

RETHINKING THE GLOBAL GOVERNANCE OF MIGRANT DOMESTIC WORKERS: THE HETERODOX CASE OF INFORMAL FILIPINA WORKERS IN CHINA

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ABSTRACT

This Article uses an interview-based case study to challenge the conventional wisdom in international labor law that formality—including formal contracts and special migration programs—always produces better jobs for transnational migrant workers than informality. Interviews with informal Filipina domestic workers in China—often visa overstayers working outside any legally recognized labor migration program—revealed that, despite working without formal status, they earned higher wages and enjoyed more favorable working conditions relative to other Asian labor markets for migrant domestic workers. National regimes of immigration law, which shape the negotiation, formation, and enforcement of the labor contract between the foreign worker and the domestic employer, explain this paradox. Typical labor migration programs (e.g., Singapore’s) tie the worker’s immigration status to a specific labor contract, the breach of which results in prompt deportation. In contrast, such connections between workplace strategies and immigration law measures are more uncertain and leave more room for

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parties to negotiate in the informal Chinese market. These contingencies between immigration law enforcement and job status paradoxically enable workers to renegotiate both the employer and the structure of their jobs after arrival, which significantly enhances their bargaining power inside and outside the workplace household. This Article conducts a cross-jurisdiction comparison between a formal program in Singapore and the informal market in China and makes a compelling argument for using a comparative-bargaining-power framework to evaluate how contracts and background rules distribute power and risk among parties in the global care chain. This approach joins the emerging scholarly critiques of the International Labor Organization’s almost exclusive focus on formalization to advance migrant workers’ conditions.

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I. INTRODUCTION

I met Emma at a birthday party held at a Miami-style outdoor swimming pool in a metropolitan city in China in summer 2019; fashionable cocktails were served at the pool and people were flirting and dancing on the side. Around twenty Filipina women occupied one end of the pool. Emma was a woman from the Philippines in her late thirties who had worked for five years as a domestic worker in China, a jurisdiction that prohibited its citizens from hiring foreign domestic workers. Her tourism visa had expired one month after her entry, and she then lost her passport to an agent who had promised to sell her a long-term visa. When I met Emma, she was living with her mother and her toddler daughter, both without valid visas, in a separate apartment provided by her employer. She worked eight hours a day, five days a week in her employer's home a few blocks away for a monthly salary of 7,500 RMB (roughly 1,070 USD).

After hearing about my research, Emma asked me: "So you are a lawyer—what do you think is the best law for us?" I gave her the standard lawyer's answer that the government should provide formalization reforms, including special visa programs, to bring foreign domestic workers into legal migration regimes. With apparent disappointment, she interrupted me:

Really? You think so? You think legal is better for us? But you see, with a legal visa, you are tied to your employer. You cannot change, even if the employer is not good. You cannot fight back when they are not good to you. Now I can change employers if I don't like them. So, all of my employers have been very good to me.¹

Emma is one of the estimated 1.4 million Filipina women and more than ten million women worldwide who are working as domestic workers in a foreign country. Meanwhile, her celebration of her undocumented status, her presence at this luxurious poolside party, and her informal migration trajectory not only contradict our common image of a migrant domestic worker as a docile third-country woman tied to somebody else's home, but also problematize the international labor law's prescriptions for them. This Article examines the case of this informal market for Filipina domestic workers in China, compares it to a typical formal program in Singapore, and uses the regional story to challenge the conventional wisdom in international labor law that formality, including labor contracts and migration status, always produces better jobs for transnational migrant workers than informality.²

1. Interview with Emma (July 21, 2019) (on file with author). For the safety and privacy of the informants, I use pseudonyms for my informants. The work arrangements of Filipina domestic workers interviewed were not completely standardized. Emma's working hours and salaries were both on the lower end in the group. Nevertheless, her fellow workers perceived her package as an average one in the local market.

2. See *infra* Section IV.A for further discussion of the methodology and its limitations.

Large waves of female labor flow from low-income countries to take up service jobs for upper-middle-class families in affluent areas. The gendered division of labor, once anchored within the household, is now transforming into one between nations in the Global North and South.³ Rich nations are increasingly assuming “a role like that of the old-fashioned male in the family—pampered, entitled, unable to cook, clean, or find his socks.”⁴ At the same time, South countries, often through labor emigration, have to take up what is traditionally regarded as “women’s work.”⁵ Scholars describe the phenomenon as an “international division of reproductive labor” or the “global care chain.”⁶ Newly affluent cities in Asia, including the most recently burgeoning ones in China, similarly employ foreign domestic workers.⁷

Migrant domestic workers are often found in over-exploitative working conditions with low compensation, amounting to what many accuse of being “modern-day slavery.”⁸ International organizations such as the International Labor Organization (ILO) and International Organization for Migration (IOM) advance a global governance consensus that divide their agendas between formal and informal migration.⁹ On one side, they adopt a rights-centric approach to extend formal labor standards and regular migration to more workers; the key legal tools for increasing formality are labor contracts and special labor migration programs. On the other side, the governance agenda associates informality solely with risk and harm, and accordingly takes an abolitionist stance to reduce irregular labor migration through more punitive legal instruments, such as anti-trafficking laws.¹⁰

However, the story of Emma, and an estimated 200,000 undocumented Filipina domestic workers in mainland China, raise challenges to these orthodox narratives.¹¹ As a migrant working with neither an enforceable labor

3. Barbara Ehrenreich & Arlie Russell Hochschild, *Introduction*, in *GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY* 23 (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2003).

4. *Id.* at 11–12.

5. *Id.*

6. See RHACEL SALAZR PARREÑAS, *SERVANTS OF GLOBALIZATION: MIGRATION AND DOMESTIC WORK* 28–52 (2d ed. 2015); see generally Ehrenreich & Hochschild, *supra* note 3.

7. Aihwa Ong, *A Bio-Cartography: Maids, Neo-Slavery, and NGOs*, in *MIGRATIONS AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER* 157 (Seyla Benhabib & Judith Resnick eds., 2009).

8. See *Domestic Slavery*, ANTI-SLAVERY INT’L, <https://perma.cc/G4RL-TQ5T> (last visited Mar. 11, 2022); Virginia Mantouvalou, *Temporary Labour Migration and Modern Slavery*, in *TEMPORARY LABOUR MIGRATION IN THE GLOBAL ERA: THE REGULATORY CHALLENGES* 223 (Joanna Howe & Rosemary Owens eds., 2016).

9. Domestic Workers Convention, Convention No. 189, ILO, June 16, 2011. [hereinafter ILO c189]; Global Compact for Safe, Orderly, and Regular Migration, Dec. 19, 2018.

10. Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. INT’L L. 609, 609–49 (2014); Hila Shamir, *The Paradox of “Legality”*: *Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY* 471 (Prabha Kotiswaran ed., 2017).

11. This estimate came from a talk given by the Philippines’ Secretary of Labor and Employment, Silvestre Bello III. See Phila Siu & Ng Kang-chung, *Manila to Ask Beijing to Legitimise Status of Up to 200,000 Domestic Workers Illegally on Mainland*, S. CHINA MORNING POST (Sept. 25, 2016), <https://perma.cc/NS5W-YPDB>.

contract nor a special work visa, Emma has neither rights nor any formal protection from the law. Nevertheless, apart from the risks of deportation and the human costs of family separation that the international organizations well articulate, she was also earning above a 1,000 USD monthly wage (in addition to housing provided by the employer) and had two flexible weekly rest days—a package far better than the earnings and working conditions that most Filipina domestic workers could expect in other Asian jurisdictions where they work legally, such as Singapore.¹² Instead of educating workers about the benefits of legal formality, this Article asks the opposite question: what can international lawmakers and advocates learn from Emma and her fellow Filipina workers in this informal migration corridor?

Once we try to see the regimes of labor migration from the migrant workers' perspectives, the paradigm shifts on several dimensions. Formal and informal migration corridors are no longer incommensurable apples and oranges, but rather present multiple specific packages of benefits and risks that are worth a thorough comparison—one in which a formal corridor does not always win. For example, three of the Filipina workers I interviewed left their formal jobs in Hong Kong and Macau to work informally in mainland China for a salary almost doubling their old ones. The paradigm also shifts from formal rights to the bargaining dynamics in the worker-employer-broker triangle in the shadow of labor and migration law.¹³ Through this new lens, formal rights are one among many contested sources of bargaining power. Contracts granting workers legal rights are often embedded in highly coercive legal structures, such as temporary labor migration programs that set stringent restrictions on workers' autonomy.¹⁴ Moreover, the resulting limitation on their market power can render their labor rights hard to realize. By contrast, under certain socio-legal conditions such as inconsistent enforcement of immigration laws and a lively informal economy, working "illegally" may enable workers to extract more benefits from their labor and more control over their lives in the host jurisdiction.

Moving beyond the formality of work, this Article argues for a comparative bargaining power framework that examines the distributional consequences of

12. For comparison, according to Helper Choice, a recruiting agency that the ILO recognizes for fair practice, the average monthly salary for migrant domestic workers in major markets were as follows: Singapore 438 USD (as of 2021), Hong Kong 656 USD (as of 2021), and Saudi Arabia 442 USD (as of 2017). See *Helper Choice*, HELPER CHOICE, <https://perma.cc/WJ9U-4A3T> (last visited Apr. 15, 2022).

