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## Unfree, Unorganised, Unwell:

### Migrant-Worker Domination as a Structural Determinant of Health in Taiwan — A Republican and Common-Good Constitutional Critique, with Lessons from India

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*Comparative Constitutional Law · Administrative Law · Health Governance*

#### Abstract

Taiwan hosts more than 850,000 migrant workers, yet the legal regime that governs them is rarely examined as a problem of *health* governance. This Article argues that three interlocking features of that regime the employer tied work permit system, the statutory exclusion of domestic caregivers from the Labor Standards Act, and a privatised brokerage system that channels workers into debt bondage together constitute a structure of *domination* in Philip Pettit's republican sense: a standing, legally constructed susceptibility to arbitrary interference. Drawing on Pettit's theory of freedom as nondomination and on Adrian Vermeule's Common Good Constitutionalism, the Article reframes Taiwan's migrant labour regime not merely as a labour equality deficit but as a health governance failure, because it systematically suppresses the capacity of a structurally vulnerable population to organise, build collective power, and secure health protective resources. Using Steven Lukes's three-dimensional account of power, it shows how the regime forecloses visible collective bargaining (the first dimension), removes migrant-worker health from the legislative agenda (the second), and naturalises migrant workers' exclusion from the category of the 'common worker' (the third). A comparative turn to Indian constitutional law Articles 14, 19, and 23, the forced-labour jurisprudence of the Supreme Court of India, and the 2024 Taiwan–India Memorandum of Understanding on labour mobility demonstrates how analogous employer-tied

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administrative structures generate convergent patterns of domination, health precarity, and suppressed collective action across very different constitutional orders. The Article concludes that permit portability, full Labor Standards Act coverage, public recruitment, and genuine collective-bargaining rights are not discretionary labour reforms but constitutional preconditions for health equity, with implications for parallel debates over immigrant labour and health access elsewhere.

**Keywords:** nondomination; common good constitutionalism; migrant labour; health equity; power-building; debt bondage; comparative constitutional law; Taiwan; India.

## I. Introduction

On any given Sunday in Taoyuan, Taipei, or Kaohsiung, the public squares and railway concourses of Taiwan fill with migrant workers from Indonesia, Vietnam, the Philippines, and Thailand. They are the visible surface of an invisible architecture. As of September 2025, the Ministry of Labor recorded 858,939 migrant workers in Taiwan a figure that has risen by roughly 110,000 in two years and that long ago surpassed the ‘threequarters of a million’ benchmark that still anchors much public commentary.<sup>2</sup> They staff the factories that anchor Taiwan’s export economy, the construction sites that build its cities, the distant-water vessels that supply its fishing fleet, and overwhelmingly the private households in which they care for an ageing population that Taiwan’s own citizens are increasingly unwilling or unable to tend. They are, in the most literal sense, indispensable. And they are, in the most literal sense, unfree.

This Article takes that unfreedom seriously as a legal fact, and it takes a particular kind of unfreedom *domination* as the organising concept for understanding why migrant workers in Taiwan are not only exploited but also *unwell*, and why they are systematically prevented from doing anything collective about it. The claim is not simply that migrant workers suffer poor health outcomes, though they do. The claim is that Taiwan’s migrant labour regime is best understood as a *health-governance* failure precisely because it is a *power-suppression* regime: it is engineered, through ordinary administrative law, to deny a structurally vulnerable population the capacity to

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<sup>2</sup>Ministry of Labor figures reported in *Cabinet Policy to Allow More Migrant Workers Slammed by Labor Groups*, Taipei Times (Oct. 31, 2025), <https://www.taipeitimes.com/News/taiwan/archives/2025/10/31/2003846432>; see also *Migration to Taiwan: Improving Rights for Migrant Workers*, Borgen Project (Nov. 20, 2025), <https://borgenproject.org/migration-to-taiwan/> (recording 858,939 migrant workers as of September 2025). The widely cited ‘750,000’ figure reflects an earlier period and now understates the population.

organise, to bargain, to set agendas, and to be seen as full members of the political and economic community whose health the state is bound to protect.

Community-organising scholarship in public health has, for two decades, documented the centrality of *power building* to advancing population health: that the durable determinants of who lives well and who dies early are not merely income or behaviour but the capacity of affected communities to shape the conditions of their own lives.<sup>3</sup> Yet the structural conditions that *prevent* power building among the most vulnerable workers remain under theorised in health

policy research, which tends to treat the absence of organising as a contingent gap to be filled rather than as a deliberate legal achievement to be dismantled. The migrant-labour regime in Taiwan is a case study in deliberate legal achievement. It does not merely fail to facilitate worker power; it is constructed to foreclose it.

To make that argument, the Article draws on two complementary theoretical frameworks. The first is Philip Pettit's republican theory of freedom as nondomination, which identifies the distinctive wrong of standing subjection to another's arbitrary will a wrong that obtains even where no overt interference has yet occurred, because the mere *capacity* of a master to interfere produces chronic insecurity, strategic self-censorship, and the deference of the unfree.<sup>4</sup> The second is Common Good Constitutionalism (CGC), developed by Adrian Vermeule, which recovers the classical understanding of law as ordered to the common good and grounds affirmative obligations of the state to protect the basic conditions of flourishing for all who participate in a shared political and economic life irrespective of citizenship status.<sup>5</sup> Read together, these frameworks reposition Taiwan's migrant-labour regime: nondomination diagnoses the wrong, and the common good identifies the correlative duty.

A word on method and scope. The Article is a work of comparative constitutional and legal analysis, combining doctrinal examination of Taiwan's Employment Service Act, Labor Standards

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<sup>3</sup>See Meredith Minkler (ed.), *Community Organizing and Community Building for Health and Welfare* (3d ed. 2012) (collecting the foundational literature on organising, power, and population health); see also World Health Organization, Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health* (2008) (locating the distribution of power among the structural determinants of health).

<sup>4</sup>See generally Philip Pettit, *Republicanism: A Theory of Freedom and Government* (1997) [hereinafter Pettit, *Republicanism*]; Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (2012).

<sup>5</sup>See generally Adrian Vermeule, *Common Good Constitutionalism* (2022) [hereinafter Vermeule, *CGC*].

Act, and the administrative regulations governing brokerage with qualitative policy analysis of the secondary record government labour data, the reports of international monitors, and the documentation produced by the nongovernmental organisations that shelter and advocate for migrant workers. It does not purport to offer original empirical fieldwork on health outcomes; its contribution is conceptual and constitutional, supplying a framework within which the considerable existing evidence of migrant-worker health precarity can be understood as the predictable product of a legal structure rather than as a collection of unfortunate incidents. Where the Article makes empirical claims about the size of the migrant workforce, the prevalence of debt bondage, or the conditions of household care it relies on the public record and flags the limits of that record where they bear on the argument. The normative claims, by contrast, are the Article's own, and the synthesis of nondomination with the common good in the specific register of health governance is, so far as the author is aware, novel.

