

# Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionizing Attempts in Israel and the United Kingdom

*Einat Albin and Virginia Mantouvalou\**

*In this Article we offer a new conceptualization of industrial citizenship, which is sensitive to gender and migration status. Our conceptualization builds on the theoretical distinction between active and passive citizenship and the analyses of active industrial citizenship. We suggest that active industrial citizenship should be detached from the old and influential tradition of trade unionism that is connected with the public/private divide. Our proposed conceptualization leads to attaching value to activities related to ethics of care and to the pursuit of legal status, which should be seen as forms of activism. The discussion focuses on organizing domestic workers. We argue that this new conceptualization of active industrial citizenship leads to the recognition of domestic workers as active industrial citizens, rather than passive victims of abuse. It also transforms the way we view organizational forms within the labor market, making it possible to appreciate on an equal basis membership in trade unions and participation in NGOs and other civil society organizations, thereby building cooperation as well as taking part in other aspects of public life. We ground our argument on theoretical literature as well as a qualitative study, a series of interviews with key trade union and NGO actors with expertise in organizing and supporting domestic workers in Israel and the United Kingdom.*

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## INTRODUCTION

A line of literature in political theory has stressed the importance of a populace of active citizens (participants in political life), rather than merely passive ones (defined as right-holders).<sup>1</sup> This literature conceptualizes passive citizenship as thin and peripheral, positing active citizenship as the real aspiration.<sup>2</sup> It therefore stresses that citizenship is best achieved once people take action, publicly pursue their rights, and become involved in a community. Active citizenship is central in theoretical work on industrial citizenship. While industrial citizenship can be described as passive citizenship in terms of rights at work, in many countries it is most glorified when workers are active, highlighting the significance of mobilization, collective action, and workplace participation.<sup>3</sup> This distinction between active and passive citizenship may be one of the reasons for the emphasis placed on trade unionism, and the view of trade unions as constituting the core of industrial citizenship. Theoretical studies stress the importance of workers' engagement with trade union activity (in comparison to other forms of association), describing it as the best form of industrial citizenship.<sup>4</sup>

The view of trade unionism as the best form of industrial citizenship is very much present in the literature on domestic workers' associations and activities. The more common associations of domestic workers — NGOs, self-help groups and community-based organizations — are viewed as more marginal, with unionization seen as a desired challenge. While studies have pointed to the advantages for workers of organizing in each of these forms — including enhanced mobility,<sup>5</sup> a sense of community, and increased citizenship at work<sup>6</sup> — it is still assumed that unionization yields the greatest benefits for

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1 Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 ETHICS 352 (1994).

2 *Id.*

3 Judy Fudge, *After Industrial Citizenship: Market Citizenship or Citizenship at Work?*, 60 RELATIONS INDUSTRIELLES 631 (2005).

4 See, e.g., RICHARD B. FREEMAN & JAMES L. MEDOFF, WHAT DO UNIONS DO? 3-25 (1984); Chenchen Zhang & Nathan Lillie, *Industrial Citizenship, Cosmopolitanism and European Integration*, 18 EUR. J. SOC. THEORY 93 (2014); Colin Crouch, *The Globalized Economy: An End to the Age of Industrial Citizenship?*, in ADVANCING THEORY IN LABOR LAW AND INDUSTRIAL RELATIONS IN A GLOBAL CONTEXT 151 (Ton Wilthagen ed., 1998).

5 Bridget Anderson, *Mobilizing Migrants, Making Citizens: Migrant Domestic Workers as Political Agents*, 33 J. ETHNIC & RACIAL STUD. 60 (2010).

6 Guy Mundlak & Hila Shamir, *Organising Migrant Care Workers in Israel: Industrial Citizenship and the Trade Union Option*, 153 INT'L LAB. REV. 93 (2014).

the domestic work sector.<sup>7</sup> We argue that when such a position is presented, it resonates with the current understanding of the notion “active citizenship,” and claim that if a new conception of “active industrial citizenship” is adopted, a new assessment of the advantages of these organizations might follow.

Leaning on feminist and migration scholars’ critiques of active citizenship, as well as on our case studies of domestic workers’ unionization attempts in Israel and in the United Kingdom, we posit the need to alter the current understanding of active industrial citizenship. Particularly in respect to industrial citizenship, the meaning of the notion “active citizenship” is based on a model of a male-national citizen. This leads, we argue, to viewing all those who do not fall into this formulation as passive. Accordingly, the conceptions of “active” and “passive” should shift in a way that challenges the traditional understanding of the public/private divide which dominates the conceptualization of industrial citizenship, and that triggers these notions in a way that is sensitive to migration status. We justify reconceptualizing industrial citizenship in the manner offered. We also argue that such reconceptualization impacts domestic workers by enabling them to be recognized as active workers and their organization attempts as equally important to unionization. The meaning of such recognition is twofold: first, it emphasizes that domestic workers — even those who are not union members — are active agents, rather than merely passive victims of abuse. Second, it emphasizes the equally important role of organizations that are not trade unions in promoting mobilization, political participation and workers’ rights, and their ability to address the superior bargaining power of employers and the role of the state, aiming to achieve a redistribution of such power. The focus of this study is on live-in domestic workers, because their situation is the most challenging for organizing.

The choice to focus on Israel and the United Kingdom stems from a number of reasons. First, in both national contexts, unionization is considered the preferred form of organization. Second, domestic workers’ experience of unionization in Israel and in the United Kingdom has been assessed differently by union leaders. While the United Kingdom experience of organizing is generally positive, in Israel the experience is rather frustrating, even though domestic workers in Israel benefit from stronger legal protection than do their counterparts in the United Kingdom. Third, Israel and the United Kingdom have different legal structures applying labor laws to domestic workers, with particular divergences regarding undocumented workers (or “illegal workers,” as British courts sometimes call them) due to migration and labor laws. This situation enables us to analyze in greater depth the relationship between what

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7 *Id.*; Shireen Ally, *Caring About Care Workers: Organizing in the Female Shadow of Globalization*, 31 *LAB. CAP. & SOC’Y* 184 (2005).

are presently considered to be passive and active industrial citizenship. Fourth, in both Israel and the United Kingdom, trade unions have made significant attempts to unionize domestic workers, in which domestic workers themselves were very active. This activity, however, did not necessarily lead to their unionization; or when it did lead to unionization, the activities undertaken by the union were not traditional union activities.

The Article is structured as follows: Part I focuses on citizenship theory and more particularly on active, passive, and industrial citizenship. Part II reviews the literature on organizing domestic workers. Part III describes the examples of Israel and the United Kingdom. Our interviews in both countries have afforded us some important insights regarding the active nature of domestic workers, which Part IV presents. Part V presents the broader conception of active industrial citizenship and argues that domestic workers should be viewed as such. The last Part concludes.

## I. CITIZENSHIP: ACTIVE, PASSIVE, AND INDUSTRIAL

The normative notion of citizenship has seen “an explosion of interest”<sup>8</sup> in recent years. Citizenship theory does not conceptualize who is a citizen in the formal sense of nationality. Rather, it is a normative theory that addresses the question of what full community membership requires in terms of rights that members should enjoy.<sup>9</sup> The British sociologist T.H. Marshall famously defined citizenship as “a status bestowed on those who are full members of a community.”<sup>10</sup> He went on to state that “[a]ll who possess the status are equal with respect to the rights and duties with which the status is endowed.”<sup>11</sup> Indeed, citizenship entails ideas of community membership, inclusion, and equality. Simultaneously, however, it also entails exclusion for those that are not viewed as members of a particular community. The most prominent example is that of migrants who are excluded from the group of “national citizens,” and are therefore not entitled to rights that are provided solely to this group.<sup>12</sup> In relation to workers, there are those who are not seen as “industrial

8 Kymlicka & Norman, *supra* note 1, at 352.

9 JEREMY WALDRON, *Social Citizenship and the Defense of Welfare Provision*, in *LIBERAL RIGHTS* 271 (1993).

10 T.H. Marshall, *Citizenship and Social Class*, in *CONTEMPORARY POLITICAL PHILOSOPHY — AN ANTHOLOGY* 291 (Robert E. Goodin & Philip Pettit eds., 1997) (originally published in 1949).

11 *Id.* at 300.

12 See LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN* (2006); Ruth Lister, *Inclusion/Exclusion: The Janus Face of Citizenship*, in *TOWARDS A GENDERED POLITICAL*

citizens” because they are excluded from the legal tests of the notion of “employees.”<sup>13</sup> In this Part of the Article, we lay down the theory of active and passive citizenship and argue that it is highly relevant for understanding the notion of “industrial citizenship” and the emphasis placed on unions in labor studies. Moreover, we add feminist and migration scholars’ critiques that shed light on the theory of active and passive citizenship.