13. I find the notion of "bargaining in the shadow of the law" especially useful to conceptualize migrant domestic workers' relations with the law. See Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

14. For a general discussion about temporary migration programs, see Shamir, *supra* note 10; Judy Fudge, *Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers*, 34 COMP. LAB. L. & POL'Y J. 95, 95–132 (2012). For similar programs in the U.S. context, see Janie A. Chuang, *The U.S. Au Pair Program: Labor Exploitation and the Myth of Cultural Exchange*, 36 HARV. J.L. & GENDER 269 (2013); Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445 (2017); Shannon Gleeson & Kati L. Griffith, *Employers as Subjects of the Immigration State: How the State Fosters Employment Insecurity for Temporary Immigrant Workers*, 46 L. & SOC. INQUIRY 92 (2021).

legal and non-legal mechanisms under both formal and informal regimes from the workers' perspectives. On the policy level, this case reveals a key pro-worker arrangement that the current formal programs often do not entail, namely workers' power to move between employers and to renegotiate the terms of their work after arriving in the host society. Relatedly, this Article also questions the underlying archetype of migrant domestic workers in international labor law, which is an exceptionally vulnerable third-world woman with a universally disadvantaged position in the labor market, as well as in the employer's household.¹⁵ Rather, they are sophisticated workers who strategize against profound structural restraints in the global care economy. This Article joins the emerging critical approach to heterogeneous arrangements found within the informal economy.¹⁶ By no means does this Article propose to reverse the formality/informality dichotomy globally, or even that, in this local case, workers enjoy all-round benefits from informality. Rather, it advances this critical stance to conceptualize formality and informality as contextualized but comparable conditions of welfare and risk that need case-by-case examination and intervention.¹⁷

This Article contributes to literature in two additional ways. It provides the first study about an emerging informal Chinese market that is silently transforming the landscape of Asia's migrant domestic worker industry. Methodologically, it also adds to an emerging trend among comparative law scholars to examine law-in-action, by investigating the *users'* experiences of the transnational labor market.¹⁸

The Article proceeds as follows. Part II elaborates on the global governance agenda for migrant domestic workers capsuled in the ILO's Domestic Worker Convention. Part III introduces this Article's legal comparatists, migrant domestic workers from the Philippines, and the legal structure of their labor emigration. Part IV delves into a case study of informal Filipina domestic workers in China. The four sections discuss, respectively: the case study's methodology and the basic setting of the local market; the relevant

15. Feminist on-site observers of the Domestic Worker Convention raised a similar critique. See Eileen Boris & Jennifer N. Fish, "*Slaves No More*": *Making Global Labor Standards for Domestic Workers*, 40 FEMINIST STUD. 411 (2014).

16. Shamir, *supra* note 10; Kerry Rittich, *Formality and Informality in the Law of Work*, in THE DAUNTING ENTERPRISE OF THE LAW: ESSAYS IN HONOUR OF HARRY W. ARTHURS 109 (Simon Archer, Daniel Drache & Peer Zumbansen eds., 2017); Natalia Ramírez-Bustamante, *Bargaining Women: Negotiating Care and Work Across Formality and Informality in the Colombian Garment Industry* (November 2017) (S.J.D. dissertation, Harvard Law School) (on file with Harvard University Library).

17. Rittich, *supra* note 16, at 113. Sociological studies also show that workers are making these kinds of practical choices in many receiving countries. See PARREÑAS, *supra* note 6; Anju Mary Paul, *Stepwise International Migration: A Multistage Migration Pattern for the Aspiring Migrant*, 116 AM. J. SOCIO. 1842 (2011). For the decision between staying in formal markets versus entering informal ones, see Hila Shamir, *What's the Border Got to Do with It? How Immigration Regimes Affect Familial Care Provision—A Comparative Analysis*, 19 AM. U. J. GENDER SOC. POL'Y & L. 601 (2011).

18. For the salience of law-in-action in comparative law, see Annelise Riles, *Comparative Law and Socio-Legal Studies*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2006); James Q. Whitman, *The Hunt for Truth in Comparative Law*, 65 AM. J. COMP. L. 181 (2017).

immigration law in action; the key question of bargaining power among workers, employers, and brokers operating in the shadow of illegality; and finally, the workers' informal economic networks outside the workplace. Part V discusses Singapore's formal migration program and compares the worker-employer-broker power dynamics in the two markets. The Article concludes with policy implications for international labor law and policies.

II. FORMALIZATION FOR MIGRANT DOMESTIC WORKERS?

International labor law has long dichotomized formal and informal work and marginalized the latter.¹⁹ Before the 1970s, the ILO and other international organizations struggled to conceptualize the vast economic activities occurring outside of formal wage labor.²⁰ Early studies of the informal economy have conceptualized a persistent sector with large volumes of casual and intermittent jobs, existing outside a more advanced capitalist formal sector—a phenomenon disproportionately associated with the underdeveloped Global South.²¹ Thus, the ILO proposed social and economic modernization as the cure.²² This dualist view has defined the ILO's early interventions against informality and persists in its influence on the labor governance consensus today.²³

Despite some studies recognizing the positive values of informality, the current normative pro-labor agenda continuously uses informality as a normative token for bad, marginal jobs.²⁴ Naming some work “informal” implies the need for intervention, and in some cases, the need for prohibition.²⁵

19. Rittich, *supra* note 16, at 110.

20. Aaron Benanav, *The Origins of Informality: The ILO at the Limit of the Concept of Unemployment*, 14 J. GLOB. HIST. 107 (2019).

21. See Keith Hart, *Informal Income Opportunities and Urban Employment in Ghana*, 11 J. MOD. AFR. STUD. 61 (1973); H. W. Singer, *Dualism Revisited: A New Approach to the Problems of the Dual Society in Developing Countries*, 7 J. DEV. STUD. 60 (1970).

22. See Singer, *supra* note 21. For the historical debates around the link between informality and development, see Martha Alter Chen, *The Informal Economy: Definitions, Theories and Policies*, WOMEN IN INFORMAL EMP.: GLOBALIZING AND ORGANIZING (WIEGO) (Aug. 2012), <https://perma.cc/45DE-BDTG>.

23. Chen, *supra* note 22. For the discussion about informal work in China, see Philip C. C. Huang, *China's Neglected Informal Economy: Reality and Theory*, 35 MOD. CHINA 405 (2009); FROM IRON RICE BOWL TO INFORMALIZATION: MARKETS, WORKERS, AND THE STATE IN A CHANGING CHINA (Sarosh Kuruvilla, Ching Kwan Lee & Mary E. Gallagher eds., 2011); SARAH SWIDER, BUILDING CHINA: INFORMAL WORK AND THE NEW PRECARIAT (2015); Hao Zhang & Eli Friedman, *Informality and Working Conditions in China's Sanitation Sector*, 238 CHINA Q. 375 (2019); Ching Kwan Lee, *China's Precariats*, 16 GLOBALIZATIONS 137 (2019).

24. Rittich, *supra* note 16, at 113–15 (noting how “[i]nformality has become a heavily normative rather than merely descriptive term: it typically serves as a proxy for forms and conditions of work that we think of as warranting change or improvement”); see also Chuang, *supra* note 10, at 640; Norman V. Loayza & Jamele Rigolini, *Informal Employment: Safety Net or Growth Engine?*, 39 WORLD DEV. 1503, 1513 (2011) (recognizing some of the empirical values of informality); Adelle Blackett, *The Decent Work for Domestic Workers Convention and Recommendation*, 2011, 106 AM. J. INT'L L. 778, 786 (2012) (using the term “informal economy” to describe precarious work); Chantal Thomas, *Immigration Controls and “Modern-Day Slavery,”* in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY, *supra* note 10, at 212, 219.

25. See Rittich, *supra* note 16, at 113 (describing this normative practice); Blackett, *supra* note 24, at 786 (exemplifying this practice).

Further, international legal norms use the formality/informality dichotomy as a marker between different international law instruments.²⁶ On one side, the ILO's Decent Work Agenda promotes a rights-centric approach to formalize the employment relationship and to include more informal workers into legalism by extending labor contracts and legislating labor standards.²⁷ On the other, an abolitionist agenda heavily relies on the more punitive anti-trafficking laws to scrutinize and to eliminate informal jobs and irregular migration.²⁸

The implication of this governance agenda for migrant workers is further complicated by the heterogeneous values around labor migration in international law.²⁹ Aside from the disagreement over the worker-welfare-maximizing governance rules, when workers move across national borders to labor, the international norms also reflect and respect the states' sovereignty in drawing the boundary of its population.³⁰ The primacy of states' interests efface the primacy of individuals' rights in multiple international law fields.³¹ Overall, international laws often tolerate the states' different treatments of migrant workers.³² As a result, the receiving countries' formal laws often extend substandard labor regulation and hyper non-labor regulation over migrant workers in comparison to local workers.³³ Indeed, many formal rules are employed to protect the local labor market and society from migrants rather than to protect the migrant workers.³⁴

Migrant domestic workers, in particular, are often recruited into temporary migrant worker programs, an increasingly popular labor migration scheme across the globe for what is perceived to be "unskilled labor."³⁵ Such programs often require the worker to commit herself to laboring for a particular employer or labor bureau for a specific term, and her formal immigration status is valid only if she strictly follows the terms of the labor contract.³⁶ The

26. Chuang, *supra* note 10.

27. Resolution Concerning Decent Work and the Informal Economy, Conclusions ¶¶ 1, 14, 16, 21–22, 24, 30, ILO, June 1, 2002, <https://perma.cc/FB78-ALDX>; see also Blackett, *supra* note 24, at 785–86; Rittich, *supra* note 16, at 115.

28. Chuang, *supra* note 10, at 636–37; see also Shamir, *supra* note 10; Thomas, *supra* note 24, at 213, 217–18.

29. See Chantal Thomas, *Convergences and Divergences in International Legal Norms on Migrant Labor*, 32 COMPAR. LAB. L. & POL'Y J. 405, 434–35 (2011).

30. See *id.* at 411–15.

31. See *id.* at 411–14, 432–33.

32. See *id.* at 415, 420–21.

33. See *id.* at 419–22; NICOLE CONSTABLE, MAID TO ORDER IN HONG KONG: STORIES OF MIGRANT WORKERS 3, 7, 11 (2d ed. 2007).

34. Thomas, *supra* note 24; CONSTABLE, *supra* note 33, at ch. 6.

35. Shamir, *supra* note 10. This legal structure can be traced back to the English law of indentured labor and had spread globally with the expansion of the British Empire. For a more historical review of temporary migration regimes, see Shireen Ally, *On Laws, Rights and Conventions: A Provocation*, 13 INT'L FEMINIST J. POL. 457 (2011); Janet Halley, *Anti-Trafficking and the New Indenture*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY, *supra* note 10, at 179; David Cook-Martín, *Temp Nations? A Research Agenda on Migration, Temporariness, and Membership*, 63 AM. BEHAV. SCIENTIST 1389 (2019).

