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Labor Citizenship for the Twenty-First Century

Michael Sullivan*

ABSTRACT

Today, immigrant individuals toiling with their citizen colleagues in insecure employment that Guy Standing describes as the post-industrial precariat make up the vanguard of the struggle to protect labor rights.¹ Government officials have honored care workers as essential service employees in the COVID-19 pandemic even as they continue to lack many basic labor protections.² Immigrant care workers on the frontlines in the service and health care sectors face occupational illness and death with minimal safeguards provided by employers.³ This paper argues that labor movement activists of the immigrant community are motivated beyond their own self-interest. These workers are motivated by the well-being of the mixed-citizenship communities where they have laid down roots.⁴ Their exemplary citizenship is exhibited by their willingness to assume the risks that come with labor organizing, including wage losses, termination of

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¹ See GUY STANDING, *THE PRECARIAT: THE NEW DANGEROUS CLASS* 11 (2016).

² Molly Kinder, *Essential but Undervalued: Millions of Health Care Workers Aren't Getting the Pay or Respect They Deserve in the COVID-19 Pandemic*, BROOKINGS (May 28, 2020), <https://www.brookings.edu/research/essential-but-undervalued-millions-of-health-care-workers-arent-getting-the-pay-or-respect-they-deserve-in-the-covid-19-pandemic/> [<https://perma.cc/P2LF-MGZL>].

³ See PETER BALDWIN, *FIGHTING THE FIRST WAVE* 283 (2021).

⁴ See MICHAEL SULLIVAN, *EARNED CITIZENSHIP* 40–41 (2019).

employment, and threats of deportation, for the benefit of a mixed-citizenship status community of workers.⁵ In the process, they are overcoming the racial, gender, occupational, and national origins exclusions of traditional “business unions,” which only recently included immigrants and care workers in their ranks.⁶

INTRODUCTION

Grassroots labor organizing efforts should be recognized as a form of participatory community citizenship, which demonstrates a willingness to work with diverse members to achieve shared goals. These shared goals are actions directed towards fulfilling obligations of national citizenship. Beyond the primary normative argument about the connection between labor activism and citizenship, further public policy applications in the immigration debate can be envisioned. With their clear investment and strong ties to the community, undocumented workers should be able to pursue a pathway to citizenship based on their labor activism. Worker solidarity, expressed by giving up individual short-term earning opportunities by refusing to cross picket lines or work for substandard wages to advance long-term collective gains for all workers, should be recognized and rewarded as preparation for citizenship. A labor organizing-based pathway to becoming documented U.S. residents, with eligibility for naturalization, could also dispel concerns that legalization will undermine labor organizing efforts.⁷

To understand where the efforts of today’s generation of labor activists fit in the broader political theory of citizenship, industrial participatory citizenship must be explored. First, earlier theorists including T.H.

⁵ *Id.*

⁶ Ruth Milkman, *Immigrant Workers and the Labor Movement in the USA*, in Carl-Ulrik Schierup, *MIGRATION, PRECARIETY AND GLOBAL GOVERNANCE* 160, 161, 164 (Ronaldo Munck, Branka Likić-Brborić & Anders Neergaard eds., 2015).

⁷ See FRAN QUIGLEY, *IF WE CAN WIN HERE: THE NEW FRONT LINES OF THE LABOR MOVEMENT* 39 (2015).

Marshall, Harry Arthurs, Robert Dahl, and Judith Shklar will be discussed.⁸ Second, the shortcomings of “industrial citizenship” in terms of the subordination of racial minorities and women within business unions that eschewed organizing drives in favor of a conservative posture that favored conciliation with management will be explored. Unions that reached out to previously underrepresented segments of workers, including immigrants and care workers, were one of the few areas of growth during the overall decline in the power of organized labor in the private sector in the late twentieth century.⁹ Third, the most relevant features of industrial citizenship will be discussed, focusing on how previously marginalized groups, including immigrants, minorities, and unpaid care workers are acting as exemplary citizens in social movements fighting for improved conditions for all workers.¹⁰ Their exemplary citizenship comes from their willingness to assume the risks that come with labor organizing. These risks include wage losses, termination of employment, and threats of deportation—for the benefit of a mixed-citizenship status community of workers.¹¹

I. INDUSTRIAL CITIZENSHIP IN THE LATE TWENTIETH CENTURY

In its heyday, from the 1950s to the early 1980s in Canada, the United States, Western Europe, Australia, and New Zealand, industrial citizenship stood for state and union protections from arbitrary dismissal, job security based on seniority, health and safety regulations, workplace compensation,

⁸ See T.H. MARSHALL, CLASS, CITIZENSHIP, AND SOCIAL DEVELOPMENT (1964); Harry Arthurs, *Developing Industrial Citizenship: A Challenge for Canada's Second Century*, 45 CANADIAN BAR REV. 786 (1967); ROBERT DAHL, A PREFACE TO ECONOMIC DEMOCRACY 95 (1985); JUDITH SHKLAR, AMERICAN CITIZENSHIP 99, 100 (1991).

⁹ See Milkman, *supra* note 6, at 167, 169.

¹⁰ See SULLIVAN, *supra* note 4, at 40–41.

¹¹ *Id.*

minimum wages, and the right to collective bargaining.¹² Some of these social rights were guaranteed by states, building a further bridge between citizenship and the working class.¹³ But for the most part, the rights of industrial citizenship were institutionalized by trade unions, which bargained for higher wages and benefits than the minimum standards required by law.¹⁴

Political sociologist T.H. Marshall reflected on a series of settlements between large corporations and unions following World War II, which offered workers greater security in wages and working conditions.¹⁵ Marshall argued that union membership had become a form of industrial citizenship for employees “parallel with, and supplementary to the system of political citizenship.”¹⁶ Overall, Marshall emphasized that political equality was insufficient, and the rights of citizenship ought to move beyond civil and political rights to encompass social rights.¹⁷ Even so, both Marshall and political theorist Judith Shklar regarded the right to work as a mere civil right to enter into a contract.¹⁸ This is a position consistent with earlier American ideals that civic standing is premised on being an “‘earner,’ a free remunerated worker . . . who is rewarded for the work he has done, neither more nor less.”¹⁹ Shklar’s vision of “economic independence” is compatible with earlier republican theories of virtue to the extent that labor organizers fought for ordinary workers to become

¹² See KATHERINE STONE & HARRY ARTHURS, *RETHINKING WORKPLACE REGULATION: BEYOND THE STANDARD CONTRACT OF EMPLOYMENT 2* (2013); GUY STANDING, *WORK AFTER GLOBALIZATION 37* (2009).

¹³ See Judy Fudge, *After Industrial Citizenship: Market Citizenship or Citizenship at Work?*, 60 *INDUS. REL.* 631, 632 (2005).

¹⁴ See J.M. BARBALET, *CITIZENSHIP 26* (1988).

¹⁵ Bryan Turner, *T.H. Marshall, Social Rights, and English National Identity*, 13 *CITIZENSHIP STUD.* 65, 66–68 (2009).

¹⁶ See MARSHALL, *supra* note 8, at 94; Thomas Janoski, *Observations on the Sociology of Citizenship: Obligations and Rights*, 59 *SOC. FORCES 7* (1980).

¹⁷ See MARSHALL, *supra* note 8, at 94.

¹⁸ *Id.*; See SHKLAR, *supra* note 8, at 99–100.

¹⁹ See SHKLAR, *supra* note 8, at 64.

informed and active citizens in their unions, the workplace, and the broader community.²⁰

Marshall's vision was not so progressive as to enumerate labor rights as social rights, or obligations that ought to be safeguarded by the state rather than left to collective bargaining amidst shifting economic conditions and balances of power where management now has the upper hand over workers without union representation.²¹ Beyond rights, Marshall was also interested in recalling workers to what he viewed as their social duties, using the British worker's role in wartime as a normative starting point. Workers had a responsibility to meet production quotas, and in turn, employers and the state had a responsibility to ensure that workers could not just survive with adequate wages and working standards. Workers could also develop their personal and professional capacities with free time, training, and income to spend beyond the mere necessities.²²

Canadian socio-legal scholar Harry Arthurs envisioned a broader, timeless normative vision for industrial citizenship extending beyond Marshall's narrow, time-bound description of industrial workers' mid-century status and rights.²³ He sought to develop a more enduring normative standard of labor protection outside the state that would transcend union membership.²⁴ Arthurs argued that labor relations laws had outgrown their original role as arbiters between employees, their union representatives, and employers.²⁵ By 1967, "the worker, shipper, insured, investor, farmer or consumer" all gain "certain advantages . . . because of his status as a member of 'an industrial community' that constituted a state

²⁰ See ALEX GOUREVITCH, *FROM SLAVERY TO THE COOPERATIVE COMMONWEALTH: LABOR AND REPUBLICAN LIBERTY IN THE NINETEENTH CENTURY* 145 (2014).

