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# RESPONSE

## WORK AND HOME<sup>†</sup>

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<sup>†</sup> An invited response to Yiran Zhang, *Home as Non-Workplace*, 105 B.U. L. REV. 911 (2025).

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## INTRODUCTION

The idea of work, as it pertains to a place called home, as distinct from the market, has engaged and perplexed scholars for generations. Work in the home raises complicated issues that have accordingly drawn the focus of generations of scholars, from Charlotte Perkins Gilman and the material feminists of the late nineteenth century<sup>1</sup> to historians of labor such as Eileen Boris<sup>2</sup> and of law like Reva Siegel,<sup>3</sup> from legal scholars like Fran Olson, Dorothy Roberts, and Robert Ellickson<sup>4</sup> to social theorists like Friedrich Engels<sup>5</sup> and architectural historians like Dolores Hayden,<sup>6</sup> to name just a few. The importance of this most thorny of issues explains why so many scholars have tackled it.

Having myself considered these issues in a series of articles,<sup>7</sup> I wholeheartedly welcome the unique and perceptive contribution Yiran Zhang

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<sup>1</sup> See, e.g., CHARLOTTE PERKINS GILMAN, *WOMEN AND ECONOMICS: A STUDY OF THE ECONOMIC RELATION BETWEEN MEN AND WOMEN AS A FACTOR IN SOCIAL EVOLUTION* 225 (1898); see also DOLORES HAYDEN, *THE GRAND DOMESTIC REVOLUTION: A HISTORY OF FEMINIST DESIGNS FOR AMERICAN HOMES, NEIGHBORHOODS, AND CITIES* (1982) (exploring feminist history around relationship between work and home).

<sup>2</sup> Cynthia R. Daniels, *Between Home and Factory: Homeworkers and the State*, in *HOMEWORK: HISTORICAL AND CONTEMPORARY PERSPECTIVES ON PAID LABOR AT HOME* 15 (Eileen Boris & Cynthia R. Daniel eds., 1989).

<sup>3</sup> See generally Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073 (1994) (examining and supporting argument that nineteenth century wives were entitled to property rights in their household labor).

<sup>4</sup> See generally Frances E. Olson, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983) (arguing legal separation of market and family in law limits effectiveness and restricts possible strategies in seeking feminist reforms); Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51 (1997) (arguing stratification between types of household labor stratifies women along class and racial lines and depresses perception of all women's work); Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226 (2006) (analyzing structure of households as informal entities between trusted intimates and discussing critiques of Western nuclear households as disadvantageous for women).

<sup>5</sup> See, e.g., FREDERICK ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* 58 (Ernest Untermann trans., Charles H. Kerr & Co. 1902) (1884).

<sup>6</sup> HAYDEN, *supra* note 1; DOLORES HAYDEN, *REDESIGNING THE AMERICAN DREAM: GENDER, HOUSING, AND FAMILY LIFE* 122-25 (rev. & expanded ed. 2002).

<sup>7</sup> See, e.g., Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1 (1996) [hereinafter Silbaugh, *Labor into Love*]; Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81 (1997) [hereinafter Silbaugh, *Commodification*]; Katharine B. Silbaugh, *Women's Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 FORDHAM L. REV. 1797 (2007) [hereinafter Silbaugh, *Women's Place*]; Katharine Silbaugh, *Distinguishing Households from Families*, 43 FORDHAM URB. L.J. 1071 (2016) [hereinafter Silbaugh, *Distinguishing*]; Katharine Silbaugh, *Environmental Determinism: Functional Egalitarian Spaces Promote Functional Egalitarian Practices*, 71 FLA. L. REV. F. 154 (2019) [hereinafter Silbaugh,

makes to this literature in her article *Home as Non-Workplace*.<sup>8</sup> Zhang approaches the topic as a labor scholar of the twenty-first century, aware of the history as well as the most recent legal, social, and political movements, with a lens that sees shortcomings in regulation of the *employment relationship* based on place. If some scholars fight the erasure of home production,<sup>9</sup> and some fight the construction of the home itself,<sup>10</sup> Zhang's work focuses on drawing the attention of work law scholars to the normality of home-based work.<sup>11</sup> My own work has focused on drawing the attention of family law scholars to household labor, as I brought a family law lens that saw shortcomings in the way family law constructed care work.<sup>12</sup> Zhang brings perhaps the opposite lens by starting with the blind spots of work law scholars. Yet our work is very compatible. My research focused on the relationships and the *place* in home work; Zhang's focuses on the *work law*. Among Zhang's distinctive contributions are: (1) demonstrating that home is not an ancillary workplace, but perhaps *the normative workplace*;<sup>13</sup> and (2) arguing that work law scholars therefore need to place work at home at the center of their own study.<sup>14</sup> Zhang wants work law scholars to learn about the ideology of the home/work dichotomy and correct their participation in that ideology, learning to resist the habit of exceptionalizing the home in designing, advocating for, and evaluating work and labor regulations.<sup>15</sup>