The Article proceeds in five further Parts. Part II develops the theoretical architecture, linking nondomination and the common good to the public health literature on power building and arguing, via Steven Lukes's three-dimensional theory of power, that domination is a structural determinant of health. Part III anatomises the three legal mechanisms employer tied permits, the Labor Standards Act exclusion, and brokerage debt bondage through which Taiwan's administrative law constructs migrant worker domination. Part IV translates that anatomy into the language of power, showing how each of Lukes's three dimensions is foreclosed and how the foreclosure operates as a pathway to ill health. Part V turns comparatively to India, whose constitutional text and forced labour jurisprudence supply both a contrast and a cautionary convergence, and whose 2024 labour mobility Memorandum of Understanding with Taiwan now binds the two systems together. Part VI sets out a reform programme portability, full statutory coverage, public recruitment, and collective bargaining rights and grounds it in the affirmative duties that CGC and nondomination jointly impose. A short conclusion draws out the implications for comparative debates over immigrant labour and health beyond Taiwan.

## **II. Domination, the Common Good, and the Power-Building Account of Health**

### ***A. Freedom as Non-Domination***

The republican tradition that Pettit reconstructs distinguishes its conception of freedom from the dominant liberal conception of freedom as noninterference. For the liberal, one is unfree to the

extent that one is actually interfered with; absent interference, one is free, however precarious one's situation. For the republican, this misdescribes the condition of the slave with a kind master, the wife under a permissive but legally unaccountable husband, or the worker whose employer *could* dismiss, deport, or denounce him at will but has not yet chosen to do so. Each of these persons may suffer little or no overt interference, yet each lives *at the mercy* of another, and that subjection the standing exposure to interference on an arbitrary basis is itself the paradigm of unfreedom.<sup>6</sup>

Domination, on this account, has three elements: a dominating party has (1) the *capacity* to interfere, (2) on an *arbitrary* basis that is, without being forced to track the avowable interests of the dominated (3) in choices the dominated party is otherwise in a position to make. The wrong of domination is therefore relational and dispositional rather than episodic. It does not wait upon an act; it inheres in a structure of vulnerability. Three consequences follow that are of first importance for health. First, domination breeds *uncertainty*: the dominated cannot plan, because the terms of their life may be altered at another's discretion. Second, it breeds *strategic deference*: the dominated learn to anticipate and placate the powerful, censoring complaint and forgoing claims that might provoke retaliation. Third, it breeds *status subordination*: the dominated occupy a visibly lesser civic standing, unable to look others in the eye as equals.<sup>7</sup> Each of these is, as Part II.D argues, a recognised pathway to chronic stress, deferred care, and adverse health.

It is worth dwelling on why these harms obtain even where the employer is kind and the broker fair. The republican point is that the worker's security, under the present regime, is a function of the *good will* of those who hold power over her rather than of any standing protection she can claim as of right. A benevolent employer who chooses not to exploit his caregiver does not thereby free her; he merely declines, for now, to exercise a power he continues to hold. The caregiver remains dependent on his continued forbearance, and she knows it. The knowledge itself is corrosive: it counsels her to please rather than to claim, to endure rather than to report, to defer the doctor's visit that might inconvenience the household rather than to assert a right to care. This is the distinctive insight that freedom-as-non-interference misses and freedom-as-non-domination

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<sup>6</sup>Pettit, *Republicanism*, *supra* note 4 (developing the contrast between freedom as non-interference and freedom as non-domination, and the figure of the slave with a non-interfering master).

<sup>7</sup>See Pettit, *Republicanism*, *supra* note 4 (identifying uncertainty, strategic deference, and subordinate status as the characteristic harms of living under another's power).

captures and it is the reason that reforms aimed only at curbing the *abuse* of power, rather than at dismantling the *holding* of it, leave the underlying unfreedom, and its health effects, intact.

Crucially for present purposes, Pettit insists that domination is frequently a creature of *law*. Law can constitute domination by conferring on one private party a discretionary power over another just as readily as it can dissolve it. The remedy for private domination is therefore not the withdrawal of the state but its *reengagement*: the construction of legal protections, anti-power, and channels of contestation that render the powerful answerable to the interests of those over whom they would otherwise rule.<sup>8</sup> This is the conceptual hinge on which the present argument turns: Taiwan's migrant labour regime is not a domain from which law is absent, but one in which law has been affirmatively arranged to *confer* arbitrary power on employers and brokers. The regime is a legal artefact of domination, and it can be a legal artefact of its undoing.

### ***B. Common Good Constitutionalism and the Affirmative Duty***

If nondomination diagnoses the wrong, it does not by itself establish that the state owes anything to noncitizens. The liberal constitutional imagination tends to treat the migrant as a guest whose claims on the polity are conditional and revocable, a holder of contract rights rather than a subject of constitutional solicitude. Common Good Constitutionalism supplies the corrective. On Vermeule's account, the deepest purpose of law is not to maximise individual choice but to direct the community toward the common good the flourishing of the political community and, derivatively, of all its members understood through the classical categories of peace, justice, and abundance.<sup>9</sup> The state, on this view, holds a robust and affirmative responsibility what the tradition calls the *ragion di stato* disciplined by justice to secure the conditions under which persons subject to its authority can live well.

Two features of CGC are decisive here. First, the relevant community is defined by *participation* in a shared political and economic life, not by the formal status of citizenship. A migrant caregiver who lives in a Taiwanese household, sustains a Taiwanese family, pays into the system, and is governed comprehensively by Taiwanese administrative law is a participant in the common good

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<sup>8</sup>Pettit, *Republicanism*, *supra* note 4 (arguing that suitably constituted law reduces rather than augments domination, and that 'antipower' for the vulnerable is the proper republican aim).

<sup>9</sup>Vermeule, *CGC*, *supra* note 5 (recovering the classical account of law as a reasoned ordinance promulgated for the common good, drawing on the *ius commune* and the natural-law tradition).

of Taiwan, and the state's obligations run to her accordingly. To treat her health and security as matters of private contract beneath constitutional notice is, on the classical account, a dereliction of the very purpose for which public authority exists.<sup>10</sup> Second, CGC understands the administrative state not as a constitutional embarrassment to be minimised but as the ordinary modern instrument through which the common good is pursued a *determinatio* of background principle into workable rule.<sup>11</sup> It follows that when administrative law is the very mechanism producing domination, the remedy is not deregulation but *redirection*: the same administrative apparatus must be reordered to the good of all participants, including the most vulnerable.

The convergence of the two frameworks is therefore tighter than it first appears. Nondomination tells us *what* is owed a status of secure equality, free from subjection to arbitrary power. CGC tells us *why* and *by whom* because public authority exists to secure the flourishing of all who share in the community's life, and the administrative state is the standing instrument of that duty. Where the two meet is the proposition that the state's obligation to protect health cannot be discharged while the state simultaneously constructs the domination that destroys it.

### ***C. Three Dimensions of Power and the HealthEquity Literature***

To connect domination to health, we need an account of *power* fine-grained enough to capture the several ways in which a population can be rendered unable to act on its own behalf. Steven Lukes's classic analysis supplies it. Power, Lukes argues, operates in three dimensions. The first is the visible exercise of power in observable conflict: A prevails over B in a contest of stated preferences the dimension of overt decision-making and, in the labour setting, of collective bargaining and strikes. The second is the power to keep issues *off* the agenda altogether, so that potential conflicts never reach the point of decision: the 'mobilisation of bias' by which some demands are organised in and others organised out. The third, and deepest, is the power to shape the very perceptions,

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<sup>10</sup>Cf. Vermeule, *CGC*, *supra* note 5 (the common good is a genuinely common, non-aggregative good in which all who are subject to the community's authority participate). The author has developed the application of this premise to non-citizen participants elsewhere; the present treatment adapts that argument to the health-governance setting.