²¹ See ANTHONY GIDDENS, *PROFILES AND CRITIQUES IN SOCIAL THEORY* 172 (1982); BARBALET, *supra* note 14, at 22–23.

²² See Tim Strangleman, *Rethinking Industrial Citizenship: The Role and Meaning of Work in an Age of Austerity*, 66 *BRIT. J. SOC.* 673, 677 (2015).

²³ See Arthurs, *supra* note 8, at 813–15.

²⁴ *Id.*

²⁵ See *id.* at 787.

within a state, all under the jurisdiction of labor law.”²⁶ The central members and rights-holders of this “state within a state” were still industrial employees with union representation.²⁷ Arthurs’ aspirational vision of industrial citizenship was synonymous with economic dependence rather than trade union membership.²⁸ This status and its accompanying rights would include “any person who is obliged to sell his services in a market in which he is dependent on a single purchaser” from employees “to many other economically vulnerable groups – self-employed truck owners and taxi-cab operators, fishermen and service-station lessees.”²⁹ All contractors could rely on labor arbitration boards for redress against an adverse change in working conditions for the employee.³⁰

A. The Height of Industrial Citizenship: Public-Sector and Military Unions

In retrospect, Harry Arthurs was writing about industrial citizenship during a peak in union membership and political influence in Canada and the United States, at a time when private sector “business union” leaders faced growing discontent within their ranks.³¹ Minority workers in the United States in particular demanded that labor unions address inequality, inadequate representation, and segregation within their own ranks with limited success.³² Within unions, which constituted a key institutional location for industrial citizenship and the source of many of its rights and

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.* at 790.

²⁹ *See id.*

³⁰ *See id.*

³¹ LANE WINDHAM, KNOCKING ON LABOR’S DOOR: UNION ORGANIZING IN THE 1970S AND THE ROOTS OF A NEW ECONOMIC DIVIDE 46–47 (2017); Rosemary Feurer, *The Strange Career of A. A. Ahner: Reconsidering Blackjacks and Briefcases*, in AGAINST LABOR: HOW U.S. EMPLOYERS ORGANIZED TO DEFEAT LABOR ACTIVISM 159, 162 (Rosemary Feurer ed., 2017).

³² *See* PHILIP FONER, ORGANIZED LABOR AND THE BLACK WORKER: 1619–1981, at 410–21 (1982); ELIZABETH FAUE, RETHINKING THE AMERICAN LABOR MOVEMENT 150–52 (2017).

duties, exclusion prevailed during their mid-twentieth century peak. Opposition to non-white immigrant labor, as a source of competition and as an “other” against which workers could forge bonds of solidarity, was evident as early as the turn of the twentieth century in the anti-Asian and anti-immigrant rhetoric of Samuel Gompers’ American Federation of Labor.³³ In the 1930s and 1940s, communist-affiliated unions organized African-Americans and spoke out against segregationist policies, only to be suppressed by mainstream business unions and law enforcement during the Red Scare that followed World War II.³⁴

At the height of the Cold War, when Marshall and Arthurs theorized the concept of industrial citizenship as the center of participatory citizenship in the U.K. and Canada, unions in the United States were reluctant to challenge racial segregation in the workplace.³⁵ Few unions promoted women or racial minority workers to positions of union leadership.³⁶ Union leaders like George Meany of the American Federation of Labor, Congress of Industrial Organizations (AFL-CIO) clung to a conservative posture on civil rights when confronted by social movements within their unions demanding internal desegregation and support for broader social and political equality.³⁷ In 1961, Herbert Hill, the Labor Secretary of the National Association for the Advancement of Colored People (NAACP), took the AFL-CIO under George Meany’s leadership to task for tolerating the exclusion or segregation of Black workers in southern union locals,

³³ See STANLEY ARONOWITZ, *FALSE PROMISES: THE SHAPING OF AMERICAN WORKING CLASS CONSCIOUSNESS* 141–42 (1992).

³⁴ See PAUL FRYMER, *BLACK AND BLUE* 62–63 (2008).

³⁵ *Id.* at 47–51; See WINDHAM, *supra* note 31, at 46–47.

³⁶ See Herbert Hill, *Racism Within Organized Labor: A Report of Five Years of the AFL-CIO: 1955-1960*, 30 *J. NEGRO EDUC.* 109 (1961); Fudge, *supra* note 13, at 640; STANDING, *supra* note 12; FRYMER, *supra* note 34, at 68–69.

³⁷ See DAVID LEWIS-COLEMAN, *RACE AGAINST LIBERALISM* 24, 74–76 (2008); Cynthia Estlund, *Reflections on the Declining Prestige of American Labor Law Scholarship*, 23 *COMPAR. LAB. L. & POL’Y J.* 789, 793–94.

belying the AFL-CIO's half-hearted commitment to racial equality.³⁸ Whereas pre-World War II union organizing efforts within the CIO were often premised on racial unity as a means of overcoming divide and conquer tactics by employers, Cold War-era AFL-CIO organizers often viewed racial justice as a distraction from class solidarity and the pursuit of purely economic objectives.³⁹

U.S. public sector unions fared better than private sector unions in the 1960s and 1970s, in terms of both membership growth and inclusiveness.⁴⁰ Public sector union membership grew from 10.8% union density in 1960 to 40.2% union density in 1976.⁴¹ Public sector unions like the American Federation of State, County and Municipal Employees were also at the heart of the civil rights struggle, highlighted by AFSCME's role during the Memphis Sanitation Strike of 1968.⁴² By the 1970s, previously quiescent public sector unions like the American Federation of Government Employees (AFGE) became more militant, going so far as to attempt to organize military personnel.⁴³ Delegates to the AFGE National Convention in September 1976 voted to amend the federation's constitution, rendering military personnel eligible for union membership.⁴⁴ Black enlisted personnel were more likely to support unionization than their white

³⁸ See Hill, *supra* note 36, at 110.

³⁹ See LIZABETH COHEN, MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO 337 (1990); LEWIS-COLEMAN, *supra* note 37, at 24.

⁴⁰ See JENNIFER MITTELSTADT, THE RISE OF THE MILITARY WELFARE STATE 56 (2015).

⁴¹ See Michael Goldfield, *Public Sector Union Growth and Public Policy*, 18 POL'Y STUD. J. 404 (1989).

⁴² See FONER, *supra* note 32, at 381–84; FRANCIS RYAN, AFSCME'S PHILADELPHIA STORY 181 (2011).

⁴³ See DAVID CORTRIGHT & MAX WATTS, LEFT FACE: SOLDIER UNIONS AND RESISTANCE MOVEMENTS IN MODERN ARMIES 47–48 (1991).

⁴⁴ See William Taylor, *Issues in Military Unionization*, in BLUE COLLAR SOLDIERS? 13 (1977).

counterparts, owing to ongoing racial discrimination within the military and the belief that unions would address their grievances.⁴⁵

The failure of military labor organizing can be traced both to the conservatism of labor leaders like the AFL-CIO's George Meany and the Teamsters Frank E. Fitzsimmons.⁴⁶ These leaders opposed military unions, arguing that the need for military discipline in combat was incompatible with civilian labor grievance arbitration processes.⁴⁷ With the help of congressional allies like Strom Thurmond (R-SC), military leaders successfully quelled military unionism in 1977 and proscribed future efforts to unionize military personnel in 1978.⁴⁸ To undermine support for military unions, military leaders increased benefits providing for military personnel's social welfare needs in exchange for their faithful service.⁴⁹ Still, the AFGE's unprecedented attempt to organize an occupation defined by deference to authority attests to the strength and scope of public sector organizing efforts during the 1970s, and to the union's belief that the rights and duties of industrial citizenship should be extended across all occupations.⁵⁰

B. Neoliberal Retrenchment in the Late Twentieth Century: From Industrial to Consumer Citizenship

By the 1980s, neoliberal governments in Canada, the United States, and the United Kingdom challenged the power of public sector trade unions, while multinational corporations threatened private sector unions with outsourcing to secure contract concessions.⁵¹ The role of union membership that formed the bedrock of industrial citizenship for its core status holders

⁴⁵ See CORTRIGHT & WATTS, *supra* note 43.