As a preliminary matter, I would note that some of the challenges of evaluating work at home may result from the way different employment relationships and care work generate meanings that bleed out from their initial context. Several distinctions among types of work at home influence how their treatment is evaluated: who is the employer, is the work associated with the home, and is the work for pay? Who the employer is in a given context and whether the "home" is central or incidental to the tasks performed both influence the analysis. The issue of work within households has at least three interrelated

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*Environmental*]; Katharine Silbaugh, *Foreword: The Structures of Care Work*, 76 CHI.-KENT L. REV. 1389 (2001); Katharine B. Silbaugh, *Marriage Contracts and the Family Economy*, 93 NW. U. L. REV. 65 (1998) [hereinafter Silbaugh, *Marriage Contracts*].

<sup>8</sup> Yiran Zhang, *Home as Non-Workplace*, 105 B.U. L. REV. 911 (2025).

<sup>9</sup> See Siegel, *supra* note 3, at 1090.

<sup>10</sup> HAYDEN, *supra* note 1, at 79-89 (describing Charlotte Perkins Gilman and Melusina Fay Peirce as part of material feminists movement who tried to redesign homes to make them physically more like factories and thereby socialize household production function).

<sup>11</sup> See generally Zhang, *supra* note 8 (applying legal analysis to implications of work at home).

<sup>12</sup> See sources cited *supra* note 7.

<sup>13</sup> See Zhang, *supra* note 8, at 930 (arguing work from home has become mainstream).

<sup>14</sup> *Id.* at 958 ("I contend that normalizing the home workplace demands a spatial shift of work law to center on the specific home workplace in determining what work law rights and regulations are relevant to a substantial portion of today's workforce . . .").

<sup>15</sup> *Id.*

iterations, and scholars will need to take care to distinguish them even though the treatment of each influences the treatment of the others.

The first two versions of work deal with care work and other work directly connected to the home, such as cleaning and food preparation. In one case, that work is done without compensation on behalf of the household, generally by a member of the household. In the other, it is done for pay by someone who may or may not live in the household but is ordinarily not a member of the family unit, however defined.<sup>16</sup> The third kind of work in households is work done for an employer and not relating to the household but simply performed within the home. This could range from piece work<sup>17</sup> to twenty-first century pandemic and post-pandemic work-from-home (“WFH”) professional and pink-collar labor. Zhang and other scholars have argued in effect that perceptions of each of these three kinds of work are highly influenced by perception of the other two kinds.<sup>18</sup> Thus, it becomes impossible to discuss any one of these forms of work without discussing the others; they become entwined because ideological understandings deploy ideas about home, social reproduction and care, labor, and leisure to link them. Yet it seems that all three are described in the literature as having one common foundation, which is the exploitation or harm to those who work at home.<sup>19</sup> This can be a soul-crushing feature to share, and so it becomes important to see these practices in a particular and granular way as much as in the dominant, and essential, theoretical mode to decide what is worth saving.

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In a series of articles early in my career, I committed fully to my own understanding of material feminism: what happens at home is all labor, steeped in gendered exploitation, with an ideology of affection as its mechanism. In *Turning Labor into Love*, I explicitly mapped the ways legal actors deployed the language of affections to devalue this labor.<sup>20</sup> In *Marriage Contracts and the Family Economy*, I described the way that characterizing household labor and activities in emotional terms allowed family courts to sever its value from the financial aspects of family life.<sup>21</sup> These pieces show my early commitment to what I believed was a more clear-eyed look at family dynamics than the multivalent and contested one extant in family law. My most direct engagement

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<sup>16</sup> This formulation is imperfect. Payment by the government to family members for nursing care in homes defies these categories, as work is done by a member of the family but includes wages. Before industrialization, households included what would today be considered employees. See Ellickson, *supra* note 4, at 291.

