



**GENDERED SERVICES:
INTERLINKING SERVICE WORK, WOMEN AND PERSONAL WORK
RELATIONS**

Einat Albin

Lecturer in Law
Hebrew University of Jerusalem

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Einat Albin, Hebrew University of Jerusalem¹

Introduction

The move to a service economy is a defining characteristic of Western countries that has impacted labour markets and work relations worldwide and has been the focus of numerous studies. A large number of these scholarly works have pointed to the strongly gendered aspect of services.² Not only is a high percentage of the female workforce employed in service sectors, but the practices involved in providing such services comprise of gendered looks and dimensions well. Service is provided to others – be they the employer, his or her family, or customers. People interacting with service workers expect to receive generous, patient, tolerant and cooperative 'service with a smile' – i.e., service exhibiting behaviours associated with femininity. Occasionally, moreover, employers and customers expect service providers to look sexually appealing. Employers apply dress codes and uniforms; weight, make-up and hairstyle regulations; and other methods to adapt their workers to stereotypical images.³

Employment situations conforming to such practices are found in types of services defined by the literature as 'personal service work,' i.e. 'the modern equivalent of past servitude – butlers, maids, cooks, gardeners, and other domestic help.'⁴ I premise this paper on an understanding that these modern equivalents of servitude rest on the genealogy of personal service work and its labour market regulation. I hereby argue that labour market regulation had a crucial role in constructing and shaping interlinks between gender and service work. I

¹ Lecturer in Law. This paper is an outline of an article in process. I would thus highly appreciate any comments and ideas. These can be sent to einat.albin@mail.huji.ac.il.

² JR Bryson, PN Daniels and B Warf, *Service Worlds: People, Organizations, Technologies* (Routledge, London 2004) Introduction; L McDowell, A Batnitzky and S Dyer, 'Migrant Workers in a Global City: Ethnicity and Gender in Servicing Work in a Greater London Hotel' (Centre for Employment Work and Finance, Oxford 2006); L. McDowell, *Working Bodies: Interactive Service Employment and Workplace Identities* (West Sussex: Wiley-Blackwell, 2009) Introduction.

³ E. Albin, 'Labour Law in a Service World' (2010) 73(6) *The Modern Law Review* 959.

⁴ H. L. Browning and J. Singelmann, *The Emergence of a Service Society: Demographic and Sociological Aspects of the Sectoral Transformation of the Labour Force in the U.S.A.* (Springfield: National Technical Information Service, 1975)

demonstrate that the gendering of services is not an act of 'nature,' but rather that it has developed through a political-economic process that occurred during the nineteenth century and the beginning of the twentieth century. I analyze this process by investigating three central dimensions: women's social location in the economy, labour market regulations' conceptualisation of personal work relations, and the association of such conceptualisation with personal service work. In the paper, I discuss these three dimensions by focusing on the national context of Britain in the relevant era. This historical analysis serves as an explanation of interlinks created between service work, women and personal work relations and their outcomes, providing a crucial background for the analysis of current forms of gendered services.

The paper is structured as follows: Part I presents theories on service work and the historical context of Britain during the nineteenth and early twentieth centuries; Part II turns to the genealogical study, discussing the three dimensions of social location, labour regulations' role in the construction of personal work relations, and the legal association of personal work relations with service work. Part III concludes.

Part I: Service Work and British Labour Law at the Wake of the Twentieth Century

The transition into a service economy is a central feature of today's Western labour markets; in the words of Bryson, Daniels and Warf, '[s]ervices are no longer worthy of an "after-thought" status.'⁵ With significant transformations occurring in forms of production and consumption, alongside the emergence of new types of organisation, management and work, services are paramount in today's economies. Literature on services has ceased to view them as inessential, parasitic, or supporting production systems (as it once did), now recognizing the service sector's core economic activity.⁶ Moreover, globalisation has affected the service sphere, with workers from third world countries being brought to provide various services activities and servicing Western countries internationally, from their own locale.

⁵ Bryson, Daniels and Warf *supra* note 2, 3.

