Legal Servitude and Free Illegality: Migrant “Guest” Workers in Taiwan
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PRISCILLA FIRST CAME TO TAIWAN as an overseas contract worker (OCW). She worked in a private household, caring for two children, cleaning a three-story house, and cooking three meals a day. Sometimes she was asked to clean the house of her employers’ parents, with only a small extra payment. She had only two days off each month. The employers did not like her to mingle with other Filipinas and would rather pay her overtime for staying home on Sundays. Priscilla was exhausted, lonely, and worried. The male employer sometimes came home during the day while his wife was at work. Once when the wife was out of town for business, he came to Priscilla’s door around midnight. “It was a long long knock. I had to drag the cabinet against the door and hide myself in the closet. I was afraid what he wanted from me,” recalled Priscilla with lingering fear in her eyes. In addition to the worry about sexual harassment from the husband, Priscilla was also concerned about the wife’s reaction. She was afraid that the female employer might send her home out of jealousy. She thought of her children in the Philippines who need money to pay off their tuitions; she thought of her debts borrowed from a loan shark to cover the placement fee. She bit her lips and told herself, “I cannot go home, not now.”

Priscilla decided to “run away,” more exactly, she left her employers without notice. She moved into a small two-bedroom apartment with three other Filipinas—one is also a runaway OCW and two have agreements with their contract employers for a live-out arrangement. Through the referral of friends, Priscilla found part-time cleaning jobs. When she has a sufficient supply
of jobs, she is cleaning ten houses a week and earning more than twice what she did as a live-in contract worker. After going undocumented, she lost some of the legal protection that regular migrants get, such as health insurance ("I pray for my health. God is my insurance!" said Priscilla). And she has to avoid the public gathering of Filipino migrants, especially during the times of police crackdown. Nevertheless, she gains more autonomy at work and more freedom in life in comparison with her documented days.

The flows of transmigration within Asia accelerated in the early 1980s and reached unprecedented levels in the last decade. The oil boom in the Gulf countries and the rapid industrialization in East Asia have attracted a growing number of migrant workers from the Philippines, Indonesia, Thailand, Sri Lanka, Bangladesh, and Vietnam. Temporary migration of semiskilled and unskilled workers is the most significant category of labor migration in this region. It is estimated that the stock of temporary migrant workers in Asia, with or without legal documents, reached 6.1 million by 2000 (Battistella 2003).

The adoption of the "guest worker" regime is a salient feature of state regulation in Asian host countries. Legal channels are open for foreigners placed in the so-called "Three D" jobs (dirty, dangerous, and difficult), but state policies position them exclusively as contract workers and transient residents. The legal channels of migration sometimes lead to routes of irregular migration. Some documented migrant workers may "run away" from the employers as an escape from debts shackles and contract bondage. Ironically, these irregular migrants become "free" in the domestic labor market and improve their working conditions, as in the case of Priscilla. Such situations contest the common ideas about improved security within legal realms and prevalent vulnerability in irregular migration.

Why are migrant contract workers trapped in this system of "legal servitude" while undocumented migrants gain higher wages and enjoy more freedom? This puzzle leads us to examine several critical dimensions in the "guest worker" system of labor migration in Asia. I offer the case of Taiwan to examine how Asian states intervene in the process of international labor migration and how their policies impact the recruitment process and conditions of migrant contract workers. In such a highly regulated market, brokers are trading not only labor power but also quotas and passports for profits. For migrant workers, the legal status and contract bonds become more meaningful of servitude than measures of protection. As a result, stringent state regulations punish those who abide by the law and induce the formation of irregular migration.

Guest or Alien?

The guest worker regime is widely adopted in Asian destination countries, in which migrant workers are employed on temporary contracts and are prohibited from immigrating or becoming naturalized. Historically, more strict modes of labor migration have existed, such as indentured workers (the "cooler" system) who were recruited, sometimes by force, to work on plantations in European colonies or the United States during the second half of the nineteenth century. Indentured workers were bound by strict labor contracts for a period of several years and subject to rigid discipline and poor wages (Castles and Miller 1993). To ease labor shortages after the second world war, several Western European countries systematically recruited foreign guest workers from Southern Europe or former colonies; these programs stopped in the mid-1970s, shadowed by the oil crisis and the subsequent recession (Castles 1986).

Today, guest worker contracts are still a common mode of employment for recruiting migrant workers from overseas. They are especially predominant in European and Asian countries that lack a history of immigration or an ideology that favors permanent settlement (Massey et al. 1998: 5). In Europe, the scheme of guest worker is prevalent in spite of national variation in methods of incorporating migrants (Soysal 1994). The European Commission also proposed a policy plan in 2005 to expand legal venues for temporary labor migration (Castles 2006). The presence of guest workers challenges the universalistic principle of European welfare states, who find it difficult to deny migrant workers their entitlements to economic and social rights. In some countries, noncitizen migrants are also granted the right to vote in local elections. Migrant workers, in theory yet not always in practice, are eligible to rights and benefits associated with the residency-based status of "denizenship" (Hammer 1989).

In Asia, more restrictive immigration policies are enforced on the basis of state concerns about geographic constraints, population densities, and nationalist agendas. Quota controls, work permits, and levies are widely adopted to control the volume and distribution of migrant workers (Cheng 1996). No immigration is granted for unskilled workers in any Asian host country so far; the Singapore government even prohibits residency to migrant workers married to any other citizens.
Behind the euphemism of guest worker lies the cruel fact that the receiving state treats migrants as disposable labor, as they live in the country of destination only during a restricted term of employment. Through prohibiting migrant workers from permanent settlement and family reunification, the host state externalizes the cost of renewing labor to the economies and states of origin (Barawoy 1976). Such an arrangement allows the host country to enjoy the labor power of migrants while they are young and healthy. They are, however, sent back home after they age, fall ill, or suffer injury.

