumented about the au pair role; it is a status that has been created by government policy. For hosts/employers the current situation offers all the 'benefits' of employing an undocumented worker – low pay, no rights, flexibility – for the au pair it does not have quite the same risks – for example the threat of deportation – but it shares many of the disadvantages.

A version of the au pair scheme is operated across a number of European countries and, while the details and forms of regulation vary from place to place, there is emerging evidence that there is slippage between 'cultural exchange' and 'domestic work' for many au pairs (Cuaratas Villa 2009, Øien 2009, Sollund 2010) and this has potential repercussions in terms of their well being. The discourse of 'cultural exchange' which frames au pairing hides the work that au pairs do and allows both host families and the authorities to overlook the rights and needs of au pairs as workers (Cox 2007). In Norway au pairing has grown rapidly in the last five years with the majority of au pairs now coming from the Philippines, despite the Philippines government objecting to the terms of the scheme and refusing to issue exit visas to au pairs (Øien 2009). Sollund (2010) shows that while many Norwegian au pair hosts feel embarrassment and ambivalence about the idea of employing a domestic worker – because they see themselves and Norway as inherently egalitarian – and the au pair scheme provides a framing that they are more comfortable with, their motivations for hosting an au pair are still clearly based in their desire to gain childcare and domestic labour rather than to engage in cultural exchange (see also Øien 2009). It appears that in the United Kingdom, Norway and France at least au pairs are increasingly treated like other domestic workers and less likely to be involved in genuine forms of cultural exchange or language learning. This is important because Øien's (2009) research in Norway suggests that as au pairs there are increasingly working in ways that are indistinguishable from other domestic workers – that is without elements of cultural exchange, with long working hours and informal status – they are also more exposed to the risks other migrants working in private homes face; risks of abuse and exploitation.

In addition Anderson (2009) found, while the UK au pair visa was in operation, au pairs seemed to be sheltered from some of the worst abuses that other migrant domestic workers faced. This was not because the Home Office, or any other agency, offered any form of protection or support but because the terms of the au pair visa meant that it attracted people who, because they came from Europe and did not have dependents, were less likely to feel utterly tied to an abusive employer than a domestic worker who was remitting to her family and could not afford to return home. With the ending of the au pair visa and the concomitant lack of clarity surrounding the au pair role in the UK, it is likely that we will increasingly see people with dependents and from a broad range of countries filling posts described as 'au pairs'. The precariousness of the role, combined with au pairs being less able to leave than previously, could be a recipe for high rates of exploitation.

### **Domestic labour and migration regimes**

Au pairs in the UK are not alone in having their work constructed as 'not work' by migration regimes and to understand the relationship between the gendered nature of domestic work and the construction of the au pair scheme it is useful to consider other migration schemes for domestic workers<sup>1</sup>. Around the world, very large numbers of domestic workers are migrants. Sometimes they have moved relatively short distances from rural to urban areas, sometimes larger distances within one country, but many tens of thousands move across international boundaries and find themselves subject to the migration regimes of their destination countries. Lutz (2008: 2) describes a 'regime' as the 'organization and the corresponding cultural codes of social policy and social practice in which the relationship between social actors (state (labour) market and family) is articulated and negotiated.' The concept captures that policies are not developed in a vacuum but relate to specific social practices and expectations.

Williams and Gavanas (2008: 15) have shown how the phenomenon of female migration into domestic and childcare work 'can be understood as part of the dovetailing of childcare regimes (state policy responses to changes in family and work) with migration regimes (state policy responses to changes in work, population movement and change).' Opportunities (or not) for migration to carry out domestic work are, therefore, directly related both to state policies on childcare, family leave etc and to cultural expectations about how domestic and care work should be done and who should do it. The resulting migration policies seek to produce particular types of labour (low waged, 'unskilled', insecure) performed by particular migrants (women, often from specific countries) which are seen as appropriate to the type of work and undemanding to the state (Walia 2010).