At its core, the distinction between active and passive citizenship stemmed from a critique of the liberal conception of citizenship, which is concerned with rights. The focus on rights was described as “passive citizenship” because it lacked emphasis on active forms of political participation. Scholars turned towards the republican idea of “active citizenship” that draws attention to participation and public activism.<sup>14</sup> Under this notion, it is not sufficient for citizens to assert their rights; they must also participate in their community as active members. Indeed, the literature has revealed the value of widespread participation in democratic politics or in civil society more generally.<sup>15</sup> Citizens’ participation is not necessarily viewed as a legal duty, though it may sometimes be framed as such (for example, some regimes impose a legal duty to vote<sup>16</sup>). This approach considers active citizenship to be a virtue that the state should promote — for example, through education.<sup>17</sup> Notably, passive and active forms of citizenship do not conflict but may rather co-relate. Thus, for example, citizens’ rights must be respected so that they will consider themselves members of society, and thus be encouraged to actively participate. The analysis of citizenship as participation offers an opportunity to consider not only people’s entitlements, but also their role as participants in society.

Historically, the notion of industrial citizenship was closely linked to the theoretical analysis of active citizenship; the industrial citizen was seen as a free agent, who had not only a right but also a duty to be active in the workplace. Industrial citizenship was typically viewed as synonymous with

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ECONOMY 98 (Joanne Cook, Jennifer Roberts & Georgina Waylen eds., 2000); see also Guy Mundlak, *Industrial Citizenship, Social Citizenship, Corporate Citizenship: I Just Want My Wages*, 8 THEORETICAL INQUIRIES L. 719 (2007).

13 Harry Arthurs, *Developing Industrial Citizenship: A Challenge for Canada’s Second Century*, 45 CAN. BAR REV. 786 (1967).

14 See, e.g., ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

15 See Kymlicka & Norman, *supra* note 1, at 360.

16 On compulsory voting, see Heather Lardy, *Is There a Right Not to Vote?*, 24 OXFORD J. LEGAL STUD. 303 (2004).

17 Will Kymlicka, *Education for Citizenship*, in *EDUCATION IN MORALITY* 79 (J. Mark Halstead & Terence H. McLaughlin eds., 1999).

trade unionism.<sup>18</sup> In the mid-twentieth century scholars began offering new understandings of industrial citizenship. Writing in 1967, Harry Arthurs said that the notion of industrial citizenship had changed from a person who was seen as a “free laborer” defined by his individual contractual act, who could “sell his labor, or the fruits of his labor, on the open market,”<sup>19</sup> to a status-based industrial citizen — a rights-bearer recognized according to “employee” status.<sup>20</sup> However, the understanding of what active industrial citizenship is did not change in the status-based model. Studies continued to conceptualize “activism” in respect to industrial citizenship in the same way as before, and to view unionism as the noblest and most effective form of industrial citizenship in the sense of workplace participation.<sup>21</sup>

The importance attributed to unions stems from the way they function — in a collective, democratic way, applying strategies of joint struggle. Moreover, unions have been more successful than other forms of association in the achievement of distributive goals. It has been said that the ability to participate in the workplace through membership in organizations promoting workers’ rights, particularly trade unions, enables workers’ voices to be heard, making it more likely that their struggle to attain workplace rights will succeed.<sup>22</sup> Together with a legal framework that prioritizes unions over other sorts of associations in the workplace,<sup>23</sup> this has enabled unions to achieve

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18 See SIDNEY WEBB & BEATRICE WEBB, *INDUSTRIAL DEMOCRACY* (London: Longmans, Green, 1902) (1897).

19 *Id.*; Arthurs, *supra* note 13.

20 Arthurs, *supra* note 13. On a rights-based approach to industrial citizenship, see also HUGH COLLINS, *EMPLOYMENT LAW* pt. IV (2d ed. 2010).

21 ALAN BOGG, *DEMOCRATIC ASPECTS OF TRADE UNION RECOGNITION* (2009); see also Hila Shamir, *Unionizing Subcontracted Labor*, 17 *THEORETICAL INQUIRIES L.* 229 (2016); sources cited *supra* note 4.

22 See, e.g., Jay Youngdahl, *Solidarity First: Labor Rights Are Not the Same as Human Rights*, 18 *NEW LAB. F.* 31 (2009).

23 In Israel the preference awarded to unions is found in the Collective Agreements Act of 1957 and in the Settlement of Labour Disputes Act of 1957. The definition of what constitutes a trade union was later made in a number of court decisions, the most important one being the Israeli Supreme Court case H CJ 7029/95 *The Histadrut v. Nat’l Labor Court* 51(2) PD 63 (Isr.). In that case the court put forward a set of criteria to determine what is needed from an organizations to constitute as a trade union, deciding that unions are organizations that their members are predominantly workers (members, not clients), not governed by employers, that is democratic, independent and sustainable. These criteria left a number of organizations outside the definition, including NGOs. In the United Kingdom, there are several provisions that exemplify how the law gives a preference to trade unions. For example, an organization needs to be a trade union in order

better terms and conditions of work for their members and others covered by their collective agreements. Additionally, organizing can help workers become not only active workplace participants, but also active community members more broadly.<sup>24</sup>

However, critical analysis of active citizenship has shown that it focuses on a particular model, which does not take into account gender or migration status. The current understanding of active citizenship is about participation in the public sphere, in politics or in the workplace. This conceptualization of active citizenship underlies what Susan Moller Okin described as a problem in normative political theory, which pays little attention to activities that are typically performed in private space, specifically in the household.<sup>25</sup> These activities are viewed as private (rather than public) and hence nonpolitical.<sup>26</sup> Likewise, the notion of active citizenship does not recognize activities that take place in small communities and with families abroad. Just as the idea of citizenship itself is based on the nation-state, so is political participation.<sup>27</sup> These activities are seen as private and thus the people performing them are viewed as passive, especially when they are uninvolved in the more recognized forms of activism, including strikes and protests. Migrants in particular find it challenging to participate in the public sphere, because of barriers such as language or unfamiliarity with their host country's politics and laws. Moreover, undocumented migrants generally avoid public acts for fear of arrest and deportation, while migrants from different backgrounds may have different perceptions of activism. Building on similar criticisms, Judy Fudge argued that the broad economic and political changes of the past few decades have resulted in a shift in the citizenship regime, challenging

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to be recognized by the employer so as to negotiate agreements on behalf of the workers; trade union representatives have a right to take time off for union duties; dismissal because of trade union membership is automatically unfair. See BOGG, *supra* note 21; see also Alan Bogg & Cynthia Estlund, *Freedom of Association and the Right to Contest*, in VOICES AT WORK 141 (Alan Bogg & Tonia Novitz eds., 2014).

24 Anderson, *supra* note 5.

25 Susan Moller Okin, *Gender, the Public, and the Private*, in FEMINISM AND POLITICS 116 (Anne Phillips ed., 1998).

26 *Id.* at 123.

27 Gordon and Bosniak have discussed the problems resulting from the interrelations between the notions of labor citizenship and national citizenship, and their concerns are relevant to other notions of citizenship that have broadened the traditional nation-centered one. See BOSNIAK, *supra* note 12; Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 551-61 (2007).

industrial citizenship as a normative ideal and undermining “the conditions that have sustained it.”<sup>28</sup>

It is necessary to shift our understanding of “industrial citizenship” to one that is more sensitive to gender and migration, and a radical reconceptualization of “active industrial citizenship” should be promoted. We build on the example of organizing attempts of domestic workers to put forward this claim. In the next Part of the Article we begin with presenting the literature on the unionization of domestic workers.

## II. LITERATURE ON UNIONIZING DOMESTIC WORKERS

A line of literature has emphasized several reasons for the importance of unionizing domestic workers. Scholars have argued that trade unionism promotes domestic workers’ recognition as workers (as opposed to “servants,” “slaves,” or “family members”) and hence their (still debated) entitlement to workers’ rights.<sup>29</sup> This recognition is particularly significant under national legal systems that exclude domestic workers from labor protective legislation.<sup>30</sup>

Moreover, unionization is claimed to be the best form of organization in promoting resource redistribution. Domestic workers are among the most disadvantaged groups in the labor market, suffering from low salaries and exclusion from certain workplace rights. The International Labour Organization (ILO) has noted domestic workers’ weak bargaining position as a reason for their low wages.<sup>31</sup> The 2011 Convention on Domestic Workers therefore emphasized the role of freedom of association and collective bargaining for this work sector in one of its first provisions.<sup>32</sup> Organizing within a union can improve the economic situation of domestic workers, because one of the primary purposes of unions is to secure for their members access to goods, such as fair working conditions.<sup>33</sup> If one uses Nancy Fraser’s terms of recognition and redistribution,<sup>34</sup> it can be said that unionization furthers recognition of domestic workers and addresses issues of redistribution of power and wealth.