<sup>11</sup>Vermeule, *CGC*, *supra* note 5 (defending the administrative state as a legitimate vehicle for the *determinatio* of general principles of justice into specific positive law). On the deep structure of the administrative state as the modern form of the social state, see Lorenz von Stein's nineteenth-century theory of *die Verwaltung*, which the author treats at length in related work.

preferences, and self-understandings of the dominated, so that they accept, internalise, or cannot even conceive of an alternative to their subordination.<sup>12</sup>

The public health literature on the social determinants of health has, independently, arrived at the conclusion that the *distribution of power* is itself a fundamental cause of health inequity. The WHO Commission on Social Determinants of Health placed ‘inequities in power, money, and resources’ at the centre of its account, arguing that those who lack control over the conditions of their lives suffer worse health across the life course through pathways of chronic stress, material deprivation, and exclusion from the goods of social participation.<sup>13</sup> A substantial body of social epidemiology from the gradient effects documented in the Whitehall studies to eco-social theory’s account of how social hierarchy becomes ‘embodied’ supports the proposition that subordination, insecurity, and the absence of voice are not metaphors but mechanisms.<sup>14</sup>

The link to power-building follows directly. If the inequitable distribution of power is a fundamental cause of ill-health, then the *building* of power among the dominated their capacity to organise, bargain, and contest is a fundamental intervention. This is the insight at the heart of community organising scholarship: that durable improvements in the health of marginalised populations come not chiefly from service provision but from shifts in who holds the power to set the terms of their lives.<sup>15</sup> It is precisely here that Taiwan’s migrant labour regime exerts its deepest health effect: not only does it expose workers to hazardous conditions and deter them from care, but it dismantles, in advance, the very capacity for power building through which such populations elsewhere have improved their health.

#### ***D. Domination as a Structural Determinant of Health***

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<sup>12</sup>See generally Steven Lukes, *Power: A Radical View* (2d ed. 2005) [hereinafter Lukes, *Power*] (elaborating the one-, two-, and three-dimensional views of power; the second dimension draws on Peter Bachrach & Morton S. Baratz, *Two Faces of Power*, 56 Am. Pol. Sci. Rev. 947 (1962)).

<sup>13</sup>World Health Organization, *Closing the Gap in a Generation*, *supra* note 3 (identifying the inequitable distribution of power, money, and resources as the structural driver of the more proximate social determinants of health).

<sup>14</sup>See, e.g., Michael Marmot, *The Health Gap: The Challenge of an Unequal World* (2015) (synthesising the evidence on the social gradient in health and the causal role of control over one’s circumstances); Nancy Krieger, *Epidemiology and the People’s Health: Theory and Context* (2011) (developing ecosocial theory and the concept of the embodiment of social conditions).

<sup>15</sup>See Minkler, *supra* note 3 (organising and community-building as strategies that produce health by altering power relations rather than by delivering services alone).



Synthesising the foregoing yields the Article's central theoretical claim. Domination is a structural determinant of health, and it operates through pathways that map onto Lukes's three dimensions. Through the first dimension, domination forecloses the collective action bargaining, striking, complaint through which workers secure safer conditions, higher wages, and access to care; the foreclosure leaves hazards unremedied and grievances unvoiced. Through the second dimension, domination keeps the health of the dominated off the legislative and regulatory agenda, so that the very questions of their protection are never seriously posed. Through the third dimension, domination reshapes shared understandings so that the dominated are not recognised as the kind of beings whose health is a matter of public concern they are 'guest workers', 'help', a temporary input with the result that their exclusion appears natural rather than chosen.

Each dimension carries an additional, distinctively republican health mechanism. Standing exposure to arbitrary power generates the chronic stress of *uncertainty*; strategic deference produces the *self-silencing* that deters workers from reporting injury, illness, or abuse for fear of dismissal and deportation; and status subordination inflicts the *recognition harm* that social epidemiology associates with exclusion. Domination, in short, is bad for health both *instrumentally* by blocking the collective remedies that would improve conditions and *intrinsically* by inflicting the insecurity and subordination that themselves damage the body. The remainder of the Article shows that Taiwan's migrant labour regime produces domination in exactly this layered sense, and that the constitutional duty to protect health therefore entails a duty to dismantle it.

### **III. The Architecture of Domination in Taiwan's Migrant Labour Regime**

Taiwan's migrant labour regime is not a single statute but a system, assembled from the Employment Service Act, the Labor Standards Act, and a privatised brokerage industry licensed and lightly supervised by the state. Examined separately, each component appears a discrete labour policy choice. Examined together, they compose an architecture of domination: a structure in which the migrant worker's capacity to exit, to bargain, and to be heard is foreclosed at every turn, and in which arbitrary power over the worker is distributed among employer, broker, and administrative gatekeeper. This Part anatomises the three loadbearing elements before showing, in Part III.D, how they interlock.

#### ***A. The Employer Tied Permit***

The foundational mechanism is the binding of the work permit to a single, named employer. Taiwan first imported foreign labour in 1989 and enacted the Employment Service Act in 1992 to give the practice a statutory basis, structuring it from the outset around a licensing system designed to protect citizen employment by capping both the categories and the numbers of foreign workers.<sup>16</sup> Within that system, the so-called ‘low skilled’ or ‘blue-collar’ migrant worker defined by reference to subparagraphs 8 through 11 of Article 46, paragraph 1, of the Act, and encompassing factory, construction, fishing, and homecare work is, as a rule, *prohibited from changing employer or occupation*. Articles 53(4) and 59 of the Employment Service Act together establish this prohibition, permitting transfer only under narrowly enumerated exceptions, such as the death of the employer or the closure of the enterprise, and only on satisfaction of strict administrative conditions.<sup>17</sup>

The legal significance of this restriction is that it converts the ordinary labour market freedom of *exit* the worker’s capacity to quit a bad employer and seek a better one into a revocable privilege controlled by the very employer the worker might wish to leave. Because lawful presence in Taiwan is conditioned on the subsistence of the named employment relationship, the loss of that relationship ordinarily entails the loss of the right to remain. The employer thus holds, in addition to the ordinary powers of an employer, a discretionary power over the worker’s immigration status and continued presence in the country. That is the textbook structure of domination in Pettit’s sense: the capacity to interfere, on an arbitrary basis, in the most basic choices where to work, whether to complain, whether to stay that the worker would otherwise be in a position to make.<sup>18</sup>

The asymmetry is sharpened by the fact that the transfer restriction applies *only* to the lower status categories. Professional and managerial foreign workers the English teacher, the corporate manager, the engineer face no comparable bar; they move freely between employers as the labour

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<sup>16</sup> See Executive Yuan (R.O.C.), *Employment Services Act Amendments Strengthen Labor Rights*, <https://english.ey.gov.tw/News3/9E5540D592A5FECD/4a00f610-1f94-4a94-b5b2-2ad35ae21760> (recounting the 1989 origins and the 1992 enactment, and the licensing logic of the regime).