Following this, domestic workers are often subject to specific and highly restrictive migration rules. For the most part such rules give domestic workers fewer rights, for example to permanent settlement or family reunification, than other migrants and impose stricter controls on their behaviour (Ozyegin and Hondagneu-Sotelo 2008). Most commonly this includes stipulations that domestic workers live in their employers' homes but there may also be regulations that govern aspects of a domestic worker's private life, such as restrictions on personal relationships. Migration regulations can also act to empower employers to impose additional, even stricter, conditions on domestic workers which can cover aspects of dress, hairstyles and most other areas of life. Requirements that workers live-in and those that tie a worker to a particular employer increase employers power over domestic workers to enforce such rules. Migration schemes developed expressly to allow the import of domestic labour rarely give domestic workers protection against low pay and long hours of

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<sup>1</sup> The discussion of migration schemes below is not intended to be exhaustive but rather to give examples of a range of government approaches that have been discussed in the English language literature.

work. They may specifically exclude domestic workers from employment protections or they create other conditions – such as tying the worker to a named employer with whom they must live – that make it almost impossible for the worker to insist on their rights (see for example Anderson 1993).

One of the strictest schemes of this kind was operated in Hong Kong, which had over 160,000 foreign domestic workers in 1996 (Tam 1999). Here, migrant domestic workers are recruited on two year contracts that stipulate job rules, task timetables and appearance. Domestic workers can find they are banned from having long hair or wearing make-up and must submit to compulsory pregnancy tests as part of their visa regulations. Nicole Constable (2003: 120) found that it was not uncommon for employers in Hong Kong to issue lists of instructions to domestic workers that tried to control every area of their life and sometimes directly contradicted official employment contracts. One such list that she quoted included the following instructions to the domestic worker:

- A maid must always be polite and greet the employer, his family GOOD MORNING, GOOD DAY, GOOD AFTERNOON, GOOD EVENING OR GOOD NIGHT (before going to bed), SIR, MADAM, etc. Don't forget to say THANK YOU at appropriate times.
- DO NOT use and nail polish on finger and toes. DO NOT put on make up, even when you are going out to do the family shopping. Your hair must be short and tidy. DO NOT wear tight jeans and pants and low-cut T-shirts while you are working. DO NOT go to the parlour in pyjamas.
- Must take bath daily before going to bed. Hand wash your own clothes separately from those of your employers and the children (especially underwear), unless your employer allows you to wash your clothes by the washing machine together with theirs.

A similar scheme for importing migrant domestic labour is operated in Singapore, which employs about 100,000 foreign domestic workers - one for every eight families in the city. Domestic workers are recruited directly from their home countries to Singapore through agencies and are expected to sign a two year contract. During the two year period they may not leave the country without a release paper from their employer and are entitled to only one day off a month. In addition they have to sign a statement prohibiting them from marrying or co-habiting with a Singaporean citizen or permanent resident and have to take a pregnancy test every six months. Domestic worker's passports are regularly held by their employers who are also allowed to retain 20 percent of a worker's earnings to cover the costs of their return passage. While employers are allowed to replace domestic workers within the two years, a domestic worker voluntarily leaving an employer must return home and, if insufficient notice is given, must forfeit a portion of her salary (Yeoh and Huang 1999a and 1999b)

It is not only the city-states of Asia that have pursued methods of recruiting migrant domestic workers while denying them the rights of other employees. Canada operates the 'live-in caregiver programme' as a way of meeting demands for child and elder care from Canadian families. The programme allows workers into Canada for a period of up to four years with the condition that they have a contract for employment as a caregiver in a family and will live-in with that family. After two years workers are allowed to apply for an open visa and later for permanent residence - the Canadian equivalent to the US 'green card' (Citizenship and Immigration Canada 2010). The programme treats domestic workers differently from other migrant workers by considering them as temporary visitors for the first two years, rather than allowing them to become landed migrants on arrival (Pratt 1997, 1999). The additional stipulation that they live-in makes them vulnerable to abuse and overwork, and they are also exempt from many of the employment protections that cover other workers (Walia 2010). As Abigail Bakan and Daiva Stasiulis (1997: 7) put it: 'Canada shares with more authoritarian regimes a glaring willingness and indeed determination to exploit female migrant domestic workers from developing countries whose limited wage earning options have made them particularly vulnerable to political and legal control.'