<sup>17</sup> Daniels, *supra* note 2, at 14-15 (describing how homeworkers performed “fraction of the total labor on each item” and “were always paid by the piece”).

<sup>18</sup> See, e.g., Zhang, *supra* note 8, at 915-16. See also generally Olson, *supra* note 4, Silbaugh, *Labor into Love*, *supra* note 7; HAYDEN, *supra* note 6; GILMAN, *supra* note 1.

<sup>19</sup> See, e.g., Zhang, *supra* note 8, at 915-16.

<sup>20</sup> Silbaugh, *Labor into Love*, *supra* note 7, at 4.

<sup>21</sup> Silbaugh, *Marriage Contracts*, *supra* note 7, at 100.

with the issue came in a piece celebrating commodification in the context of household labor:

Should we think and talk about unpaid domestic labor—housework—using market, or economic, language? What follows is a defense of economic discourse on the subject of law and housework. It is written in response to the common criticism aimed at scholars who have examined domestic labor through an economic lens. It is a response to what is commonly called a “commodification critique,” and particularly as that critique is formulated within feminist discourse.<sup>22</sup>

These pieces were written almost thirty years ago. Out of generosity to my younger self, I can say that they focused on an uncomfortable attribute of activities that are gendered female, which is the tendency to prefer emotional to economic characterizations, an issue Zhang discusses using the term “privacy.”<sup>23</sup> As I have aged, though, I’ve become less comfortable with the intensity of my firm choice of labor discourse, even though I do not disown it. In retrospect, I wonder whether it is possible to avoid contributing to the hegemony of capitalist logic. Whether on the left or right, materialist perspectives raise questions about what, if anything, is outside of the economy. I have come to wonder: should resistance only be about creating a just and sustainable economy<sup>24</sup> after the concept of an efficient economy had so dominated the legal discourse a generation ago?<sup>25</sup> Or should resistance instead include cultivating and protecting spaces of freedom *from* economic logic?

Economic relationships involve interactions among people, and they can also involve spaces. That those are not the same thing is easy to forget when talking about either families or households. When I consider spaces that resist capitalist logic, I think of collectives, the localism of mutual aid models, utopian living communities, and art-filled streets. But my imagination for existing households as a space that also can resist capitalism is better now than at the time I published works calling for recognition of the value of labor in that space. I now see this resistance even in ones that are not part of intentionally designed utopian communities. At that time, I viewed households as hopelessly produced by market logic. I now see them as places both produced by market logic and able to resist market logic—and thus resist some aspects of capitalism.

I do not at all concede that I, or Zhang, are wrong about labor in households. Instead, I think Zhang’s piece, inviting work law scholars to take the home seriously and elevating home to the place of normative workplace, should be an

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<sup>22</sup> Silbaugh, *Commodification*, *supra* note 7, at 82 (footnote omitted).

<sup>23</sup> Zhang, *supra* note 8, at 956-58 (discussing privacy in context of domestic power dynamics).

<sup>24</sup> The Law and Political Economy project focuses on developing an economy that is “just, equal, and sustainable.” See *Law & Political Economy*, LAW & POL. ECON. PROJECT, <https://lpeproject.org/> [<https://perma.cc/9VFE-R6W3>] (last visited Apr. 19, 2025).

<sup>25</sup> See, e.g., Richard A. Posner, *The Law and Economics Movement*, 77 ASS’N ECON. REV. 1, 1 (1987).

ideal invitation for those scholars to focus on two thorny problems that plague the literature on work at home. The first is what constitutes work? The second, and related question, is what constitutes home? Research focused on these questions would enhance the work law discourse about work at home and may help to excavate why the issue of homework remains so vexing despite so much sustained attention.

### I. WHAT IS WORK?

Work law scholars may want to engage with the ways family life can be or cannot be characterized as labor. Simple questions like those I raised thirty years ago continue to need attention: how does emotional salience obscure and devalue labor? More complicated questions that fit into the twenty-first century include: how can we distinguish between existence, play, or other aspects of relative freedom on the one hand, and work on the other? If we can find a way to characterize everything we do as work, is it possible to escape capitalism's energy: work and spend, spend and work?