<sup>17</sup> Employment Service Act art. 53(4) & art. 59 (Taiwan) (restricting transfer of employer for foreign workers engaged under Article 46(1)(8)–(11)); see Yu-Yue Cheng, *Taiwan Dispatch: Ministry Issues Forced Labor Guidelines After US Trade Action, Migrant Workers’ Rights at Risk*, JURIST (Mar. 11, 2026), <https://www.jurist.org/news/2026/03/> (explaining that, under Articles 53(4) and 59, blue-collar migrant workers are barred as a rule from changing employer, with only narrow exceptions, while professional and white-collar workers are not so restricted).

<sup>18</sup> See Pettit, *Republicanism*, *supra* note 4 (the holder of an unaccountable discretionary power over another’s basic options dominates that other, whether or not the power is exercised).

market allows. The Act thus does not treat ‘the foreigner’ as such with suspicion; it constructs a graduated unfreedom, reserving the harshest restriction for those whose labour is most physically demanding, most easily exploited, and most concentrated among the poor of Southeast and South Asia. The employer tied permit is, in this sense, not an incidental administrative convenience but the keystone of a stratified regime of domination.

Two further features of the permit regime intensify its grip. First, the worker’s lawful stay is capped: Article 52 of the Employment Service Act limits accumulated employment to twelve years for most blue collar workers, with a modest extension for qualifying family nursing workers a temporal horizon that frames the worker, in law, as a depreciating asset to be returned rather than a settler who might one day belong.<sup>19</sup> Second, the very rigidity of the no transfer rule produces the phenomenon the state then criminalises: the ‘runaway’ or undocumented worker. Faced with an abusive placement she cannot lawfully leave, a worker may abscond, forfeiting status to escape the household and joining the tens of thousands of undocumented migrants whose irregularity is, in no small part, a creature of the rule that forbade their lawful exit.<sup>20</sup> The regime thus manufactures the very illegality it condemns, and the undocumented worker now wholly outside the protective and inspective apparatus of the state is more dominated, and less well, than before.

### ***B. Exclusion of Domestic Caregivers from the Labor Standards Act***

The second mechanism is exclusion from the floor of basic labour protection. The Labor Standards Act sets Taiwan’s minimum standards for wages, working hours, rest, and leave. But domestic helpers and homebased caregivers who, with institutional caregivers and domestic workers, make up the bulk of Taiwan’s roughly 220,000 ‘social welfare’ migrant workers fall *outside* the Act, because they fall outside the definition of covered ‘business or industries’ in Article 3 of the Labor Standards Act.<sup>21</sup> Their conditions of work hours, wages, rest are governed only by the individual labour contract negotiated, often through a broker, before entry, with no statutory minimum wage,

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<sup>19</sup>Employment Service Act, art. 52 (Taiwan) (limiting the accumulated period of employment of foreign workers, with differentiated and somewhat longer treatment for family-nursing workers).

<sup>20</sup>As of September 2025, an estimated 94,000 migrant workers in Taiwan were undocumented, predominantly Vietnamese and Indonesian. See *Migration to Taiwan*, *supra* note 2. On the structural link between the no-transfer rule and the pressure to leave a legal employer, see Cheng, *supra* note 17.

<sup>21</sup>*A Story of Exclusion: Foreign Migrant Workers in Taiwan*, Cornell J.L. & Pub. Pol’y (Nov. 4, 2023), <https://publications.lawschool.cornell.edu/jlpp/2023/11/04/a-story-of-exclusion-foreign-migrant-workers-in-taiwan/> (explaining that domestic workers and home-care workers are not protected under the Labor Standards Act because they fall outside the definition of business or industries in Article 3); Labor Standards Act, art. 3 (Taiwan).

no cap on working hours, and no guaranteed rest day. The predictable result is the legal normalisation of long hours and low pay: a live in caregiver may be on call around the clock, her ‘rest’ a function of her employer’s goodwill.<sup>22</sup>

The exclusion compounds itself in the domain of social insurance and, therefore, of health. Because the Labor Standards Act does not cover live in domestic caregivers, they are not entitled to its sick leave protections; and because labour insurance enrolment is mandatory only for employers of five or more, the overwhelming majority of household caregivers employed by a single family have been excluded from labour insurance since the programme’s inception in 1992. Roughly 200,000 migrant domestic workers are affected. They are covered, since recent reform, only by Labor Occupational Accident Insurance, which partially reimburses the cost of *work-related* injury but provides no income protection during recovery from major illness and no sick leave.<sup>23</sup> For a population whose work is physically arduous and whose isolation within private households shields their conditions from inspection, the absence of a statutory floor is not a gap to be tolerated but a structural production of precarity.

Read through the lens of nondomination, the Labor Standards Act exclusion performs a second function. It does not merely lower the worker’s entitlements; it removes the *external standard* against which the employer’s conduct could be measured and the worker’s complaint vindicated. Where the statute is silent, the only governing norm is the will of the employer, mediated by a contract the worker had little power to shape. The exclusion thus enlarges the sphere of arbitrary power: it is a legislative decision to leave a class of workers governed by private will rather than public standard, in the most intimate and least observable of workplaces.

### ***C. Private Brokerage and Debt Bondage***

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<sup>22</sup>*Cf. Migrant Caregivers in Taiwan*, Wikipedia (last visited 2026) (recounting that household nursing and domestic workers were briefly brought within the Labour Standards Act in 1998 and excluded again in 1999, and that the exclusion produces excessive hours and sub-minimum wages); *New Documentary: ‘Migrant Caregivers: Taiwan’s Invisible Workers’*, Taiwan News (June 15, 2023), <https://www.taiwannews.com.tw/news/4918800> (officials defending exclusion on the ground that caregiving within a household ‘does not fit’ the Act).

<sup>23</sup>*NGOs Demand Taiwan Provide Insurance for Domestic Migrant Workers*, Focus Taiwan (June 15, 2025), <https://focustaiwan.tw/society/202506150004> (reporting that some 200,000 migrant domestic workers have been excluded from labour insurance since 1992, that live-in caregivers are covered only by Labor Occupational Accident Insurance, that they are not entitled to sick leave because they fall outside the Labor Standards Act, and that they accordingly receive no income while recovering from serious illness).

The third mechanism is the privatised brokerage system, which monetises the worker's subjection and converts it into debt. Most migrant workers enter Taiwan through a chain of recruitment agencies and brokers in both the sending country and Taiwan. Taiwan is one of the few jurisdictions whose law permits brokers to charge migrant workers recurring 'service fees' for functions that elsewhere are borne by employers as ordinary human-resource costs.<sup>24</sup> The United States Department of State's 2025 Trafficking in Persons Report records that these monthly service fees commonly run to fifty or sixty United States dollars, that workers frequently report receiving no discernible service in return, and that, after recruitment fee and deposit repayments are garnished from wages, many migrant workers in Taiwan earn significantly less than the statutory minimum wage.<sup>25</sup>

The path to debt bondage is then completed by the fact that many Taiwan based brokers are simultaneously lending companies. The same entity that charges the fee offers the loan to pay it, so that the worker arrives already indebted and remains so, servicing a debt to the very intermediary who controls his placement. The structure has been recognised by international monitors and civil society investigators alike as creating a cyclical vulnerability to debt bondage itself an International Labour Organization indicator of forced labour.<sup>26</sup> Where transfer between employers is barred, the indebted worker cannot escape an abusive placement without forfeiting both his income and his lawful status, and so the debt operates as a second tether, reinforcing the first.