The sending state also favors the guest worker system, which positions migrants in the frame of temporary visits rather than permanent immigration. The sending state often invests in ideological work to secure the loyalty of its overseas nationals as well as the flow of their regular remittances. For example, the Philippine government has promoted the notion of “national heroes” in a media campaign based on the nationalist imagery of “homeland.” In addition, many sending states have established special financial programs to attract overseas remittances, such as offering tax breaks, setting up banking facilities in receiving countries, and requiring the remittance of a fixed share of earnings into government-controlled accounts (Athukorala 1993).

Direct involvement of governments in promoting international migration is a major feature that distinguishes the Asian system from its counterparts in North America and Western Europe (Massey et al. 1998: 191). Many states of origin actively facilitate and channel the export of their nationals as profitable commodities. Several Asian governments, for example those of the Philippines and Indonesia, have established special labor export agencies within their national bureaucracies to regulate flows, train potential migrants, and promote their workers to receiving countries. Vietnam, previously a communist regime, has now established state-owned companies to handle the recruitment and placement of all overseas workers.

In addition to promoting and facilitating emigration, the sending state may also use policy tools to control certain kinds of labor outflow. Nana Ofori (2005) found that many emigration policies in Asia place specific restrictions upon overseas employment of women such as age and occupational regulations, while allowing men to leave their country almost freely. She argues that the policies for male migration are generally driven by economic imperatives, while the policies for female migration tend to be more value-driven, which curtail women’s freedom of movement. Under the moral banner of protection, I will later discuss how migrant women may enunciate these values in practice.

In sum, we have envisaged the interlocking processes of “denationalizing economies” and “renationalizing politics” in contemporary labor migration (Sassen 1996). One the one hand, the integration of market economy, regionally as well as globally, has facilitated and expedited the trade in migrant workers; on the other hand, nation-states continue to play an essential role as gatekeepers to regulate inflows and outflows of migration. Being incorporated into the host labor market, migrant workers are nevertheless excluded from the political collective, whose policy frameworks in the distribution of rights and benefits make migrant workers, even with legal documents to work, marginalized and vulnerable to abuses. As Michael Walzer (1983: 58–59) describes, the market for guest workers is created based on the political premise that migrants as a group constitute a “disfranchised class”—without the denial of political rights and civil liberties and the everpresent threat of deportation, the system would not work.

Border Control and State Regulation

In October 1989, Taiwan’s government, for the first time, authorized a special order that allowed foreigners to work legally for a national construction project. Two years later, the release of working permits for migrant workers was expanded to the private sector, including construction, labor-intensive manufacturing, and the employment of domestic helpers and caretakers. This policy emerged primarily as a response to a labor shortage, or more exactly, a lack of cheap labor for low-skilled positions not in high favor by locals. The current number of documented migrant workers exceeds 360,000, about 2.5 percent of the national workforce.

When Taiwan’s government legalized the employment of foreign workers in the early 1990s, it copied a great deal from the policy frameworks in Singapore and Hong Kong, both of which had established a guest worker system in the late 1970s. The case of Taiwan is a microcosm for a trend of policy convergence in East Asia. It also constitutes a significant case for the discussion of the guest worker program, because the state has adopted rather strict regulations on the granting of work permits and the maximum duration of the workers’ stay.

Vic Sztewicz (1991) identifies three forms of state intervention in the process of labor migration. First, the state, by setting up a standard of exclusion, determines who is eligible for entry into the geographic national boundaries. Second, the state stipulates who is included within the symbolic boundaries of the nation by regulating access to civil rights. Third, the state also
determines how migrant workers are allocated and incorporated into specific sites in the relations of production and the organization of the labor process. I use this theoretical framework to examine Taiwan’s foreign labor policy, whose aim, in a nutshell, is to ensure that migrant workers are temporarily transient and spatially fixed. Against such policy backdrop, undocumented migrants break loose the state regulations with their mobile bodies and potential to stay permanently.

As early as the beginning of the 1980s, some Southeast Asians entered Taiwan as tourists and overstayed their visas. The estimated number of undocumented foreign workers in the late 1980s exceeded 50,000 (Tsay 1992). The legalization of migrant labor in 1989 should be read not only as a response to capitalist demands for cheap labor but also as a turning point in border control—total exclusion became limited and regulated inclusion. The Council of Labor Affairs (CLA) has adopted a quota system to control the quantity of migrant workers and their distribution in selected occupations and industries.

This quota system has created an interest liaison among the state, employers, and employment agencies. The procedures of releasing quotas and granting admissions have provided a breeding ground for bribery and corruption. Taiwan’s newspapers have uncovered several scandals in which employers mobilized political networks for quotas, or placement agencies paid off CLA officials to speed the bureaucratic procedures for granting admissions.

Although migrant workers are included within the geographical national boundaries, the state has taken some measures to exclude them from symbolic national boundaries. As the CLA officials have repeatedly announced, one of the crucial principles in Taiwan’s migration policy is to strictly prohibit the permanent settlement of migrant workers. In the beginning, Taiwan’s government mandated that the maximum duration of a migrant worker’s contract was three years (two years plus a one-year extension), and each worker could work in Taiwan only once. In order to reduce the number of runaway migrants, the new legal regulation effective since January 2002 allows migrant workers “with good records” to reenter once more and work in Taiwan up to six years (including both contracts).

