

to governmental policies, especially their visas, or to workshops that they had arranged. Lebovitch⁷⁸ 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.”⁷⁹ 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,⁸⁰ 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.⁸¹ 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.

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.⁸² 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.⁸³ 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.⁸⁴ 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.⁸⁵

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

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,⁸⁶ 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.⁸⁷

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.”⁸⁸

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.⁸⁹ 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.

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.”⁹⁰

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.⁹¹ 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.”⁹²

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.

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."⁹³

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.⁹⁴ As Holland noted, "[w]e won the rights in 1998 . . . and we are continuing the fight. Just because [the

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.”⁹⁵ 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.⁹⁶

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.⁹⁷ 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,”⁹⁸ 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

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.⁹⁹ 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.¹⁰⁰

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.

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.¹⁰¹ 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.

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