If it is possible to create something different, perhaps one of the most important places is in intimate relationships, such as those in many families. Indeed, the intimacy of family relationships may be a reaction to the harms of capitalism in the market sphere. Zhang describes a *New York Times* journalist being monitored at home toggling between work on his computer and playing with his children.<sup>26</sup> I couldn't help wondering what cultural or ideological process rendered playing with children not work, and was it a good one? In some relationships, including paid childcare, it certainly is work. When we commodify activities like playing with family members, we begin the process of understanding labor relations and protections, and yet we also turn a space of potential freedom over to market thinking and discourse. It may be a choice between living in one ideology of potential exploitation and another: in each, the ideas themselves contain both power and peril, with each oppressed in some ways and liberating in others. This may explain the persistent thorniness of the issue of work at home.

Zhang's article discusses many more examples that beg this question. Some people who work from home are on the clock, with time being the essential measure, while others are productivity-based, from knowledge workers to piece work producers.<sup>27</sup> These two measures of "work" may present different issues at home than in an institutional workplace. Distinguishing work from its absence is far more challenging than managing time and output. Zhang's clear description of the exploitation of home health aides who are on a twenty-four-hour shift but not paid for sleep hours horrifies the reader.<sup>28</sup> The exploitation is

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<sup>26</sup> Zhang, *supra* note 8, at 951 n.253 (citing Adam Satariano, *How My Boss Monitors Me While I Work from Home*, N.Y. TIMES, <https://www.nytimes.com/2020/05/06/technology/employee-monitoring-work-from-home-virus.html> (last updated May 7, 2020)).

<sup>27</sup> *Id.* at 953.

<sup>28</sup> *Id.* at 916.

clear: presence in the workplace is required for twenty-four hours, even though pay is based on thirteen active hours only. On this understanding of work—that it requires tasks—no security guard or babysitter who stays after children go to sleep can be said to be working. We know intuitively this is wrong. Yet even after we agree about the obvious exploitation involved in requiring a worker’s physical presence without payment, the problem of defining work remains. Many creative or productive processes require brainstorming, or daydreaming, and Zhang’s discussion of jiggling the mouse to prove work, sounding like twenty-first century Taylorism, indicates an analytical crisis that transcends the location of the laborer.<sup>29</sup>

Household labor, including family relationships, is at times characterized as work. One recent sustained treatment examined familial pregnancy, childbirth, and childrearing as akin to surrogacy, calling for the most materialist account of the exploitation of this labor.<sup>30</sup> *The Communist Manifesto* called for the abolition of the family because it harnesses both capitalism and patriarchy to exploit women’s labor: “[t]he bourgeoisie has torn away from the family its sentimental veil, and has reduced the family relation to a mere money relation.”<sup>31</sup> The *Manifesto* goes on to say:

Abolition [*Aufhebung*] of the family! Even the most radical flare up at this infamous proposal of the Communists. On what foundation is the present family, the bourgeois family, based? On capital, on private gain. In its completely developed form this family exists only among the bourgeoisie. But this state of things finds its complement in the practical absence of the family among the proletarians, and in public prostitution. The bourgeois family will vanish as a matter of course when its complement vanishes, and both will vanish with the vanishing of capital.<sup>32</sup>

Even Marx and Engels, though, imagine that there is some sort of intimate relationship that transcends the systems of capitalism and patriarchy:

[Communism] will transform the relations between the sexes into a purely private matter which concerns only the persons involved and into which society has no occasion to intervene. It can do this since it does away with private property and educates children on a communal basis, and in this way removes the two bases of traditional marriage – the dependence rooted

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<sup>29</sup> *Id.* at 952-53. For a definition of Taylorism, see *Taylorism*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/science/Taylorism> [<https://perma.cc/36T7-YEVK>] (last updated Feb. 28, 2025) (noting Taylorism is named after Fred W. Taylor, who “broke each job down into its individual motions, analyzed these to determine which were essential, and timed the workers with a stopwatch” which made the factory workers more productive”).

<sup>30</sup> SOPHIE LEWIS, *FULL SURROGACY NOW: FEMINISM AGAINST FAMILY* 4-10 (2019).

<sup>31</sup> Karl Marx & Friedrich Engels, *Manifesto of the Communist Party*, in *THE MARX-ENGELS READER* 338 (Robert C. Tucker ed., 1st ed. 1972). The idea that intimate life is “between the sexes” might be a reflection of the era in which they wrote, although it was possible to have a broader view then as well.