The inclusion or exclusion of foreigners is nevertheless selective on a class basis. While blue-collar migrant workers are not eligible for permanent residence or citizenship, white-collar professional migrants, including professionals, managers, and teachers, are subject to different rules. Their work permits are granted on an individual basis and not subject to quota controls. There is no limitation on length of stay in the country, and they are eligible to apply for permanent residence or citizenship after residing in Taiwan and working legally for five years or more.

The third dimension of state intervention places migrant workers in a vulnerable position by depriving them of the right to circulate in the domestic labor market. The government dictates that a migrant worker can work for only one particular employer during a stay in Taiwan. No transfer of employer is allowed except under the following conditions: if the original employer goes bankrupt, closes business, or cannot pay wages to the worker; if the care recipient of a migrant worker dies or moves to another country; or if a worker is abused by the employer or illegally placed on the labor market.

By depriving migrant workers of the right to freely circulate in the domestic labor market, the government monitors the whereabouts of these ethnic others. This measure deprives workers of the proletariat’s trampoline—market mobility—thus helping employers stabilize the relations of production and aggrandizing inequality in the worker-employer relationship (Liu 2000). As I will detail later, migrant workers, in consequence, are tied to a contract of personal subordination and forced to tolerate hardship or mistreatment.

Taiwan’s government also places migrant workers in the custody of employers as a way of externalizing management costs. Each employer is requested to pay a monthly levy, a fee designed to subsidize government expenses for managing migrant workers and retraining local workers. If a migrant worker disappears from the custody of her or his employer, the latter is still obligated to pay the fee every month until the worker is caught or the contract expires. Another more serious punishment to the employer entails temporarily freezing the quota associated with the runaway worker so that the employer cannot hire a replacement. In other words, the employer suffers not only the loss of labor power once provided by the runaway worker, but also the loss of a more precious commodity, the quota, the capacity for replenishing migrant labor.

**Brokering Labor and Quotas**

In countries like Canada and the United States, where migrant workers with legal documents are entitled to acquire permanent status, contractors usually emerge within ethnic communities ("bottom-up" intermedialists). Yet in Asia, where the contract workforce is constantly replenished with new blood, both employers and workers lack sufficient information about the other party and tend to rely on private agencies as intermediaries (Martin 1996; Okunishi 1996). Placement agencies in receiving countries, together with recruitment agencies
agencies in sending countries, become major gatekeepers in the process of migration. This section looks at the brokering of migrant labor in Taiwan, a market practice greatly constrained by the “visible hands” of state policy.

The placement fees charged to migrant workers for coming to Taiwan is higher than elsewhere in Asia. A migrant worker has to pay a placement fee ranging from NT$90,000 to NT$220,000, an amount that equals five to fourteen months of migrant wages in Taiwan. This charge varies by industry and nationality of workers: the job offers in construction and manufacturing cost more than domestic jobs; migrants from Thailand, Indonesia, and Vietnam usually pay more than their Filipino counterparts.

What explains the emergence of exorbitant placement fees in Taiwan? The economic model does work to some extent, but we have to consider multiple markets under the regulation of the state as visible hands. First, there is a supply-demand imbalance in the migrant labor market. Taiwan is one of the most attractive destinations for migrant workers because of its relatively attractive wages. The minimum-wage regulation has made the average wage offered to migrants higher than that in other Asian host countries. Yet opportunities to work in Taiwan are relatively scarce owing to quota controls. Labor brokers are therefore able to appropriate a significant cut in the process of recruiting and placing workers.

The second and more crucial reason comes from the brokerage market in Taiwan. There are currently about six hundred licensed placement agencies competing to do business with a limited number of employers possessing quotas. The figure does not even include unlicensed companies or individuals, which account for about 15 percent of the market, according to a broker interviewed. Excess capacity and limited demand have increased volatility and competition in the brokerage industry. Placement agencies in Taiwan have a notable “organizational death rate,” estimated to be as high as 18 percent per year (Tsai and Chen 1997: 86).

To compete for job offers held by factory employers, placement agencies usually have to pay employers a kickback, estimated to be NT$20,000 to NT$30,000 for recruiting each migrant worker into Taiwan. In this way, it is the service provider, rather than the service user, who pays for the costs of labor recruitment (Tsai and Chen 1997: 83). The kickback burden on placement agencies also includes expenses in socializing with employers, arranging free trips for employees, interviewing foreign applicants, and even hiring prostitutes or escorts for employers during their stay in Southeast Asia.

A Filipino agency in Manila offered a historical account of the rising placement fees in Taiwan. In 1991, there were only a limited number of Taiwanese agencies and the “service fee” collected from a worker basically complied with the amount stipulated by the Philippine government, 5,000 pesos (equivalent to US$200 then). The situation changed after 1993 when Taiwan’s brokerage market was opened to more participants:

Now there are more brokers and more competition. New brokers need to get niches in the market, so they develop new marketing strategies, which is, I am the broker, you are the employer, you are dealing with agency A, you pay him this much, but agency B said, “You don’t have to pay me.” The employer thinks, “Yes. Why do I have to deal with agency A, if I can get free service from agency B?” Then the third broker came in, “You don’t even have to pay me, I will pay you, you will send you to Manila on my expenses, you can even bring your family in and I will pay you shopping money.” So these brokers got their job orders without money, but since they have invested their capital, they need to convert the job orders into money.