⁶ Ibid

The literature has mapped a few integral types of service work. Browning and Singelmann offer four classifications: business, distributive, social and personal services.⁷ *Business (or producer) services* include finance, insurance, real estate and business-support services like accounting, consulting, legal advice and representation. *Distributive services* include wholesale, retail, transportation, communication and the likes. *Social services* comprise health, education and the wide range of care-giving activities. *Personal (or consumer) services* are the modern equivalent of past servitude – butlers, maids, cooks, gardeners, and other domestic help roles. The existence and demand for the last category reflect the renewed need for household work with parents working long hours, as well as the quest for pleasure and luxury in society. These latter services compete with tasks that are traditionally considered to be household chores that were either unpaid or conducted by domestic servants: cleaning, cooking, serving food and drinks, cutting hair, laundering etc.⁸

Jobs associated with personal service work tend towards the low end of the labour market, and workers engaged in them are prominently the ‘losers’ of the service economy.⁹ Women form a significant proportion of those employed in these jobs. Social science literature has shown that the gendered feature of personal service work is associated with a few characteristics, central to such work, through which a better understanding of the position of workers in these services can be achieved.¹⁰ Three of these traits are of particular importance to the discussion in the paper: the interactive, dependent and embodied features of the work.

Interactive services are, as defined by Leidner, ‘jobs that require workers to interact directly with customers or clients.’¹¹ According to Leidner, ‘[i]nteractive service workers are located on the boundaries of organizations, where they must mediate between the organization and outsiders.’¹² Interaction is also central to service work that is performed in small establishments, like households, where the worker comes into constant interaction with the family. Such interactive service work is gendered; in many of these occupations, feminine

⁷ Browning and Singelmann, *supra* note 4.

⁸ *Ibid.*

⁹ S Lash, ‘Reflexivity and its Doubles: Structure, Aesthetics, Community’ in U Beck, A Giddens and S Lash (eds.) *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order* (Stanford: Stanford University Press, 1994) 110.

¹⁰ McDowell, Daniels...

¹¹ R. Leidner, *Fast Food Fast Talk: Service Work and the Routinization of Every Day Life* (London: University of California Press, 1993) 1.

¹² *ibid* 7.

characteristics such as servility, deference, and charm are qualities of good service.¹³ Moreover, interaction brings about *dependence* on people other than the employer, because as a consequence of the interaction, those others perform what is presumed to be employing functions – hiring, firing, paying remunerations etc.¹⁴ Moreover, this type of service orientation requires *embodiment* in a form differing from the masculine, strong embodiment of the manufacturing worker, for example. In interactive services, the providers' 'height, weight, looks, attitudes are part of the exchange, as well as part of the reason why some of them get hired and others do not'.¹⁵

The discussion below will demonstrate that within historical legal thought, these characteristics of services have provided the central justifications for locating workers conducting personal service work outside the scope of labour market regulation. In conjunction with women's general status within the labour market, I will argue that such justification has led to a tight linkage between services, the female gender and personal work relations. As discussed below, labour market regulation not only reflected social conceptions, but has also played a central role in shaping these conceptions while using them as justifications for applying different sets of rules to those providing personal service work than to those engaged in other service categories. In doing so, market regulation has contributed significantly to the political-economic process that created the distinction between personal service workers and others.

Such a distinction was possible at a time in history when labour regulation was selective, meaning when particular rules applied to distinct groups of workers. This selectivity typified British labour law through the mid-twentieth century, and included three main types of selective regulation. First was sectoral-selectivity. During the nineteenth century, British labour regulation was generally sectoral in character. This period is characterised by a transition from the criminal sanctions set in the Master and Servant Acts that applied to specific sectors, to labour-protective Acts. These Acts also only covered specific sectors and occupations. The Truck Act, 1831, provided protection to workers in the specific

¹³ McDowell, Batnitzky and Dyer, *supra* note 2, 16.

¹⁴ See E. Albin, 'A Worker-Employer-Customer Triangle: The Case of Tips' (2011) 40(2) *ILJ* 181. Some examples include: tips paid for waitresses; money given to lap dancers by customers; family members of a care recipient who decide on the worker's hiring and firing; complaints given by customers who come into contact with the worker that can highly affect employers' decisions on these matters, etc.

¹⁵ McDowell, *supra* note 2, 9.

occupations mentioned in its sec. XIX, and the Factory and Workshop Acts applied only to a particular list of trades.¹⁶ Moreover, the minimum wage legislation in Britain – the Trade Boards Act, 1909 – and later on the Wages Councils Act, 1945, were sectoral, pertaining only to workers in particular sectors of the economy. Second was the personal scope of employment law. Before the mid-twentieth century, a variety of legal statuses existed for personal work contracts. These included the 'workman,' the 'employee,' the 'self-employed' and the 'domestic servant.'¹⁷ The law addressed each of these categories differently, reflecting social and economic hierarchies. Third was the legal approach towards groups dubbed as marginal in the economy. At that time, specific legislation that targeted women and young workers for protective purposes, but these protections were highly selective – not only because they referred only to workers in identified sectors, but also because they covered merely a few issues that troubled the policy-makers of the time.