Israel operates a similar policy, known as the 'binding arrangement', which links the employment permit given to an employer with the visa given to a migrant worker. If the employee's contract expires, for any reason, the visa also ends. Careworkers are one of the few groups granted work permits by the Israeli state and they are expected to provide round the clock care for elderly or disabled people, normally living in their employer's home. Perversely, because only the disabled or elderly in need of care are eligible to receive a work permit, a market has now developed in Israel for undocumented domestic workers who work for families not eligible for a work permit, for example those wanting childcare or housework. Undocumented workers can be paid up to 50 per cent more than documented workers because of this large market for their labour (Mundlak and Shamir 2008). The binding arrangement therefore restricts documented workers' employment rights by severely limiting their ability to negotiate with employers or to leave abusive situations, while simultaneously supporting demand for undocumented domestic workers who are also vulnerable because of their migration status even though they are better paid.

As shown in the example of au pairs, immigration regimes work by overlooking as well as by overseeing. In contrast to the specifically developed schemes outlined above, the United States does not have a formal government policy or system to recruit migrant domestic workers. The method most often used to bring domestic workers from abroad is the 'blind eye' turned by immigration authorities (Chang 2001; Hondagneu Sotelo 2001). The Immigration and Naturalization Service has traditionally served employers by ignoring the

employment of undocumented migrants in private homes and some employers deliberately seek out undocumented domestic workers because they will accept lower wages and will be less likely to insist on their employment rights. Doreen Mattingly (1999) has found in her research that legislation designed to reduce illegal immigration from Mexico to the US has actually fuelled the growth in the employment of undocumented migrants as domestic workers. The Immigration Reform and Control Act (IRCA), passed in 1986, made it illegal for employers to hire undocumented workers. Before this it was illegal for such workers to seek work but their employers had not committed an offence by employing them. The Act made it much more difficult for undocumented migrants to work in the US and a larger proportion of them sought work that was informal and hidden from the immigration authorities, as domestic work is. In addition, the Act had the effect of driving down work opportunities and conditions for all migrants, even those who were legal, as many employers would no longer hire them. This had the knock-on effect of reducing the incomes of migrant households that had been dependent on a male wage earner and of pushing more migrant women into work to make up the loss in earnings. Mattingly (1999: 76) comments that, because of the efficiency with which it has driven migrant women into domestic labour as nannies and housekeepers, 'The IRCA may well be the country's most effective policy for supporting professional women.'

These examples demonstrate that the UK au pair scheme is not unique in constructing precarity for domestic workers. Through their specific restrictions, or by turning a blind eye, migration regimes produce a particular type of worker with particular characteristics, able to command particular pay and conditions (Anderson 2010). In the case of domestic workers the characteristics demanded are generally low cost to employers and insecurity. Migration regimes achieve this in a range of ways – from tightly regulating the migration of workers and giving them only limited rights to creating conditions which encourage the supply of undocumented workers who are inherently insecure, or as in the case of UK au pairs, by creating a non-worker category that only migrants can fill.

While domestic workers are by no means unique in having their pay and working conditions shaped by migration regulations (see Anderson 2010 for a fuller discussion of this process) the gendered nature of domestic work plays an important role in shaping the precise nature of paid domestic workers' conditions. The assumption that domestic work is women's work plays a part in who gets a visa or work permit and in rules, such as those from Singapore and Hong Kong that restrict domestic workers' reproductive rights. Lutz (2008), Williams and Gavanas (2008) and Sollund (2010), amongst others, have demonstrated the ways that gendered welfare regimes also shape employers' lives and so create demand for particular forms of paid domestic labour.

A more subtle affect of gendered assumptions is the condition that many domestic workers face, that they must live in their employers' homes. This requirement is both a cause and effect of the gendering of domestic work. The imagining of domestic work as women's natural duty means that paid domestic work becomes confused with the unpaid work of female household members and its true extent is overlooked. Simultaneously, the requirement that domestic workers live in seems logical or natural when their work is compared to women caring for their own families. Domestic work is cast in a particular light, as a form of labour that is unique and not easily separable from familial relations. This elision between paid and unpaid work is also reflected in employment law and has far reaching outcomes for domestic workers.