The kickback practice emerged out of the supply-demand imbalance in Taiwan’s brokerage market: there are more brokerage services than employers who want to buy (and so the prices to employers go down), while there are fewer job offers than workers who want to buy (and so the prices to workers are up). A staff in a Taiwanese agency complained bitterly about this situation: “Now the factory (employer) is the boss. Who has the quota, who is the boss… Trust doesn’t count anymore. When another broker approaches the employer offering a higher kickback, do you think the employer will take it or not?”

Placement agencies are willing to pay the kickback because they can still appropriate significant profits in the process of “converting job orders into money.” Taiwanese agencies “buy” job orders from employers at the costs of the kickback and then “sell” these job orders to foreign recruiters. The profits generate from the placement fees collected from migrant workers. Labor brokers in both sending and receiving countries accuse the other of demanding excessive money, so they had no choice but to raise charges to workers. A manager in a Taiwanese placement agency said, “We cannot do anything about this. Foreign agencies want to have a share. Taiwanese employers don’t want to pay. We brokers have to make money, so workers are the ones who are out of luck.” The owner of a Filipino recruitment agency, however, pointed his finger at Taiwanese brokers.
Now, 5,000 pesos became too little money, because the [Taiwanese] brokers were demanding money. So we started to lobby with our government: Why don’t we increase the fee that we can collect from our workers to one month? Our government was hesitant, because NGOs [non-governmental organizations] were not happy about this. In the end, our government sugarcoats the money: they said the placement is still 5,000, but the agency can collect a “mobilization fee” that is equivalent to one month salary. It is only playing with words. Although both the Philippine and Taiwanese governments have set the maximum amount of placement fees collected from a migrant worker, labor brokers invent payment categories such as mobilization fees, entrance fees, and service fees to cover the actual charge of placement fees. Some agencies require workers to sign a receipt before their departure to Taiwan to disguise wage deductions as money the worker “borrowed”—for instance, a loan “for my family’s immediate expenses while waiting for my salary here in Taiwan.” Some canny brokers collect cash from workers to avoid records shown on the pay slips; as such, the workers could not hold any evidence for illegal wage deduction.

The reason that placement agencies hold different attitudes toward their two sets of clients (employers and workers) owes partly to Taiwan’s migration policy. A migrant worker is allowed to work in Taiwan only once or twice, but the quotas used by employers are renewable. Quota, as an abstract capacity of recruiting and replenishing workers, becomes an even more valuable commodity than migrant workers themselves. Some business associations and employers who possess the privileges to distribute or monopolize the limited number of quotas can even make extra profits by selling the quotas or subcontracting migrant workers to other employers. In favor of quota-owning employers, labor brokers burden migrant workers with most of the recruitment cost. As a result, migrant workers become victims to loan sharks and debt shackles.

Contract Bondage and Debt Shackle
The primary feature that distinguishes migrant workers from local workers is the bondage of contract employment. Many Taiwanese employers report that the total expenses for hiring a migrant worker, including food, boarding, and levies, are only slightly lower than hiring a local worker. Migrant workers are yet considered much more hao yong (Chinese: easy to use) than local workers. Migrant workers reduce costs for employers not only through their lower wages, but also through their powerlessness in the organization of labor process, associated with their foreigner status and lack of on-the-job (Canton 1993).

With the exception of domestic workers and caretakers, most migrant workers in Taiwan are entitled to rights and benefits stipulated in the Labor Standards Law. However, the policy is motivated less by the desire to safeguard the welfare of migrants and more by the wish to appease trade unions. Universal labor standards help protect the job security of Taiwanese workers by reducing the gap between the cost of hiring a local worker and a migrant worker. The pressure from local unions explains why Taiwan’s government has been hesitant to change the policy even in the face of widespread complaints among employers.

The legal protection of migrant workers is, after all, more a symbolic statement than a set of enforceable measures. The CLA has failed to supervise actual working conditions or provide effective legal assistance. Many migrant workers receive partial benefits only, having no paid vacations or receiving no overtime pay. They are often given unfavorable assignments, such as night shifts and the use of hazardous equipment in substandard conditions. For instance, Anru Lee (2002) found that Thai workers in a textile factory were assigned to double shifts and paid at a fixed rate (the minimum wage) that was lower than the wages for local workers paid on a piece-rate system.

A riot broke out on August 22, 2005, in which about a hundred Thai migrants working on Kaohsiung’s mass rapid transit railway project protested against stringent labor management. The conflict was initiated when a guard stopped some workers from entering the dormitory while carrying a few bottles of beer. The riot opened up an oppressive apparatus full of human rights violations to the public scrutiny. In the name of “life management,” Thai workers in this project were banned from smoking, drinking alcohol, and using mobile phones in the very confined living space. They suffered from wage docking and underpayment; they received only forty-six hours of overtime pay for the one hundred hours of overtime they worked each month. They were also subjected to other forms of exploitation because they depended on the employers to provide food and lodging. They received tokens instead of cash as their allowances, and the charges for snacks and groceries in the dormitory were much higher than market prices.