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28 Fudge, *supra* note 3, at 633.

29 Mundlak & Shamir, *supra* note 6.

30 Virginia Mantouvalou, *Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor*, 34 COMP. LAB. L. & POL’Y J. 133 (2012).

31 ILO, DOMESTIC WORKERS ACROSS THE WORLD: GLOBAL AND REGIONAL STATISTICS AND THE EXTENT OF LEGAL PROTECTION 70 (2013).

32 ILO, Domestic Workers Convention (No. 189) art. 3 (June 16, 2011).

33 Stuart White, *Trade Unions in a Liberal State*, in FREEDOM OF ASSOCIATION 330, 334-35 (Amy Gutmann ed., 1998).

34 Nancy Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation*, in REDISTRIBUTION OR RECOGNITION? A POLITICAL-

Additionally, trade unions are considered to be the best vehicles for participation and voice. Notably, the “louder voice of a trade union linked to the whole labor movement”<sup>35</sup> can be beneficial to the disadvantaged domestic workers sector. Furthermore, unions provide additional assistance for their members. They can provide them with services (such as language courses and legal and immigration advice) and with more general support to help them understand their rights. Lastly, unions are favored due to their democratic, participatory nature.

At least theoretically, other forms of organization, particularly NGOs, are not considered to yield the same advantages as unions.<sup>36</sup> Guy Mundlak and Hila Shamir have argued that “[i]n contrast to workers’ rights centers and community organizations, trade unions offer a form of industrial citizenship based on the concepts of membership, political agency, and direct participation.”<sup>37</sup> They claim that membership in a trade union serves as an important path to “industrial citizenship,” which seeks to constitute a democratic process that voices the interests and needs of workers and whose focus is on the sphere of social and economic wellbeing.<sup>38</sup> Similarly, Shireen Ally has stated that “exclusive focus on the conditions that make domestic workers unorganizable cast[s] domestic workers as passive and powerless victims of the structural features of their work,”<sup>39</sup> and that the problem with other forms of association is that they undermine union activity.<sup>40</sup> The current literature on active and passive citizenship contributes a fuller understanding of the value attributed to union activity in comparison to these other forms of organization. The law, scholars and labor activists prefer this type of organization, among other things, due to the type of activity it entails (democratic, public), a value which is followed by the recognition provided when one becomes a union member; and due to the treatment of trade unions by the law.

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PHILOSOPHICAL EXCHANGE 7 (Nancy Fraser & Axel Honneth eds., 2003). On the view of labor law as enabling recognition of and redistribution to reproductive laborers, including domestic workers, see Prabha Kotiswaran, *Abjective Labors, Informal Markets: Revisiting the Law’s (Re)Production Boundary*, 18 EMP. RTS. & EMP. POL’Y J. 111, (2014).

35 Interview with Diana Holland, Assistant Gen. Sec’y, Unite, in London, U.K. (Dec. 8, 2014).

36 On the distinctions between union activity and NGO activity, see Guy Mundlak, *Labor Rights & Human Rights — Why Don’t the Two Tracks Meet?*, 34 COMP. LAB. L. & POL’Y J. 217 (2012).

37 Mundlak & Shamir, *supra* note 6, at 94.

38 *Id.* at 100.

39 Ally, *supra* note 7, at 188.

40 *Id.* at 197.

The adoption of the prominent idea of “active” citizenship can also illuminate the reasons for unionization’s failure in respect to domestic workers. Scholars have pointed to the obstacles to unionizing domestic workers<sup>41</sup> — all of which may explain why it is hard for domestic workers to be “active” under the current definition of the term. The citizen-alien divide has been implicated in explaining the challenges of unionizing domestic workers, given that the majority of these workers in many countries are migrants.<sup>42</sup> As noted, “active citizenship” is mainly based on national citizenship, leaving the alien excluded in various ways. Regarding unions, the exclusion of migrants also results from what has been described as unions’ “different circles of solidarity”: in a globalized world, unions express different solidarity with their citizen members than they do with migrant workers. This differentiation leads to tensions and the preferential treatment of the former group over the latter.<sup>43</sup>

Indeed, part of the citizen-alien framework is the dual citizenship of migrant workers, who belong to more than one place at the same time.<sup>44</sup> They have certain ties — legal, communal, and familial — in their country of origin and in the receiving country, which jointly build their citizenship.<sup>45</sup> Domestic workers maintain ties with their home country, including with family members who have been left behind. In parallel, they live and work in the host country and become community members there too, although they do lack national citizenship status. Lack of national citizenship and symbolic belonging prevents them from becoming fully devoted to union activity and to act in the manner preferred by the theory of “active citizenship.”

A further aspect of the citizen-alien framework is the slave-worker binary that places domestic workers at an even greater disadvantage.<sup>46</sup> Domestic workers experience grave restrictions of freedom by employers that confiscate their passports, for instance. Because of the restrictions of their freedom, their living and working conditions have even been classified as slavery or

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41 See Ally, *supra* note 7; Mundlak & Shamir, *supra* note 6; see also Margriet Kraamwinkel, *Organizing in the Shadows: Domestic Workers in the Netherlands*, 17 THEORETICAL INQUIRIES L. 351 (2016).

42 ILO, *supra* note 31, at 29 et seq.; Einat Albin & Virginia Mantouvalou, *The ILO Convention on Domestic Workers: From the Shadows to the Light*, 41 INDUS. L.J. 67 (2012).

43 Einat Albin, *Union Responsibility to Migrant Workers: A Global Justice Approach*, 34 OXFORD J. LEGAL STUD. 133 (2014).

44 Jennifer Gordon & R.A. Lenhardt, *Rethinking Work and Citizenship*, 55 UCLA L. REV. 1161, 1215-16 (2008).

45 *Id.*

46 Anderson, *supra* note 5.

servitude at times.<sup>47</sup> Several reports in the past few years have described domestic workers as particularly vulnerable to forced labor and slavery, not only because of their migratory status, but also due to the terms and conditions of their work, particularly its isolated nature insofar as it is conducted within households, far from the public eye.<sup>48</sup> These restrictions affect their status as workers and their ability to be active in the way which is currently perceived as the preferred form of activism.<sup>49</sup>

This brings us to a particular hurdle created by the public-private divide — the sphere of union activity. Unions act in the public sphere, while domestic workers are consigned to the private sphere: a private household (which for live-in domestic workers doubles as their site of both employment and residence). They are further limited to the private domain by migration policies and labor laws. For example, their exclusion from working time regulations can lead them to be constrained to the private sphere of the house twenty-four hours a day, on occasion for an entire week and more.<sup>50</sup> Domestic workers' work pattern has also been noted as a related challenge for unionization, especially in the case of live-ins. Domestic work is situated behind closed doors and involves long working hours that leave little time for what is traditionally viewed as political activity.<sup>51</sup>

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47 Siliadin v. France, 415 Eur. Ct. H.R. (2005); see also Virginia Mantouvalou, "Am I Free Now?" *Overseas Domestic Workers in Slavery*, 42 J.L. & Soc'y 329, 348 (2015).

48 INTERNATIONAL LABOUR CONFERENCE, 99TH SESSION, DECENT WORK FOR DOMESTIC WORKERS: REPORT IV(1) ch. 6 (2009); HANNY BEN-ISRAEL, REVISITING CEDAW'S RECOMMENDATIONS: HAS ANYTHING CHANGED FOR MIGRANT WORKERS IN ISRAEL IN THE LAST TWO YEARS? (2014); see also Sandra Fredman, *Home from Home: Migrant Domestic Workers and the ILO Convention on Domestic Workers*, in MIGRANTS AT WORK 399 (Cathryn Costello & Mark Freedland eds., 2014); Kristi L. Graunke, *Just Like One of the Family: Domestic Violence Paradigms and Combating On-the-Job Violence Against Household Workers in the United States*, 9 MICH. J. GENDER & L. 131 (2002).