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<sup>24</sup>See *The Fight in Taiwan for Better Migrant Worker Conditions*, Commonwealth Magazine (Jan. 10, 2024), <https://english.cw.com.tw/article/article.action?id=3597> (quoting a comparative observation that Taiwan is the only country with a law stipulating that migrant workers pay service fees to brokers, and characterising the practice as a warning signal for coerced labour).

<sup>25</sup>U.S. Dep't of State, *2025 Trafficking in Persons Report: Taiwan* (2025), <https://www.state.gov/reports/2025-trafficking-in-persons-report/taiwan> (recording recurring monthly broker service fees of roughly US\$50–60 for which workers often receive no discernible service; that, after garnishment of recruitment fees and guaranteed-deposit repayments, many foreign workers earn significantly less than the minimum wage; and that many Taiwan-based brokers are also lending companies, creating a cyclical structure of debt bondage).

<sup>26</sup>*Id.*; see also Transparentem, *The Price of Work: A Brief on Widespread Migrant Worker Recruitment Fees in Taiwan's Manufacturing Sectors* (2025), <https://transparentem.org/report/taiwan-the-price-of-work/> (finding, on the basis of 2024 worker interviews, high recruitment fees that in most cases required loans and placed workers at risk of debt bondage, which the ILO recognises as an indicator of forced labour); *Taiwan's Migrant Workers Versus Labour Brokerage System*, Taiwan Insight (Jan. 19, 2022), <https://taiwaninsight.org/2022/01/19/> (collecting U.S. human-rights-report findings of excessive recruitment fees and debt bondage).

Brokerage debt bears directly on health through a mechanism that is by now well documented: indebted workers defer or forgo medical care. To miss work for illness is to risk dismissal; to be dismissed is to lose status and to default on debt. The rational response, for a worker whose continued presence and solvency hang on the employer's goodwill, is to conceal injury and illness, to keep working through pain, and to avoid the clinic until a condition becomes acute. The debt thus converts every health need into a financial threat, and the conversion is a direct product of a legal regime that permits the fee, licenses the broker lender, and forbids the worker to leave.

Two sectors illustrate the apparatus at its most acute. In distant water fishing, migrant crew are excluded from the Labor Standards Act, isolated for months at sea, and subject to the broker-lender debt structure described above; international monitoring has repeatedly documented document retention, contract violations, excessive overtime, and the mistreatment of crew aboard Taiwan-linked vessels, with enforcement thin and penalties slight.<sup>27</sup> In manufacturing, the consequences of the regime have begun to register in the trade enforcement of Taiwan's partners: a United States Customs and Border Protection investigation into a major Taiwanese bicycle manufacturer found indicators of forced labour in its supply chain including wage withholding and excessive overtime prompting the Ministry of Labor, in early 2026, to issue forced-labour prevention guidelines that critics faulted for addressing symptoms while leaving the systemic causes, debt bondage and the exclusion of homecare workers, untouched.<sup>28</sup> The trade enforcement is telling: it took the threat of lost market access, rather than the claims of the workers themselves, to move the regime even to the gesture of reform a vivid measure of how thoroughly the workers' own power had been suppressed.

#### ***D. How the Mechanisms Interlock***

The three mechanisms are not parallel grievances but an integrated apparatus. The employer tied permit removes *exit*; the Labor Standards Act exclusion removes the *external standard* that might constrain the employer's use of the resulting power; and brokerage debt removes the *financial*

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<sup>27</sup>See U.S. Dep't of State, *supra* note 25 (recording inspection findings of document retention, contract violations, excessive overtime, and crew mistreatment across numerous fishing vessels, and noting that most violators received guidance notices rather than meaningful penalties); *Migration to Taiwan*, *supra* note 2 (noting that distant-water fishing falls outside Labor Standards Act protection).

<sup>28</sup>See Cheng, *supra* note 17 (reporting the U.S. Customs and Border Protection finding of forced-labour indicators in the supply chain of a major Taiwanese manufacturer, the Ministry of Labor's 2026 forced-labour-prevention guidelines listing eleven indicators including debt bondage and document retention, and the criticism that the guidelines fail to address debt bondage and the exclusion of home-care workers from legal protection).

*capacity* to absorb the consequences of resistance. Each closes a door the others leave ajar. A worker who could change employers might escape an abusive household, but the permit forbids it. A worker forbidden to leave might still invoke a statutory minimum, but the Labor Standards Act exclusion denies her one. A worker denied both might still walk away and bear the cost, but the debt makes the cost ruinous. The cumulative effect is a near total foreclosure of the worker's practical alternatives which is to say, near total domination.

It bears emphasis that this apparatus is constructed entirely from *ordinary administrative law*: a licensing statute, a coverage definition, a fee regulation. There is no need to posit malice or conspiracy; the domination is emergent, the cumulative product of discrete administrative choices each defensible in isolation and indefensible in combination. This is what it means to say that the regime is a structural determinant of health. No single official decides that migrant workers shall be unwell and unorganised; the structure decides it, by distributing arbitrary power and foreclosing the avenues of its contestation. And because the structure is legal, it is also, in principle, reformable by legal means a point to which Part VI returns.

#### **IV. Domination as Health-Governance Failure: The Suppression of Power**

This Part translates the architecture of Part III into the vocabulary of power, showing that the regime suppresses each of the three dimensions of power identified by Lukes and that each suppression is, at the same time, a pathway to ill-health. The argument is that Taiwan's migrant labour regime is a health governance failure not despite but *through* its suppression of worker power.

##### ***A. The First Dimension: Foreclosed Collective Bargaining***

In the first, most visible dimension, power is exercised in open contests over stated demands the domain of unionisation, bargaining, and the strike. For migrant workers in Taiwan, this dimension is foreclosed at the root. The employer tied permit makes the credible threat that underwrites all worker bargaining the threat to withdraw labour, individually or collectively a threat the worker cannot make, because to withdraw labour is to risk the loss of status and removal from the country. A workforce that cannot quit cannot credibly strike; a workforce that cannot credibly strike cannot bargain. The dispersal of domestic caregivers into individual private households compounds the

foreclosure, scattering the very population least protected by statute into the workplaces least amenable to collective organisation.<sup>29</sup>

The health consequence is direct. Across labour history, the first dimension power to bargain collectively has been a principal engine of workplace health and safety: shorter hours, safer conditions, sick leave, and access to care have been won, not granted. To foreclose collective bargaining is therefore to foreclose the ordinary mechanism by which workers convert grievances about hazardous or exhausting conditions into enforceable improvements. The hazards that organised workforces elsewhere have bargained down excessive hours, unsafe equipment, the denial of medical leave persist for Taiwan's migrant workers precisely because the power to contest them has been removed in advance.