Not until the second half of the twentieth century did the conceptual structure of labour law move towards a more unitary approach of labour relations, offering legislation aimed at the entire subordinate employment category as it is currently perceived of. Initially, labour lawyers considered unitary legislation to be a welcomed development of British worker-protection legislation, signalling 'progress' from the earlier selective era.¹⁸ Following a few decades of selectivity, this approach unified previously excluded groups of workers under the modern contract of employment and thus entitled them to legal protection.

Over the past few years, however, the limitations of the current structure of labour law have begun to be uncovered, and questions emerge regarding the unitary approach. Recently, Freedland suggested that the unitary 'contract of employment' was false from the outset.¹⁹ Based on a genealogical approach, I argue that this perceived unity is indeed false, for the historically-created divisions remain valid in today's labour regime, despite the grand

¹⁶ See the Preamble of the Factories Act 1802 (42 Geo. 3), which provided that the Act applied only to workers in cotton or wool mills and factories, as well as to the list of factories and mills in the Preamble of 'An Act to Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom, 1833' (3 & 4 Will. 4).

¹⁷ On the first three, see SF Deakin and F Wilkinson, *The Law of the Labour Market* (OUP, Oxford 2005) Chapter 2 and specifically the table on p 106; on the domestic servant category, see E. Albin, 'From 'Domestic Servant' to 'Domestic Worker'' in J. Fudge, S. McCrystal & K. Sankaran (eds) *Challenging the Legal Boundaries of Work Regulation* (Oxford: Onati series Hart, 2012) 231.

¹⁸ MR Freedland, *The Personal Employment Contract* (Oxford Monographs on Labour Law OUP, Oxford 2003) 16-17.

¹⁹ Ibid 15-22.

transformation that the move to a unitary approach has brought and the prominent changes occurring in the market in recent decades.

Part II: Interlinking Service Work, Gender and Personal Work Relations

During the period in which British labour law was selective, the general labour market underwent a dramatic development of industrialisation, along with increasing firm sizes and legalisation of unionisation.²⁰ This process involved a separation between women and men in the labour market, which has not outstripped labour market regulation. On the contrary, labour regulation played a role in the course of separation, alongside the formation of conceptions towards women and the type of work they performed.²¹ Within this course interlinks between services, gender and personal work relations were formed. This Part focuses on three main dimensions constructing such interlinks: the social location of women in the contemporary economy; the construction of personal work relations by means of labour market regulation; and the association of personal work relations with personal service work.

A. Social Location

Social location is a term that specifies 'the way in which regional and local political economy interact with class, ethnicity, culture and sexual preference.'²² Social location operates at two levels.

At one level the term denotes the location of women in a particular political economy [...] At a second level, the term refers to women's social location not in a strictly spatial sense, but within a social structure where socially constructed categories – gender, class, race, ethnicity, sexual orientation – are linked to positions that in turn shape experience.²³

²⁰ Deakin and Wilkinson, *supra* note 17.

²¹ S Fredman, *Women and the Law* (Oxford Monographs on Labour Law Clarendon, Oxford 1997) 74, 107, 111-112.

²² L Lamphere and others, *Sun Belt Working Mothers: Reconciling Family and Factory* (Cornell University Press, NY 1993), 4.

²³ *ibid* 7.

Accordingly, the theory provides a method that can help explain why women are linked to particular positions in the labour market. In relation to the matter at hand, it helps to elucidate women's association with personal service work and the outcomes of this association.