36. Halley, *supra* note 35.

worker is only allowed to change employers in exceptional circumstances such as extreme labor abuse with permission by the host country's department of immigration or labor.³⁷ Correspondingly, the program usually grants a very short legal stay to the worker after the termination of her labor contract.³⁸ The worker often has no pathway to permanent residency and has to leave the jurisdiction after reaching the maximum duration of stay.³⁹ As a result, workers have very limited market mobility in the host jurisdiction.⁴⁰ Contrary to legal advocates' expectations, the formal status as constructed by such programs can generate legal vulnerability to labor abuse and trafficking.⁴¹ When the receiving countries design special labor migration programs for domestic workers, they usually further internalize the society's entrenched undervaluation of paid domestic work, which is historically associated with women's unpaid work inside the household and with female workers from ethnic minorities.⁴² Some formal programs even extend intricate disciplinary rules onto workers' personal and sexual life through periodic pregnancy and STD tests and strict restraints on their physical mobility.⁴³

Despite acknowledging that the informal economy is internally diverse, the ILO considers formalization to be the overarching resolution to promote migrant domestic workers' interests.⁴⁴ Domestic workers, a group historically entrenched in the informal economy, have become a major subject for the ILO's agenda to extend formal labor protection. Due to its entanglement with family and intimacy, domestic work has long been excluded from the scope of international and national labor laws.⁴⁵ Since the 1950s, many labor-standard-making ILO conventions have permitted the exclusion of domestic workers from their scopes.⁴⁶ The international labor treaties' exclusion of domestic workers also corresponds with their exclusion from national labor laws. Up until 2011, though 70 percent of countries had some labor protection laws for domestic workers, these measures often fell outside the labor laws for the general workforce and extended fewer protections.⁴⁷

37. PARREÑAS, *supra* note 6, at ch. 1.

38. Daniel Costa & Philip Martin, *Temporary Labor Migration Programs: Governance, Migrant Worker Rights, and Recommendations for the U.N. Global Compact for Migration*, ECON. POL'Y INST. 2, 13 (Aug. 1, 2018), <https://perma.cc/A3JM-LR6R>.

39. Shamir, *supra* note 10.

40. Fudge, *supra* note 14, at 103.

41. Fudge, *supra* note 14, at 111, 119.

42. Shirley Lin, *And Ain't I a Woman: Feminism, Immigrant Caregivers, and New Frontiers for Equality*, 39 HARV. J.L. & GENDER 67 (2016).

43. CONSTABLE, *supra* note 33, at 76; ADELLE BLACKETT, *EVERYDAY TRANSGRESSIONS: DOMESTIC WORKERS' TRANSNATIONAL CHALLENGE TO INTERNATIONAL LABOR LAW* 55 (2019).

44. See ILO c189, *supra* note 9.

45. Boris & Fish, *supra* note 15, at 413, 421–22.

46. *Id.*

47. Blackett, *supra* note 24, at 780; Einat Albin & Virginia Mantouvalou, *The ILO Convention on Domestic Workers: From the Shadows to the Light*, 41 INDUS. L.J. 67, 69 (2012).

When the Domestic Worker Convention finally included domestic work in international labor standards, it constituted a milestone achievement for the ILO's Decent Work agenda, as well as a historical triumph for labor feminists.⁴⁸ During the deliberation for the Convention, feminist experts and domestic worker advocates also advanced some serious critiques of state laws and searched for an alternative emancipatory labor law.⁴⁹ Reflecting the transcendence of its aims, the Convention legislates the labor standards for *all* domestic workers, regardless of their contractual or immigration status.⁵⁰ The standard includes minimum wage, working hours, rest and vacation, protection against discrimination or abuse, social welfare provisions, and maternity leave, among others.⁵¹ The accompanying Recommendation (R 201) further challenges and prohibits some specific formal regulations that have been excessively intrusive, such as pregnancy tests and mandated live-in arrangements.⁵²

Nevertheless, the Convention still relies exclusively on formal legal instruments to realize these inclusive standards. It promotes written contracts, formal complaint mechanisms, and stronger labor inspections as its enforcement mechanisms.⁵³ The reliance on the formal contract is the most pronounced for those who are laboring across national borders. The Convention mandates a pre-departure labor contract that is enforceable in court, together with the right to repatriation, as the ideal form to structure their work.⁵⁴ While making domestic work visible in this way challenges and reforms the status-quo laws, it still heavily relies on and reflects the ILO's formalization agenda.⁵⁵

Commentators have noticed the Convention's limited challenges to the formal laws' disempowerment of migrant domestic workers.⁵⁶ The convention falls silent on reforming a crucial structure of formality for migrant domestic workers—the immigration and work permit laws that many Asian jurisdictions institute to constrain the workers' bargaining power.⁵⁷ The receiving jurisdictions' work permit laws are often deeply intertwined with the labor contract in legal texts and in enforcement.⁵⁸ Although domestic worker advocates from Asia raised this intervention during the deliberations

48. Boris & Fish, *supra* note 15; Albin & Mantouvalou, *supra* note 47.

49. Blackett, *supra* note 43, at 114.

50. Blackett, *supra* note 24, at 787; CATHERINE DAUVERGNE, *MAKING PEOPLE ILLEGAL: WHAT GLOBALIZATION MEANS FOR MIGRATION AND LAW* (2008).

51. ILO c189, *supra* note 9, at art. 10, 11, 14, 15.

52. Concerning Decent Work for Domestic Workers, Recommendation No. 201, ILO, 2011; Blackett, *supra* note 24.

53. ILO c189, *supra* note 9, at art. 16, 17.

54. *Id.* at art. 8.

55. Blackett, *supra* note 24.

56. Shamir, *supra* note 10, at 473–74; Fudge, *supra* note 14, at 27–42; Stuart C. Rosewarne, *The ILO's Domestic Worker Convention (C189): Challenging the Gendered Disadvantage of Asia's Foreign Domestic Workers?*, 4 GLOB. LAB. J. 1 (2013).

57. Rosewarne, *supra* note 56.

58. Nisha Varia, "Sweeping Changes?" *A Review of Recent Reforms on Protections for Migrant Domestic Workers in Asia and the Middle East*, 23 CAN. J. WOMEN & L. 265, 265–76 (2011).

on the Convention, the text of the final Convention does not reflect it.⁵⁹ Similar to other UN and ILO treaties addressing labor migration, the Convention permits the restrictions on migrant workers' rights under the principle of national sovereignty over immigration. By legitimating such profound restrictions, these international instruments further reinforce the status of migrant domestic workers as "commodities."⁶⁰

Ultimately, the Convention's transcendent potential has been quickly subsumed into a mainstream formalization agenda that reflects a rather flattened view of the formal/informal.⁶¹ The ILO's 2014 Transition from the Formal to the Informal Economy Recommendation (R 204) built on the Convention to include domestic workers.⁶² The UN's 2018 Global Compact for Safe, Orderly and Regular Migration continues this promotion of formality and regularity for all migrants.⁶³

However, migrant domestic workers often resist this prescribed preference for formality in the real world. They work both with and against the laws to earn more control over their work.⁶⁴ Several sociological studies in the United States, Taiwan, and Israel have all observed that temporary migrant workers intentionally leave their formal status for financial and other benefits in the informal economy.⁶⁵ The leap often comes with a reduction of security but a substantial bump in income, even if they are working in the same jurisdiction.⁶⁶ Among those, Israel provides a most intriguing case. Formal migrant domestic workers in Israel are fully protected by the labor law, yet subject to sector restrictions that they can only provide in-home senior and disability care.⁶⁷ The immigration law also provides an exceptionally long duration of 90 days for the worker to legally stay in the country after the contract termination or the employer's death.⁶⁸ Yet many workers still left the formal program to take up childcare or other domestic service outside the state-managed platform.⁶⁹

Following this route of empirical inquiry, this Article provides an in-depth investigation into the distributional consequences of a predominantly informal market in mainland China and further draws the comparison to a typical formal migration program in Singapore.

59. Boris & Fish, *supra* note 15, at 415–36.

60. Fudge, *supra* note 14, at 42.

61. Blackett, *supra* note 24, at 13.

62. *Id.*

63. Global Compact for Safe, Orderly, and Regular Migration, *supra* note 9.

64. Blackett, *supra* note 24.

65. Gordon, *supra* note 14; CLAUDIA LIEBELT, CARING FOR THE 'HOLY LAND': FILIPINA DOMESTIC WORKERS IN ISRAEL (2011); Pei-Chia Lan, *Legal Servitude and Free Illegality: Migrant "Guest" Workers in Taiwan*, in *ASIAN DIASPORAS: NEW FORMATIONS, NEW CONCEPTIONS* 253 (Rhacel S. Parreñas & Lok C. D. Siu eds., 2007).

66. Gordon, *supra* note 14, at 449; LIEBELT, *supra* note 65; Lan, *supra* note 65.

67. Shamir, *supra* note 10.

68. *Id.*

69. *Id.*

III. FILIPINA DOMESTIC WORKERS AS BARGAINING POWER COMPARATIVISTS

This Part introduces the Article's comparativists, migrant domestic workers from the Philippines. Filipina domestic workers are not only a group of frequent users of the global labor migration regime, but also come from what the ILO has referred to as a "model" sending country.⁷⁰ As a result of the Philippines' decades-long investment in elevating the competitiveness of Overseas Filipino Workers (OFWs), the group has earned the reputation as robust bargainers.⁷¹ Their English language abilities further enhance their human capital as well as their bargaining techniques.⁷² Thus, the country's legal institutions and the Filipina diaspora's culture of labor migration have produced a group of workers with relatively high bargaining skills in the global care chain.

The Philippines has been steadily providing the world with migrant service workers as a matter of industrial policy.⁷³ In the early 1970s, President Ferdinand Marcos institutionalized the labor export program, taking the Philippines into a development strategy heavily depending on the export of manual labor.⁷⁴ The Philippine government has consciously trained, brokered, and incentivized its citizens to take up low-paid jobs in other economies as an institutional answer to profound poverty and government debt issues, a situation which satisfies labor-importing states' demand for temporary migrants.⁷⁵ The World Bank also prompted multiple other Southeast and South Asian countries to take this route of economic development.⁷⁶

Labor emigration and the remittance economy play important roles in the Philippines' political economy. According to the Philippines government's official statistics, around 2.3 million people worked as OFWs in other jurisdictions in 2018.⁷⁷ Roughly 8 percent of them are in irregular situations such as being undocumented.⁷⁸ In 2015, the remittances sent by OFWs amounted to 28.5 billion USD, which constituted 10 percent of the Philippines' annual

70. ROBYN MAGALIT RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD* xxiii (2010).

71. Sarah Swider, *Working Women of the World Unite?: Labor Organizing and Transnational Gender Solidarity Among Domestic Workers in Hong Kong*, in *GLOBAL FEMINISM: TRANSNATIONAL WOMEN'S ACTIVISM, ORGANIZING, AND HUMAN RIGHTS* 120–21, 176, 192–93 (Myra Marx Ferree & Aili Mari Tripp eds., 2006) (finding that Filipina workers had stronger organizing power relative to workers from other countries in the Hong Kong market).

72. See, e.g., PIERRETTE HONDAGNEU-SOTELO, *DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE* 55 (2007) (observing that some Filipina domestic workers have higher than average salaries for domestic workers in the Los Angeles market).