### **Domestic labour and employment rights**

As well as being subject to specific migration rules domestic workers often face reduced employment rights, including not having the right to a minimum wage or maximum working hours that are available to other workers. Rules which exclude domestic workers from employment protections are often targeted specifically at those who live in. Living in differentiates domestic workers from most other groups and makes it easier for laws to include or exclude them specifically. These rules are generally framed in terms of either 'family membership' – that is that the domestic worker cannot be treated like any other employee because she is a 'member of the family' - or 'different work' – that the tasks domestic workers do are not equivalent to other forms of labour. These two rhetorics, and the regulations they support, arise from class and gender based assumptions about domestic work and domestic workers.

Discourses of 'family membership' are particularly used to describe live-in domestic workers. Rather than signalling that these workers are cared for and treated as equals by their employers, family membership is often used euphemistically to describe paternalistic relations which echo the dependent relations of Victorian (and earlier) domestic servants and their employers. When these discourses are invoked in employment regulations they are given as a reason why domestic workers should not have access to the same rights as other workers. For example, Geraldine Pratt (2004: 49) recounts an exchange in a British Columbia legislative debate when a member of legislature, Ms Sanford, tabled an amendment to the B.C. Employment Standards Act to extend overtime pay provisions to live-in domestic workers. Another member spoke against the amendment saying:

Remember that a domestic has to be accepted into a family. She [Ms Sanford] misses that point. That is the reason a domestic cannot keep time. You are accepted into the family as part of the family, and the principle that you have your time recorded doesn't work in the family scene [...] A domestic is part of the family and as part of the family takes part in family life, and that's the way it should be.

As Pratt comments, this discussion places the domestic worker in the 'highly gendered discursive frame of familialism' (2004: 50) rather than recognising her as simply an employee. Similarly Mundlak and Shamir (2008) review a legal case brought by a Romanian domestic care worker in Israel to claim overtime payments because of the long hours she had worked. The court found that while live-in workers were due some additional payment for long hours, the law did not apply to them as it did to other workers. Mundlak and Shamir (2008: 168) comment that an unspoken question lingers behind the court's decision 'would a mother demand overtime for attending to her children at night?' They argue that the courts aversion to treating the domestic worker as a worker reveals the regulative connection between paid and unpaid care work. If a housewife is unpaid and considered unproductive, how can a domestic worker be fully regulated and rewarded? In the USA live-in domestic workers are also excluded from the right to overtime pay. As Hondagneu-Sotelo (2001: 213) writes 'the legislation seems to encode the assumption that live-in domestic work is closer to being "just like one of the family" than to wage employment.' In all these cases there is an imagined continuity between the unpaid 'housewife' and the paid domestic worker which denies the labour of both.

In the UK a similar frame is used to exclude domestic workers from working time regulations and health and safety protections. The UK has a maximum working week of 48 hours and other regulations that govern rights to rest breaks and limits to night work. The legislation governing working time regulations uses a definition of a 'worker' which is taken from EC Framework Directive (89/391) which states that a worker is 'any person employed by an employer, including trainees and apprentices but excluding domestic servants' (DTI 1996: 13). This definition then specifically excludes 'domestic servants' from key protections including the limit on total hours worked and the right to have a health assessment before being assigned night work (as other groups of workers do). In addition domestic servants are exempted from a regulation that requires employers to ensure that employees doing monotonous work are given adequate rest breaks for the sake of their health and safety (Working Time Regulations 1998) and they are excluded from health and safety legislation more generally (Lourie 1998)<sup>ii</sup>. The use of the word 'servant' and these exclusions from key protections that are offered to other workers construct domestic workers as inherently different. It is as if once a worker is a member of a *household* she is imagined as being a member of a *family* and her work is not distinguishable from the labour of family members, and therefore cannot be counted, limited nor organised in a way that is helpful or safe to her.