⁴⁶ See MITTELSTADT, *supra* note 40, at 62.

⁴⁷ See *id.*

⁴⁸ See *id.* at 70–71.

⁴⁹ See EZRA KRENDEL, UNIONIZING THE ARMED FORCES 164–66 (1977).

⁵⁰ See MITTELSTADT, *supra* note 40, at 56–59.

⁵¹ See Bryan Turner, *We Are All Denizens Now: On the Erosion of Citizenship*, 20 CITIZENSHIP STUD. 680, 685 (2016).

in Marshall's limited understanding of the concept was under attack. Still, the concept of industrial citizenship continued to gain adherents as a normative vision for resisting these changes and protecting workers' rights. In 1988, Australian political sociologist Jack M. Barbalet followed Arthurs' normative vision for an expanded constituency for industrial citizenship limiting the commodification of employed persons. He contended that potential membership in industrial citizenship was not exclusionary, but universal, available to anyone whose material situation required them to draw upon such protections.⁵²

Robert Dahl provided an alternative but related conception of economic democracy. His alternative did not depend upon unions as guarantors of social rights, vesting control over wages, benefits, and hiring on "the people who work in the firm" who "might be called citizens of the enterprise."⁵³ On this account, self-governing enterprises would do more than just guarantee economic benefits to workers, they would also inculcate the duties of firm citizenship by giving workers a stake in the firm's welfare.⁵⁴ Although this vision of industrial citizenship is not limited to unionized workers, it is limited to those privileged to be employees of a self-governing enterprise.⁵⁵ Judith Shklar expanded this normative vision to those not currently employed and defined economic citizenship as a social commitment to provide opportunities for work at a living wage for everyone.⁵⁶

⁵² See BARBALET, *supra* note 14, at 28.

⁵³ See DAHL, *supra* note 8, at 92.

⁵⁴ *See id.* at 100.

⁵⁵ *See id.* at 114–16.

⁵⁶ See SHKLAR, *supra* note 8, at 99.

II. OVERCOMING THE EXCLUSIONARY DIMENSIONS OF INDUSTRIAL CITIZENSHIP

For all of its benefits for employees of large unionized firms, and despite efforts to expand “industrial rights” to non-union members, the mid-century vision of “industrial citizenship” was exclusionary in practice, which was limited to a select cadre of employees of large organizations represented by union federations.⁵⁷ The underlying concept of industrial citizenship set out by its leading twentieth century theorist T. H. Marshall assumed that women would gain their social entitlements through a male relative’s participation in the workforce, union membership, and access to government social welfare benefits and protective labor legislation.⁵⁸ Still, an element of Marshall’s vision of social and industrial citizenship transcends the exclusions of his time—the notion that there must be a contract enforced by the state to ensure that all persons have the right to work for a living wage that accords them with the means of survival, respect, and social standing.⁵⁹ In turn, workers have the reciprocal duty to support the state with their taxes and a cooperative enterprise with their labor.⁶⁰ Even when evaluated from the standard of the gender norms of Marshall’s mid-twentieth century British perspective, industrial citizenship failed to cover the significant social labor performed primarily by women to support paid workers, union members, and taxpayers.⁶¹ A model of industrial citizenship that does not fully recognize the contributions of women as both paid workers and unpaid caregivers is not normatively defensible. The remaining problem, for those who do not work outside the home, lies in recognizing the social value of unpaid care work as a benefit for care receivers, an investment in the training of young citizens, and as

⁵⁷ See STONE & ARTHURS, *supra* note 12, at 3.

⁵⁸ See Di Zetlin & Gillian Whitehouse, *Gendering Industrial Citizenship*, 41 BRIT. J. INT’L REL. 773, 774 (2003).

⁵⁹ See Strangleman, *supra* note 22, at 676.

⁶⁰ See *id.* at 776.

⁶¹ See *id.*; Fudge, *supra* note 13, at 636.

covering a cost that other workers or social welfare providers would otherwise have to bear.

A. From the Margins to the Center: Immigrant Workers in U.S. Unions

On the issue of immigrant rights, large union federations like the American Federation of Labor and Congress of Industrial Organizations advocated for restrictions on the entry and employment of non-citizen agricultural and industrial workers until the mid-1990s.⁶² Since then, labor unions and other forms of labor organizations have become more inclusive of immigrant workers who once fell outside the protection of union federations.⁶³ This development has the potential to serve a new constituency of workers without access to the rights and status of formal state citizenship, including unauthorized immigrant workers.⁶⁴ Since the 1990s, unionization campaigns in Los Angeles and Houston like Justice for Janitors, to represent service workers who cannot be readily outsourced by firms, have been so successful that the once protectionist AFL-CIO set aside its opposition to unauthorized immigrants in a February 2000 policy statement.⁶⁵ Community labor organizers are leading the movement to organize immigrants in geographical areas of low union density.⁶⁶ Coalitions between labor and entrenched immigrant rights movements are key to the success of these efforts. Victories for immigrant rights movements in cities with relatively strong labor movements and a dense

⁶² See Rebecca Hamlin, *Immigrants at Work: Labor Unions and Noncitizen Members*, in CIVIC HOPES AND POLITICAL REALITIES 300, 305–10 (S. Karthick Ramakrishnan & Irene Bloemraad eds., 2008).

⁶³ See Hamlin, *supra* note 62, at 310.

⁶⁴ *Id.*

⁶⁵ See TIMOTHY MINCHIN, LABOR UNDER FIRE 250 (2017); Michael Sullivan, *Labouring for Citizenship*, 22 LEFT HISTORY 111, 126 (2018).

⁶⁶ See Lee Adler & Daniel Cornfield, *The United States: Tackling Inequality in Precarious Times*, in MOBILIZING AGAINST INEQUALITY: UNIONS, IMMIGRANT WORKERS, AND THE CRISIS OF CAPITALISM 35, 38 (Lee Adler, Maite Tapia & Lowell Turner eds., 2014).

network of immigrant rights organizations, like San Francisco, have not been replicated to the same extent in other major immigrant receiving centers like Houston without these favorable conditions for organization.⁶⁷ State policies that undermine city-level immigrant-rights initiatives, like Texas's anti-sanctuary city law SB4, have undermined the gains that immigrant workers have made in Houston, forcing the city's undocumented workers to curtail their participation in the economy.⁶⁸ Immigrant laborers have made considerable strides towards full acceptance as equal members of labor unions when they have been able to participate in high-profile labor actions alongside citizen workers.⁶⁹ Where union organizing and density is lower, as in Houston, undocumented workers have not benefitted from the protection and participatory citizenship that comes through labor activism.⁷⁰

Throughout the U.S., citizen and non-citizen employees share in the struggle for a living wage and job security in what has become a "gig economy" for service and care providers.⁷¹ Unions that represent mixed-citizenship status employees in these precarious lines of work have become

⁶⁷ See Els de Graauw & Shannon Gleeson, *Immigrant Labor Rights Advocacy in San Francisco and Houston*, in *THE CITY IS THE FACTORY: NEW SOLIDARITIES AND SPATIAL STRATEGIES IN AN URBAN AGE* 80, 81, 85, 89 (M. Greenberg & P. Lewis eds., 2017).