In fact, open confrontation like the described case rarely happens among foreign workers in Taiwan. When I asked, in a focus-group discussion, why migrant workers do not take action to assert their rights, the answers of the migrant participants centered on the financial burdens of debts and placement fees. "Placement fees tie our arms from fighting," "We still have five-sixths to pay at home," "We are afraid if we speak out, we will be sent back to the
Contract bondage and debt shackle depoliticize migrant workers not only through self-discipline but also by depriving their rights of collection organizing. Although migrants are legally entitled to union membership, their alien status and fear of termination often prevent them from getting involved in similar activities. Some migrant factory workers are requested to sign an agreement that stipulates prohibition from participating in protests and rallies (Wu 1997). Another reason that discourages migrant workers from asserting their legal rights is the restriction on employment during legal proceedings (Cheng 1996). They are not allowed to work for new employers while having cases against their previous employers in court; many drop their cases when facing financial pressure during the lengthy legal process.

Lacking the opportunity to switch employers, some migrant workers manage to run away from their contractual employers. The deprivation of freedom among documented migrant workers presents a striking contrast to undocumented migrant workers, who are free to switch jobs and gain increased bargaining power in relation to unauthorized employers.

Causes and Risks of Running Away
The total number of irregular migrants in Taiwan is still unknown, which includes those who entered Taiwan with a tourist visa and overstayed and others who came as contract workers and ran away from the jobs stipulated in their work permits. According to the police, the accumulated number of runaway contract workers in Taiwan from 1994 to 2005 was 91,421. More than 76 percent of these workers have been repatriated or left the country voluntarily, and 21,679 still reside in Taiwan.13 In 2004, about 4.35 percent of migrant contract workers left their designated employers without notice.14 Domestic workers are reported to have the highest runaway rate among all categories of migrants, occupying almost a quarter of the total number of runaway workers.15

Why did migrant workers run away? I have interviewed eight migrant domestic workers without legal documents to stay and work in Taiwan. Two entered Taiwan as tourists and overstayed; the others escaped from their contract employers for various reasons. Some became undocumented to avoid abuse, maltreatment, and unreasonable workload. Some did so for more personal reasons, such as disputes with co-workers and problems in marriage or relationships. Another common incentive for escaping was workers' wish to stay in Taiwan longer than the period granted by their contracts or their employers. Otherwise, they would have to pay another large amount of placement
fees and stay unemployed at home for several months prior to applying for another overseas job. This explains why many escaping cases happen near the end of contracts or when employers break or decline to renew contracts.

Runaway workers usually have developed some local connections in Taiwan. They locate new jobs either through referrals of friends or through the placement of unlicensed brokers, mostly bilingual ethnic Chinese migrants (huaqiao), with a charge of NT$5,000 to NT$7,000. The supply of undocumented migrant labor emerges to meet the substantial demand for unauthorized employment. A two-tiered migrant labor market has thus been established: on the top are registered employers who recruit migrant labor overseas through legal venues; on the bottom are those employers who are not qualified for granting with quotas and so hire migrants without proper documents.

The undocumented status renders migrants vulnerable in many aspects, in particular to threats of deportation. Filipino migrants call runaway workers TNT (Tag nang Tago in Tagalog, meaning “hide and hide”) or, with some black humor, artista (celebrity). A runaway worker explained the latter’s meaning: “We call ourselves artista because we have so many fans—those policemen, they are always running after us!”

Irregular migrants may also suffer from a lack of legal protection and health insurance. NGOs in Taiwan have reported cases in which undocumented migrant women were raped by their boarding house roommates or abused by their unlicensed brokers. These victims were often afraid to seek legal assistance due to their clandestine status. Because irregular employment is not contract bound, undocumented migrants are at risks of “working for nothing” if employers or brokers maliciously withhold their wages. In addition, a number of occupational injuries happened to undocumented migrants, who mostly worked in small, unlicensed factories with hazardous environments and substandard conditions of safety. These employers could often waive their legal liability to pay a full coverage of medical expenses and indemnification for the injured migrants, a situation clearly marking the status of undocumented migrants as “disposable labor.”

Illegal on Paper, Free in the Market

Despite the risks involved in irregular employment, undocumented migrants paradoxically become free in the labor market. That is, they are free to determine which of the positions offered by potential employers they will fill or leave.” Madeline, a Filipina who ran away one year ago and has shifted among three employers, compared her experience: “A documented and un

documented worker: “They [employers] treat illegal [workers] better. Because they have the need, they want you to stay. If they treat you bad, you will just go out. And they are afraid you will point them out [to the police that] they are illegal bosses.”

The exit option empowers irregular migrants to negotiate better terms and work conditions with unauthorized employers. They are not like documented employers, who are the sole legitimate employers endorsed by the state authority. The monthly wage of an undocumented worker is about NT$5,000 to NT$10,000 higher than the wage of a legal contract worker, plus no further deductions. A survey study reports that more than half of the migrant informants enjoy raised pay, increased days off, and relaxed labor management after going undocumented (Sheu 2001). The precondition for the comfort and security of irregular migrants is that there is a sufficient supply of jobs for them. Some runaway migrants complained to me that it had become more difficult to locate factory jobs due to the recent economic depression in Taiwan. The discrepancy in working conditions across the legal and illegal realms is most significant in the sector of domestic service, where the demand continues to rise and yet employer qualification is highly regulated.

Undocumented domestic workers are able to choose arrangements accommodating more privacy and autonomy, such as day work, part time, and live out. Migrant part-timers, in particular, enjoy improved working conditions in many respects compared to the live-in documented worker. They are paid by the hour with an increased wage rate, and their working hours and tasks are clearly defined. The job content amounts to house cleaning and usually excludes laundry, ironing, and dishwashing. Part-time cleaners have minimal interaction with their employers, a situation that allows domestic workers autonomy and flexibility in arranging the procedure and pace of work (Romero 1992). It also assists domestic workers in avoiding risks involved in a live-in condition, such as abuse, maltreatment, sexual harassment, and excessive demands.