49 Einat Albin, *From Domestic Servant to Domestic Worker*, in CHALLENGING THE LEGAL BOUNDARIES OF WORK REGULATION 231 (Judy Fudge, Shae McCrystal & Kamala Sankaran eds., 2012); Virginia Mantouvalou, *Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor*, 34 COMP. LAB. L. & POL'Y J. 133 (2011); Einat Albin, *Between Required Intimacy and Problematic Forcefulness: The Case of Domestic Workers*, TEL AVIV L. REV. (forthcoming 2016) (Isr.) [hereinafter Albin, *Intimacy*].

50 Anderson, *supra* note 5.

51 Michelle Ford, *Organising the Unorganisable: Unions, NGOs, and Indonesian Migrant Labour*, 42 INT'L MIGRATION 99 (2004); Ally, *supra* note 7, at 187; Mundlak & Shamir, *supra* note 6.

The gendered dimension of the job has also been said to create a challenge to unionization. This gendered dimension stems from the type of work that is performed — the provision of care and intimacy to others,<sup>52</sup> activities that are far from the male model of workers — as well as the fact that most of those performing domestic work are women.<sup>53</sup> This gendered element has implications for unionization. The workers are much less able to participate in public activities and in democratic assemblies and strikes, due to the double burden they have at work and home. They have less time to be publically active in the model of activism preferred by unions.<sup>54</sup> Historically, the women's movement developed outside the union framework, in which women were less involved and active than men and which did not necessarily take into consideration women's interests.<sup>55</sup> From a feminist perspective, unions have often been viewed as institutions that create and preserve differentiations between men and women, like job distinctions and pay gaps.<sup>56</sup>

A final challenge relates to the way in which unions function. Unions' past focus on manufacturing sectors is a limitation when considering the needs of domestic workers, because the strategies that they use address challenges of some sectors but not others.<sup>57</sup> Over years of activity, many unions developed their methods within a male-dominated workplace, organizing workers located within one plant through strategies that address hundreds of workers simultaneously, many of whom are also probably citizens. Hence, unions face particular challenges in dealing with issues affecting the highly divergent domestic work sector that is composed mostly of individual workers who work alone, in the employer's home.

The main insight from the existing literature is that it is indeed very hard to unionize domestic workers and make them "active citizens" in the common

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52 Albin, *Intimacy*, *supra* note 49; Barbara Ehrenreich & Arlie Russel Hochschild, *Introduction*, in *GLOBAL WOMEN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY 1* (Barbara Ehrenreich & Arlie Russel Hochschild eds., 2003); Guy Mundlak & Hila Shamir, *Between Intimacy and Alienage: The Legal Construction of Domestic and Carework in the Welfare State*, in *MIGRATION AND DOMESTIC WORK: A EUROPEAN PERSPECTIVE ON A GLOBAL THEME 161* (Helma Lutz ed., 2008).

53 ILO, *supra* note 31, at 21.

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

55 *Id.*

56 Sidney Webb, *The Alleged Differences in the Wages Paid to Men and to Women for Similar Work*, 1 *ECON. J.* 635 (1891).

57 Ally, *supra* note 7, at 190; Dorothy S. Cobble, *The Prospects for Unionism in a Service Society*, in *WORKING IN THE SERVICE SOCIETY 333* (C.L. Macdonald & C. Sirianni eds., 1996).

sense of the term. This insight prompts us to offer a new conceptualization of the notion “active industrial citizenship.” On the basis of the feminist and migration studies’ critiques of the current meaning of active and passive citizenship, we argue that the notions of “active” and “passive” should be altered to yield a broader understanding of industrial citizenship. This broader understanding does not depart from the value attributed to active agents, but rather conceptualizes “active citizenship” differently. It does, however, shed light on the value that should be attributed to activities that are currently seen as passive, even though they are, we argue, active and can lead to redistribution of power between workers and employers. The case studies to which we turn next have led us to make and ground this argument.

### III. ISRAEL AND THE UNITED KINGDOM — TWO DIFFERENT EXPERIENCES

In order to deepen our understanding of the meaning of active and passive citizenship of domestic workers and to draw some comparisons from the experiences in the United Kingdom and Israel, we conducted a number of interviews with key trade unions and NGO actors with expertise in organizing and supporting domestic workers in these countries. In the United Kingdom, we interviewed Diana Holland, the Assistant General Secretary of Unite, who has been involved in the organizing efforts of domestic workers since the 1980s; Catherine Kenny of Kalayaan, the main NGO working on the rights of migrant domestic workers since 1987; Anooshah Farakish, research officer for equalities at Unite; and Marissa Begonia, the leader of Justice for Domestic Workers (J4DW), a self-help group of domestic workers that is linked to Unite. In Israel, we interviewed Yael Wolfenson, an organizer at *Koach La'Ovdim* (Power to the Workers), a relatively new trade union that has made significant attempts to organize domestic workers; Idit Lebovitch of *Kav La'Oved* (the Workers' Hotline), which is the largest NGO in Israel working with domestic workers; and Gershon Gelman from the *Histadrut*, the strongest and oldest trade union in Israel.

#### A. Israel

The organization of domestic workers (particularly live-ins) in Israel has flourished since the entry of migrants into the country became a phenomenon, in 1993.<sup>58</sup> A number of associations have been involved in the process of

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58 Adriana Kemp & Rebeca Raijman, *Tel Aviv Is Not Foreign to You: Urban*

organization — community organizations, NGOs, and trade unions.<sup>59</sup> The most significant activity has involved a key NGO working in the field of workers' rights named *Kav La'Oved*. This organization, established in 1991, started working with migrants when they first entered Israel in large numbers from 1993 onwards. Since then, it has become the main point of reference for live-in domestic workers. Each year, the organization provides services to around 5000 migrant domestic workers, most of whom reside with their employers.<sup>60</sup> *Kav La'Oved* receives complaints via a telephone service, email, and open days in which workers come to the NGO offices. It also approaches relevant authorities to provide individual aid in specific cases and works to promote policy change in the Knesset (Israeli Parliament), the Supreme Court, and government agencies.<sup>61</sup>

Throughout its years of activity, *Kav La'Oved* has brought important policy changes to the terms and conditions of work for migrant workers, including domestic workers. It was the main applicant in the petition that argued that the binding policy of migrant workers to their employers is unconstitutional, a petition accepted by the Israeli Supreme Court in 2006, after which a few migration policies were adopted in Israel for different sectors;<sup>62</sup> it was involved in altering the policy regarding family rights of domestic workers who have given birth during their stay in Israel;<sup>63</sup> and it was active in trying to change policy on the assessment of working time when applying the Hours of Work and Rest Act to domestic workers.<sup>64</sup> Together with other NGOs that also addressed issues of migrant domestic workers, like Physicians for Human Rights, *Messila*, etc., substantial changes have been made regarding the terms of visas for domestic workers, parental rights and health rights.

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*Incorporation Policy on Labour Migrants in Israel*, 38 INT'L MIGRATION REV. 26 (2004); Adriana Kemp et al., *Contesting the Limits of Political Participation: Latinos and Black African Migrant Workers in Israel*, 23 ETHNIC & RACIAL STUD. 94 (2000).

59 More information on these organizations can be found in Mundlak & Shamir, *supra* note 6, at 99-100.

60 Interview with Idit Lebovitch, Care-Workers Dep't Coordinator, *Kav La'Oved*, in Tel-Aviv, Isr. (Nov. 26, 2014).

61 *Id.*

62 HCJ 4542/02 *Kav La'Oved v. Gov't of Israel* 61(1) PD 346 (2006) (Isr.).

63 HCJ 11437/05 *Kav La'Oved v. Ministry of Interior* (Apr. 13, 2011), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

64 The NGO represented the worker in HCJ 10007/09 *Yulanda Glutan v. Nat'l Labor Court* (Mar. 18, 2013), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

According to Idit Lebovitch, no effort or activity is needed to reach out to the workers; they come in of their own initiative, informing each other of the NGO's work through their own networks.<sup>65</sup> Beneficiaries' top priority is to receive information on their labor rights and their work visas and to take action in particular situations. Regarding the visa, their main interest has usually been to extend its time limitations (under Israeli law, the relevant visas are limited to a period of five years with possibilities of extension in certain circumstances<sup>66</sup>). The focus on visas became highly evident once unionization efforts started emerging within the sector.