73. See, e.g., RODRIGUEZ, *supra* note 70, at 19–74; see also, *Philippine Development Plan 2011–2016 Midterm Update*, NAT'L ECON. & DEV. AUTH (2014), <https://perma.cc/NBP7-5KJ9>.

74. RODRIGUEZ, *supra* note 70, at 7.

75. See, e.g., *Id.*, at xviii–xxii.

76. Rosewarne, *supra* note 56, at 9.

77. See *Statistical Tables on Overseas Filipino Workers (OFW): 2018*, PHIL. STAT. AUTH., <https://perma.cc/VXA5-WMP7> (last visited Dec. 14, 2020) (download "Table 1.1 Distribution of Overseas Filipino Workers by Sex and Region 2018.xls").

78. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – Philippines, ILO (*Ratified* 2006) (2012) [hereinafter ILO c143], <https://perma.cc/BL43-P9A5>.

GDP.⁷⁹ Since the 1980s, female OFWs working in domestic service and care-related industries constituted an increasingly significant part of labor migration.⁸⁰ Today, more Filipina women than men work overseas.⁸¹ The sociologist Rhacel Salazar Parreñas estimates that, as of 2011, more than 1.4 million female OFWs worked as domestic workers in other countries.⁸² While they are widely present in the Global North, the top destinations for Filipina domestic workers remain in Asia.⁸³ As of 2018, 90.4 percent of female OFWs in the official statistics work in other Asian countries.⁸⁴

At the same time, the Filipino state has multiple channels to better protect OFWs, such as bilateral labor treaty negotiations, promises of extraterritorial intervention, blacklisting countries with extraordinary human right abuses of OFWs, and other endeavors.⁸⁵ After the controversial execution of a Filipina domestic worker in Singapore, the Philippines government passed the landmark Migrant Workers and Overseas Filipino Act of 1995 (RA No. 8042), which established “a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress,” which was enforced by the institution of Philippine Overseas Employment Administration (POEA).⁸⁶ The RA 8042 also established penalties for illegal deployment of OFWs.⁸⁷ As a recent example of blacklisting, in 2018, the Philippines imposed a ban on the deployment of all Filipino workers to Kuwait after the tortured body of a domestic worker was found in a freezer in her employer’s house.⁸⁸ It has also appointed officers in embassy and consular offices to represent the interests of migrant workers and established several “safe houses” for women workers fleeing abusive employers.⁸⁹

Though the Filipino state offers consistent support to all OFWs throughout their migration trajectories, most protective measures occur before the migrant’s departure and aim to prepare them for the forthcoming harsh working conditions. The pre-departure measures mainly consist of three parts: regulating private broker agencies, certifying individual employment contracts, and mandatory pre-departure training programs.⁹⁰ Apart from the licensure process, the POEA also sets a maximum rate for the brokers and prohibits

79. Patrick R Ireland, *The Limits of Sending-State Power: The Philippines, Sri Lanka, and Female Migrant Domestic Workers*, 39 INT’L. POL. SCI. REV. 322 (2018).

80. Ana P. Santos, *Philippines: A History of Migration*, PULITZER CTR. (July 11, 2014), <https://perma.cc/4LLC-5VZ9>. This does not deny that an increasingly large portion of the domestic workers are male. Still, the percentage falls under 10 percent. See PARREÑAS, *supra* note 6, at 159–60.

81. See PHIL. STAT. AUTH, *supra* note 77.

82. PARREÑAS, *supra* note 6, at 3.

83. *Id.*

84. PHIL. STAT. AUTH, *supra* note 77 (download “Table 1.3 Distribution of Overseas Filipino Workers by Place of Work and Sex 2018.xls”).

85. RODRIGUEZ, *supra* note 70, at xix-xx and 65–74.

86. *Id.* at 95.

87. Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 8042 (June 7, 1995) (Phil.).

88. Joshua Berlinger & Jinky Jorgio, *Killing Prompts Return of Philippines Workers from Kuwait*, CNN (Feb. 17, 2018), <https://perma.cc/9MXW-4Y86>.

89. Rosewarne, *supra* note 56, at 7.

90. Act Amending Rep. Act No. 8042, Rep. Act No. 10022 (July 27, 2009) (Phil.).

them from charging domestic workers any placement fees.⁹¹ However, the state's continuous efforts have not prevented rampant violations. The brokerages often over-charge workers large sums under other names since the workers are desperate for job opportunities.⁹² The brokerages often adopt a "fly now, pay later" structure that charges workers in terms of wage deduction after they begin jobs in the destination country.⁹³ This debt structure plays a crucial role in entrenching brokers' and employers' control over workers.⁹⁴

In addition to regulating the agencies, the state reviews every individual overseas employment contract as compliant with the Philippines' labor laws, minimum wage and working conditions.⁹⁵ In 2006, as part of the efforts to professionalize the domestic service sector, the Philippines government enacted a minimum wage of US\$400 and a minimum age of 23 years old for overseas domestic service work.⁹⁶ Workers are also required to pass mandatory skill and health tests and to attend pre-departure orientation seminars organized by NGOs in cooperation with the government, including some women-specific ones.⁹⁷ For domestic workers, the mandatory seminar attendance further extends to their immediate families.⁹⁸ The pre-departure programs are designed to construct Filipina workers as "empowered" neo-liberal subjects of economic competitiveness and entrepreneurship, navigating risky workplaces overseas saturated with potential gender-based harms like sexual abuses.⁹⁹ When a potential worker is compliant with all of the steps and clears all of the administrative charges (roughly US\$50), the government issues an Overseas Employment Certificate that permits the exit of the worker at airports.¹⁰⁰

Nevertheless, the Philippines state's dependence on revenue from labor exportation constrains its ability to further protect migrant workers' interests.¹⁰¹ Its action suggests that the regulation of OFWs still prioritizes sustaining the labor outflow and remittance inflow.¹⁰² For example, the pre-departure trainings emphasize the workers' duty of remittance through state-assigned channels.¹⁰³ It also has conflicting interests in promoting formal migration

91. *Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016*, PHIL. OVERSEAS EMP. ADMIN., Part II, Rule V, § 51 (2016), <https://perma.cc/C6PN-PGC5> [hereinafter POEA Regulations].

92. RODRIGUEZ, *supra* note 70, at 35.

93. Paul, *supra* note 17.

94. Charmian Goh, Kellynn Wee & Brenda S.A. Yeoh, *Who's Holding the Bomb? Debt-Financed Migration in Singapore's Domestic Work Industry*, MIGRATING OUT OF POVERTY (2016), <https://perma.cc/V2XS-J8VJ>.

95. Rep. Act No. 8042, *supra* note 87.

96. ILO c143, *supra* note 78.

97. Ong, *supra* note 7.

98. POEA Regulations, *supra* note 91, Part VIII, Rule IV, § 221.

99. Anna Romina Guevarra, *Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines' Overseas Employment Program*, 12 SOC. IDENTITIES 523 (2006).

100. POEA Regulations, *supra* note 91, Part II, Rule IX, § 72.

101. Ireland, *supra* note 79.

102. RODRIGUEZ, *supra* note 70, at 117–19.

103. *Id.*

channels. To ensure stable diplomatic relations with labor-receiving governments and international organizations, the government has a strong incentive to make certain its citizens comply with those countries' laws, especially their immigration laws.¹⁰⁴ However, systematic corruption in the Philippines' government also facilitates the irregular flow of workers.¹⁰⁵

Another layer of relevant background rules for its feminized labor export-oriented economy is the Philippines' socially conservative family law. As of 2020, the Philippines is the only UN-affiliated country besides Vatican City that does not allow legal divorce, with a limited exception for its Muslim minorities.¹⁰⁶ Contraceptives and access to abortion are also not widely available to the whole population.¹⁰⁷ As a result, most children grow up in large families, and many women become mothers at an early age. As of 2018, one in five girls aged 19 in the Philippines was either pregnant or had already given birth.¹⁰⁸ On the one hand, the prevalence of early pregnancies produces a population with a predominantly young workforce; on the other, many women have the responsibility to financially support their families from a young age and are squeezed into labor emigration.¹⁰⁹ The global care industry re-interprets the sending countries' traditional family cultures as a "comparative advantage" that produces more loving and motherly workers who have learned caregiving through caring for siblings and their own children.¹¹⁰

Thus, after decades of massive labor emigration and state investment, the Philippines has established a robust "culture of migration."¹¹¹ As multiple ethnographers have noted, Filipina domestic workers are not simply victims of globalization.¹¹² Rather, they embody "new subjectivities of globally mobile and feminized workers."¹¹³ Contrary to common expectations, Filipina domestic workers, like many other migrant domestic worker groups, are not always from "the poorest of the poor," given the costs of emigration.¹¹⁴ Instead, many identify as middle-class women from the Philippines seeking financial security or wealth accumulation.¹¹⁵ Two social markers signify their socio-economic class in their own country. First, they are often over-educated

104. *Id.* at 117; see also ILO c143, *supra* note 78.

105. Rosewarne, *supra* note 56, at 7.

106. *State of World Population 2018*, U.N. POPULATION FUND (Oct. 2018), <https://perma.cc/6SLG-WQ4U>.

107. *Id.*

108. *Id.*

109. *Id.*

110. Arlie Russell Hochschild, *Love and Gold*, in *GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY*, *supra* note 3, at 15, 22–24. The workers sometimes participate in reproducing the similar conceptualization in order to increase their chances in the market. For example, one of my informants fabricated the story of having two children back home to win over the potential employers' interest. Interview with Jane (July 27, 2019) (on file with author).

111. Pauline Gardiner Barber, *The Ideal Immigrant? Gendered Class Subjects in Philippine–Canada Migration*, 29 *THIRD WORLD Q.* 1256, 1272 (2008).