The live-out arrangement also protects freedom and privacy of workers and lessens isolation and monotony prevalent in a live-in condition. Migrant part-timers usually share a rental apartment. Access to a private space shelters their lifestyles and habits from employers’ regulation. They can freely smoke, drink, dance, and invite friends to stay over. They hold frequent social activities in their apartments with other migrants, including ethnic Chinese and spouses of Taiwanese. With more social connection to the local society, many of them are able to run sideline businesses, such as selling Levi’s jeans,
cellular phones, internet phone cards, and direct-selling products to other migrant workers.

As a consequence of these live-out benefits, undocumented part-timers could develop a more balanced relationship with employers than the live-in documented workers. They have stronger bargaining power to negotiate working conditions, to control the labor process, and to arrange their schedules and days off in a flexible way. Once Prisilla invited me to a Sunday party in her apartment. While we were eating adobo and singing karaoke, her cellular phone rang. One of her employers called begging her to squeeze a service into her busy schedule so that the employer's house would not become a mess. After hanging up, Prisilla proudly said to me:

If you are part-timer, you are the boss! If you don't want to work, it's OK. Not like stay-in, you feel lazy but you still have to do it. You get only one day free. Part-timer, you can have everyday free. It's just you don't earn. Sometimes we have appointments; then we set another date. That's why I told you we are the bosses! We choose the day, choose the time. We have more freedom and power!

A symmetrical dynamic of employment relationship is reflected in the titles part-time workers use for their employers. Unlike live-in migrants who call their employers "Madam" indicating an undisputable class hierarchy, part-time workers call their employers by their last name or first name on a more equal basis. When asked how they addressed their employers, Cecilia, an undocumented part-time cleaner expressed a clear aversion toward the term Madam and emphasized her capability to negotiate an equal-footing position in the symbolic struggles of calling names:

I call them names, like Mrs. Chang. I never call them Ma'am. Why do I call them Ma'am? I think it's not good to call them Ma'am, because we are the same. If I call them Ma'am, they look down on me. So I just call her Mrs. Wang. But many of my employers have the same last name, so I asked them, "What is your English names?" They said, "I don't have any." I said, "OK, I will give you a name. You look sexy, so I call you Sexy!" When she calls me, I said "Who is this?" She said, "Sexy!"

While Cecilia was telling me this, Trina, a contract domestic worker, cut in and said, "You can do that, because you are part-time, you are not live-in!" Migrant workers are victimized in a live-in arrangement not only because they are physically confined in the residence of employers, but also because they are legally bound to their contract employers. As noted earlier, Taiwan's government prohibits migrant workers from transferring employers and circulating in the local labor market. These legal constraints exacerbate a status of personal subordination. Fey, a Filipina domestic worker who for years had overstayed as a tourist, came back to Taiwan in 1999 as a contract worker. She compared her different work experiences:

If you are an OCW, you are controlled by your employers in two or three years. If they are not good, you still have to stay with them. If you are a tourist, you can just leave and find another employer. For example, I ask for an over night stay. If they don't agree, I just transfer to another employer. But now OCWs can't, so if their employer is bad, they just run away.

When irregular migrants surrender to or get caught by the police, they are obligated to point out at least one employer before repatriation.\(^{32}\) A couple of undocumented migrants I visited in a detention center were held there for a while only because they refused to report any names of their previous employers. One told me, half jokingly and half seriously, "My last employer was bad. I am going to give her name to the police!" To avoid being pointed out and charged for government fines, unauthorized employers are compelled to treat their undocumented employees with some kindness because both of them are located outside the legal realm.

Passports as Fictitious Commodities

Another common illegal practice among migrant workers in Taiwan is the use of counterfeit documentation. To avoid the rule of working only once or twice in Taiwan, many migrant workers reenter Taiwan with forged passports. They are called "ex-Taiwan" by fellow migrants. In some cases, returning with a falsified name is acknowledged or even encouraged by employers, especially household employers who wish to keep the employees they have grown accustomed to instead of recruiting and training new ones. Many ex-Taiwan migrants borrow the names of their siblings or cousins, who have decided not to work overseas and are willing to lend them their legal identities. Others, through recruitment agencies, purchase names of people they have never met. A Filipina migrant, who had used passports under three different names during her ten-year stay in Taiwan (with one overstayed tourist visa and two working contracts), mocked herself: "I have so many names. Now I don't even remember what my real name is!"
Migrant workers need passports with falsified information not only to bypass the rules of host states but also to avoid the restriction of their own governments. Most sending Asian states have placed age restrictions on female migration. Women in the Philippines must be at least twenty-one years old to work abroad as domestic workers and eighteen as entertainers. The age restriction is even stricter in South Asia; for example, the Indian government only allows women over thirty to carry on domestic work in western Asia and northern Africa (Oishi 2005: 60). Despite the existence of these rules, it is a common practice for underaged women to work abroad by using forged passports with falsified age records.

The passport, as a means for the documentation of individual identity, is fundamental to the operation of nation-states. It represents the state's documentary control over the movements of people in a national community that is geographically bounded and bureaucratically guarded (Torpey 2000). The passport as a tag of membership bestowed by the state of origin allows the bureaucracy to identify and track those who travel across borders. It also provides an essential document of personhood required for one's entrance and circulation in the global labor market. The practices of using forged passports or reporting falsified information reveal how migrants maneuver the institutional channels of nationhood and citizenship to improve their prospect in the bounded global market. Although counterfeit documents indicate a malfunction of the bureaucratic apparatus, sending governments often turn a blind eye to covert violation in order to facilitate labor export.