The capacity of live-in domestic workers to unionize emerged when the *Histadrut* and later *Koach La'Ovdim* began working with this group. Each of these unions adopted a different approach towards the unionization of domestics. The *Histadrut* — Israel's largest trade union — mainly operated in the provision of legal aid on an individual basis, considering domestic workers to be part of the larger group of migrant workers in Israel. Gershon Gelman, the head of the *Histadrut*'s branch in Tel Aviv Yaffo, initiated the *Histadrut*'s opening its doors to migrants in 2002.<sup>67</sup> At that point in time the situation of migrant domestic workers was very difficult. Reports showed that ninety percent of them did not receive minimum wages, that their passports were being taken by their employers, that many of them were restricted to the confines of the house. Further information unraveled that living conditions were poor and that workers were subjected to violence and abuse.<sup>68</sup> The *Histadrut* began making efforts, and Gelman's branch was the only one in the union working with migrants. Notwithstanding its attempts, though, including the writing of informational pamphlets, conducting workshops on rights, and going to meet migrants in their residential areas, its success in unionizing domestics has been limited.<sup>69</sup>

Gelman notes the difficulty in unionizing domestic workers, despite their potentially strong union power — the size of the group, the type of work they perform, and the number of households that depend on their work, which enables hundreds of thousands of Israelis, mostly women, to enter the labor market. In Gelman's words, migrant domestics "don't have time for

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65 Interview with Idit Lebovitch, *supra* note 60.

66 This is set in Entry into Israel Law, art. 3A(a), 5712-1952, 111 LSI 354, as amended (Isr.).

67 Interview with Gershon Gelman, Head of the Tel Aviv Yaffo Branch, *Histadrut*, in Tel Aviv, Isr. (Nov. 9, 2014).

68 A summary of reports stating this is the situation is found in H CJ 4542/02 Kav La'Oved v. Gov't of Israel 61(1) PD 346 (2006) (Isr.).

69 Interview with Gershon Gelman, *supra* note 67.

unionization, and they don't want it."<sup>70</sup> What migrant domestic workers are interested in, according to him, is the preservation of their work visa, their job, their ability to earn money, and their salaries. In these fields they are very active — they visit the union to learn about their rights and meet with lawyers to write letters to the employers or (if needed) file petitions with the courts. Gelman's impression is that migrant domestic workers do not spend their spare time in unionization or any other sort of political activity, but rather spend it in their community or in earning more money by performing another job. His attempts to try and build leadership from within have not been fruitful.

It can be said that the *Histradrut's* attempts failed due to the period of time when they took place — at the time the binding policy was still extant in Israel, and when migrants were frightened of taking any action. Michael Ellman and Smain Laacher have stated that the binding policy suppressed migrant workers' market power, making them reluctant to challenge their employers for fear of losing their visas.<sup>71</sup> However, the *Histadrut's* efforts continued even after this period of time, and more importantly, another unionization attempt was made a few years afterwards when the legal situation of domestic workers had already changed, and here too, union members in their interviews reached similar conclusions to those voiced by Gelman.

In 2009 *Koach La'Ovdim*, a relatively new, and at that time rather small, trade union in the Israeli labor market, began making efforts to unionize domestic workers. Working together with an Israeli NGO called *Tevel B'Tzedek* (Earth in Justice), *Koach La'Ovdim* adopted a new and interesting approach towards the unionization of domestic workers.<sup>72</sup> Volunteers of *Tevel B'Tzedek*, who operated programs in various developing countries including Nepal, returned to Israel in 2009 and began working with migrant workers from Nepal, including many domestic workers. In the course of this involvement, the volunteers organized a meeting with *Koach La'Ovdim* to discuss the establishment of a union for migrant domestic workers.<sup>73</sup> *Koach La'Ovdim's* attempts to unionize took place in Tel Aviv and Jerusalem. While the Tel Aviv branch offered more individual services to domestic workers (mainly involving legal aid), with the goal of increasing membership numbers, the

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70 *Id.*

71 MICHAEL ELLMAN & SMAN LAACHER, INT'L FED'N FOR HUMAN RIGHTS, *MIGRANT WORKERS IN ISRAEL: A CONTEMPORARY FORM OF SLAVERY* (2003), [http://www.solidariteit.nl/Documenten/2005/Final\\_Report\\_290703.pdf](http://www.solidariteit.nl/Documenten/2005/Final_Report_290703.pdf) (a report from a joint mission to Israel investigating the situation of migrant workers).

72 *See* Mundlak & Shamir, *supra* note 6.

73 *Id.*

Jerusalem branch was more innovative in its attempt to create leadership, political engagement, and mobilization.<sup>74</sup>

Engaging in community building and leadership development, the Jerusalem branch of *Koach La'Ovdim* held discussion groups on labor rights, health issues, and social security benefits, focusing on the potential of the union option. They established a leadership group representing various nations from which migrant domestic workers came to Israel: Nepal, Sri Lanka, India, and the Philippines. The leadership group was called “coordinators” and their role was to reach domestic workers working in Jerusalem, and inform them of unionization attempts and the importance of union involvement. This was done by holding house-based meetings where such information was provided. The union worked to empower the coordinators, provide them with organization tools, and train them in migrant workers’ rights.

Moreover, the union sought opportunities to unite workers in a joint struggle against government policies (rather than employers). For example, the union dealt with attempts to deny the application of the Hours of Work and Rest Act<sup>75</sup> to domestic workers. It addressed policy proposals to reinstate a policy binding domestic workers to their employers, although the Supreme Court had declared the binding of workers unconstitutional a few years earlier.<sup>76</sup> It also took action to extend the time period of the working visa for domestic workers, which at that time was limited to five years of work with no possibilities of extension. Some of these attempts were successful, at least in the sense that domestic workers voiced their own claims.

Further union activities of *Koach La'Ovdim* included the issuing of membership cards. No other union members have such a card, but this card was important for domestic workers because in their countries of origin certification is highly useful and valued and it therefore gave the workers a sense of belonging and prestige. The union also issued certificates acknowledging the completion of courses. Additionally, union representatives together with the coordinators discussed the idea of striving towards a collective agreement with either a care agency or individual employers. However, many workers rejected this option because they did not want to create tensions with those employing them. Their activities also included elections in which representatives of the group were chosen based on *Koach La'Ovdim*'s premise that all the

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74 Interview with Idit Lebovitch, *supra* note 60; Interview with Yael Wolfenson, Director, *Koach La'Ovdim*'s Jerusalem Branch, in Jerusalem, Isr. (Nov. 5, 2014).

75 Hours of Work and Rest Act 5711-1951, 76 LSI 204, as amended (Isr.).

76 Information on this case can be found in Einat Albin, *The Sectoral Regulatory Regime: When Work Migration Controls and the Sectorally Differentiated Labour Market Meet*, in *MIGRANTS AT WORK*, *supra* note 48, at 134.

workplaces and sectors it organizes have democratically elected representatives. The elections signaled democracy and increased membership numbers from 80 to 132.

Many of *Koach La'Ovdim's* activities were conducted in cooperation with *Kav La'Oved*. In fact, union members said that many domestic workers joined them because they confused the union's name, which includes the word "*La'Ovdim*," with the well-reputed NGO, whose Hebrew name includes the word "*La'Oved*." Union representatives were aware of this confusion, but utilized such mistakes to enhance union membership and workers' involvement.

Although the union worked to adopt strategies that it believed would work better for domestic workers, after five years of activity, it reached a decision to refrain from making any further efforts to unionize domestic workers and decided to turn its attention elsewhere. Indeed, this was a decision regarding where to direct its limited resources. Ultimately, unionization efforts failed at both the *Histadrut* and *Koach La'Ovdim*, despite the involvement of civil society, the adoption of new strategies, the involvement of a leadership group, and the immense efforts made by activists at *Tevel B'Tzedek* and *Koach La'Ovdim*.

Yael Wolfenson, *Koach La'Ovdim's* representative in this unionizing attempt, said that "it was more a work struggle imagined by the union than something the workers considered possible or something they wished for."<sup>77</sup> Wolfenson reached similar conclusions to those of Gelman. She said that migrant domestic workers' real needs may have been ill suited to unionization; what they actually wanted was to deal with their daily problems. They were informed regarding the meaning of strikes and unions, but they did not consider it possible to use these tools to further their own goals. Once the union started working on these broad issues, domestic workers recognized their collective power. But still, they were more concerned with any infringements of their rights. Lebovitch from *Kav La'Oved* also said similar things. According to her, even though the Jerusalem branch of *Koach La'Ovdim* was innovative in the way it addressed domestic workers, it ultimately failed because unionization could not have progressed further. It was more successful than the Tel Aviv branch and therefore active for a longer period of time, but still did not manage to unionize the workers, and was limited in what it could achieve.