112. See PARREÑAS, *supra* note 6; CONSTABLE, *supra* note 33; LIEBELT, *supra* note 65, at 11.

113. LIEBELT, *supra* note 65, at 1.

114. PARREÑAS, *supra* note 6, at 29; HONDAGNEU-SOTELO, *supra* note 72.

115. PARREÑAS, *supra* note 6, at 31; Paul, *supra* note 17.

for the job of unskilled caregivers, with many having some college education.¹¹⁶ Second, working as domestic workers abroad, they often hire maids for their own households in the Philippines.¹¹⁷ They also deviate from the receiving countries' common belief of migrant workers as docile and illiterate in rights discourse. Indeed, in Hong Kong—a market that hosts migrant domestic workers from multiple Asian countries—Filipina workers have earned a reputation as skillful workers with high resistance to over-exploitation.¹¹⁸

Filipino migrant workers have developed numerous individual and community strategies to navigate the global labor market. One is building “step-wise international migration trajectory.”¹¹⁹ A sub-group of workers has been consciously working their way up a hierarchy of destination countries and accumulating sufficient migrant capital in the process so as to eventually gain entry to their preferred destinations of work or settlement.¹²⁰ They might start the trajectory by taking jobs in the Middle East, considered the least desirable region, and then gauge their earnings and connections to apply for jobs in Hong Kong or Canada.¹²¹ Entering the informal market by running away from their legal employers is another widely observed strategy in jurisdiction where law enforcement loopholes and local informal labor markets make it feasible.¹²² Communities of fellow Filipina women provide crucial support networks across multiple jurisdictions.¹²³

With an ample repertoire of community knowledge about different markets and comparatively strong abilities to navigate the system, Filipina domestic workers constitute a strong case to study labor migration governance from the workers' perspective. However, it would be exaggerated to say that they are shopping around destination countries as fully informed consumers. Many other factors such as social networks condition their decisions on migration.¹²⁴

Several specific features factor into their experience in the global migration regime. First, most of the Filipina domestic workers working in other Asian countries do not aim for permanent settlement in the jurisdiction where they work, differing from many foreign domestic workers in the United

116. PARREÑAS, *supra* note 6.

117. The two are also shared characteristics of foreign domestic workers global wide. See HONDAGNEU-SOTELO, *supra* note 72.

118. Hsiao-Chuan Hsia, *The Making of a Transnational Grassroots Migrant Movement: A Case Study of Hong Kong's Asian Migrants' Coordinating Body*, 41 CRITICAL ASIAN STUD. 113 (2009).

119. Paul, *supra* note 17, at 1842.

120. *Id.*

121. *Id.* at 1843, 1854, 1862.

122. Lan, *supra* note 65, at 253–54; LIEBELT, *supra* note 65, at 129–55; Shamir, *supra* note 17.

123. Though some research also suggests that the community is selective in providing help to new members. See Anju Mary Paul, *Good Help Is Hard to Find: The Differentiated Mobilisation of Migrant Social Capital Among Filipino Domestic Workers*, 39 J. ETHNIC & MIGRATION STUD. 719 (2013).

124. Paul, *supra* note 17, at 1875.

States and Europe.¹²⁵ Instead, their typical life plans consist of serial labor emigration to different jurisdictions or repetitively to the same one, followed either by returning home or emigrating to the West for good.¹²⁶ As sociologist Nicole Constable observes about Filipina domestic workers in Hong Kong, they have often learned “to make themselves at home away from home.”¹²⁷ Second, Filipina domestic workers often migrate as individuals, even if labor migration is an economic strategy of the household.¹²⁸ Sending remittances back is widely understood as fulfilling the woman’s duty to her family members, especially her children. By performing what traditionally is perceived as “women’s labor” in a foreign household, the migrant domestic workers step into the role of breadwinner, contravening the traditional division of labor in their home family.¹²⁹ On a cultural level, this action simultaneously threatens the traditional Filipino family and reinforces its persistent cultural value of mutual obligation among kin.¹³⁰ Thirdly, Filipina domestic workers value the relational quality of their employers. Many of them are willing to accept slightly lower pay or work in a less desirable jurisdiction if they can find a “good employer.”¹³¹ These characteristics are also observed in other intra-Asia migrant communities, yet less so in migration from Latin America.¹³²

IV. “ILLEGAL BUT FREE”: THE CASE OF FILIPINA DOMESTIC WORKERS IN CHINA

This Part turns to the Filipina domestic workers in China and their heterodox experience in an informal labor market. It answers the following questions: how do Filipina domestic workers enter, stay, and work in mainland China despite the ban on overseas domestic workers?¹³³ More importantly, how do law and informality affect the workers’ bargaining power vis-à-vis employers, broker agents, and other stakeholders, in and outside their workplace?

125. See HONDAGNEU-SOTELO, *supra* note 72; CATI COE, *THE SCATTERED FAMILY: PARENTING, AFRICAN MIGRANTS, AND GLOBAL INEQUALITY* (2013).

126. PARREÑAS, *supra* note 6, at 12–13.

127. CONSTABLE, *supra* note 33, at 224.

128. LIEBELT, *supra* note 65, at 59. This is, again, in contrast to migrants from Latin America in the U.S., who often migrate with families.

129. Ehrenreich & Hochschild, *supra* note 3, at 23–25.

130. PARREÑAS, *supra* note 6, at 75–79.

131. *Id.*; Rhacel Salazar Parreñas & Rachel Silvey, *The Indentured Mobility of Migrant Domestic Workers: The Case of Dubai*, in *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY*, *supra* note 10, at 503, 512–13.

132. HONDAGNEU-SOTELO, *supra* note 72.

133. A 1996 multi-department enactment prohibits individuals and individual businesses (a legal category for small businesses) from hiring foreign workers. See Rules for the Administration of Employment of Foreigners in China (promulgated by the Ministry Lab., Ministry Pub. Sec., Ministry Foreign Aff. & Ministry Foreign Trade & Econ. Coop., Jan. 22, 1996), art. 33.

A. *Methodology and Introduction to the Field*

Due to the difficult-to-reach nature of informal migrant domestic workers and the lack of formal statistics, I developed my sample of informants via the snowballing method, which is commonly used to study subjects with similar characteristics.¹³⁴ I entered the social world of Filipina domestic workers through one Filipina nanny friend who was a highly respected member of the community. Between June and August 2019, I was regularly invited to their group outings in S City, a metropolitan coastal city in mainland China, on weekends and their rest days. I conducted semi-structured interviews with thirty-six workers and multiple group discussions with workers.¹³⁵ I asked my interviewees to tell their own stories about working as migrant domestic workers in China and other jurisdictions, with follow-up questions based on their own narratives. Aside from individual interviews focusing on personal experiences, I also discussed general issues in group meetings, such as the benefit and harm of holding a visa, the opening of new job opportunities, the price of an agent. Topics like these were frequently discussed in the community, so sometimes the workers initiated the discussion themselves. I also interviewed two Chinese broker agents working with Filipina domestic workers.¹³⁶ For the informants' privacy and safety, I use pseudonyms for both individuals and the locality.

Given the constraints of the sample size and the recruitment methods, this case is not a statistically representative sample of informal migrant domestic workers in mainland China. My sample also suffers from survival bias, as I have only interviewed people who were still living in China. Nevertheless, other sources can corroborate some information I have acquired through my interviews. Take the example of monthly salary for live-in Filipina domestic workers. The common salaries in my informant group were between 8,000 and 8,500 RMB in 2019, and they reported an average yearly raise of 500 RMB over the past few years. A 2016 Financial Times article reported the salary of undocumented Filipina domestic workers in Beijing as 7,000 RMB, which approximated my informants' report.¹³⁷ The rising salaries of foreign

134. For snowballing methods, see H. RUSSELL BERNARD, *RESEARCH METHODS IN ANTHROPOLOGY: QUALITATIVE AND QUANTITATIVE APPROACHES* (2017). The limitation is obvious: all of my informants have some connections to the community and my sampling has left out those who do not have access to the community or rest days. Meanwhile, sociological research of migrant domestic workers often uses similar recruitment methods. See PARREÑAS, *supra* note 6; CONSTABLE, *supra* note 33; Paul, *supra* note 17, at 1851; Kayoko Ueno, *Strategies of Resistance Among Filipina and Indonesian Domestic Workers in Singapore*, 18 *ASIAN PAC. MIGRATION J.* 497 (2009). Even large-scale quantitative research about documented domestic workers in other jurisdictions with formal migration programs use similar sampling methods. See MARTIN RUHS, *THE PRICE OF RIGHTS: REGULATING INTERNATIONAL LABOR MIGRATION* (2013); Anja Wessels, Madeline Ong & Davinia Daniel, *Bonded to the System: Labour Exploitation in the Foreign Domestic Work Sector in Singapore* 49 (2017).

135. The sample size is also comparable to sociological studies of Filipina domestic workers in other jurisdictions.

136. I found these agents from connections outside the Filipina community. I have attempted multiple interviews with the employers, but they all declined, quoting privacy concerns.

137. Gloria Cheung, *China's New Import: A Growing Black Market in Maids*, *FIN. TIMES* (Sept. 30, 2016), <https://perma.cc/KW6F-X8RH>.

domestic workers in the mainland China market also caught the attention of adjacent jurisdictions. A top Philippine diplomat in Hong Kong and labor scholars in Taiwan all warned that the salaries in the China market—more than double that of their local markets—might affect recruitment in both localities.¹³⁸ Thus, this qualitative study still gives some meaningful information about this informal industry.

All thirty-six informants in this case study were female Filipina workers. Except for one Muslim informant, the rest of the group attended Catholic churches. Their ages ranged between twenty-three and fifty-five (median: forty-one). The length of their stays in China ranged from new arrivals to thirteen years (median: 5.5 years). Twenty had working experience in other Asian jurisdictions before, six in Middle Eastern countries, and sixteen in East Asia (including Hong Kong and Macau). This study's sample size and the basic demographic markers of this sample are similar to studies about Filipina domestic workers in other jurisdictions.¹³⁹ As other studies about Filipina workers have documented, the group's socio-economic backgrounds diverged widely: some were struggling to feed their children while others owned multiple houses and shops in the Philippines.¹⁴⁰

However, this group's immigration status and housing conditions were significantly different from Filipina domestic workers in other Asian jurisdictions. Only four of them held a valid visa issued by the Chinese government at the time of interviews.¹⁴¹ About two-thirds of the thirty-six informants spent weekday nights at their employers' homes, and one third lived in their own lodging. Among the twenty-three live-in workers, fifteen had separate leased lodgings independent from their employers, which they often used for weekend stays or storing their personal properties. The work of twenty-six informants involved caring for a child and the ten others provided differing domestic services. Three workers reported experiencing physical abuse in China, one of them sexual abuse.¹⁴²

While not captured in formal statistics, the informal market for domestic labor in China included at least 200,000 undocumented Filipina workers

138. See Phila Siu, *Top Philippine Diplomat in Hong Kong Antonio Morales Backs Calls to Raise Minimum Wage of City's Domestic Helpers*, S. CHINA MORNING POST (May 20, 2018) <https://perma.cc/H3KU-LEVX>; 李有容 (Yu-Jung Lee) & 鄭杏茹 (Shing-Ju Cheng), 命運或機會：我國外籍家庭看護工轉換雇主實證分析 [A Chance or A Risk? Empirical Studies on Foreign Care Workers' Transfer of Employment], 39 調查研究-方法與應用 123, 126 (2018).

