

“Ain’t I A Woman?”: Feminism, Domestic Workers, and New Crossroads for Equality Through Immigration Reform

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Although three quarters of the U.S. immigrant population are comprised of women and children, mainstream feminist movements have largely remained silent about new laws that have institutionalized inequality for immigrants and fostered abuses by state and private actors. Feminist voices addressing workplace equality and freedom from violence for immigrant women were also absent from last year’s bruising immigration debate. Demands for legal protections for the most vulnerable women in our workforce have come from organizers and labor advocates whose work has been intersectional, but marginalized within broader feminist agendas. Recent, groundbreaking state-by-state organizing of domestic workers nationally is but one part of the effort required to challenge the increasingly draconian measures that threaten immigrant women’s safety daily.

Unbeknownst to many, the present period is the most dangerous for an undocumented immigrant worker in U.S. history. In 2014, deportations crescendoed to an all-time high as a direct result of a decade-long investment in sophisticated detection, detention, and deportation apparatuses by two Presidential administrations. Conversely, statutory rights — e.g., wage-and-hour laws, the right to organize, and the right to be free from sexual abuse or harassment — are largely unenforceable due to continuing contradictions in our labor and immigration laws. An estimated 47% of female undocumented workers earn below the minimum wage; 85% of all undocumented workers do not receive any overtime pay. Feminist legal theory yet to address trends in immigrant labor rights, deportation, and police-immigration collaborations such as the Priority Enforcement Program that further fuel non-citizens’ fears of police and government entities.

This Article argues that feminist and other critical legal theories can address the profound inequalities immigrant workers face by analyzing immigrant domestic workers and their recent efforts to claim representation in “future flows” in the immigration reform debate. Fundamental legal and social changes are needed. A domestic worker I recently represented, a home health aide, asked her employer for the back pay that she was owed and expressed her desire to quit. The employer responded by falsely claiming that she had stolen jewelry worth tens of thousands of dollars — a felony and thus a deportable offense. The prosecutor could not be convinced of the truth: that the state’s resources were being misused to further unspeakable retaliation against an immigrant worker. This retaliation could have resulted in the revocation of the domestic worker’s legal immigration status, and her ultimate deportation, if she were convicted. Such abuses are predictable, the logical result of current laws.

In this Article, I identify connections between government and industry interventions that deny dignity to all women, particularly the politically vulnerable, and feminist strategies. The last major bipartisan comprehensive immigration reform proposal, S. 744, contained measures that were both promising and appalling, relying upon gender, class, and race divisions while its terms were couched in neutral language. This Article suggests a new role for feminist legal theory and critical legal studies to elevate the discourse surrounding immigrants’ rights and future rounds of immigration reform.

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