Segmentation theorists have explained in detail the location of specific groups – such as women, ethnic minorities or youth – in distinctive occupations and sectors.²⁴ Such researchers have pointed to demand as well as supply-side factors as impacting segmentation. Studies on segmentation revealed the reasons for women's location in jobs at the low end of the market, including, among others, the view of women as dependent on others for income;²⁵ as weak in union representation;²⁶ and as a group that was excluded from specific sectors and industries, education and training opportunities, mechanisation, advanced technologies, and other professional advantages.²⁷ As a gendered separation took place in the market during the nineteenth century, unions and employers set entry bars to occupations, relying upon preconceived notions regarding women's abilities whilst devaluing their skills.²⁸ Women could only enter those particular occupations that were open to them, many of which had a service orientation.²⁹

These occupations were interactive. As noted earlier, such interaction is a defining feature of service work, which not only entails work with people other than the employer – like children, the elderly, guests or customers – but also creates dependence on those others. This dependence emerges as family members, guests and customers perform what is traditionally seen as employers' functions: engaging workers for employment and terminating employment; remunerating and providing workers with other benefits of employment; managing the employment relationship and the work process; and using the worker's services in the process of production or service provision.³⁰ Freedland, who identified and

²⁴ On segmentation, see: C Craig and others, *Labour Market Structure, Industrial Organisation and Low Pay* (CUP, Cambridge 1982); JA Peck, *Work-Place: The Social Regulation of Labor Markets* (Guilford Press, NY 1996).

²⁵ J Rubery, 'Pay-Equity, Minimum Wage and Equality at Work: Theoretical Framework and Empirical Evidence' (ILO Declaration/WP/19/2003).

²⁶ Ibid.

²⁷ Fredman, *supra* note 21, 110-113.

²⁸ Rubery, *supra* note 25.

²⁹ J Lewis, *Women in England 1870-1950: Sexual Divisions and Social Change* (Wheatsheaf Indiana University Press, Brighton Bloomington 1984) Chapter 4; MM Bird, *Women at Work, A study of Different Ways of Earning a Living Open to Women* (London 1911); S Webb and BP Webb *Industrial Democracy* (Printed by the Authors Especially for the Trade Unions of the United Kingdom, London 1898) 495-507.

³⁰ Freedland, *supra* note 18, 40.

distinguished these four functions, noted that they may be exercised by a single entity or by different entities.³¹

Hence, for example, one of the occupations available to women in turn-of-the-century England was waitressing. Although a formal style of professional table-waiting was traditionally a male occupation that involved acting invisible and de-sexed,³² by the twentieth century, at least the lower segments of this job had become 'woman's work.' In contrast, men performed managerial jobs, especially in restaurants; hence, women's chances of promotion were not high.³³ Moreover, sexuality played a role in the opening of waitressing to women. Clients expected waitresses to be attractive, and special uniforms were designed accordingly. The working conditions of waitresses were typified by low pay, long working hours, and, crucially, dependence on tips for earnings.³⁴ Steering women to work in waiting jobs thus not only denied their inclusion in the male-dominated occupations, but also further linked gender and service, interaction, dependence and embodiment.

Another illustration is bartending – another career option open to women. As 'help wanted' advertisements of the time indicate, women were directed to work in bartending based on the sexual demand attached to this occupation. In such advertisements, prospective employers requested applicants with a 'sexy' and 'beautiful' appearance, and usually employed girls at a young, but already developed age.³⁵ The interactive feature of this work shaped the demand for embodiment, i.e. sexuality, and of the workers' behaviours that were accompanied to it. The prevailing conduct of behaviour was determined according to customers' expectations, even at times when those were abusive, for 'where it is the custom, the employer is not all pleased if the barmaid refuses.'³⁶ In this occupation, the interactive feature was crucially important and workers' continued employment was contingent on the requirement that they do not refuse customers' demands.

The third and final example is domestic service, which was seen as the most respectable occupation of this sort, for as Bird said: '[a]bove all, this has the dignity of the women's true

³¹ See also Albin, *supra* note 14.

³²Y Guerrier and AS Adib, 'No, We Don't Provide That Service: The Harassment of Hotel Employees by Customers' (2000) 14 *Work, Employment and Society* 689, 691.

³³ RC Wood, *Working in Hotels and Catering* (Routledge, London 1992) 65.

³⁴ Bird, *supra* note 29, 80.

³⁵ *Ibid*, 85.

³⁶ The Joint Committee on the Employment of Barmaids, 'Women as Barmaids' (Report, London 1905) 21.

sphere.³⁷ Domestic work entails constant interaction with the employer and his/her family, dependence on them in behavioural as well as financial aspects (such as in the provision of accommodation and food), and embodied features that are attached to the interaction. At the time, domestic service was comprised of a variety of types of women's work because it was common, as Jane Lewis notes, to associate various feminine jobs to domestic work.³⁸ Such association is also evident in the way the courts defined the historical legal category of 'domestic servants,' as discussed below. The discussion will show that the gendered feature is tightly associated with personal service work because it was mainly personal service providers that were included within that category, even when service work was conducted in commercial establishments and not private households.