⁶⁸ Ileana Najarro & Monica Rhor, *Deeper Underground*, *HOUS. CHRON.* (Oct. 20, 2017), <https://www.houstonchronicle.com/deeperunderground/2/> [<https://perma.cc/Q3UF-MLEY>]; Andrea Zelinski, *Attorney General Paxton Sues San Antonio over Sanctuary Cities Law*, *HOUS. CHRON.* (Nov. 30, 2018), <https://www.houstonchronicle.com/news/politics/texas/article/Texas-Attorney-General-Paxton-sues-San-Antonio-13435657.php> [<https://perma.cc/G46G-R5G2>].

⁶⁹ Els de Graauw & Shannon Gleeson, *Labor Unions and Undocumented Immigrants: Local Perspectives on Transversal Solidarity During DACA and DAPA*, *CRITICAL SOCIO.* (Dec. 30, 2020), <https://journals.sagepub.com/doi/abs/10.1177/0896920520980123> [<https://perma.cc/9TMU-UYEN>].

⁷⁰ *Id.*

⁷¹ See SHANNON GLEESON, *PRECARIOUS CLAIMS: THE PROMISE AND FAILURE OF WORKPLACE PROTECTIONS IN THE UNITED STATES* 2, 7, 23 (2016); MINCHIN, *supra* note 65, at 270–71.; Kathleen Thelen, *The American Precariat: U.S. Capitalism in Comparative Perspective*, 17 *PERSPECTIVE ON POL.* 5, 6 (2019).

key players in the immigrant rights movement.⁷² For workers without legal resident status and citizenship, who can become members of unions or organize in alternative labor representation mechanisms, industrial citizenship is a particularly effective means of protecting their social rights.⁷³

B. The Marginalization of U.S. Organized Labor and Transformation of Industrial Citizenship

The prospects of an industrial citizenship vested in a compact between unions and corporations have dimmed, as union membership has declined, and firms outsource work to other countries with lower wages and fewer labor protection standards. The toll for the wages and employment rates of blue-collar men who benefitted most from the compact between industry and unions⁷⁴ from the late 1940s to the 1970s—across racial and ethnic lines—was particularly grave.⁷⁵ In the United States, it is estimated that the average wages for non-union men without a college degree would have been 8% higher by 2016 if unions were as prevalent as they were in the late 1970s.⁷⁶

In the United States, service workers who cannot be readily outsourced are increasingly employed on temporary, contingent contracts or as independent contractors in a “gig economy” that replaced the convention of a standard employment contract that provided labor market security for

⁷² See GLEESON, *supra* note 71, at 270–71.

⁷³ *Id.*

⁷⁴ The blueprint for welfare capitalism in the United States—provided for by patterned bargaining agreements—came with the provisions of the “Treaty of Detroit” in 1950 between the UAW and General Motors after four rounds of strikes and negotiations in the late 1940s. See Gerald Davis, *THE VANISHING AMERICAN CORPORATION: NAVIGATING THE HAZARDS OF THE NEW ECONOMY* 41–43 (2016).

⁷⁵ See Robert Self, *Breadwinner Liberalism and Its Discontents in the American Welfare State*, in *DEMOCRACY AND THE WELFARE STATE: THE TWO WESTS IN THE AGE OF AUSTERITY* 273 (Alice Kessler-Harris & Marizio Vaudagna eds., 2017).

⁷⁶ See JAKE ROSENFELD, PATRICK DENICE & JENNIFER LAIRD, *UNION DECLINE LOWERS WAGES OF NON-UNION WORKERS* 2, 19 (2016).

employees in larger firms in the late twentieth century.⁷⁷ More recent critics of Marshall's concept of industrial citizenship note that the trade union rights of the time were a product of the institutional strength of a few unions that excluded most workers.⁷⁸ Guy Mundlak, an Israeli scholar of labor law and industrial relations at Tel Aviv University, still sees industrial citizenship as an answer to the "question of sorting political status and economic inequality." This view remains relevant when looking beyond its mid-century institutional structure towards other forms of workplace democracy vested in alternative labor market institutions. These can range from works councils in Europe to day labor centers for unauthorized immigrants in the United States.⁷⁹

III. INDUSTRIAL CITIZENSHIP FOR PRECARIOUS TWENTY-FIRST CENTURY WORKERS

The fact remains that many citizen and non-citizen workers alike have sunk into precarious conditions.⁸⁰ They are far less likely to benefit from the labor protections taken for granted by their twentieth century predecessors under the standard employment contract that Marshall and Arthurs described as the hallmark of industrial citizenship, with social rights guaranteed by law and by corporations held accountable by unions to their long-term workers.⁸¹ Union density fell to a new low in 2018 in the United States, with the share of employed workers belonging to unions falling to 10.7%.⁸² Less educated citizen and non-citizen workers' skill-sets

⁷⁷ See STANDING, *supra* note 12, at 76.

⁷⁸ See Janoski, *supra* note 16, at 7–8; Guy Mundlak, *Industrial Citizenship, Social Citizenship, Corporate Citizenship: I Just Want My Wages*, 8 THEORETICAL INQUIRIES L. 720, 733 (2007); ELIZABETH ANDERSON, PRIVATE GOVERNMENT 69 (2017).

⁷⁹ See Mundlak, *supra* note 78, at 734; QUIGLEY, *supra* note 7.

⁸⁰ See STANDING, *supra* note 1.

⁸¹ See STONE & ARTHURS, *supra* note 12.

⁸² In 2018, non-union workers in the United States earned only 82% (\$860 US per week) of what union workers earn (\$1051 US per week). U.S. BUREAU OF LAB. STAT., UNION MEMBERSHIP (ANNUAL) NEWS RELEASE (2019),

have been rendered redundant due to deindustrialization and technological change. These workers are cornered into the minimum wages jobs of the gig economy where they are one accident away from destitution.⁸³ Diminished status can lead to distrust and anti-immigrant attitudes that managers can use to divide workers and prevent them from organizing effectively.⁸⁴ Populist politicians appeal to these attitudes to gain power through working-class resentment.⁸⁵ When undocumented workers challenge unfair or illegal working conditions or attempt to organize with citizen workers, employers retaliate with requests for identity documents or threats to report them to Immigration and Customs Enforcement.⁸⁶

For citizen and non-citizen workers alike, who can no longer look to weakened state institutions for labor protections, a more inclusive version of industrial citizenship vested not only in unions, but also in alternative modes of labor representation, might fulfill earlier aspirations for a status based in the workplace and rights secured through collective organization. With the decline in union membership during in the 1990s, Harry Arthurs saw industrial citizenship as being “about the attempt to make the New economy less volatile and brutal, so as to ensure a modest measure of

https://www.bls.gov/news.release/archives/union2_01182019.htm [<https://perma.cc/H4ZS-JUND>]; see Doug Heinwood, *Unions Still Haven't Rebounded*, JACOBIN (Jan. 25, 2019), <https://www.jacobinmag.com/2019/01/union-density-united-states-2018-bls> [<https://perma.cc/2GJN-VQ26>].

⁸³ See JESSICA BRUDER, *NOMADLAND: SURVIVING AMERICA IN THE TWENTY-FIRST CENTURY* (2017).

⁸⁴ See VANESSA RIBAS, *ON THE LINE: SLAUGHTERHOUSE LIVES AND THE MAKING OF THE NEW SOUTH* 51–53, 99 (2016); KARYN LOSCOCCO, *RACE AND WORK* (2018); JUSTIN GEST, *THE WHITE WORKING CLASS* 135 (2018).

⁸⁵ See RIBAS, *supra* note 84, at 105; JAMIE LONGAZEL, *UNDOCUMENTED FEARS: IMMIGRATION AND THE POLITICS OF DIVIDE AND CONQUER IN HAZELTON, PENNSYLVANIA* (2016); GEST, *supra* note 84, at 92, 99.