The active nature of the domestic workers, however, was quite striking in the testimonies of Lebovitch, Wolfenson and Gelman. Talking about the coordinators, Lebovitch and Wolfenson noted their dedication to promoting the organization of workers. All three interviewees also noted several situations in which workers came in significant numbers to protests on issues relating

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77 Interview with Yael Wolfenson, *supra* note 74.

to governmental policies, especially their visas, or to workshops that they had arranged. Lebovitch<sup>78</sup> mentioned an “exciting and rare” incident of domestic workers’ organization and mass mobilization to attend a protest organized by *Kav La’Oved* against what they called the “Slavery Bill.”<sup>79</sup> Two buses of migrant workers came from the Jerusalem branch of *Koach La’Ovdim*. All three interviewees also discussed how active workers were in receiving information on their rights at work, and in some situations in turning to the courts.

Additionally, Lebovitch noted that the common view of domestic workers as “disadvantaged,” “vulnerable,” and “passive” is problematic. “They are so powerful and so active in many ways,” she noted in her interview, despite the fact that many of their activities avoid conflict and any targeting of their employers or the state. For example, Lebovitch noted a domestic worker who came to *Kav La’Oved* seeking legal advice. When she was told that her wages were lower than her entitlements according to the Minimum Wage Act,<sup>80</sup> she refused to file a legal suit against her employer, on the grounds that he was a very nice person. Despite being informed that the employer was actually robbing her of her rights, she refused to take any legal action against him. This case characterizes the approach of some domestic workers towards the state as well: they are grateful and highly hesitant to engage in conflict. Even though this description might lead some to say that these workers are disadvantaged, in fact it is their activities that do not suit the current perception of the notion “active.” One example Lebovitch gave of an activity much engaged in by these workers is the care they provide to their care receivers and to their families back home.<sup>81</sup> Hence, alongside the lack of success of the unionization attempt in Israel, all interviewees expose a very powerful and strong active group of workers who use various tools of activities to promote their interests.

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78 Interview with Idit Lebovitch, *supra* note 60.

79 Entry into Israel Act, 5712-1952, 6 LSI 159 (as amended) (Isr.). The “Slavery Bill” referred to an amendment proposed to the 1952 Act that intended to limit the movement of domestic workers from one employer to another, suggesting that domestic workers be allowed to change employers only three times during their stay in Israel. This bill, applying to domestic workers only, changed the legal regime created after an important Supreme Court decision that declared the binding of migrant workers to their employers unconstitutional and therefore void. HCJ 4542/02 *Kav La’Oved v. Gov’t of Israel* 61(1) PD 346 (2006) (Isr.). For further information, see Albin, *supra* note 76.

80 The Minimum Wage Act 5747-1987, 1211 LSI 68, as amended (Isr.).

81 Interview with Idit Lebovitch, *supra* note 60.

## B. The United Kingdom

The unionizing experience of domestic workers in the United Kingdom is linked to their immigration rights. In 1984, activists at an organization called the Commission for Filipino Migrant Workers (CFMW) noticed a pattern in the profile of workers who approached them.<sup>82</sup> Many of the domestic workers were undocumented, because they had escaped their employer to whom their visa was tied. The visa status of migrant domestic workers tied them to a particular employer with whom they entered the country. Their residency status was lawful as long as the employer with whom they entered the country employed them, thus providing this employer with a powerful means of control over them. Provisions for overseas domestic workers in the immigration system can be explained by the wish of certain visitors entering the United Kingdom to be accompanied by domestic workers with whom they have developed personalized relationships. In addition, domestic workers themselves may wish to retain their job while their employers are abroad for a short period of time.

When workers approached the CFMW, it became evident that the visa system was leading to the creation of a group of undocumented workers. CFMW members were members of the Transport and General Workers' Union (T&G), a trade union that was a precursor of the trade union Unite.<sup>83</sup> With the help of the CFMW, the "Waling Waling" organization was established to campaign for the right of domestic workers to change employers while maintaining legal status. Waling Waling's members were domestic workers. In 1987, a group of Waling Waling supporters founded the main British NGO working on the rights of migrant domestic workers, Kalayaan. The two groups worked together; members of Waling Waling also served on the management board of Kalayaan.<sup>84</sup> In 1990, they approached T&G, which had strong links with migrant workers, and T&G welcomed 600 migrant domestic workers into its ranks. From then on, T&G, Kalayaan, and Waling Waling worked jointly to help undocumented domestic workers establish citizenship rights in the United Kingdom.<sup>85</sup>

Following joint campaigns of the union, the NGO, and the domestic workers themselves, following the election of the Labour Party in 1998, the rights and legal status of migrant domestic workers were reinstated. Under the regime of 1998, a domestic worker who had been employed by her or his

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82 See Anderson, *supra* note 5.

83 Interview with Diana Holland, *supra* note 35.

84 Anderson, *supra* note 5.

85 Interview with Diana Holland, *supra* note 35.

employer for at least one year abroad could accompany a foreign national who entered the country for a period of six or twelve months. The worker could apply to renew their visa for a year at a time so long as they remained in full time employment as a domestic worker in a private household. After five years of legal residence, and in later years, having passed English language and “Life in the UK” tests, the worker could apply for settlement. Although the domestic worker had entered the country with a specific employer, he or she was no longer tied to this employer. Notably, however, the worker could change employers, but not work sectors. Nor could the worker access public funds or have too long a break in their employment. This meant that becoming pregnant or ill before securing settlement would be likely to jeopardize a worker’s immigration status. The 1998 victory was beneficial to migrant domestic workers for obvious reasons: they gained a welcome right to change employer and stay in the country for longer periods,<sup>86</sup> which safeguarded them from total dependence on the employer with whom they arrived. This led to an improvement in the working conditions of domestic workers.<sup>87</sup>

The 1998 immigration change was also beneficial to the union, as Diana Holland of Unite explained in her interview. Notably, it was a campaign victory for the union, at a time when union membership was dropping. Furthermore, there was an important symbolism in the fact that women and members of ethnic minorities led the relevant union activities, which was quite uncommon. However, the relationship between the organizations changed around 1998, since their joint purpose had been achieved. As Holland explained, “we won the campaign and domestic workers started getting on with their lives,” making this “a difficult time organizationally.”<sup>88</sup>

When Waling Waling stopped operating in the mid-1990s, activists perceived a need to establish a distinct group for domestic workers in the context of the trade union.<sup>89</sup> They were motivated by the concern that domestic workers might lack the confidence and trust to approach the trade union itself, but believed that in order for such an organization to be successful, it had to be a grassroots initiative of the domestic workers themselves. Hence, J4DW was set up in 2009. J4DW is a self-help group of migrant domestic workers, and part of Unite — a trade union that was formed by the merger of T&G and Amicus. At the time of writing, J4DW has approximately a thousand members.

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86 Draft ILO Multilateral Framework on Labour Migration, para. 82, <http://www.ilo.org/public/english/standards/relm/gb/docs/gb295/pdf/tmmflm-1.pdf>; *id.* paras. 60-61.

87 See MUMTAZ LALANI, *KALAYAAN, ENDING THE ABUSE* 15 tbl. 4 (2011).

88 Interview with Diana Holland, *supra* note 35.

89 *Id.*

As Holland suggested, J4DW “is very much of the union and from the union, but it has its own identity as well.” J4DW is not involved in traditional union activities, such as collective bargaining and strike; rather, it offers services, such as union classes to help members independently assert their rights, mediation between members and their employers, shelter for workers in need, assistance in building leadership skills, and campaigning and lobbying for domestic workers’ rights. Moreover, they maintain links with the European trade union movement. Marissa Begonia of J4DW noted in her interview that organizing is very important for domestic workers because the organization is their family. “They truly know what we are; we know about each other’s suffering and we support each other.”<sup>90</sup>

In 2012, the government changed the visa for domestic workers, making it much more restrictive than the pre-2012 system. Under the new regime, when migrant domestic workers arrive lawfully in the country accompanying an employer, their visa ties them to this employer.<sup>91</sup> Their residency status is lawful for as long as the employer with whom they entered employs them, to a maximum of a nonrenewable six-month period. Campaigning groups, parliamentary committees, and scholars describe the 2012 visa as one that leads to “modern slavery.”<sup>92</sup>

This visa change has given new focus and impetus to campaigns and collaborations between civil society organizations. Begonia explained that workers under the new visa who have escaped their employer say they “would love to . . . come to us, to be part of the community. But they are so scared. We cannot guarantee their safety.” In this context, the interviewees from Kalayaan, Unite, and J4DW said that these organizations have been working very closely with each other recently, as well as with other workers’ rights, migrants’ rights, and women’s rights advocates. Support for some of their campaign even comes from organizations more distantly related to these issues, such as the Tate Modern art gallery in London. These collaborations are informal, and our interviewees seem to consider them successful. Unsurprisingly, the focus of the campaigning and services provided has been affected by the visa change.