<sup>32</sup> *Id.* at 349.

in private property, of the women on the man, and of the children on the parents.<sup>33</sup>

I wonder where and whether this entity, “relations between the sexes”(!), is under construction now, and whether the home/work dichotomy has the power to create a liberationist space despite the obvious exploitation risks. I cannot help but note that the passage elevates a conception of “privacy” for intimate relationships as an outgrowth of the elimination of private property, engaging the ideology of privacy at home that Zhang describes as a mechanism of exploitation, while Marx calls it a sign of exploitation’s demise.<sup>34</sup> Without a definition of work that is careful about activities in intimate lives, we may lose our ability to see potential for liberation in these activities and to distinguish them from exploitation.

The question “what is work?” is familiar to those concerned about care work within families, who have the task of elevating social reproduction to gain legal entitlements. Yet, as important as the question “what is work” is, it threatens to swallow everything: sleep, play, daydreaming. We can conceive of all of it as work. And we absolutely should, for some purposes, but we must stay mindful of the risk of suffocating practices that encourage freedom and resist capitalism. Activities within the home *might* raise the issue of destroying resistance more than they do in physical institutional workplaces, because of the way people toggle between activities at home. Indeed, work from home may accelerate the inescapability of work, to the detriment of well-being, as employers colonize a space of possible resistance. The way we talk about activities at home should avoid replicating the way employers talk about it.

In the twenty-first century, social media influencers monetize their family life online in the form of social connection; children do household chores on behalf of their families that would violate labor laws outside the family context, and adults monetize their sexuality online.<sup>35</sup> The difficulty of sorting work from non-work arises from the home/work dichotomy that Zhang discusses,<sup>36</sup> and the particular problems of gender and social reproduction. But one particular aspect of that dichotomy seems more urgent to me today than it did thirty years ago, which is the effort to *experience* a contrast with the market, and perhaps the need to create one. To treat people’s fragile experiences of freedom as false consciousness may inadvertently inflict its own harm.

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<sup>33</sup> Frederick Engels, *The Principles of Communism*, MARXISTS ARCHIVE, <https://www.marxists.org/archive/marx/works/1847/11/prin-com.htm> [<https://perma.cc/4WUA-ZUBK>] (last updated Feb. 2005)

<sup>34</sup> See *supra* notes 27-28, 32-33 and accompanying text.

<sup>35</sup> See VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* 27 (2005) (discussing monetization of intimate relationships).

<sup>36</sup> See generally Zhang, *supra* note 8.



## II. WHAT IS “HOME”?

This discussion gives rise to the second question I would pose to future work law scholars engaging Zhang’s charge to view the home as “a regular workplace, if not *the* workplace.”<sup>37</sup> The Department of Labor has a surprisingly flexible definition of home, one that concludes, “[a] determination of whether domestic services are provided in a private home is fact-specific and must be made on a case-by-case basis. No specific factor controls; the overall situation must be analyzed.”<sup>38</sup> Given the history of the home, this indeterminacy offers a reasonably honest take on a question that may be more difficult than we realize.

I have written before about the particular role of *Place* in channeling care work and other household labor.<sup>39</sup> Redesigning spaces where people live has been a central focus of social theorists and utopian leaders. During the nineteenth century in the United States, a number of these ideas were actualized in living experiments designed to disrupt the ideas of home that privatized care.<sup>40</sup> Experiments have included socializing household labor through community kitchens and laundries, from the time of the material feminists in the early twentieth century to today’s cohousing communities.<sup>41</sup> During the post-World-War II era in the United States, policymakers incentivized the development and ownership of single family homes for nuclear families in complete contrast to the projects of socialist theorists.<sup>42</sup> Today, when we wonder whether the home space is being colonized by employers, what is the home we imagine in that story?

While a mid-twentieth-century nuclear-family household may occupy an imaginary space that makes it normative, non-normative arrangements are entirely common in the United States, historically and today. Some iterations include residential hotels and micro-unit apartment arrangements that invert some ideas about the allocation of private and semiprivate spaces. In the lives of young adults, it is not atypical to live in a dormitory designed for sleeping but

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<sup>37</sup> *Id.* at 932.

<sup>38</sup> *Fact Sheet #79: Private Homes and Domestic Service Employment Under the Fair Labor Standards Act (FLSA)*, U.S. DEP’T OF LABOR (Sept. 2013), <https://www.dol.gov/agencies/whd/fact-sheets/79-flsa-private-home-domestic-service> [<https://perma.cc/3PN8-2DA7>].