⁸⁶ See RIBAS, *supra* note 84, at 51–53, 132; CAROLINA MUÑOZ, *TRANSNATIONAL TORTILLAS: RACE, GENDER AND SHOP-FLOOR POLITICS IN MEXICO AND THE UNITED STATES* 43–44 (2008).

security, dignity, and justice for us all.”⁸⁷ By the turn of the twenty-first century, Arthurs, like other interdisciplinary scholars of labor relations, was more muted about the prospects for industrial citizenship as an empirical description of the rights and status of workers in developed countries.⁸⁸ Today, Arthurs and other socio-legal scholars like Katherine V.W. Stone view industrial citizenship as a normative vision that might protect precarious participants in the “gig economy” working outside the standard employment contract that once guaranteed job security and other rights to employees.⁸⁹ A disproportionate number of these “high hazard, low wage” workers are non-citizens. Today, these workers are at a far greater risk of contracting COVID-19 at work, resulting in lasting symptoms for those who recover.⁹⁰ To accomplish the vision of industrial citizenship as labor protection for precarious workers, citizens must act in solidarity with their non-citizen colleagues and resist divisive populist political explanations that blame their plight on competition with immigrants.

A. *Earning Citizenship on the Job: Organizing as Community Service*

Beyond working for wages as a reward for their economic contributions to employers, some unauthorized immigrants are also organizing with their citizen co-workers in solidarity to ensure fair wages and labor protections for all workers, risking their jobs, freedom, and capacity to remain in the United States in the process. Labor solidarity was an accepted pathway to

⁸⁷ See HARRY ARTHURS, *THE NEW ECONOMY AND THE DEMISE OF INDUSTRIAL CITIZENSHIP* 18 (1997).

⁸⁸ See Fudge, *supra* note 13, at 641–44.

⁸⁹ See STONE & ARTHURS, *supra* note 12, at 8–12.

⁹⁰ See ORG. FOR ECON. COOP. & DEV., *WHAT IS THE IMPACT OF THE COVID-19 PANDEMIC ON IMMIGRANTS AND THEIR CHILDREN?* (Oct. 19, 2020), <http://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/> [https://perma.cc/4CGE-BYFC]; Holly Cabrera, *Asylum Seekers at Forefront of COVID-19 Battle Still Await Word They Will Be Allowed to Stay*, CBC NEWS (July 20, 2020), <https://www.cbc.ca/news/canada/montreal/immigrant-orderlies-hopeful-work-in-chslds-will-lead-to-residency-1.5656576> [https://perma.cc/SY4B-UV28].

community acceptance and membership during César Chávez's United Farm Workers (UFW) organizing campaigns during the 1960s and 1970s. The UFW assisted affiliated workers with immigration matters even while it enlisted the Border Patrol and U.S. Immigration and Naturalization Service's assistance to deport non-union strikebreakers.⁹¹ As union activists, unauthorized immigrants risk termination of employment and deportation if immigration officials find them, even while they are organizing with citizen co-workers to improve their collective working conditions.⁹² When management engages in practices that endanger the safety and livelihood of all workers, rank-and file employees engage in grassroots protests and work stoppages. This step is facilitated by social movement unions like the Service Employees International Union, which organized mixed-immigration status workplaces following a surge of protests and work stoppages by non-unionized janitors in Los Angeles in the early 1990s.⁹³ This grassroots movement spread to the construction and food processing industries, where concerted efforts by employers to recruit undocumented workers led to a deterioration of wages and working conditions over the previous decade.⁹⁴

Today, immigrants are a source of renewed vitality for the labor movement, both in traditional unions like the Service Employees International Union (SEIU) and in alt-labor organizations like worker centers.⁹⁵ Labor lawyer, scholar, and activist Fran Quigley has found that immigrants are more receptive to union membership than are native-born

⁹¹ See Julio Hernandez, *Union Vice President Speaks Out: The Union and the Greencarder*, EL MALCRIADO (June 1, 1968); Bill Chandler, *The Braceros: Imported Slaves or International Barter*, EL MALCRIADO (Dec. 9, 1974).

⁹² See Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 546 (2007).

⁹³ See RUTH MILKMAN, *L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT* 123 (2006).

⁹⁴ See MUÑOZ, *supra* note 86, at 133–46.

⁹⁵ See Rachel Meyer, *Precarious Workers' Movements and the Neoliberal State*, 19 WORKING USA: J. LAB. & SOC'Y 37, 39–40 (2016).

workers because they already have taken so many risks to better their lives through migration.⁹⁶ But the ideal of civic membership as arising from worker solidarity and reciprocity faces substantial difficulties because unauthorized immigrants are concentrated in industries where union density is low, and unions no longer have the political influence they once did.⁹⁷

B. Care Work: Expanding the Ambit of Social Citizenship

On a global scale, care work is a growing economic niche where employment is available to immigrants, with or without documentation, where they work in the shadows subject to the goodwill of individual families.⁹⁸ Female family members typically perform the bulk of unpaid care work, even when they also work outside the home. Their labor falls outside the ambit of the traditional standard employment contract and beyond the reach of the rights safeguarded by unions for paid employees in large companies during the mid-twentieth century. This leads to a disjunct between “worker’s rights and women’s rights” when they are engaged in care work.⁹⁹ Political theorists like Paul Kershaw are rectifying this devaluation of care work by demonstrating its civic value for society at large.¹⁰⁰ Both unpaid and paid care workers perform the essential work of social reproduction, sustaining their communities by transmitting their ideals and values to their children, and teaching them the habits that will prepare them to be productive and caring citizens later in life.¹⁰¹

⁹⁶ See QUIGLEY, *supra* note 7, at 40.

⁹⁷ See JAKE ROSENFELD, WHAT UNIONS WILL NO LONGER DO 156 (2014); see also JUSTIN GEST, THE NEW MINORITY: WHITE WORKING CLASS POLITICS IN AN AGE OF IMMIGRATION AND INEQUALITY 195, 199 (2016); GLEESON, *supra* note 71, at 11.

⁹⁸ See JENNIFER FISH, DOMESTIC WORKERS OF THE WORLD UNITE! 5 (2017); Leti Volpp, *Feminist, Sexual, and Queer Citizenship*, in THE OXFORD HANDBOOK OF CITIZENSHIP 153, 158 (Ayelet Shachar et al. eds., 2017).

⁹⁹ See Heidi Gottfried, *Why Workers Rights Are Not Women’s Rights*, 4 L. 146, 158 (2015).

¹⁰⁰ See Paul Kershaw, *Caregiving for Identity Is Political: Implications for Citizenship Theory*, 14 CITIZENSHIP STUD. 395 (2010).

¹⁰¹ See *id.* at 409; SULLIVAN, *supra* note 4, at 165.

Recognizing the community-wide benefits of caregiving, scholars of industrial relations like Judy Fudge urge policymakers to include this unpaid care work within the ambit of labor law.¹⁰² Fudge rejects earlier assessments that unpaid caregiving should fall in the domain of private family law because caregiving is socially necessary for a functioning labor market to operate by providing for caregivers' dependents while they perform paid work.¹⁰³

One flashpoint in the struggle for care worker collective bargaining and recognition as employees under the U.S. federal Fair Labor Standards Act involves In-Home Supportive Service program workers. The In-Home Supportive Services (IHSS) program started in California in 1973, and other states have since implemented this model.¹⁰⁴ IHSS in California evolved out of previous attendant and homemaker programs aimed at providing non-institutional care for disabled people on public assistance.¹⁰⁵ Disability rights advocates initially welcomed this program to allow care recipients to hire a caregiver of their choice on contract by providing state funding to care receivers.¹⁰⁶ The IHSS program allowed care receivers to employ relatives to care for them, but caregivers usually had to quit other jobs to receive state funding.¹⁰⁷ From the inception of the program, IHSS workers toiled long hours for low wages, often below the legal minimum wage after factoring in off-the-clock personal care.¹⁰⁸

¹⁰² See Judy Fudge, *A New Vocabulary and Imaginary for Labour Law: Taking Legal Constitution, Gender, and Social Reproduction Seriously*, in *THE FUTURE REGULATION OF WORK: NEW CONCEPTS, NEW PARADIGMS* 7 (Douglas Brodie ed., 2016).

¹⁰³ See *id.* at 22.

¹⁰⁴ See Eileen Boris & Jennifer Klein, *Organizing Home Care: Low-Waged Workers in the Welfare State*, 34 *POL. & SOC'Y* 81, 89 (2006).

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ See EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* 190 (2012).