These legal decisions reflect a period in which this type of interactive, dependent and embodied work that was performed originally by women in their household, either 'for love' (by 'housewives') or 'for pay' (by domestic servants), has been highly devalued in the commercial market. It was a form of paid work that was regarded already in the eighteenth century by Adam Smith as unproductive,³⁹ and later on classified as 'unskilled.'⁴⁰ At the same time, such attitudes demonstrate the centrality of state regulation and the courts in promoting the gendering of services. Indeed, a clear picture of interlinked social and legal phenomena arises from the combination of the social location of women in the labour market as presented in this section – steering women to particular service-oriented, interactive jobs that created dependency and particular embodiment – and the court decisions that will be described below.

B. The Construction of Personal Work Relations

As noted above, various forces culminated in the placement of women within the particular positioning of the 'personal service provider' in the turn-of-the-century British political economy. In addition to the social forces yielding gender-based workplace limitations discussed above, another key force responsible for this outcome was the law – and in particular, the way in which personal work relations were constructed by the law.

³⁷ Bird, *supra* note 29, 105.

³⁸ Lewis, *supra* note 29, 174.

³⁹ A Smith, *The Wealth of Nations Books I-III* (Penguin Books, London 1986) 429-449.

⁴⁰ Lewis, *supra* note 29.

I have shown elsewhere how at the time, workers performing personal service work were differentiated from other groups of workers.⁴¹ In a process that happened throughout the end of the nineteenth century and up until the mid-twentieth century, two types of labour relations emerged within British labour regulation. One was a highly industrial bureaucratic employment relationship, and the other involved personal service work. What yielded this separation was the exclusion of the category 'domestic servant' from the scope of labour protection legislation that applied to all other workers, the interpretation of this category by the courts as entailing personal work relations, and the inclusion within the 'domestic servant' category of various personal service workers performing work in commercial establishments as well. This section will address the conceptualisation of personal work relations, and the next section will cover the association of various personal service work within the category of 'domestic servants' based on such a conceptualisation.

'Domestic servant' was quite a dominant category of personal work contracts within labour legislation up until the mid-twentieth century.⁴² As noted in Part I above, during this period, various categories of personal employment contracts were found in legislation and in court decisions, such as 'workman' and 'employee'. In contrast to other groups of workers, however, during the eighteenth and nineteenth centuries, workers performing domestic service work were generally not subjected to the criminal sanctions of the Master and Servant Acts, and 'domestic servants' were also excluded from the employee protection provided in the Truck Act 1831.⁴³ Hence, in general, domestic servants were neither protected nor sanctioned, but rather left outside the scope of legislation. This trend continued through the end of the nineteenth century, when British law began contrasting the category of 'domestic servant' with that of 'workman.' The latter type of employees had been gradually gaining legal protection – protection that was inapplicable to all employees placed within the 'domestic servant' category.⁴⁴

⁴¹ Albin, *supra* note 17.

⁴² Also today, there are statutes that refer to the term 'domestic servant.' One example is The Working Time Regulations 1998 SI 1999/3372 reg 19.

⁴³ This does not mean that magistrates did not deal with the domestic cases brought before them. Steedman uncovered that even though domestic servants were exempted from the Master and Servant Acts, magistrates dealt with cases that such workers brought before the court. See C Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge, Cambridge University Press, 2009) ch. 6.

⁴⁴ The category 'domestic servants' was excluded from the quasi-criminal Employers and Workmen Act of 1875 (The Employers and Workmen Act 1875 s 10). The notion of 'workman' in the Employers and Workmen Act, 1875 referred to later in the Employers Liability Act, 1880 and the Truck Acts, 1831, 1887 expressly left

Throughout this period, courts' determinations of the application of legal provisions were subjected to their interpretation of the category of 'domestic servant.' Such a categorisation depended upon the work relationship between the domestic worker and the employer being one of a more personal nature. In *Nicoll v Greaves*, the court noted that 'there are some contracts for service which bring the parties into such close proximity and frequency of intercourse,'⁴⁵ and the service can be 'of such a domestic nature as to require the servant to be frequently about his master's person.'⁴⁶ Moreover, in the case of *Pearce v Lansdowne*, the court stated that domestic servants were 'persons whose personal relations in the household or retinue of their masters made it inconvenient that the disputes between them and their masters should be settled before magistrates.'⁴⁷ According to the court, domestic workers were to be categorized by the *type of relationship* maintained with their employer.