<sup>39</sup> See, e.g., Silbaugh, *Environmental*, *supra* note 7, at 154; see also generally Silbaugh, *Distinguishing*, *supra* note 7 (discussing households as unique *Place* in context of family life); Katharine Silbaugh, *Households and Families: A Legal Mismatch*, 41 HARV. DESIGN MAG. 2015, at 50, 51 [hereinafter Silbaugh, *Households and Families*]; Silbaugh, *Women’s Place*, *supra* note 7.

<sup>40</sup> Silbaugh, *Environmental*, *supra* note 7, at 154; see also, e.g., Lawrence Foster, *Women, Family, and Utopia: The Oneida Community Experience and Its Implications for the Present*, 28 COURIER 45, 51-52, 58 (1993) (describing “family” in context of these experiments); HAYDEN, *supra* note 1, at 37-53.

<sup>41</sup> HAYDEN, *supra* note 1, at 151-62.

<sup>42</sup> Silbaugh, *Environmental*, *supra* note 7, at 154-58; Silbaugh, *Women’s Place*, *supra* note 7, at 1829-35.

not for other household tasks. Members of the military live in barracks and on ships, incarcerated people live in prisons, and people in need of heightened medical care live in congregate settings like nursing homes and halfway houses. Many will not characterize these places as home even though they sleep, work, and live in these spaces for lengthy periods, and a story about labor at home needs to see these complicated boundaries of home as a place and as a concept.

All of these arrangements include aspects of cooperatives, in that the household work, meaning the chore of daily care, is distributed in some fashion that is different from the isolated social reproduction of the nuclear family. More sprawling household arrangements have been normative in the United States prior to industrialization, where home production extended households to apprentices or other quasi-employment relationships.<sup>43</sup> The institution of slavery deployed language of family and household to justify torture,<sup>44</sup> and Japanese Americans were coerced into forced labor during their mass incarceration in World War II's internment practice.<sup>45</sup> People in Immigration Customs and Enforcement detention today can participate in an unpaid labor program in service of the United States.<sup>46</sup> Considering these examples shows how pressing it is to develop a conception of "home" when contemplating labor there, and how widely varied the normative framework for contemplating home will be depending on these varied contexts. Where we sleep, where we eat, where we do or don't work—none of these will get us to a meaning of home. Some of these examples strain our sense of what home could mean, yet that strain exposes the extent to which home is not merely a space, but an idea.

For some people, home may have an intuitive connection to the idea of family. Even when discussing more twenty-first-century nuclear-family arrangements, I have written about the need to resist the temptation to associate households with families.<sup>47</sup> Most adults have people who they identify as family, such as a parent, child, or sibling, who do not sleep under the same roof as they do.<sup>48</sup> Children often have a parent who lives in a different household during their childhood; many adult children establish households apart from parents and

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<sup>43</sup> Cf. Ellickson, *supra* note 4, at 257 (noting one-fifth of nineteenth century households included member not related to head of household, often either boarder or live-in servant).

<sup>44</sup> Margaret A. Burnham, *An Impossible Marriage: Slave Law and Family Law*, 5 LAW & INEQ. 187, 191-92 (1987).

<sup>45</sup> See generally STEPHANIE HINNERSHITZ, JAPANESE AMERICAN INCARCERATION: THE CAMPS AND COERCED LABOR DURING WORLD WAR II (2021) (discussing forced labor as inherent aspect of incarceration of Japanese Americans in internment camps during World War II).

<sup>46</sup> U.S. IMMGR. & CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, at 407 (last updated Dec. 2016).

<sup>47</sup> See, e.g., Silbaugh, *Distinguishing*, *supra* note 7 (distinguishing between households and families); see also Silbaugh, *Households and Families*, *supra* note 39.

<sup>48</sup> Figure HH-1. *Percentage of Households by Type*, U.S. CENSUS BUREAU (2024), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-1.pdf> [<https://perma.cc/VF4L-Z8SJ>].

siblings, and many couples commute between two households.<sup>49</sup> Many people live in a household unit with people who are not intimates or close associates.<sup>50</sup> It would be a mistake to characterize the household as an economic unit on the one hand and the family as an intimate or associational unit that is basically coextensive with the household. Indeed, Supplemental Nutritional Assistance Program (“SNAP”) defines a household as the group of people who prepare food and eat together, and it adds in familial relationships whether or not they eat together.<sup>51</sup> Friends who are roommates can be a household for SNAP if they eat together and are not one if they do not.