Care workers seek the benefits of wage, labor standards, and collective bargaining that earlier generations of industrial citizens fought for in factories represented by unions.¹⁰⁹ But in contrast to the paradigmatic industrial citizens of the twentieth century who worked together and could readily organize together to resist unfair or illegal working conditions, IHSS workers continue to labor in isolation from their peers in individual households.¹¹⁰ Whereas the blue-collar industrial citizen in pattern bargaining agreements in mid-twentieth century unionized factories were predominantly male U.S. citizens, IHSS care workers are predominantly women of color, who are also often immigrants. Many of these immigrants do not have legal status in the U.S., and live and work in fear of deportation.¹¹¹ The nominal employers of IHSS workers, care receivers who received IHSS funding to hire care workers, were usually very poor, with a monthly income of less than \$600, and limited capacities to care for themselves, let alone to advocate on behalf of their caregivers.¹¹² To characterize these care receivers as employers with considerable control over the employment relationship, or customers of care, as Justice Samuel Alito did in *Harris v. Quinn* rationalizing limitations on the ability of unions to organize IHSS workers, overstates the degree of agency and control that care receivers have in this relationship.¹¹³ Instead, care workers and care receivers are in a state of mutual economic and political

¹⁰⁹ See Abigail S. Rosenfeld, *Consider the Caregivers: Reimagining Labor and Immigration Law to Benefit Home Care Workers and Their Clients*, 62 B.C. L. REV. 315 (2021).

¹¹⁰ See AI-JEN POO, *THE AGE OF DIGNITY: PREPARING FOR THE ELDER BOOM IN CHANGING AMERICA* 87–88 (2015).

¹¹¹ See Eileen Boris & Jennifer Klein, *The Fate of Care Worker Unionism and the Promise of Domestic Worker Organizing: An Update*, 40 FEMINIST STUD. 473 (2014); MARK GREENBERG ET AL., *IMMIGRANT FAMILIES AND CHILD WELFARE SYSTEMS: EMERGING NEEDS AND PROMISING POLICIES* 33–34 (2019).

¹¹² See BORIS & KLEIN, *supra* note 108.

¹¹³ See *Harris v. Quinn*, 573 U.S. 616 (2014); see also Stacy Clifford Simpican, *The “Perverse Result” of Disability Rights: Deregulating Care Workers’ Labor Unions in the Supreme Court*, 39 NEW POL. SCI. 7 (2017).

vulnerability in the states that finance the IHSS and similar programs.¹¹⁴ Given their mutual interests in funding care work, unions may end up representing the interests of care workers and care receivers as nominal employers alike in negotiations with the state.¹¹⁵

The U.S. Supreme Court dealt a blow against the movement to unionize in-home and family care workers in the United States on June 30, 2014, when Justice Alito delivered the majority opinion in *Harris v. Quinn* prohibiting unions from collecting dues from home care workers. Alito's opinion affirmed the view that "the organization of household workers like the personal assistants does not favor the interests of labor peace."¹¹⁶ Beyond the challenge of funding for collective bargaining for all workers in this decision, the *Harris v. Quinn* holding served as a reminder that foundational guarantees of industrial citizenship like the National Labor Relations Act still need to recognize the value of all forms of work, paid and unpaid, beyond former male-dominated blue-collar factory strongholds. Care receivers are more adequately characterized as intermediaries between the state, which provides the funding and sets wages and working conditions, and IHSS workers. The multiple subaltern statuses of IHSS workers continue to complicate efforts by labor organizers to reach and organize this marginalized workforce. This does not mean that we should discard the industrial labor relations regime. Rather, we should find ways to include care workers within the labor protections established for industrial citizens in the twentieth century.

¹¹⁴ See Grace Chang, *Inevitable Intersections: Care, Work and Citizenship*, in *DISABILITY DOMESTICITY* 163, 164 (2017).

¹¹⁵ See Cynthia Cranford & Jennifer Chun, *Immigrant Women and Home-Based Elder Care in Oakland, California's Chinatown*, in *GENDER, MIGRATION, AND THE WORK OF CARE* 41, 49–51, 56 (Sonya Michel & Ito Peng eds., 2017).

¹¹⁶ See *Quinn*, 573 U.S. at 616. The Service Employees International Union (SEIU) and the United Domestic Workers of America (UDW) were at the forefront of these efforts.

Despite barriers to organization, in-home care workers have succeeded in obtaining collective bargaining rights.¹¹⁷ Unions have not stood alone in this fight for collective bargaining rights. California led the nation in granting legislative protections for collective bargaining for independent homecare providers with the passage of legislation¹¹⁸ allowing them the opportunity in 1999. This achievement came through the combined efforts of disability rights advocates, senior rights advocates, and clients and caregivers in a pattern that was replicated in other states that later enacted legislation providing home care workers with collective bargaining rights.¹¹⁹ In the wake of AB 1682, unions that had already organized other domestic workers began to organize IHSS workers in California.¹²⁰ AB 1682 was followed by successful campaigns in Oregon and Washington to amend the states' constitutions to allow for home care workers to organize in 2000 and 2001 respectively.¹²¹ In 2003, Illinois Governor Rod Blagojevich signed an executive order granting personal assistants paid with state funds the right to unionize.¹²²

Between 2003 and 2015, Michigan, Massachusetts, Ohio, Missouri, Vermont, Minnesota, and Pennsylvania followed suit with legislation providing collective bargaining rights to home care workers and wage and working condition protections at the state level not found in federal law.¹²³

¹¹⁷ See Boris & Klein, *supra* note 111, at 474; Simplican, *supra* note 113, at 2.

¹¹⁸ A.B. 1682, 1999 Leg., Reg. Sess. (Cal. 1999).

¹¹⁹ See *Caring for California, Part 4: United for a Better Future*, UDW (June 2, 2014), <http://www.udwa.org/2014/06/caring-california-united-better-future/> [<https://perma.cc/3E9Y-P53X>].

¹²⁰ See Cranford & Chun, *supra* note 115, at 42–43.

¹²¹ See Boris & Klein, *supra* note 104, at 98–99; Patrice Mareschal, *Innovation and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States*, 31 LAB. STUD. J. 25, 32–35 (2006).

¹²² See BORIS & KLEIN, *supra* note 108, at 214.

¹²³ See Nari Rhee & Carol Zabin, *The Social Benefits of Unionization in the Long-Term Care Sector*, in ACADEMICS ON FREE CHOICE: MULTIDISCIPLINARY APPROACHES TO LABOR LAW REFORM 83, 87 (John Logan ed., 2009); Leigh Ann Schreiber, *The Home Health Care Industry's Organizing Nightmare*, CENTURY FOUND. (Aug. 18, 2015),

By 2015, an estimated 440,000 home health aides and personal care attendants across the U.S. were union members, the result of organizing drives that were facilitated by state-level collective bargaining protections.¹²⁴ These legislative victories for home care collective bargaining at the state level were only a starting point. They marked the start of a difficult task of community organizing and building a social movement that would reach and respond to the needs of dispersed care workers and care receivers alike. At the same time, home care union organizers have had to devote considerable resources to legal action and political lobbying to resist efforts to roll back collective bargaining rights in the courts and legislatures. Republican governors like Rick Snyder of Michigan and John Kasich of Ohio reversed home care collective bargaining rights in 2012 and 2015 respectively, and a Pennsylvania court took similar action in 2016.¹²⁵

Where care workers have succeeded in unionizing, their average hourly wage increased, and they gained access to training programs, safety equipment, and health benefits.¹²⁶ Many of these workers labored in the shadows of the unpaid, informal economy prior to unionization. In California, 70% of the home care workforce are relatives of caregivers, predominantly women who seek to avoid institutionalizing their loved ones

<https://tcf.org/content/commentary/the-home-health-care-industrys-organizing-nightmare/> [<https://perma.cc/TTH4-LNDN>].

¹²⁴ See Clare Hammonds, *For Children and Self*, in *ON THE CLOCK: THE COMPLEXITIES AND CONTRADICTIONS OF PAID CARE WORK* 229, 232 (Mignon Duffy, Amy Armenia & Clare L. Stacey eds., 2015).