139. See LIEBELT, *supra* note 65, at 57 (Israel); Wessels, Ong & Daniel, *supra* note 134, at 62 (Singapore); CONSTABLE, *supra* note 33 (Hong Kong); Parrenas & Silvey, *supra* note 131, at 509, 513–16 (Dubai); PEI-CHIA LAN, *GLOBAL CINDERELLAS: MIGRANT DOMESTICS AND NEWLY RICH EMPLOYERS IN TAIWAN* (2006) (Taiwan).

140. Migrant middle-class women performing domestic work in others' families is a common phenomenon both among Filipina domestic workers globally and among female migrants of other ethnicities. PARREÑAS, *supra* note 6, 117–58; HONDAGNEU-SOTELO, *supra* note 72, at 19.

141. One held a tourist visa, two held work visas for corporations, and one a S-1 family companion visa.

142. One was abused by her Chinese husband; the other two by employers. Of course, informants might underreport sexual abuses because of social taboo. Meanwhile, sex was not a tabooed topic in the community and many informants jokingly discussed sexual topics in my presence.

before the COVID-19 pandemic, spurred by China's rapid economic development and emerging upper-middle class.¹⁴³ This informal labor flow went in two directions: vast economic inequality within China still drove many Chinese laborers to take up working-class jobs in the Philippines, while the more affluent middle-class employed domestic labor from both China and from abroad.¹⁴⁴ Thus, the relationship between the two ethnic groups is more fluid than some other cases. Despite a large reserve of local domestic workers—mostly rural-to-urban migrants—thirst for the cultural capital of globalization and an English education drove demand for foreign labor.¹⁴⁵ Filipina workers' English language skills earned them two distinct client pools: the expatriate white families who needed English-speaking domestic workers and the upper-middle-class Chinese families who craved an English education for their young children in addition to everyday care. This informal labor market is concentrated in a few metropolitan coastal cities, and as one of the largest cities with a large foreigner population, S City accommodated an estimated 100,000 Filipina domestic workers.

In this informal market, Filipina domestic workers not only replace the labor of the local women but also bring in some unique skills. As a result, the average salary for a Filipina nanny was 10–15 percent higher than a Chinese nanny in the local market. Their income is also high based on other metrical comparisons. The market salary for a live-in Filipina nanny in S City in 2019 was 8,000 to 10,000 RMB (1,135–1,415 USD), more than triple S City's minimum wage (2,480 RMB or 352 USD) and higher than the city population's average wage (6,500 RMB or 923 USD). This was significantly higher than the average wage of live-in Filipina domestic workers in other Asian jurisdictions in 2017, which was 640 USD in Hong Kong, 560 USD in Taiwan, 500 USD in UAE, and 370 USD in Singapore.¹⁴⁶ The only Asian market yielding a comparable wage was Israel with about 1,374 USD.¹⁴⁷

Between the Filipina workers and the employers stood two types of agents, the “transnational recruiter” and the “local headhunter.” A “transnational recruiter” usually worked out of two branches, one in the Philippines and the other in China, to connect a worker in the Philippines with an employer in China and facilitated the immigration of the worker. The mechanism followed the typical “fly now, pay later” practices recruiting Filipina domestic workers into other Asian jurisdictions.¹⁴⁸ After online interviews and

143. See Siu & Kang-chung, *supra* note 11.

144. See Raissa Robles, *Chinese Workers 'Flood' the Philippines, yet Duterte's Officials 'Don't Know' How Many There Are*, S. CHINA MORNING POST (Dec. 22, 2018), <https://perma.cc/M4G7-DJ2Z>.

145. For more information on internal migrant domestic workers in China, see generally HAIRONG YAN, *NEW MASTERS, NEW SERVANTS: MIGRATION, DEVELOPMENT, AND WOMEN WORKERS IN CHINA* (2008); Morgan Hartley & Chris Walker, *White People with No Skill Sets Wanted in China*, VICE (Jan. 7, 2014), <https://perma.cc/EK6H-5YAJ>.

146. PARREÑAS, *supra* note 6, at 19.

147. Ruth Margalit, *Israel's Invisible Filipino Work Force*, N.Y. TIMES (May 3, 2017), <https://perma.cc/QE28-2VZY>.

148. PARREÑAS, *supra* note 6, at 13; Lan, *supra* note 65.

sometimes a deposit fee, the recruiter arranged for the worker, when she was still in the Philippines, to sign a two-year-long contract to work for the specific employer. The contract usually stipulated a 25 percent lower salary and shorter weekly rest hours than the conditions of Filipina domestic workers who were already in the jurisdiction, though the pay was still better than that in other jurisdictions. The recruiter also charged a high fee: around 50–75 percent deductions from the first six-month salaries, which usually amounted to \$2,500–\$2,800. The employer directly transferred the deducted wages to the recruiter. In exchange, the recruiter took care of the visa application (tourism and business visits categories), transportation, and initial training and medical examination. In the process, the recruiter often controlled the workers' travel documents. The recruiter's staff escorted the worker during transportation and kept her travel documents until they arrived in the recruiter's local office. Similar business models of smaller scale also existed for domestic workers from other Southeast Asian countries, such as Indonesia and Myanmar.

In contrast, a "local headhunter" connected employers and prospective Filipina workers who were already in China. A headhunter often posted available jobs on social media and connected interested workers and employers. On the formation of an employment relation, usually after a negotiated trial time, the agent charged the employer a commission fee equal to the worker's one-month salary (8,000 to 10,000 RMB, or 1,135–1,415 USD) while the worker paid 20–30 percent (~2,000 RMB or 285 USD). Both paid the fee directly to the headhunter. Some Filipina workers also worked as headhunters on the side.

B. *Contingent Illegality: Immigration Law in Action*

Formality and informality are not two clearly dichotomized forms of work.¹⁴⁹ The work and life of a Filipina domestic worker in China often deviates from the formal laws of both the receiving and sending countries. Moreover, written laws assign different legal consequences to each deviation, ranging from non-rights in courts, to prohibition of the practice, to administrative and criminal punishments. Yet, each country's diverse incentives, capacities, and approaches to enforce the law alter the actual consequences of informality. I summarize the various deviations and legal consequences in Table 1, where written laws determine the law-on-the-books consequences while the law-in-action ones come from the informants' own experiences. It is worth noting here that loose enforcement, especially of the prohibitive legal elements, can work in favor of parties who engage in informal activities.

149. See Rittich, *supra* note 16, at 115; Chen, *supra* note 22, 4–6.

TABLE 1. DIMENSIONS OF INFORMALITY

Law	Deviation from the Rules	Law-on-the-books Consequences	Law-in-action Consequences
Contract	Though some workers had signed an employment contract, none expected it to be enforceable in the court. Some contracts were blatantly fake for the purpose of immigration law requirements. None of these contracts were registered with the state as the Chinese or Filipino labor law mandated.	Non-enforceability of the employment contract in court or labor arbitration.	Parties very spottily used formal systems to enforce contract. ¹⁵⁰ Yet some used the contract as a bargaining leverage.
Taxation/Social Security	None of the workers or their employers paid taxes or social insurance contributions for this employment relationship in either country.	Tax enforcement, such as fines; No eligibility for social insurances.	Tax and social insurance enforcement were very rare.
Registration of Entities	The recruitment agencies were either not registered enterprises or operated outside the scope of their entity registration. When workers operated small-scale side businesses, none of them registered the entity.	Fines and suspension of the license; Prohibition of future practices.	Enforcement on agencies sometimes happened. Enforcement on migrant traders/workers was very rare.
Zoning/ Tenant	The workers who leased independent lodgings often violated the maximum occupancy in local zoning regulation. The landlords violated the administrative mandate of lease registration.	Non-enforceability of the lease in court; Prohibition of future leasing.	Maximum occupancy rules were sometimes enforced
Immigration	Various immigration violations of both countries' immigration laws, see Section IV.B.	Administrative and criminal punishment.	See Section IV.B.

150. Only one informant ever reached out to the police for unpaid wages. The police retrieved a reduced wage for her with a generic reasoning against wage theft. Yet other informants regarded this as an outlier. Interview with Elinor (Aug. 3, 2019) (on file with author).

For undocumented foreign workers, their immigration status disqualified them from establishing other formal relationships, resulting in other dimensions of informality. My interviewees had to strategize around the violation of immigration law in their everyday life. Nevertheless, the consequences of violating immigration law were, again, highly contingent. The prohibitions that read as certain in the legal text were enforced through a fragmented immigration law enforcement system on the ground. It was this contingency that enabled the Filipina domestic workers to enter, stay, and work in the country for years; at the same time, it also left them vulnerable in their encounters with law enforcement.¹⁵¹

China's immigration laws do not extend employment visas to foreign domestic workers. A 1996 regulation prohibited individuals and individual businesses (a legal category for small businesses) from hiring foreign workers.¹⁵² Since 2016, as a narrow exception, the government has permitted "long-term elite foreign workers" in selected cities to sponsor a "personal assistant visa" and formally employ foreign domestic workers.¹⁵³ All but three of the workers I interviewed had entered the country on one-month tourism visas directly from the Philippines or other jurisdictions they had previously worked in. They had applied for the visa themselves or with the help of a transnational recruiter. Most workers simply overstayed their tourism visas, while a few managed to maintain a misclassified business visa or an employment visa affiliated with her employer's corporation to work quasi-legally in the country.¹⁵⁴

Workers without visas were subject to administrative punishments. According to China's Exit and Entrance Administration Law (EEAL), a worker overstaying a visa and working without a visa is subject to a fine up to 10,000 RMB (~1,412 USD) and detention up to 15 days. The employer and the agent are subject to penalties up to 100,000 RMB (~14,115 USD).¹⁵⁵

151. In this section, I narrate the law as written and as experienced by my informants, whose experience, to be sure, might not be generalizable beyond this specific group. For example, their experience substantially differs from that of undocumented African traders in Southern China. Nigerian Igbo traders were disproportionately harassed and pursued by the police and their illegal immigration status caused them more substantial everyday inconvenience in comparison to my informant group. GORDON MATHEWS, LINESSA DAN LIN & YANG YANG, *THE WORLD IN GUANGZHOU: AFRICANS AND OTHER FOREIGNERS IN SOUTH CHINA'S GLOBAL MARKETPLACE* 115–38 (2017).