An additional challenge to the work/home dichotomy includes the sometimes characterization of the single-family home as primarily a consumption space,<sup>52</sup> invented by capitalism after World War II in order to generate markets for appliances and household goods. Viewed as such, the household of today would be both a consumption and a production space, making it otherwise *indistinct* from many public spaces. Some work thought of as household labor may be collectivized outside of the home without being socialized, as in the case of retail meal delivery. It is difficult to find stability in the social reproduction function.

I believe that as work law scholars wrestle with the question of what is home so that they can take up Zhang’s charge of centering the home as a normative workplace, the most difficult and familiar issues with this research field will re-emerge.<sup>53</sup> Some may decide that home is the place that is not the market and not where we are employed, such that the private/public dichotomy and the home/work dichotomy are bootstrapped to take the “place” out of the re-centering project. This would substitute ideas for physical space. Intuitively for many, home feels like a place where work intrudes, where work colonizes leisure, for the reasons described above. Yet that can hardly be the meaning of home, for the reasons Zhang so ably sets out. I am struck by Zhang’s use of the term “work law black hole” to describe the home, because black holes invoke

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<sup>49</sup> See, e.g., *Living Arrangements of Children, 1970-2023*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://www.ojjdp.gov/ojstatbb/population/qa01201.asp?qaDate=2023&text=yes&print=yes&maplink=link2> [<https://perma.cc/K7NQ-SNNB>] (last visited May 20, 2025).

<sup>50</sup> See Figure HH-1. *Percentage of Households by Type*, *supra* note 48.

<sup>51</sup> *SNAP Eligibility*, FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., <https://www.fns.usda.gov/snap/recipient/eligibility> [<https://perma.cc/E639-SXE8>] (last visited Apr. 19, 2025) (“Everyone who lives together and purchases and prepares meals together is grouped together as one SNAP household. Some people who live together, such as spouses and most children under age 22, are included in the same SNAP household, even if they purchase and prepare meals separately.”).

<sup>52</sup> HAYDEN, *supra* note 6, at 23-27; Silbaugh, *Women’s Place*, *supra* note 7, at 1833-34.

<sup>53</sup> For an early treatment of today’s WFH culture and the intractability of addressing the problem of work and household, see Michelle A. Travis, *Telecommuting: The Escher Stairway of Work/Family Conflict*, 55 ME. L. REV. 261, 265-66 (2002) (offering critique of telecommuting by noting “[p]roponents rarely contemplate the possibility that telecommuting arrangements will vary for members of different groups according to existing power structures”).

the absence of space altogether.<sup>54</sup> Zhang means that work law is not adapted to the space called home, and I would add that it is not adapted to the idea of home either. Zhang describes work's material and ideological exit from the home, raising the question of whether work can exist without both an ideology of work and an ideology of home. An account of what home is will be essential to any theoretical project that seeks to notice that work happens there. It will be difficult to formulate a story about what home is that resists either a idea about home as an economic entity<sup>55</sup> or one version of a feminist idea that home is defined by its capitalist patriarchy.<sup>56</sup>

#### CONCLUSION

In considering how people live, how they support themselves, and how they seek freedom and joy, I find myself asking what constitutes resistance to a system that has trouble delivering those things or respecting them when people create them for themselves. I want Zhang's project to succeed, in that those who work from home deserve labor protections suited to that situation. At the same time, I have developed a modest concern, or second thought, about the flattening potential of materialism. I believe that further exploration of the boundaries of work and of the boundaries of home can deepen our appreciation of the conundrum that has sustained home labor as an endless source of study.

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<sup>54</sup> Zhang, *supra* note 8, at 939.

<sup>55</sup> See Ellickson, *supra* note 4, at 231.

<sup>56</sup> See, e.g., SOPHIE LEWIS, ABOLISH THE FAMILY: A MANIFESTO FOR CARE AND LIBERATION 2-3 (2022) (criticizing family as source of enshrining patriarchy, which is itself enshrined by capitalism); see also Zhang, *supra* note 8, at 924 ("Through a critical feminist lens, the home/workplace dichotomy is the spatial manifestation of the 'separate sphere' ideology. This perceives the economic, competitive, rational, productive, and public market as separated and dichotomized from the noneconomic, altruistic, loving, reproductive, and private family." (footnote omitted)).