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90 Skype Interview with Marissa Begonia, Co-ordinator, J4DW (Feb. 22, 2015).

91 See *Immigration Rules 2014*, pt. 5, §§ 159A-159H (U.K.), <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/>.

92 See JOINT COMMITTEE, REPORT OF THE JOINT COMMITTEE ON DRAFT MODERN SLAVERY BILL, SESSION 2013-14, at 100 (2014); KALAYAAN, SLAVERY BY ANOTHER NAME: THE TIED MIGRANT DOMESTIC WORKER VISA (2013), <http://kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>; Mantouvalou, *supra* note 47.

Catherine Kenny of Kalayaan confirmed Begonia's frustration regarding the situation of workers who arrived post-2012, explaining that the organization can offer them very little assistance. Kalayaan can offer some limited support, for example, in cases where domestic workers may be recognized as victims of human trafficking; but the rest of these workers who may have escaped abusive or exploitative employers cannot be helped. Indeed, since the introduction of the visa in 2012, the number of workers approaching Kalayaan has dropped, potentially because these workers are more fearful than those who arrived previously. Anooshah Farakish from Unite also explained to us that undocumented workers are more fearful and less likely to join a trade union. Holland confirmed that domestic workers under the 2012 visa are in a situation of "immense fear." All the union can offer these workers, as she explained, is the opportunity to hold meetings in their premises, which provides a more neutral and safe environment than any private or public space. In contrast, workers who arrived in the country before 2012 receive assistance from Kalayaan in renewing their visa, applying for indefinite leave to remain (after five years in the United Kingdom), and other legal assistance, including in taking compensation claims or employment cases against their former employers.

Yet although newly arrived domestic workers have no rights at work and face immense fears, some are very active. As Holland explained, some undocumented domestic workers found the strength to accompany the union to the Home Office to argue their case. Others spoke about the challenges that they face in public, in the House of Lords. Holland emphasized the importance of finding "the strength and inspiration of those workers who were prepared in the most difficult of circumstances to speak out (this is women; brave women!) . . . . It was a difficulty but also one of the things that made the campaign very, very strong."<sup>93</sup>

Moreover, the supporters of domestic workers have been very active in recent years. NGOs such as Kalayaan and Anti-Slavery, and lawyers' groups, like the Anti-Trafficking and Labour Exploitation Unit, took active part in parliamentary discussions on new legislation on modern slavery. They criticized the 2012 visa that deprives domestic workers of rights and status, and their voice is strong. The campaign also gained significant political support in the U.K. House of Lords and in some media outlets.<sup>94</sup> As Holland noted, "[w]e won the rights in 1998 . . . and we are continuing the fight. Just because [the

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93 Interview with Diana Holland, *supra* note 35.

94 See, e.g., 10 Dec. 2014, Parl. Deb., H.L. (5th ser.) (2008) 1815, <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141210-0001.htm> (the House of Lords' debate on the visa).

Government] changed the system does not mean that we are going away.”<sup>95</sup> The U.K. example, then, also suggests that domestic workers are active agents, and that through different types of organizations that support them, they find a voice even in the most difficult political circumstances.

#### IV. DOMESTIC WORKERS AS ACTIVE AGENTS

What insights can we gain from the different experiences in Israel and the United Kingdom regarding the industrial citizenship of domestic workers? Clearly, domestic workers are active in their working lives, but not in the sense of traditional activity that is considered central in industrial citizenship literature. Domestic workers work hard to support their dependents; they create relationships; they may care for the person for whom they provide their work, and they may engage in political activity, but often not in the way in which it is traditionally conceptualized. Domestic workers can be described as actively engaged in at least three spheres: activities relating to their legal status; activities concerning the way they view their work; and activities regarding the workers’ pursuit of their legal rights at work.

##### A. Activities Relating to Legal Status

In citizenship literature, limited attention is paid to activities relating to the legal status of individuals, as an aspect of active citizenship. This oversight stems largely from the prevailing assumption in the literature that people have legal status and a set of legal rights. The same can be said of union activities. Traditional union activity rests on the assumption that an employment relationship exists and that each worker is entitled to some (even if very minimal) degree of rights.<sup>96</sup>

However, our interviews revealed that for migrants, including domestic workers, the struggle over legal status is substantial, and involves a very active and political voice. This struggle is closely related to their work. They do not demand to engage in a naturalization process, but rather to work legally (even if they wish to change employer), and/or to work for longer periods of time. Domestic workers in Israel are primarily concerned with securing their rights, mainly labor rights, and their working visa. In the United Kingdom as well, it was their legal status (or lack thereof) that led them to organize.

Notably, however, lack of legal status bears critical implications for unionization as well. In the United Kingdom, a qualitative study on how

95 Interview with Diana Holland, *supra* note 35.

96 See Arthurs, *supra* note 13.

domestic workers experience the current visa regime revealed that they fear unionization.<sup>97</sup> The undocumented domestic workers who were interviewed for that study said that they do not even know what a trade union is, and when this was explained to them, they said that they would be too scared to join such an organization. Their concern to be documented and have a decent job to support their dependents in their country of origin does not necessarily lead them to engage in political activity in public. On the contrary, they often fear such public activity. This point, however, relates only to activism within unions; because strikingly, we observed that in order to pursue or enforce their rights, some domestic workers have been highly active in different ways — for example, by approaching NGOs and participating in their activities. The result of such activity is the redistribution of power between workers and employers. This is because it enables migrant domestic workers to work for longer periods of time and also to be seen as entitled to workplace rights and take action to achieve those rights. Such activity should be considered as active industrial citizenship.

## **B. Activities Relating to Work**

Work is central to people's lives and also impacts their identity. The special characteristics of the domestic labor sector, particularly involving live-in workers, suggest that their workplace can be described as a more centrally defining feature of their lives than it is for other workers. For those who have migrated for that purpose, leaving families and homes behind, work is even more central than it is for many other workers. While in some respects migrant workers, including domestic workers, can be said to have weaker ties with their host countries due to their dual citizenship and sense of belonging to their countries of origin, this is certainly not true regarding the sphere of work. In both Israel and the United Kingdom, domestic workers are devoted to their employers and put in many hours of work. They also do not want to disappoint their families that may be in desperate economic need, which is why they are often more devoted and dedicated to their work.

“[A] good citizen is an earner,” as Judith Shklar said in her analysis of American citizenship, “because independence is the indelibly necessary quality of genuine, democratic citizenship,”<sup>98</sup> but furthermore the complete devotion to the workplace and intensive hours provided is something that should be valued as well. Currently, in both Israel and the United Kingdom domestic workers are excluded from working time regulation and thus are

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97 Mantouvalou, *supra* note 47, at 348.

98 JUDITH SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 92-93 (1991).

not necessarily compensated for these long hours of work. However, in Israel, domestic workers and organizations like *Kav La'Oved* have been active to try to change this situation, with not much success.<sup>99</sup> Such activity should therefore be highly valued — the work itself and the activities to further recognition of such work as one of value.

### C. Activities Relating to the Pursuit of Legal Rights

Despite hurdles in accessing legal rights (for instance, difficulties in accessing the court system, filing a suit, and following it to the end), there is evidence that domestic workers are active in pursuit of their legal rights. The 5000 domestic workers coming into *Kav La'Oved* in Israel each and every year, the thousand members of J4DW in the United Kingdom, and the numerous court decisions in both countries in cases filed by domestic workers reflect this activism.<sup>100</sup>

But even workers who do not pursue their legal rights in court should not be viewed as passive. For example, our interviewees in Israel noted that domestic workers may come from more docile cultures and therefore resist confronting their employers or agencies when the latter do not respect their legal rights. The interpretation of reluctance to engage in a “legal battle” as docility, or inactivity, fails to recognize the nature of domestic workers’ jobs — that is, their ethics of care for the care receivers. Some domestic workers may resolve conflicts in less traditional ways, such as negotiating with their employers using the organizations’ representatives as middlemen. Their ethics of care does not contradict activism, and should not be viewed as passive.