¹²⁵ See Schreiber, *supra* note 123; Mark Scolforo, *Pa. Court Throws Out Bargaining Rights for Home Care Workers*, *MORNING CALL* (Sept. 22, 2016), <http://www.mcall.com/news/nationworld/pennsylvania/mc-pa-court-throws-out-bargaining-rights-for-home-care-workers-20160922-story.html> [<https://perma.cc/XTW7-WBEV>].

¹²⁶ See Simplican, *supra* note 113, at 3; Jennifer Jihye Chun & Cynthia Cranford, *Becoming Homecare Workers: Chinese Immigrant Women and the Changing Worlds of Work, Care and Unionism*, 44 *CRITICAL SOCIO.* 1015 (2018).

by taking up home care work at the expense of their own careers.¹²⁷ Across the United States, the primary beneficiaries of in-home health care worker unionization have been women, immigrants, and African-Americans, which collectively make up the majority of all in-home care workers.¹²⁸ Beyond the SEIU, the UDW and other care worker unions that bargain with employers and the state for better wage and working conditions, care workers also look to broader community organizations to provide them with job training, camaraderie, language instruction, and political education.¹²⁹ Together, formal unions and community organizations provide an essential support network for isolated care workers through social movement labor organizing that transcends the collective bargaining relationship between workers and employers.¹³⁰

Worker centers and community labor organizing efforts have the kind of flexibility to engage in political action, protests, and boycotts that traditional labor unions lack owing to the strictures of U.S. labor laws.¹³¹ In the wake of the U.S. Supreme Court's 2018 decision in *Janus v. American Federation of State, County and Municipal Employees*, public sector unions have lost their legal power to require workers to pay dues for representing them.¹³² In this legal environment, grassroots collective action may have an advantage over traditional labor organizing and collective bargaining. For instance, public school teachers have successfully resorted to grassroots collective action outside the collective bargaining process in Arizona, Colorado, Kentucky, North Carolina, Oklahoma, and West Virginia to

¹²⁷ See Boris & Klein, *supra* note 111, at 475–76.

¹²⁸ See Simplican, *supra* note 113, at 3.

¹²⁹ See Cynthia Cranford & Jennifer Chun, *supra* note 115, at 59–61.

¹³⁰ See Kim England, *Home, Domestic Work and the State: The Spatial Politics of Domestic Workers' Activism*, 37 CRITICAL SOC. POL'Y 373–80 (2017).

¹³¹ See STEPHANIE LUCE, LABOR MOVEMENTS: GLOBAL PERSPECTIVES (2015).

¹³² See *Janus v. AFSCME*, 585 U.S. 2448 (2018); Jake Rosenfeld & Patrick Denice, *What Do Government Unions Do? Public Sector Unions and Nonunion Wages 1977-2015*, 78 SOC. SCI. RSCH. 53 (2019); Leslie K. Finger & Michael T. Hartney, *Financial Solidarity: The Future of Unions in the Post-Janus Era*. 19 PERSPS. ON POL. 19, 19–20 (2021).

achieve improvements in wages and working standards.¹³³ These victories are particularly notable in Arizona and North Carolina where both striking and collective bargaining by teachers is illegal.¹³⁴ It remains to be seen whether these short-term victories can be replicated in other occupational sectors or sustained for educators as legislators in Arizona and West Virginia considered retaliatory measures restricting the political speech of teachers in response to their labor actions in early 2019.¹³⁵

Within the broader framework of social movement labor organizing, Domestic Workers United (DWU) and the National Domestic Workers Alliance (NDWA) are key examples of alt-labor community organizing efforts advancing the rights and community interests of care workers and care receivers alike.¹³⁶ Domestic Workers United (DWU) is a non-union labor organization that was founded as a multiethnic coalition of Caribbean, Latina, African, and South Asian organizations launched in 2000 in New York City to represent the interests of minority immigrant women in the rank-and-file of the domestic work industry.¹³⁷ DWU's immigrant membership played a key role in the campaign to enact a Domestic Workers' Bill of Rights through a bill introduced in the New York State legislature in 2004 and finally enacted in 2010 that guaranteed overtime pay, rest periods, and protections against harassment in the private

¹³³ See Dana Goldstein, *West Virginia Teachers Walk Out (Again) and Score a Win in Hours*, N.Y. TIMES (Feb. 19, 2019), <https://www.nytimes.com/2019/02/19/us/teachers-strikes.html> [<https://perma.cc/M943-C5ZR>]; Alexander Hertel-Fernandez, Suresh Naidu & Adam Reich, *Schooled by Strikes? The Effects of Large-Scale Labor Unrest on Mass Attitudes Towards the Labor Movement*, 19 PERSPS. ON POL. 73, 77 (2021).

¹³⁴ See Catherine Fisk, *A Progressive Labor Vision of the First Amendment: Past as Prologue*, 118 COLUM. L. REV. 2057, 2077–78 (2018).

¹³⁵ See HB 2015, 2019 Leg., 54th Reg. Sess. (Ariz. 2019); Goldstein, *supra* note 133.

¹³⁶ See BORIS & KLEIN, *supra* note 108, at 221.

¹³⁷ See BORIS & KLEIN, *supra* note 108, at 221; Harmony Goldberg, *Prepare to Win: Domestic Workers United's Strategic Transition Following Passage of the New York Domestic Workers' Bill of Rights*, in NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT 266, 272 (Ruth Milkman & Ed Ott eds., 2014).

households where they work. DWU achieved this objective through the advocacy efforts of its members combined with the support of traditional labor federations including the AFL-CIO.¹³⁸ The NDWA has campaigned for similar legislation nationwide.

The NDWA has expanded to represent a broader coalition of community partners and individual care workers directly.¹³⁹ The NDWA was founded on June 30, 2007, at the United States Social Forum in Atlanta, GA as a coalition of thirteen community organizing groups that emerged out of the immigrant rights movement rather than traditional unions.¹⁴⁰ The DWU, the NDWA, and their community partners defend the interests of domestic workers classified as companions who are excluded from the NLRA and other laws providing for minimum wages, overtime pay, and other protections.¹⁴¹ The NDWA advances a model of workplace relations that recognizes that care workers and care receivers have shared interests that include family ties, marginal socioeconomic status, and a dependency on state funding.¹⁴² Moving beyond domestic political advocacy, the NDWA partnered with other national domestic workers associations, trade unions, and human rights organizations to secure ratification of Convention 189 of the International Labor Organization on “Decent Work for Domestic Workers.”¹⁴³ This convention would broaden the reach of the National Labor Relations Act to expand labor protections to domestic workers. Though the Biden Administration has not yet committed to ratifying this

¹³⁸ See Goldberg, *supra* note 137, at 274–79.

¹³⁹ Lauren Hilgers, *Out of the Shadows*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html> [<https://perma.cc/6XS7-2Y2W>].

¹⁴⁰ See Eileen Boris & Premilla Nadasen, *Domestic Workers Organize!*, 11 WORKING USA 43 (2008).

¹⁴¹ See BORIS & KLEIN, *supra* note 108, at 132–33; Goldberg, *supra* note 137, at 271; FISH, *supra* note 98, at 234–35; KATZ ET AL., IMAGINING A FUTURE OF WORK THAT FOSTERS MOBILITY FOR ALL 14 (2018).

¹⁴² See POO, *supra* note 110, at 115–16.

¹⁴³ NAT’L DOMESTIC WORKERS ALL., <https://www.domesticworkers.org> [<https://perma.cc/M9ET-M5T2>].

convention, the NDWA continues to use Convention 189 as a benchmark for its lobbying efforts.¹⁴⁴

C. Care Workers in Alt-Labor: Today's Exemplary Post-Industrial Citizens?

Care workers—otherwise known as personal attendants or domestic workers—are like twentieth century industrial citizens in their need to organize together to obtain and safeguard labor protections.¹⁴⁵ But they are not always in the same adversarial relationship as factory workers are to industrialists, where the threat of work stoppages is necessary or possible to obtain concessions from powerful capital-owning employers that were at the center of the national economy. Rather, care workers are more like the “gig” workers that inhabit a fissured workplace where contract workers cannot look to a single employer for redress when labor violations occur.¹⁴⁶ Like other contract workers, outside the employer-employee relationship, care workers are relying on “social movements of social change, such as lobbying and legislation, [and] codes of conduct and education,” instead of strikes and work-to-rule campaigns.¹⁴⁷ These movements unite immigrants and citizens who are working towards a common cause and sharing the risks associated with political protests and labor actions.¹⁴⁸ In this way, alt-labor organizing efforts resemble their forebears in the mixed-citizenship status United Farm Workers (UFW) union during its founding period. The UFW granted immigrant workers access to community benefits, including

¹⁴⁴ See FISH, *supra* note 98, at 234–36.