Concurrently, a different conceptualisation of domestic servants' work relationships with their masters and mistresses was developing. The domestic servant and master relationship was seen as *personal*, as opposed to work relations of other workers that were gradually detached from household labour and legally considered to be *contractual*. A closer reading of these judgments reveals that personal work relations were conceptualised as having three main characteristics: they were *private*, *intimate* and *familial-paternalistic*, based on a rationale of care and not of rights.⁴⁸ The construction of such special relationships between domestic servants and their masters and mistresses led law-makers to refrain from interfering in them.

Indeed, household domestic workers' personal work relations are private in respect to their sites of activity, as opposed to other market-based activities. This notion of privacy affected their regulation, with domestic workers becoming rights-less in a developing rights-based

domestic servants outside the boundaries of worker-protective legislation. A similar exclusion could also be found in other legal mechanisms that did not adopt the Employers and Workmen Act's definition, such as the Shop Hours Act, 1892 and the Unemployment Insurance Act, 1920 (Section 10 of the Shop Hours Act, 1892 excluded those 'wholly employed as a domestic servant.') Another Act exempting 'domestic servant' from its scope was the Unemployment Insurance Act 1920, 'except where the employed person is employed in any trade or business carried on for the purposes of gain.' Moreover, additional worker-protective Acts, such as the Factory and Workshop Acts 1833, 1844, 1856 and 1874 provided aid to occupations listed in the schedules of the Acts, excluding tasks performed by domestics. Worker-protective legislation providing welfare rights to workers also excluded domestic servants. The Workmen's Compensation Acts of 1906 and 1925 excluded casual workers who were employed for purposes other than the employer's trade or business (The Workmen's Compensation Act 1906, s 13; The Workmen's Compensation Act 1925, s 3).

⁴⁵ *Nicoll v Greaves* [1864] 17 CB NS 27, 141 ER 11, at 14.

⁴⁶ *Ibid.*

⁴⁷ *Pearce v Lansdowne* [1893] 69 LT 316.

⁴⁸ E Albin, 'Between Care and Pay: Personal Work Relations in Limbo' (forthcoming *Hebrew*).

regulatory regime.⁴⁹ Such a conceptualisation, in turn, consequently constructed a work relationship that was regulated mainly within the household by the family receiving their services. It was accompanied by a language of paternalism based on emphatic expressions of familial care, which also grounded rights-less regulation in the perception of the domestic servant being part of the family household and under the protection of her employers. This perceived assimilation of the domestic servant within the family was also reflected in the intimate nature ascribed to these work relationships. Hence, in *Pearce*, the judge noted that the relation between master and servant is 'a close and intimate one,' whose exclusion from the legal scope is justified because the domestic servant is a 'member of the master's household; more or less a member of his family, and it is not convenient to dispose of family or household matters in the way provided by that Act.'⁵⁰

By constructing a unique type of 'personal' work relationships, labour market regulators shaped the idea that some work relations are unique and distinct. However, as the following section shows, these types of relationships were not only associated with domestic workers. The courts applied them to varied situations of what Browning and Singelmann termed 'personal service work.' In doing so, the courts differentiated not only the domestic worker but also a large number of other personal service workers from others engaged in the activity of work. Courts based their determination of 'personal service work' on one of three rationales – the *type of work conducted* (similarity to domestic chores), the *location* where work was performed (in households or household-like establishments), or the *interactive* feature of the work (with either families or their guests and customers), as detailed below.

C. Associating Personal Service Workers with Personal Work Relations

Personal service work is defined as the modern equivalent of past servitude, and thus it is not surprising to find that the judiciary viewed a vast majority of workers performing personal service work as domestic servants. It may seem surprising, however, that the judiciary took this approach even when the work was performed in commercial establishments, like pubs, bars, hospitals, clubs, museums and other venues. Moreover, the

⁴⁹ I apply the term rights-less regulation here because this was not a situation of de-regulation, or of lack of regulation. Rather, it was an intentional process of leaving work relations to be regulated by the private parties – mainly families.

⁵⁰ Pearce, *supra* note 47.

workers included in the category were not necessarily performing what is typically seen as domestic work (cleaning, cooking, caring, nursing, and the likes) but rather were also engaged in other tasks, such as cashiers.