152. Rules for the Administration of Employment of Foreigners in China, *supra* note 133.

153. These domestic workers enter on S-1 visa, a category for family companions, which used to cover elite foreign workers' family members. Exit and Entrance Administration Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Congr., June 30, 2012, effective July 1, 2013), art. 6–10 [hereinafter EEAL]. According to a local news report, less than one thousand domestic workers had obtained a S-1 visa as of 2017. S City Gov claims, "It's more convenient for foreign elite workers to hire Filipina helpers!" at the S City official website (citation omitted to preserve anonymity of the region).

154. Working under a miscategorized visa still violates EEAL and has the same legal consequence of working without a legal visa. *See id.* However, on the ground, an active visa stamp maintains the image of legality at immigration checking. Employers also have incentives to sponsor such visas for similar reasons.

155. *Id.* at art. 62, art. 80.

Any foreigners involved “may be repatriated” for violating the EEAL.¹⁵⁶ The ‘transnational recruiter can be criminally liable.¹⁵⁷ Section 6-3 of the Criminal Law criminalizes various acts related to human smuggling, and offenders are subject to up to seven years of incarceration or life imprisonment if they commit serious offenses.¹⁵⁸

While the statutes seem non-negotiable, immigration law enforcement was uncoordinated and sporadic, partially attributable to the EEAL’s procedural rules. Only specialized police or immigration bureaus above the county level have the authority to investigate immigration-related activities, including initiating an on-site interrogation.¹⁵⁹ Minimizing the incentives for street-level enforcement officials to pursue illegal overstays, the internal division of labor spared the Filipina workers from some of the risks.¹⁶⁰ Up to the time of my interviews in 2019, the Filipina community had reported that illegal overstay *per se* was not on the top of the law enforcement’s radar. Sometimes the police even consciously let them walk off without punishment, citing the limited capacity of immigration enforcement.¹⁶¹ However, encountering street-level law enforcement for other issues like census polling still carried the potential to escalate into immigration enforcement. Fifteen out of thirty-six informants had encountered authorities at least once without being apprehended. In response to such routine encounters, the workers had employed various resistance strategies, such as speaking fluent Chinese, staying vigilant, using bribery, and invoking sympathy.¹⁶² Sometimes workers were able to leverage connections with employers or other local patrons, such as talking with policeman on the phone in a local dialect.¹⁶³

156. *Id.* at art. 62.

157. I corroborated the legal text with a search of the online adjudication database. Under the search terms of “the Philippines” and “domestic workers,” the only criminal case records I found were agents brokering the workers into the country. *Search*, THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, <https://perma.cc/B849-H8AE> (last visited Apr. 16, 2022).

158. Criminal Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Congr., Feb. 25, 2011, effective May 1, 2011), <https://perma.cc/4UQS-56H8>.

159. EEAL, *supra* note 153, at art. 58.

160. A worker made a brilliant observation of the police’s labor division that “if you see an officer speaking English (very likely an immigration police), you know you are in the system. Before that, you can always escape, tip, or pray to God, and God might give you another chance.” Interview with Sia (July 13, 2019) (on file with author).

161. See interviews with Maria (July 7, 2019) (on file with author) & Elinor (Aug. 3, 2019) (on file with author).

162. For example, Elinor managed to get off the hook twice during her 10-year stay in China. The first time, after she was reported by a fellow Filipina worker, immigration police came to her door. She “explained the situation to the police with tears, saying that ‘I am staying for my kids and I need to earn money for my family.’” The immigration police “had mercy” and let her go. The second time, the police decided to deport her. But the detention center was full at the time and she had blood hypertension issues. Not wanting to take responsibility for her potential health issues, they sent her home and told her to wait for a phone call. Not hearing from the police for a month, she just changed her phone number, moved to another boarding house, and continued working in the city. Interview with Elinor (Aug. 3, 2019) (on file with author); see also interview with Adele (July 7, 2019 & July 16, 2019) (on file with author) (recounting a similar story to Elinor’s).

163. See interviews with Alex (July 16, 2019 & Aug. 17, 2019) (on file with author); interview with Frida (July 16, 2019) (on file with author) interview with Claire (July 28, 2019) (on file with author).

Laboring without a formal contract or a work visa also violates the Philippines' regulation of their emigrants abroad. Of the three pre-departure regulations introduced in Part III (licensure, labor contract scrutiny, and mandatory trainings), informal migrants and their recruiters contravene at least the second and third.¹⁶⁴ A worker without a labor contract scrutiny certificate cannot exit the country, and recruiters working with informal migrants face administrative fines and removal of licenses.¹⁶⁵ In practice, detection was rare—only one informant had been stopped at the border.¹⁶⁶

The Philippines' Consulate in S City also exercised discretion to support the informal workers. The Consulate readily issued a travel document when a worker reported a lost passport. It would also renew expired passports without checking the visa pages.¹⁶⁷ Moreover, the Consulate provided basic and community services to all Filipina workers regardless of their immigration status, such as voting in the national election. Workers on overstay status found these practices empowering in maintaining their independence and legal identity. At the same time, the Consulate refrained from overtly contesting China's decisions to repatriate visa-overstayers, striking a subtle balance with China's border control officials.

The legal rules—especially the ones being violated—shaped the workers' bargaining power in the following ways. First, the lack of possible legal options altered the migrants' legal consciousness. As China does not have a formal migration program for foreign domestic workers, it is nearly impossible for this group of workers to be perfectly law-abiding residents. Thus, they had moved towards a more strategic relation with the law, deciding between compliance and violation based on costs and risks. Second, the legal punishment for reported deviations distributed risks and bargaining strategies among the workers, the employer, and the brokers. Each party calculated the potential consequences of certain actions that they or the other party might endure. Third, legal prohibitions deterred the workers from turning to the authorities for any public service, which cultivated their reliance on other informal networks, especially those formed within the migrant community.

Despite the prevalence of loose enforcement and availability of informal support, the workers experienced fear and stigma due to the risk of deportation. Staying vigilant was the most common concern in their daily life conducted outside their employers' households. For example, during weekend parties, the sight of a policeman in public often triggered the workers' hypervigilance, and the groups sometimes avoided certain locations in fear of

164. POEA Regulations, *supra* note 91, at Part II, Rule VI, Part III.

165. POEA Regulations, *supra* note 91, at Part III.

166. Group discussion with Erica and others (July 14, 2019) (on file with author).

167. Only one of my informants had been stopped by the Filipino emigration officer at the border due to lack of an employment certificate. But the Filipino side's restriction did enter some workers' calculations. Even when the worker with a miscategorized Chinese visa could travel across borders, she might avoid returning to the Philippines, worried about being stopped on her returning trip to China. *See* interview with Denise (July 19, 2019) (on file with author).

police. Some workers, especially those from higher socio-economic backgrounds, had concerns about discussing their immigration status with families and friends back at home. As one commented: “They didn’t understand and kept asking me, ‘Why are you still traveling here and there on weekends when you’re illegal? Why aren’t you scared?’”¹⁶⁸

C. *Bargaining in the Shadow of Illegality*

This section analyzes how laws impact the bargaining dynamic among workers, employers, and intermediary agents “in the shadow of” illegality.¹⁶⁹ This section first delineates the market norms in this informal labor market and the stakes the workers bargain for, and then introduces the repertoires of workers’ bargaining strategies.

This section follows literature on bargaining power and background rules and draws lessons from contract theorists about non-legal mechanisms for enforcing contracts.¹⁷⁰ Under this framework, the players are not so much governed by law as conditioned by it.¹⁷¹ Rules, including state laws and market norms, often shape the micro bargaining dynamics by enabling or disabling some bargaining strategies. In other words, parties are bargaining in the shadow of background rules.¹⁷² The stakeholders bargain with each other in the predictive range of their individual and collective guesses about the legal consequences of their action or non-action, and accordingly speculate on their bargaining power vis-à-vis each other.¹⁷³ Though the stakeholders are not always antagonistic, the bargaining power framework emphasizes the role of reciprocal coercive threats as strategies to bargain and to enforce a bargain.

The high informality in this market enabled workers to change jobs relatively easily. One key message that saturated workers’ discussions was that, with contract enforcement non-existent and immigration enforcement contingent in the background, and with every player reluctant to involve the formal authorities, the worker could exit the employment relationship without severe legal consequences if she found it unsatisfactory. Without a formal immigration status attached to a specific employment contract, the worker was

168. Interview with Gabriella (July 15, 2019) (on file with author).

169. Mnookin & Kornhauser, *supra* note 13.

170. For a summary of the literature on bargaining power and background rules, see Robert L. Hale, *Coercion and Distribution in a Supposedly Non-coercive State*, 38 *POLIT. SCI. Q.* 470, 470–94 (1923); Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 *LEGAL STUD. F.* 327, 327–66 (1991); Mnookin & Kornhauser, *supra* note 13; Janet Halley, *Conclusion: Distribution and Decision Assessing Governance Feminism*, in *GOVERNANCE FEMINISM: AN INTRODUCTION* (Janet Halley, Prabha Kotiswaran, Rachel Rebouché & Haila Shamir eds., 2018). For non-legal mechanisms for enforcing contracts, see David Charny, *Nonlegal Sanctions in Commercial Relationships*, *HARV. L. R.* 373, 373–467 (1990); Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 *J. LEGAL STUD.* 115, 115–57 (1992).