¹⁴⁵ See Cynthia Cranford & Jennifer Chun, *supra* note 115, at 49–50; Katherine Stone, *Unions in the Precarious Economy*, AM. PROSPECT (Feb. 21, 2017), <http://prospect.org/article/unions-precarious-economy> [<https://perma.cc/TJ62-6TKY>].

¹⁴⁶ Katherine Stone, *Unions in the Precarious Economy*, AM. PROSPECT (Feb. 21, 2017), <http://prospect.org/article/unions-precarious-economy> [<https://perma.cc/TJ62-6TKY>].

¹⁴⁷ See Boris & Nadasen, *supra* note 140, at 415; KATZ ET AL., *supra* note 141, at 14.

¹⁴⁸ See Marcel Paret & Shannon Gleeson, *Precarity and Agency Through a Migration Lens*, 20 CITIZENSHIP STUD. 283–85 (2016).

assistance in immigration hearings in exchange for sharing the economic burdens and risks to their safety and livelihood during labor actions.¹⁴⁹

As immigrant-led movements, alt-labor organizing initiatives are radically inclusive.¹⁵⁰ They transcend divisions that the trade union movement condoned up until the turn of the twenty-first century—a division of workers into “legal” and “illegal” that still resonates with many rank-and-file members of trade unions that defined the industrial citizenship of the twentieth century.¹⁵¹ Beyond the domestic work sector, community-based worker organizations have great potential for representing the broader economic, political, and legal interests of contract and other precarious workers, including undocumented immigrants in sectors of the economy where union membership is not readily attainable.¹⁵² Barriers to union organizing can include employer resistance, the lack of organization in the sector of economy where migrants work, and local union unwillingness to organize immigrants.¹⁵³ Even in these restrictive environments, unauthorized immigrants are mobilizing with lawful permanent residents and citizens to protect their labor rights through day-worker centers.¹⁵⁴ Day-worker center involvement also reflects a commitment to the well-being of

¹⁴⁹ See Hernandez, *supra* note 91.

¹⁵⁰ See Kati Griffith & Leslie C. Gates, *Milking Outdated Laws: Alt-Labor as a Litigation Catalyst*, 95 CHL.-KENT L. REV. 245 (2020).

¹⁵¹ See Ed Ott, *Afterword: Lessons from the New Labor Movement for the Old*, in NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT 289, 290 (Ruth Milkman & Ed Ott eds., 2014); Mike Elk, *Pennsylvania Democrats Aim to Draw in Union Workers Who Voted for Trump*, GUARDIAN (Mar. 12, 2018), <https://www.theguardian.com/us-news/2018/mar/12/pennsylvania-democrats-aim-to-draw-in-union-workers-who-voted-for-trump> [<https://perma.cc/9546-MZKP>].

¹⁵² See KATZ ET AL., *supra* note 141, at 12–14.

¹⁵³ See Bryan Turner, *We Are All Denizens Now: On the Erosion of Citizenship*, 20 CITIZENSHIP STUD. 679, 689 (2016).

¹⁵⁴ See VANESSA TAIT, POOR WORKERS’ UNION: REBUILDING LABOR FROM BELOW 141, 156 (2016); Rachel Meyer & Janice Fine, *Grassroots Citizenship at Multiple Scales: Rethinking Immigrant Civic Participation*, 30 INT’L J. POL., CULTURE & SOC’Y 332–34 (2017).

a broader community of citizen and immigrant workers constituting earned community membership.

To survive and grow, traditional labor unions and federations are also supporting a broader “social movement unionism.” Social movement unionism organizes workers who cannot join unions to protest both their employers and government policies demanding higher wages and enforcement of existing labor laws.¹⁵⁵ Social movement unionism can bring in workers at the margins of formal economic and political community membership that includes “gig” workers of all immigration and citizenship statuses. Not bound by the terms of a collective bargaining agreement or the strictures of labor laws prohibiting secondary picketing, social movement union campaigns can fight for labor and immigrant rights together, acting as citizens by simultaneously demanding political and economic inclusion.¹⁵⁶ Citizens in precarious working conditions and immigrants without legal status are successfully acting together as members of a shared community of interests making common economic and political demands to employers and government officials alike.¹⁵⁷

IV. CONCLUSION

Taking part in labor organizing efforts—from traditional trade unions to alt-labor organizing campaigns—should be recognized as a form of participatory citizenship that demonstrates a willingness to work with citizens to achieve shared goals as preparation for the obligations of national citizenship. As a matter of public policy, I realize this goal is

¹⁵⁵ See Meyer, *supra* note 95, at 37, 49 (2016); Christina Ibsen & Maita Tapia, *Trade Union Revitalization: Where Are We Now? Where to Next?*, 59 J. INDUS. RELS. 183 (2017); Richard Hyman & Rebecca Gumbrell-McCormick, *Resisting Labour Market Insecurity: Old and New Actors, Rivals or Allies?*, 59 J. INDUS. RELS. 547 (2017); CHRIS ZEPEDA-MILLÁN, *LATINO MASS MOBILIZATION: IMMIGRATION, RADICALIZATION, AND ACTIVISM* 37 (2017).

¹⁵⁶ See Meyer, *supra* note 95, at 37, 49.

¹⁵⁷ See *id.* at 50.

highly aspirational and unlikely to occur any time soon in a challenging political climate for organized labor. But as a matter of normative theory, alt-labor organizing efforts are the modern incarnation of what T.H. Marshall, Harry Arthurs, Robert Dahl, and Judith Shklar valued about industrial or economic citizenship as an ideal with rights and responsibilities that workers should aspire to as a form of exemplary citizenship in their workplaces, their communities, and their nation. To respond to common economic challenges, immigrants and less affluent citizens must develop networks of solidarity both within and outside traditional national labor unions.¹⁵⁸

Twentieth century industrial citizenship stood for the notion that there must be a compact enforced by the state to ensure that all persons have the right to work for a living wage that accords them with the means of survival, respect, and social standing. In turn, workers have the reciprocal duty to support the state with their taxes and a cooperative enterprise with their labor. Beyond union membership, participants in twenty-first century alt-labor organizing campaigns are performing these duties and more to fight for workplace rights. Immigrants are taking part in labor organizing campaigns and protests for a mixed-citizenship status occupational community while assuming the risks of being fired, blacklisted by employers, and targeted for deportation. They are acting as exemplary citizens who are motivated by a factor beyond self-interest—the well-being of workers in mixed-citizenship communities where they have laid down roots.

Labor organizations are training workers to be civic leaders and exemplary post-industrial citizens, in both the workplace and the broader community. Who are these exemplary post-industrial citizens? We can distinguish between the level of participation of a worker-activist who leads

¹⁵⁸ See Lea Ypi, *Borders of Class: Migration and Citizenship in the Capitalist State*, 32 *ETHICS & INT'L AFFS.* 141, 145 (2018).

an organizing drive and a dues-paying member who joins a union only because he is required to in a closed shop. But so long as both display solidarity towards the objective of collective action to safeguard wage and working conditions, they are displaying the virtues of post-industrial citizenship. They might even help defuse longstanding allegations at the grassroots level that unauthorized immigrants will undermine citizen wages and working conditions.¹⁵⁹ Unauthorized immigrant workers who forego short-term wages and work by not crossing picket lines and taking part in labor actions are acting in the interests of their fellow workers regardless of citizenship. Even today, their solidarity and willingness to share in the risks of community-building show a commitment to their adopted home's well-being that should be recognized as a form of exemplary citizenship.

¹⁵⁹ See TAMARA DRAUT, SLEEPING GIANT: HOW THE NEW WORKING CLASS WILL TRANSFORM AMERICA 75 (2016); GEST, *supra* note 97, at 196.