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99 See HCJ 10007/09 *Yulanda Glutan v. Nat'l Labor Court* (Mar. 18, 2013), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

100 For case law from the United Kingdom, see, for example, *Nambalat v. Taher & Anor*; *Udin v. Pasha*, [2012] EWCA (civ) 1249 (U.K.) (on working time); and *Onu v. Akwivu: Taiwo v. Olaigbe & Anor*, [2014] EWCA (civ) 279 (U.K.) (on the prohibition of discrimination). One of the most important U.K. Supreme Court employment law decisions was also brought by a migrant domestic worker. See *Hounga v. Allen*, [2014] UKSC 47. In Israel there were numerous cases, just to mention a few: HCJ 10007/09 *Yulanda Glutan*; Case No. 1113/02 Nat'l Labor Court, *Tudurnigad v. Ma'ayan* 39 PDL 409; Case No. 3549-06 Dist. Labor Court (Hi), *Mulnar Atalka v. The Estate of Zlotziber Penny* (Aug. 11, 2009), Nevo Legal Database (by subscription, in Hebrew) (Isr.); Case No. 3346-09 Dist. Labor Court (TA) *Kutchin Lukaria v. Frida Diamant* (Dec. 25, 2011), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

## **V. A NEW CONCEPTION OF ACTIVE INDUSTRIAL CITIZENSHIP**

On the basis of the discussion above, we believe that domestic workers should be viewed as active industrial citizens. We build this argument in two stages. First, we propose a reconceptualization of the notion “industrial citizenship” based on the feminist and migration scholars’ critiques of active citizenship, and offer several justifications for adopting this broader notion. Second, we argue that should such a broader conception be accepted, it may lead to the inclusion of domestic workers within the notion of industrial citizenship. This conceptual shift will promote the recognition of domestic workers as active citizens, emphasizing their status as active agents rather than passive victims of abuse; and of their contribution through their work (which is typically undervalued, and should be valued much more). It will also recognize the equal importance of the organizations in which they associate in promoting mobilization, political participation, workers’ rights and eventually redistribution of power.

### **A. A Broader Conception of Active Industrial Citizenship**

Based on the gender and migratory critiques, we believe that a broader conception of industrial citizenship should be adopted. This new conception challenges the traditional understanding of the public/private divide by recognizing activities conducted in the sphere of the home, or in pursuit of a legal status, as public and political. Hence, our posited notion accepts ethics of care as not contradicting activism, but on the contrary, as a political choice and action. A less confrontational approach to conflict resolution in itself comprises a political choice and should be recognized as such. The total devotion to the care receivers and the decision to leave families behind and support them is also a political choice. Both are also mobilizing, empowering, and at times lead to a redistribution of power from the employer to the worker. This new notion also broadens the scope of activity beyond the traditional scope of nationality, to include activities that are related to work but that are more relevant to noncitizens. Activities relating to working visas and to the sending of remittances abroad in order to support dependents should be seen as political, work-related initiatives. Additionally, taking action in courts in a foreign country, where language and legal orders are unfamiliar, also comprise highly active and strong forms of political engagement. All these activities which are currently seen as “passive” should be valued as active industrial citizenship.

The justification for broadening the conceptualization of industrial citizenship in a manner that is sensitive to gender and migration, as proposed above,

is twofold. First, it fits the aim of labor law to include within its scope all workers regardless of citizenship status or gender. While national citizenship intends to create a distinction between the citizen and the alien, industrial citizenship should not. Thus, the latter notion should lead to a more universal understanding and acceptance of workers' activities regardless of national citizenship. Industrial citizenship will in this way be an inclusionary device, rather than a device of exclusion, which as we explained earlier is a common concern expressed in citizenship literature. Indeed, industrial citizenship may create another form of distinction between those within the scope of labor law and those situated outside it. Notably, this distinction as well has been criticized and should be rethought in light of the discussion held here; however, such a discussion lies beyond the scope of this Article.

Second, critically, in the sphere of work, the notion of active citizenship should not necessarily be related to what is commonly known as "public space activity." Work is increasingly being performed in more private spaces, and various different methods have emerged to deal with labor disputes that may be less confrontational, but no less active. In many situations, particularly in small workplaces (i.e., the household), traditional industrial citizenship activities, including union action like collective bargaining and strike, may not necessarily be the most suitable way to address workplace disputes.

## **B. Domestic Workers as Active Industrial Citizens**

According to this fresh understanding of active industrial citizenship, domestic workers are most certainly active industrial citizens, engaged in public activities. The analysis of domestic work as work and of domestic workers' activities as valuable manifestations of active citizenship challenges the traditional public/private division. The example of domestic workers' active citizenship (as workers and as political agents more generally) emphasizes the view that activities in private space, by those who are confined therein, can be political. Activities that are performed in migration communities, in the workplace, in relation to their legal status and other activities related to their work, should all be recognized as expressions of active industrial citizenship, especially when they are aimed at redistribution of power between worker and employer.

The view of domestic workers as active industrial citizens emphasizes their behavior as that of active agents, rather than passive victims of abuse. Moreover, it stresses that their typically undervalued contribution through their work should be valued more by society. Society should be more cognizant and appreciative of the sacrifices they make to come and work in the host country and the challenges they face in order to pursue their rights. Additionally, their contribution in care work, as well as the way they resolve disputes, should be

prized. Lastly, the recognition of domestic workers as active industrial citizens emphasizes the role of organizations that are not trade unions in promoting mobilization, political participation, and workers' rights.

Even though trade unions can play an important role in supporting domestic workers, our analysis proposes that other forms of active industrial citizenship should not be underestimated. For domestic workers, participation in NGO activities and other community organizations might be more suitable than union activities, and should be viewed as no less active. Currently, these other forms of active citizenship are less valued because the relevant activities lie at the periphery of what is perceived to be important for an active worker. The battle for rights and the services given to pursue rights regarding work visas or rights at work are often considered private pursuit of individual rights, the importance of which is more marginal. Our analysis, however, reveals that in fact, the struggle for rights is often not only highly active, but also not necessarily individualistic. It can be a group activity, and in reality it often is.

NGOs in particular are very active in promoting rights at work for domestic workers. Not only are the workers and their supporters active, but they also cooperate with each other, creating a strong civil society movement. Indeed, the vast numbers of domestic workers struggling for their rights in the Israeli labor courts, and coming to *Kav La 'Oved* for aid, jointly create an organized, group-based activity. Similarly, domestic workers in the United Kingdom take cases to the employment tribunals and courts on an individual basis. However, this seemingly individual action is actually organized, as information on rights passes from one domestic worker to another and through several civil society actors intervening in these cases. Thus, even litigation of individual cases often comprises a collective, strategic effort supported by active participation of civil society groups. Citizenship through the exercise of legal rights is, therefore, not necessarily passive. It can be seen as an organized, active form of citizenship that empowers workers.

## CONCLUSION

In this Article we offer a gender and migration-sensitive reconceptualization of the notion "industrial citizenship." The proposed concept of active industrial citizenship is grounded on theoretical work conducted in political theory and political science, as well as on our findings from interviews conducted in Israel and the United Kingdom. On the basis of these interviews, we suggest that domestic workers are highly active. The active citizenship of domestic workers may not always take on the more traditional, socially valued form of active citizenship — unionization — but it is no less political.

The current theoretical view of industrial citizenship via the active-passive division strengthens existing notions of unionization as an aspiration bearing more value than other forms of organization. However, this conceptualization favors and values one type of activity — namely political, democratic struggles within unions — over other forms of activity. Thus, this notion disadvantages groups who find such activities challenging or less appealing and act in different ways.

The significance of our conceptualization of industrial citizenship insofar as domestic workers are concerned is that it alters the way we see domestic workers and the way we view forms of organizations other than unions. As Idit Lebovitz said, domestic workers should not be seen as vulnerable, passive or disadvantaged.<sup>101</sup> They are very powerful, taking risks in their lives and in their work, while engaging in nontraditional (for a labor context) forms of activism. This suggests that domestic workers should not be viewed as passive victims of abuse, but as active agents who make political choices, engage in struggles concerning their work, and take part in the political realm more broadly. It also highlights more generally that active participation in society and the workplace can take different forms for different workers, and that it is not only trade unions that foster industrial citizenship: NGOs and other civil society organizations also play a very significant role in active participation on an equal basis.

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101 Interview with Idit Lebovitz, *supra* note 60.