### ***B. The Second Dimension: Agenda Exclusion***

The second dimension concerns the power to keep issues off the agenda the 'mobilisation of bias' by which potential conflicts are prevented from reaching the point of decision. Here the regime operates by ensuring that migrant worker health rarely becomes a live legislative or regulatory question. Disenfranchised, dispersed, and deterred from complaint, migrant workers exert little electoral or organisational pressure; their concerns enter the policy agenda, when at all, only through the mediation of a thin layer of advocacy organisations. The Labor Standards Act exclusion is itself a second-dimension achievement: by placing domestic caregivers *outside* the Act, the legislature removed their wages, hours, and rest from the field of ordinary labour regulation, so that the recurring questions of statutory protection that arise for covered workers are, for them, never seriously posed.<sup>30</sup>

The health consequence of agenda exclusion is the chronic nondecision. Reforms that are never debated are never enacted; protections that are never on the agenda are never extended. The decadeslong pendency of a household service or domestic worker protection law drafted, discussed, and deferred is the signature of a second-dimension suppression: the issue is kept

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<sup>29</sup>On the structural barrier that the no-transfer rule poses to collective action, see Cheng, *supra* note 17; on the dispersal of caregivers into private households and its isolating effect, see *A Story of Exclusion*, *supra* note 21.

<sup>30</sup>On the persistence of the exclusion despite repeated civil-society campaigns — including the long-running effort to enact a Household Service Act — see *Migration to Taiwan*, *supra* note 2 (recounting the Promoting Alliance for a Household Service Act); *The Ministry of Labor Endeavors to Protect the Rights of Domestic Workers Through Pragmatic Approaches*, Ministry of Labor (R.O.C.), <https://english.mol.gov.tw/21139/21156/21505/post> (noting a long-pending draft Domestic Workers Protection Act).



perpetually at the threshold of decision, acknowledged but never resolved, while the health harms of the unprotected status continue to accrue.

### ***C. The Third Dimension: The Naturalisation of Exclusion***

The third and deepest dimension is the power to shape perceptions and self-understanding's so that subordination appears natural. Here the regime achieves its most insidious effect: it removes migrant workers from the very category of the 'common worker' whose health and dignity are matters of public concern. The caregiver is recast as 'help' within the private sphere of the family, her labour assimilated to the unpaid care historically performed by women and therefore not 'work' in the sense the Labor Standards Act protects; the official justification for her exclusion that household caregiving is *sui generis* and 'does not fit' the Act is the discursive form this naturalisation takes.<sup>31</sup> The factory worker, in turn, is recast as a temporary economic input a unit of the labour shortage rather than a member of the community, his presence framed as a contingency to be managed rather than a participation to be honoured.

This third-dimension achievement is what allows the first two to persist unremarked. Once migrant workers are not seen as full participants whose flourishing the polity is bound to secure, the foreclosure of their bargaining power and the exclusion of their concerns from the agenda cease to register as injustices and appear instead as the natural order of a guestworker arrangement. The recurring framing of migrant worker importation as a question of *national security* or cultural anxiety vividly displayed in the public reaction to the prospect of Indian recruitment is a further instance of the same dynamic: the worker is constituted as a threat or a burden rather than a neighbour.<sup>32</sup>

Common Good Constitutionalism supplies the direct rejoinder to this third-dimension exclusion. If the community whose good the state must secure is defined by participation rather than citizenship, then the migrant caregiver and factory worker are *already* members of it, and their reconstitution as non-members as help, as input, as threat is precisely the ideological move that

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<sup>31</sup>See *New Documentary: 'Migrant Caregivers: Taiwan's Invisible Workers'*, *supra* note 22 (officials defending the exclusion on the ground that caregiving duties within a household are 'unique' and 'do not fit' the Labor Standards Act; a human-rights advocate responding that the Act is meant to treat all workers fairly and should be adapted to the characteristics of different work rather than used to exclude).

<sup>32</sup>*Cf. 2023 Taiwanese Anti-Indian Migrant Worker Protest*, Wikipedia (last visited 2026) (recounting the December 2023 demonstration against the prospective importation of Indian workers, the first protest in Taiwan specifically against migrant-worker imports, and the government's initial characterisation of it as the product of cognitive warfare).

the classical account of public authority forbids. The recognition harm inflicted by third dimension domination is, on this view, not merely a sociological fact but a constitutional wrong: a failure of the polity to acknowledge those whose flourishing it is bound to pursue.

#### ***D. The Convergent Health Pathway***

The three suppressions converge on a single health pathway. Foreclosed bargaining leaves conditions hazardous; agenda exclusion leaves protections unenacted; naturalised exclusion leaves the resulting harms unseen. Layered atop these instrumental effects are the intrinsic harms of domination itself the chronic stress of status insecurity, the self-silencing that deters care seeking, and the recognition harm of civic subordination. The empirical signatures are by now familiar: live-in caregivers without sick leave or income protection working through illness; indebted factory workers concealing injury for fear of dismissal; a population for whom seeking medical care carries the standing risk of employment disruption and removal.<sup>33</sup> None of this is incidental. It is what a power suppression regime does to the health of those it dominates and it is why the regime must be understood, and addressed, as a matter of health governance and not labour policy alone.

### **V. A Comparative Lens: India's Constitutional Treatment of Migrant and Bonded Labour**

The comparative turn to India is doubly apt. India is, on one hand, the source country whose prospective workers the 2024 Memorandum of Understanding will channel into precisely the Taiwanese regime this Article has anatomised; the two systems are now, in a concrete administrative sense, joined. On the other hand, India's own constitutional order contains a developed jurisprudence on forced and bonded labour that both illuminates the wrong at issue and reveals, by its limits, how analogous employer tied administrative structures reproduce domination even under a constitution that formally forbids it. India is thus both a normative resource and a cautionary convergence.

#### ***A. Articles 14, 19, and 23 and the Forced-Labour Jurisprudence***

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<sup>33</sup>On deterred care-seeking and the income insecurity of unprotected caregivers, see *NGOs Demand Taiwan Provide Insurance for Domestic Migrant Workers*, *supra* note 23; on debt-driven vulnerability and its persistence, see U.S. Dep't of State, *supra* note 25, and *Transparentem*, *supra* note 26.

The Constitution of India supplies three textual anchors. Article 14 guarantees equality before the law and the equal protection of the laws; Article 19 protects, among other freedoms, the freedom to practise any profession or to carry on any occupation, trade, or business; and Article 23 prohibits ‘traffic in human beings’, *begar*, and other similar forms of forced labour, imposing on the State a positive obligation to abolish such practices wherever they are found.<sup>34</sup> The Supreme Court of India has given Article 23 a notably capacious reading. In the *Asiad Workers’ Case — People’s Union for Democratic Rights v. Union of India* — the Court held that the word ‘force’ in Article 23 encompasses not only physical and legal compulsion but also *economic* compulsion, so that the payment of wages below the statutory minimum, where it arises from the worker’s want of alternatives, itself amounts to forced labour.<sup>35</sup>

In *Bandhua Mukti Morcha v. Union of India*, the Court extended the principle to bonded labour in the Faridabad stone quarries, holding that a person bound by debt to labour for inadequate remuneration is deprived of liberty and reduced to a condition the Constitution forbids, and directing the State affirmatively to identify, release, and rehabilitate bonded labourers.<sup>36</sup> Two features of this jurisprudence are salient. First, the Court located the wrong not in the formality of a contract but in the *condition* of subjection to which economic vulnerability gives rise a doctrinal recognition, in the idiom of fundamental rights, of what this Article has called domination. Second, the Court read Article 23 together with Article 21’s guarantee of the right to life, which Indian courts have construed to include the right to live with human dignity and, in a line of cases, the right to health and to emergency medical care.<sup>37</sup>

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<sup>34</sup>India Const. arts. 14, 19, 23. Article 23(1) provides that ‘traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.’