The UK regulations suggest that domestic work is distinct from other forms of work not only because it takes place in private households, but also because of the nature of the work involved. Whilst not expressly articulated, the exemptions of domestic work from regulations which are designed to ensure the health and

safety of workers, suggest that domestic work is not imagined to be work. In the USA federal legislation which guarantees basic labour protections and minimum wages specifically excludes domestic employees who work as caregivers to children or the elderly from the right to earn minimum wage or overtime pay (Hondagneu-Sotelo 2001). This exclusion suggests that the content of domestic work is also somehow seen as inherently different to other forms of labour. The National Labor Relations Act of 1935 (NRLA) states that 'The term employee shall include any employee ... but shall not include any individual employed ... in the domestic service of any family or person in his home' (quoted in Hondagneu-Sotelo 2001: 221). This exclusion means that in the USA domestic workers do not have the legal right to organise collectively as other workers do.

Together, restrictive immigration policies and exclusion from employment protections mould domestic workers into a particular relationship to the labour market in many countries. Immigration rules that restrict domestic workers to a particular employer or to live-in conditions limit their ability to seek work freely or to leave the worst employers. At the same time exclusions from minimum wage and working time regulations bring down the pay and working conditions for all domestic workers, making their labour more easily available to employers. The construction of domestic workers and domestic work as somehow different to other workers and other jobs can mean that struggles to improve working conditions involve discursive battles to redefine domestic workers as employees rather than 'family members' (Pratt 2004).

### **Conclusions: gender, class and the invisibility of domestic labour**

The UK au pair scheme provides an example of the ways in which migration and employment regulations construct domestic labour to be different from other forms of work. The au pair trope defines au pairs as family members carrying out tasks which are commensurate with that status. The assumptions underpinning this are highly gendered as the au pair's responsibilities within her host family are those traditionally ascribed to women rather than the breadwinning responsibilities ascribed to male family members.

Housework and childcare, the staples of the private sphere, are too often seen as the 'natural' role of women, born of love or care and in contrast to men's labours in the public sphere. Centuries old imaginings of women's traditional tasks as something other than 'real' work create the context for au pairs in the UK today, and domestic workers around the world, to be exploited and ignored. When housework and caring are seen as acts of love or as 'natural' behaviour for women the tasks involved slip easily from the category of 'work' and those who do them slip from the category 'worker'. This slippage has allowed au pairs in the UK to become invisible. As they are not workers they have been left in a liminal position by legislation – available to provide housework and childcare for British families but not recognised or protected by legislation.



Around the world domestic workers face specific rules both in terms of migration and employment legislation which differentiate them from other groups of workers. In almost all cases they have fewer rights and worse working conditions. Migration regulations which require domestic workers and au pairs to live in their employers' homes exacerbate the denial of domestic work as *work*. By reproducing conditions which are most like those of unpaid familial labour, live-in work hides domestic workers behind closed doors and obscures their true status as workers. Domestic workers are often required by migration rules to live-in and then denied employment rights because they do.

Legislation does not develop in a vacuum. Policies, on migration and employment rights reflect prevailing practices as well as constituting them (Mundlak and Shamir 2008). Migration schemes for domestic workers often reflect the differences in power between domestic workers and employers, when they meet the employers' demands for cheap labour at the cost of domestic workers' pay and working conditions. They also reflect assumptions about who should do housework and childcare, and the ways in which this work should be done. Migration regimes produce particular forms of labour, and migration rules from a range of countries produce domestic workers who are poorly paid, isolated and lacking legal protections. Their work is organised to recreate the unpaid labour of female household members and employment regulations then deny that it is real work at all.

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<sup>i</sup> Throughout this paper I try to use the official language of 'au pair' and 'host family' rather than worker and employer. This is for the sake of clarity, to distinguish au pairs from other groups of domestic workers and not because I am convinced that they do not work and that the people who benefit from that work should not be thought of as employers. I have also chosen, again for the sake of clarity and simplicity, not to put the terms au pair and host family in quotes throughout the paper. However, I do tend to read them in that tone of voice and I do think the terms should be disputed and not taken as clear signifiers of well-defined roles.

<sup>ii</sup> I would like to thank Vincent Keeter of the House of Commons Library for his help with locating and clarifying these policies.