A long string of case law held that workers in the following establishments and tasks fell under the category of domestic servants: clubs,⁵¹ pub workers,⁵² a cleaner in a public school,⁵³ hunt servants, an attendant at the Oxford Ashmolean Museum, a hospital porter, a storekeeper and lodge-keeper,⁵⁴ and a general handyman in a hospital.⁵⁵ Some of these decisions were based on the type of work performed: the dominant 'nature of the work' and general tasks considered necessary for fulfilling the job. This includes chores such as cleaning, serving, and caring for children or the elderly. In some instances, when these chores were not performed in households or in household-like establishments, the workers were not viewed as domestic servants. In the case of *Guinness*, a cook and stewards working on yachts were viewed as performing duties of seamen and therefore not categorized as 'domestic servants.'⁵⁶ Moreover, in *Holmes*, two caretakers of a construction site were not held to be included within the 'domestic servant' category either.⁵⁷

Differing case law, on the other hand, found jobs not associated with the type of work performed by domestics to be included in the 'domestic servant' category as well. Such an example is found in the case of *Junior Carlton Club*, addressing the issue of whether club servants in a wide range of occupations fell under the exclusionary category of 'domestic servant.'⁵⁸ These occupations included a cashier, a billiard marker, a commissionaire, a wine butler, a house porter, a hall porter, a housekeeper, a coffee-room superintendent, an engineer, waiters, cooks and housemaids. The court provided that

domestic servants are servants, whose main or general function is to be about their employers' persons, or establishments, residential or quasi-residential, for the purposes of ministering to their employers' needs or wants, or to the

⁵¹ *Junior Carlton Club, Re* [1922] 1 KB 166 (KBD).

⁵² *Pearce, supra* note 47.

⁵³ *In re Applications by Dr David and Others* [1922] 1 KB 172 (KBD).

⁵⁴ *Vellacott, Re* [1922] 1KB 466 (KBD).

⁵⁵ *Cameron v Royal London Ophthalmic Hospital* [1941] 1 KB 350 (KBD).

⁵⁶ *Guinness, Re* [1926] 25 LI L Rep 451 (KBD).

⁵⁷ *Holmes v Lord Advocate* [1924] SLT 654 (Outer House).

⁵⁸ *Junior, supra* note 51 above.

needs or wants of those who are members of such establishments, or of those resorting to such establishments, including guests.⁵⁹

The court placed its focus on 'main or general' functions of the workers, and the judgment emphasised the interaction between workers and 'members' of the establishments and with 'those resorting to such establishments, including guests' as a cause for placing club workers in this category. In other words, the court's underlying rationale was the provision of service, or in its own words: 'to be about their employers' persons, or establishments, residential or quasi-residential'⁶⁰ as a central reason for the decision that all workers in the club were domestic servants and excluded from legal protection. A similar rationale was applied in the case of *Holmes*, mentioned above, where the two construction site caretakers not working for the personal health, comfort or convenience of anyone were not considered to fulfill the test adopted in *Junior Carlton Club*.⁶¹

Hence, within a period of a hundred years, the British labour market and law transformed to differentiate those performing personal service work from all other workers. This process took place within a particular political economy in which women entering into the labour market were directed to work in particular jobs, many of which involved personal service work. In conjunction, the courts were associating personal service work with the 'domestic servant' category that had been excluded from protective legislation, on the grounds of the type of work being performed, its location or its interactive feature. All these standards are gender-sensitive. Hence, through a long line of cases, the courts managed to not only exclude personal service work from labour protection but also to create a particular perception of gendered services as are more private and intimate, entailing the employer's paternalism based on a rationale of care and not of rights. Gendered services were not only devalued, but also placed in an intersection between contractual employment relationships and paternalism. Such paternalism expanded beyond the employer to include other people coming into interaction with the worker. These attitudes, which emerged between the nineteenth century and the mid-twentieth century, continue to characterise gendered services today.

⁵⁹ Ibid 170.

⁶⁰ Ibid.

⁶¹ *Homes*, *supra* note 57.

Conclusion

Changes taking place in the labour market in recent years have been central to the literature discussing the situation of cleaners, barmaids, waitresses, fast food providers and other personal service workers in today's economy. In this paper, I have demonstrated how the current situation of personal service workers is partially an outcome of important historical processes that took place between the mid-nineteenth century and the mid-twentieth century. During that time, gender, personal work relations and service work became interlinked, the outcome of which continues to characterise gendered services today.