<sup>35</sup>*People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 (India) (holding that ‘force’ in Article 23 includes economic compulsion, and that payment below the minimum wage to one driven by poverty and want of choice constitutes ‘forced labour’).

<sup>36</sup>*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India) (recognising bonded labour as a form of forced labour under Article 23, reading the right to live with human dignity into Article 21, and directing the State to identify, release, and rehabilitate bonded labourers); see also *Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 328 (India) (striking down the payment of below-minimum wages on famine-relief works, and holding that the State may not exploit the vulnerable condition of the destitute even under the pretext of relief).

<sup>37</sup>See India Const. art. 21; *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37 (India) (the right to life under Article 21 obliges the State to provide timely emergency medical treatment); *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 (India) (occupational health is integral to the right to life with dignity under Article 21).

The Indian materials thus furnish, in positive constitutional form, the very linkage this Article has argued for on theoretical grounds: that economic subjection is a constitutional wrong, that it is continuous with the denial of dignity and health, and that the State bears an affirmative duty to dismantle it. Statutory implementation the Bonded Labour System (Abolition) Act 1976, the Minimum Wages Act 1948, and the InterState Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 gives the constitutional principle administrative teeth, at least on paper.<sup>38</sup>

### ***B. The 2024 Taiwan–India MOU and Convergent Structures***

On 16 February 2024, Taiwan and India signed a Memorandum of Understanding on migration and mobility, to be implemented through subsequent working level agreements specifying the industries, numbers, source regions, qualifications, and recruitment methods for Indian workers in Taiwan; press reporting indicated that the framework contemplated the eventual recruitment of up to 100,000 Indian workers.<sup>39</sup> The MOU is a framework instrument; it leaves the substantive terms of the workers’ status to be set by the receiving state’s domestic law. And that is precisely the difficulty. Indian workers recruited under the MOU will enter the Taiwanese regime anatomised above the employer tied permit, the brokerage system, and, for those placed in households, the Labor Standards Act exclusion. The constitutional protections that Article 23 and the bonded labour jurisprudence afford within India do not travel with the worker across the strait.

The comparison therefore yields a sobering convergence. India’s own domestic record reveals how readily employer tied and contractor mediated structures reproduce domination even under a constitution that names and forbids forced labour: the persistence of bonded and interstate migrant labour, despite the 1976 and 1979 Acts, testifies to the gap between constitutional prohibition and administrative reality. Taiwan’s regime, lacking even the constitutional prohibition, channels the same structural forces with fewer doctrinal brakes. The MOU thus joins two systems each prone,

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<sup>38</sup>Bonded Labour System (Abolition) Act, No. 19 of 1976 (India); Minimum Wages Act, No. 11 of 1948 (India); Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, No. 30 of 1979 (India).

<sup>39</sup>See *India, Taiwan Sign Migration Agreement to Strengthen Bilateral Cooperation*, Business Standard (Feb. 16, 2024), [https://www.business-standard.com/economy/news/india-taiwan-sign-migration-agreement-to-strengthen-bilateral-cooperation-124021601307\\_1.html](https://www.business-standard.com/economy/news/india-taiwan-sign-migration-agreement-to-strengthen-bilateral-cooperation-124021601307_1.html) (reporting the 16 February 2024 signing and the subjects reserved for follow-up working-level discussion); *2023 Taiwanese Anti-Indian Migrant Worker Protest*, *supra* note 32 (noting press reports that the MOU would allow the recruitment of up to 100,000 Indian workers). As of early 2026, implementation remained at an early stage. See *Taiwan and India Near Deal for Migrant Workers*, Domino Theory (Apr. 7, 2026), <https://dominotheory.com/taiwan-and-india-near-deal-for-migrant-workers/>.

by the design of their labour administration, to the production of worker domination and it does so without, as yet, any binding cross border guarantee that the Indian worker's passage to Taiwan will not be a passage from constitutional protection to its absence.

### ***C. What Each System Can Learn***

The comparative exercise is not a ranking but a mutual diagnosis. From India, Taiwan can take the doctrinal insight that economic subjection is continuous with the denial of dignity and health, and the institutional lesson that an affirmative state duty to identify and dismantle conditions of bondage can be articulated in justiciable constitutional terms. From Taiwan's experience, India increasingly a sender of labour under bilateral arrangements can take the cautionary lesson that the constitutional protections its workers enjoy at home may evaporate at the border unless they are secured by the terms of the mobility agreements themselves. The shared implication is that the protection of migrant workers' health and freedom cannot be left to the domestic labour law of the receiving state alone; it must be built into the architecture of recruitment, the design of the permit, and, ideally, the bilateral instrument that authorises the movement.

## **VI. Dismantling Domination as a Precondition for Health Equity**

If the regime's health failure is a function of domination, the reform programme follows from the diagnosis: dismantle the domination, and one removes the structural barrier to the power building through which migrant workers might secure their own health. Four reforms, taken together, would convert the architecture of unfreedom into a structure consistent with the affirmative duties that nondomination and the common good impose. None is utopian; each has been proposed by Taiwanese civil society, and several are mirrored in the practice of comparable jurisdictions.

### ***A. Permit Portability***

The first and most fundamental reform is to sever the work permit from the single named employer to make the permit *portable*, so that a worker may change employers within the sector without forfeiting lawful status. Portability restores the freedom of exit that is the precondition of all worker bargaining; it removes at a stroke the employer's discretionary power over the worker's immigration status, and with it the keystone of domination. The amendment is modest in form a revision of Articles 53 and 59 of the Employment Service Act to extend to lower status workers

the transfer freedom already enjoyed by professionals and profound in effect, for it transforms a relationship of mastery into one of ordinary, terminable employment.<sup>40</sup>

### ***B. Full Labor Standards Act Coverage***

The second reform is to bring domestic caregivers and household workers within the floor of statutory protection whether by amending the definition of covered industries in Article 3 of the Labor Standards Act or by enacting the long pending dedicated household service legislation, provided it secures genuine minima for wages, hours, rest, and leave rather than a diminished parallel regime. Statutory coverage supplies the *external standard* whose absence, as Part III.B argued, enlarges the sphere of arbitrary power; it converts the employer's will into one bounded by public norm. Coupled with inclusion in labour insurance and sick leave entitlement, it directly addresses the income insecurity that currently drives unprotected caregivers to work through illness.<sup>41</sup>

### ***C. Public Recruitment Services***

The third reform is to displace the private broker lender with public, government to government recruitment. Where the state assumes responsibility for matching workers to employers as several sending and receiving states have moved toward the structural incentive to charge service fees and to bind workers in debt is removed, and the cyclical broker lender vulnerability that the Trafficking in Persons Report describes is dissolved at its source. Direct hiring has long been the central demand of Taiwan's migrant worker advocates, precisely because it attacks the financial tether that reinforces the permit tether.<sup>42</sup>

### ***D. Collective-Bargaining Rights***

The fourth reform is to secure, in law and in practical fact, migrant workers' rights to organise and bargain collectively — including measures that overcome the dispersal of household workers, such

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<sup>40</sup>See Employment Service Act, arts. 53, 59 (Taiwan); Cheng, *supra* note 17 (identifying the no-transfer rule as the principal source of unfreedom and the natural target of reform). On civil-society demands for the freedom to change employers, see *Cabinet Policy to Allow More Migrant Workers Slammed by Labor Groups*, *supra* note 2.