The varied strategies that migrants develop to circumvent the documentary control of nation-states reveal grave inequality in the resources available to different class groups. Aiwha Ong (1999) found that business and professional migrants from Hong Kong and Taiwan seek passports from different countries to facilitate their business and social ties across national borders and to achieve a metropolitan lifestyle in multiple continents. In contrast, lower-status migrants obtain multiple passports from their home nation to recycle quotas and repeat entry into destination countries. For these mobile workers, "nationality is no more than a means to facilitate travel" (Harris 1995: 222). In poor sending countries, where many nationals cannot afford to travel abroad unless working overseas, the passport becomes a commodity that can be bought and sold between locals and overseas migrants.

Karl Polanyi (1944/1957) wrote about the "great transformation" in the beginning of the nineteenth century: labor, land, and money - three elements that were the subsistence of human and societal existences in feudalism turned into "fictitious commodities" in the new market economy. The self-regulated market, seemingly an invisible hand on the surface, could not sustain itself without the intervention of the state by regulating finance, trade, labor markets, and conditions of work in alliance with growing trade unions. The insights of Polanyi remain helpful in sorting out the relationship between market and state in contemporary global capitalism and revealing the complex modes of commodification in the nexus of international labor migration.

Aristide Zolberg (1991) describes contemporary nation-states as the "bounded states in a global market," which continues to guard the porous borders based on the model of state sovereignty and nation-based citizenship. I would like to further point out that migrant workers are situated in a bounded global market. Transnational labor recruitment exacerbates the commodification of migrant workers, who are treated as profitable objects of exchange by labor brokers and disposable labor power by receiving countries. Meanwhile, the global labor market space is shaped and patterned by bilateral links between state agencies, whose visible hands direct and channel movements of migrant workers, domestically and internationally.

In this bounded global market, multiple forms of fictitious commodities have been created against the backdrops of state sovereignty and territorialized regulations. First, quotas, privileges granted by the host government to a small proportion of employers, become a valuable commodity that can be bought and sold between employers and agencies and between qualified employers and unqualified employers. Quotas, with the capacity to renew migrant labor, are converted into economic values even before they are used to employ a migrant worker who actually creates productive values. Second, job offers, which refer to overseas employment opportunities, are monopolized by the transnational brokerage industry. Agencies purchase jobs from employers at the cost of kickbacks and then convert job offers into profits by collecting exorbitant placement fees from migrant applicants. Finally, the passport, a symbol of one's national membership, is turned into a lucrative item purchased by migrants to multiply their job opportunities in the global labor market.

Conclusion

The "guest worker" policy in Asia has created a highly exploitative system of labor migration. Migrant workers not only lack political rights and civil liberties, but also are deprived of the economic right of market mobility. They
constitute a new form of slave labor tied to temporary contracts and personal subordination. The oppressive labor conditions and excessive placement fees, coupled with uncertainties in the renewal of contracts, contribute to the increasing number of runaway migrants in Taiwan. State regulations, hence, have resulted in a two-tiered labor market for migrant workers. Indeed, as we have seen, undocumented, or irregular, migrants can nevertheless escape the circumstance of “legal servitude” and enjoy some “free illegality” in the underground economy.

The problem of runaway migrants signals an erosion of state sovereignty, indicating that the government fails to monitor the whereabouts of foreigners who are supposedly slotted in the country only for a transient period. Without dealing with the root causes of irregular migration, the government only tries to iron out the problem with temporary bans on employment and severe penalties on unauthorized employers. The system also holds contract employers liable for the escape of their employees, leading to control strategies such as wage withholding, surveillance, and even confinement (see Lan 2006). And yet, the stricter the measures of personal control the employers adopt, the more likely migrant workers will choose to escape them.

Recently, some countries, including the United States, have turned to the guest worker program as a solution to the prevalence of irregular migration. The Bush government advocates this system as the best model of “managing” labor migration to strike a balance between easing labor shortages and patrolling borders. However, as I have shown in the case of Asia, the guest worker program often becomes an oppressive regime of labor control and social exclusion. Similar situations have also happened to foreign workers recruited to do farm work in the United States under short-term contracts, many of whom suffer from low pay, exorbitant fees, and broken promises (Greenhouse 2007). State regulations in the name of management may only subject migrant workers to legal servitude if there is no sufficient protection of civil rights or enforcement of universal labor standards. Scholars have also criticized the exclusion of guest workers from family unification and naturalization as an immoral policy against the ideals of justice and democracy (Wallace 1983).

In reality, the presence of guest workers has become relatively permanent in many host countries. In Asia, migrants make up some 20 percent of the workforce in Singapore; Malaysia has about 10 percent; in the Persian Gulf countries, migrant workers outnumber national workers (Asia 2004). Although their contract bond overseas may be inevitably transient, it often prolongs into a pattern of migration. The trajectory of circular migration may involve a series of movements across countries. For example, many Asian migrants first work in the Middle East, later move to East Asia where higher wages are offered, and then seek immigration to Canada as the final destination. Other migrants use false documents or overstay visas to extend their residence in the same country. They may not become permanent citizens in host countries, but their active participation has greatly contributed to the economic, social, and cultural life of the host societies.