<sup>41</sup>See Labor Standards Act, art. 3 (Taiwan); *A Story of Exclusion*, *supra* note 21; on the pending Domestic Workers Protection Act and the campaign for a Household Service Act, see *supra* note 30.

<sup>42</sup>See *The Fight in Taiwan for Better Migrant Worker Conditions*, *supra* note 24 (recounting the Taiwan International Workers' Association's longstanding call for direct government-to-government hiring in place of private intermediaries); U.S. Dep't of State, *supra* note 25 (documenting the broker-lender structure that direct hiring would displace).

as sectoral or multiemployer bargaining frameworks suited to a workforce scattered across private homes. Portability makes the strike threat credible; collective bargaining rights make it lawful and organised. Together they restore the first-dimension power whose foreclosure, as Part IV.A argued, leaves workplace hazards unremedied. This is the reform most directly continuous with the power building literature: it does not deliver health as a service but equips workers to win it for themselves.

### ***E. Constitutional Grounding***

These reforms are not, on the argument of this Article, discretionary policy preferences to be weighed against the convenience of employers or the management of a labour shortage. They are entailments of the state's constitutional duty. Common Good Constitutionalism grounds an affirmative obligation to secure the basic conditions of flourishing including health for all who participate in the community's economic and social life; nondomination specifies that this duty cannot be discharged while the state itself constructs the arbitrary power that destroys those conditions. The migrant worker, as a participant in the common good of Taiwan, is owed a status of secure equality, and the administrative state the modern instrument of the common good is the very apparatus through which that status must be built. The reforms above are simply the *determinationes* by which the general duty is rendered into specific, workable law: portability and coverage and public recruitment and bargaining rights are what the duty to protect health *looks like* when translated into the institutions of migrant-labour administration.<sup>43</sup>

### ***F. Anticipating Objections***

Three objections deserve a response. The first is the *labour shortage* objection: that Taiwan's demographic crisis makes a flexible, employer controlled migrant workforce a practical necessity, and that portability and full coverage would raise costs and deter the recruitment on which an ageing society depends. The answer is partly empirical and partly principled. Empirically, jurisdictions that permit worker mobility and extend statutory protection have not found their care economies to collapse; the costs of decency are real but bounded, and they are costs the common good requires the community to bear rather than to externalise onto the bodies of the most

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<sup>43</sup>See Vermeule, *CGC*, *supra* note 5 (affirmative state duties to the common good, discharged through the *determinatio* of principle into positive law via the administrative state); Pettit, *Republicanism*, *supra* note 4 (the republican state's task of constructing antipower for the vulnerable).

vulnerable. Principally, the objection proves too much: it is precisely the argument by which every regime of bound labour has justified itself, and the Indian Supreme Court's rejection, in the famine relief cases, of the claim that vulnerability licenses subminimum treatment applies with equal force here.<sup>44</sup>

The second is the *autonomy* objection: that workers freely consent to these terms when they sign their contracts, and that to override the bargain is paternalistic. But consent extracted under conditions of debt, information asymmetry, and a binary choice between a tied placement and no work at all is consent in form rather than substance; the republican tradition, like the Indian forced labour jurisprudence, has long recognised that economic compulsion vitiates the freedom that consent presupposes.<sup>45</sup> A worker who 'agrees' to a regime she cannot lawfully leave has not exercised autonomy; she has surrendered to its absence. The third objection is one of *constitutional competence*: that these are matters for the legislature, not for constitutional theory, and that talk of affirmative duties risks judicial overreach. The response is that the argument of this Article is addressed in the first instance to the legislature and the administration the very actors the common good tradition identifies as the ordinary stewards of the common good. To say that portability and coverage are constitutional entailments is not to demand that courts impose them tomorrow, but to deny that they are merely optional, to be granted or withheld at the convenience of employers. They are what the state's standing duty requires, and the political branches are bound to pursue them whether or not a court ever compels it.

## VII. Conclusion

This Article has argued that Taiwan's migrant labour regime should be read as a problem of health governance, and that the key to that reading is the concept of domination. Three interlocking features of the regime the employer tied permit, the Labor Standards Act exclusion of domestic caregivers, and a brokerage system that channels workers into debt bondage together construct, through ordinary administrative law, a standing susceptibility to arbitrary power. That domination

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<sup>44</sup>See *Sanjit Roy v. State of Rajasthan*, *supra* note 36 (the State may not exploit the destitution of the vulnerable to justify below-minimum wages, even in the name of relief). The principle generalises: economic necessity does not license the construction of domination.

<sup>45</sup>See *People's Union for Democratic Rights v. Union of India*, *supra* note 35 ('force' includes the compulsion of economic circumstance and want of alternative); Pettit, *Republicanism*, *supra* note 4 (consent under domination does not legitimate the dominating relationship).



is bad for health twice over: instrumentally, by foreclosing the collective bargaining, agenda setting, and recognition through which workers elsewhere have built the power to improve their own conditions; and intrinsically, by inflicting the chronic insecurity, self-silencing, and status subordination that social epidemiology identifies as mechanisms of ill-health. Read through Pettit's theory of nondomination and Vermeule's account of the common good, and analysed through Lukes's three dimensions of power, the regime emerges not as a labour equality deficit alone but as a deliberate suppression of the power building capacity of a population of more than 850,000 people whose health vulnerabilities are, in a precise sense, produced by law.

The comparison with India deepens rather than dissolves the point. India's constitutional prohibition of forced labour and its bonded labour jurisprudence show that economic subjection can be named and condemned in justiciable constitutional terms, and that an affirmative state duty to dismantle conditions of bondage can be articulated; yet India's own administrative reality, and the 2024 Memorandum of Understanding that will channel Indian workers into Taiwan's less guarded regime, show how readily employer tied structures reproduce domination across very different constitutional orders. The lesson is that the protection of migrant workers' health and freedom must be built into the architecture of recruitment and permit, not left to evaporate at the border.

The reform programme portability, full statutory coverage, public recruitment, and collective bargaining rights is, on this account, not a wishlist but a set of constitutional entailments: the *determinationes* by which the state's duty to protect the health of all participants in the common good is rendered into the institutions of labour administration. Dismantling migrant-worker domination is therefore not merely a matter of labour equality. It is a precondition for genuine power building, and so for health equity. That conclusion travels. Wherever immigration status is welded to a single employer, wherever a class of care workers is written out of the labour code, wherever recruitment debt tethers the worker to the intermediary, the same structural logic suppresses the same power and produces the same ill-health. Taiwan's regime is a particularly clear instance of a general phenomenon and the constitutional case for dismantling it, grounded in nondomination and the common good, is a case with reach well beyond the island whose squares fill, each Sunday, with the indispensable and the unfree.