In facing the situation of the “provisional diaspora” of migrant workers (Barber 2000), we need alternative policy frameworks beyond the conventional ideas of membership and sovereignty. If the host country really treats migrants as guests, it must break loose the dichotomy between citizen and alien. Migrants, who contribute their labor and tax to host societies, should enjoy substantial rights and benefits based on a “membership without citizenship” (Brubaker 1989). International conventions and transnational migrant movements have also advocated the protection of migrant workers based on the global discourse of universal human rights (Soysal 1994). As labor equals and human fellows, migrant workers should be granted the freedom to change jobs and extend residency, as well as the rights to participate in civil politics in the residence country; their family should be entitled to public education and other social services. In the dire strait of globalization, we have to remap the course of national sovereignty by anchoring on the shores of moral obligations and human rights. After all, the essential values of membership are not based on blood ties or formal identifications but are constituted by equality, solidarity, and participation of members in a community, be it a city, a society, or the world.

Notes

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1. These documented workers are able to conduct part-time work under the sponsorship of their contract employers. They usually have worked in Taiwan before and their sponsors were their previous employers. Some of them provide free cleaning services in exchange for the sponsorship of employers.

2. The monthly wage of a migrant contract worker is NT$15,840, equivalent to the amount of the minimum wage in Taiwan. The overtime pay is NT$4580 per day. Part-time cleaners are paid by the hour; the market rate is NT$500–500 per hour. The exchange rate at the end of March 2003 for one U.S. dollar to one NT (New Taiwanese) dollar = 11.1315.
3. This chapter is part of a larger project on Filipina and Indonesian domestic workers in Taiwan. See Lan (2006) for a comprehensive discussion of the foreign labor policy and ethnographic details of the situation of migrant workers in Taiwan.


5. South Korea started admitting unskilled foreign labor and adopted a similar guest worker policy in August 2004. Japan has allowed the employment of foreign contract workers in particular occupational categories, including entertainers and caregivers (the latter is a new policy implemented in 2006).

6. In Singapore and Hong Kong, the employment of foreign domestic workers is granted as long as the income of the household is sufficient; foreign workers could extend their contracts without a maximum duration but they are by no means entitled to permanent residence or naturalization.

7. Based on investigations into an alleged labor shortage, the CLA determines the size of quotas, selects the industries or occupations that may enjoy quotas, and releases the quotas on an irregular basis. The qualification for the employment of domestic helpers and caregivers is based on the “urgent need” of employers, measured by the number and age of the children in a household or the physical condition of the elder or patient.

8. The size of the levy, officially called an “employment stabilization fee,” is NT$1,900 for the employment of care takers and NT$5,000 for the employment of domestic helpers.

9. Recently, some Taiwanese agencies have bought out agencies in sending countries to minimize transaction costs. Because the sending governments outlaw foreigner-owned agencies, these Taiwanese brokers purchase management rights and register under the name of local owners.

10. Anonymous brokers interviewed by Lin Chia-li (Aldrich 2000, appendix: 3-2B: 3) and translated by the author.

11. In Taiwan, an agency can legally collect a placement fee up to the amount of a worker’s monthly wage, plus a monthly service fee (NT$1,800 during the first year, NT$1,700 during the second, and NT$1,500 during the third). Accordingly, the maximum amount of legal placement and service fees collected from a worker during three years totals NT$75,840.

12. According to the current law, the maximum working hours are eight hours a day and forty-eight hours a week; workers are entitled to one weekly leave plus seven days of annual leave. In terms of covering health insurance, the employer is responsible for 60 percent, the government for 40 percent, and the worker for 10 percent.

13. A short-cut expression refers to loans borrowed from loan sharks in the Philippines: as one borrows 5,000 pesos, he or she has to return 6,000 pesos in a month (monthly interest rate equals 20 percent).

14. Given the absence of formal diplomatic relationship between Taiwan and the Philippines, MECO serves as a proxy institution for the Philippine embassy in Taiwan. The labor office in MECO is an overseas branch of the Overseas Workers’ Welfare Agency (OWWA).


17. Statistics provided by the CLA, August 1998. Unfortunately, similar occupation-based statistics are not available for recent years. Chao (2004) estimated that the proportion was getting even higher after 2000.

18. It should be noted that licensed and unlicensed brokers are not necessarily exclusive categories. Chao (2004: 78) reported that one Indonesian Chinese, working as a freelance recruiter for a licensed manpower company, places jobs for undocumented migrants on the side. Sometimes he even makes extra money by turning in undocumented migrants and earning rewards from the police.

19. My definition of “free labor” and “unfree labor” draws on Vic Satzewich (1991), who points out these two ways in which foreign workers are incorporated into host economies. By free labor, he follows Karl Marx to describe that workers in capitalism are “free to determine which of the positions offered by potential buyers of wage labour they will fill, a decision which lends a degree of personal determination within the limits set by market forces” (Satzewich 1991: 41).

20. It should be noted that not all undocumented migrants prefer live-out, part time jobs. Some prefer a live-in condition that saves the costs of lodging and food expenses and the trouble of locating multiple employers. In addition, live-out workers face a higher risk of being caught by the police, because they are more visible when renting a boarding house together.

21. The current law stipulates that an unauthorized employer is subject to a fine as much as NT$500,000 and could be sentenced to jail for recommitment within five years.

22. Taiwan’s government has imposed several temporary bans on the recruitment of Indonesian and Vietnamese workers as a warning against their rising runaway rates.

References