171. Halley, *supra* note 170, at 259.

172. Hale, *supra* note 170.

173. Mnookin & Kornhauser, *supra* note 13.

already working illegally. Consequently, she could move among employers and between different types of employment outside of the law's explicit disciplinary role for enforcing contracts. The workers had identified that this specific leverage to change their jobs substantially enhanced their bargaining power: "No visa means free. It's free for the employers and free for us too. They can choose us and we can choose them. If I don't like them, I will change. [Job change] is normal here."¹⁷⁴ Another worker said: "Some of us are lucky to find a good boss, who treats us like families. If we are not lucky and the boss is too bad, here we can simply quit them [sic]."¹⁷⁵

The information gathering and sharing within the migrant group had enabled many job changes. At group gatherings, the community often discussed recent job openings and sometimes promoted job opportunities to a fellow worker who had what the group regarded as a bad employer. To a certain degree, switching from a less-than-average employment relationship was not only a possibility, but a norm. Complaints about bad treatment from employers to the group often led to suggestions of job openings on the market. Sometimes the other women started blaming the worker for sticking to her bad employer and pushing interviews on her.¹⁷⁶ In sum, the weekend community gatherings served as a crucial site where the workers defined the value of their labor, explored the background rules, and discovered, discussed, and to some extent, enforced their bargaining strategies in this informal market.¹⁷⁷

The bargaining stakes can be both quantitative and objective (salary) and qualitative and subjective ("I am treated as a family"). The worker's stake can be in tension with the employer's (as in the salary) or a win-win situation with both being better off (the employer and the worker get along well). The most obvious metrics for the worker were the salary and weekly rest hours. The baseline in the S City in 2019 was 8,000 RMB and twenty-four consecutive rest hours outside the employer's home. If the employment offered salaries or rest hours falling short of the baseline, the workers usually needed some above-standard treatment in other dimensions to stay and also to justify it to her peers, such as free, separate housing¹⁷⁸ and shorter working hours.¹⁷⁹ Aside from the two basic metrics, workers' satisfaction with their work also manifested in relational aspects with their employers' family, or as a common saying in the community, whether "they treat[ed] me like family."¹⁸⁰

174. Interview with Nancy (July 8, 2019) (on file with author).

175. Interview with Eugene (July 21, 2019) (on file with author).

176. Group discussion with Erica and others (July 14, 2019) (on file with author).

177. This is true in other East Asian jurisdictions where Filipina workers are allowed to congregate on Sundays. See CONSTABLE, *supra* note 33; Margaret Fenerty Schumann & Anju Mary Paul, *The Giving Up of Weekly Rest-Days by Migrant Domestic Workers in Singapore: When Submission Is Both Resistance and Victimhood*, 98 SOC. FORCES 1695 (2019).

178. Interview with Emma (July 21, 2019) (on file with author).

179. Interview with Shelly (July 27, 2019) (on file with author).

180. This is also well recorded in other ethnographies about Filipina domestic workers. See PARREÑAS, *supra* note 6, at 9.

“Being treated like family” was both an individual worker’s subjective feeling and the peer workers’ collective evaluation. One standard dimension was the level of respect the worker received from the employer, and whether she was treated as an equal family member enjoying similar freedom. Workers listed specific details in everyday life as signs of (dis)respect, such as whether she was dining together with the family, whether she could watch videos on her phone in front of the employer, whether she could go out freely during working hours, and so on. Sometimes the relational aspect contravened the metrics. For example, bringing the employer’s child to the Filipinas’ weekend social events would extend the worker’s working hours yet the community widely celebrated it as a sign of the employer’s familial trust.¹⁸¹

The market norm of job changes enabled the worker to leave an unsatisfying employment relationship, not just extremely abusive ones. One worker said she quit her previous employer because her employer failed to deliver the promise of keeping a coherent schedule.¹⁸² Another worker kept a record to herself of the disrespectful incidents and left the employer after “four strikes.”¹⁸³ Aside from the employer’s treatment, this worker also took into account her preferences about the household that she lived in among the possible options she might have. In this way, the autonomy to change employers was also a form of freedom of family formation. Some common preference markers included the employer’s ethnicity and language ability, the size of the household, the (non-)existence of a grandma, the age of the children, the level of privacy, etc. Workers’ preferences on these factors varied. For example, some workers preferred culturally traditional Asian families that did not assume the stereotype of a sexually available Filipina woman and respected the worker’s relationship with her husband.¹⁸⁴ Others embraced Western families with fewer household rules and more independent children.¹⁸⁵

In terms of their bargaining positions, workers could be broadly divided into two categories, those who were under the transnational recruiters’ first contracts (“first-comers”) and those who came without transnational recruiters or who were not under the first contract (“freelancers”). These positions indicated power structures that factored into the community’s bargaining strategies. First-comers were under initial contracts that could not be enforced by the law, yet the employers and recruiters had already paid for the workers’ immigration cost (including visa application and transportation). As a result, they privately enforced the contract to collect their investment in the form of lower wages and debt, with contractual and extra-contractual

181. Interview with Maria (July 7, 2019) (on file with author).

182. Interview with Coco (July 28, 2019) (on file with author).

183. Interview with Meghan (July 24, 2019) (on file with author).

184. Interview with Frida (July 16, 2019) (on file with author); interview with Meghan (July 24, 2019) (on file with author).

185. Interview with Adele (July 7, 2019) (on file with author); interview with Elinor (Aug. 3, 2019) (on file with author).

means.¹⁸⁶ Thus, the first-comers' salaries were usually a quarter less than the freelancers' wage, or the "market wage." The wage deduction paid for the broker's commission fee. The contract, even though unenforceable in the court, deterred workers from changing to jobs with fairer terms, especially when they were unfamiliar with the local environment. During this period, the worker faced excessive pressure from the employer and the recruiter to stay in the contract, and had limited access to the migrant community and the community's repertoire of bargaining strategies. The contract often contained strict clauses, such as "no use of cell phones in the first three months" or "two days off in one month." Employers also invoked extra-contractual coercions, such as passport confiscation, arranging the worker's off hours on Saturdays instead of Sundays,¹⁸⁷ controlling the Wi-Fi in the house,¹⁸⁸ putting the Filipina in the same room with another Chinese nanny,¹⁸⁹ and so forth. Fourteen out of seventeen workers who had come through transnational recruiters mentioned that the first employer was the worst, or "the only bad family" they had in China.¹⁹⁰

Here is Elsa's drastic experience of her first employer:

I signed the contract in the Philippines. They told me they would give me only 2,000 RMB per month (after deduction) to work in F City (a provincial city). I worked in Kuwait before. So I thought 2,000 was fine. I didn't know about the high salary in China then. The employer was bad to me. They didn't give me Wi-Fi. Other things I can live without but life without Wi-Fi is impossible. The Wi-Fi machine was only on between 8 and 10 in the evening. My work usually finished at 9:30 or 10 so it was impossible for me to use it. They only paid me 500 RMB and sent back the rest of my salary to my parents. If I asked for cash from them, they would ask me what stuff I want and buy it for me instead of giving me money.¹⁹¹

While employers and brokers impose coercive strategies, the workers also developed their counterstrategies to run away. Indeed, it was so common that a recruiter told me that she would warn the employers of this risk in advance if they insisted on hiring a newly arrived worker.¹⁹² An informal industry consisting of local headhunters and drivers, or "Filipina's friends," are out there ready to assist runaways. As a Filipina nanny was expected to earn a considerable salary after running away, the "friends" were happy to help her with transportation in exchange for 50 percent of her one-month salary

186. Charny, *supra* note 170.

187. Interview with Janice (July 17, 2019) (on file with author).

188. Interview with Elsa (July 21, 2019) (on file with author); interview with Pearl (July 27, 2019) (on file with author).

189. Interview with Pearl (July 27, 2019) (on file with author).

190. Interview with Rosemary (July 8, 2019) (on file with author).

191. Interview with Elsa (July 21, 2019) (on file with author).

192. Interview with Recruiter 1 (July 15, 2019) (on file with author).

(4,000 RMB, ~570 USD). Almost every informant I knew had the contact number of at least one “Filipina’s friend” and were usually happy to introduce them. As a result, for a newly arrived worker, acquainting one fellow Filipina was enough to arrange a runaway. For example, Elsa in the previous story ran away within six months after connecting to a Filipina in S City on a mobile app for Filipina workers. Better informed workers were prepared for the runaway scheme even before signing the contract; the fastest runaway happened just two weeks after arrival.¹⁹³ More than one worker mentioned that it was not the particular employer that made their first employment the worst, but the sub-market power structure embodied in the form of sub-market salary and wage deduction. As one said, “they [the employer family] were actually good persons and did nothing wrong as an employer. But I had to run away because the wage gap was so large.”¹⁹⁴

The workers’ undocumented status, paradoxically, made running away easier. The lack of any opportunity for a long-lasting legal visa, a potential alternative benefit, reduced their incentives to stay longer in the contract and to repay the debt. More importantly, due to the lack of an immigration law system to support the financially onerous contract, the employer and the agent could not leverage the state’s power to directly enforce the contract against the migrant domestic workers. This, of course, did not eliminate the possibility of extralegal enforcement, such as holding travel documents. Additionally, particular socio-legal conditions, such as the Philippines consulate’s travel document replacement policies, also made running away less costly.

For freelancers and workers more embedded in the Filipina community, job mobility was a mundane part of workplace choice. They had developed a wide variety of bargaining strategies leveraging both their role as an indispensable caregiver in the employer’s family and against their alternative opportunities in the market.

Some bargaining strategies came from within the employer’s household. Many workers were more than a passive service-provider inside the household; rather, they had some authority in reshaping other household members’ behaviors, often by leveraging their close relationship with the child, whom all family members cherished.¹⁹⁵ The workers valued the authority in the employer’s household *per se*, and their authority simultaneously enabled a better working environment for herself. For example, Erika’s employer’s family was composed of a picky “madam,” a quibbling “granny,” a silent “sir,” and a protective “boy.” The madam and her granny were always at

193. Interview with Eugenia (July 21, 2019) (on file with author).

194. Interview with Pearl (July 27, 2019) (on file with author).

195. This bargaining strategy within the family is not unique to the Filipina domestic workers in this informal market. Ethnographies about Filipina domestic workers in Singapore also document similar strategies. Conversation with Sociologist Dr. Nirmala Purushotam (Sept. 18, 2020) (on file with author); see also *infra* Part V.

odds with Erika. “But after our fights, the boy always came to me, not his mother or granny: ‘My mother is stupid. Don’t mind it.’ Once the granny was picky again, and the boy yelled: ‘Stop talking, granny! I need a quiet room for homework.’ So she stopped.”¹⁹⁶ Another worker used her language skills as a weapon to alter the family dynamic. She proposed to the female employer to eliminate Chinese speaking during weekdays to foster an English language environment for the child, efficiently silencing an antagonistic granny.¹⁹⁷

A more market-oriented strategy was to maximize their information about job opportunities, keeping their work options open. Workers often maintained some connection with local headhunters, kept an eye on fellow workers’ social posts, and in some scenarios took job interviews without leaving the current job.¹⁹⁸ One opportunistic worker even colluded with a local headhunter to change jobs every few months so that the headhunter could earn additional commission fees from the employers.¹⁹⁹

Indeed, some workers explicitly exerted their power at the intersection of the employer’s inter-dependent household and the active informal labor market. Alex left and returned to the same employer three times to get the conditions she wanted. Alex said:

For the first two years, I didn’t have off days. The madam only allowed me to get out for a few hours every week. After another fight, I left them to work for another family. Madam begged for me back. She sent me videos of the two boys [I was caring for], crying, and asking for me. ‘Please come back. The boys cannot live without you. We cannot live without you.’ She begged on the phone. I was too attached to the two boys, so that I went back. She also gave me a salary raise from 4,000 to 6,500 and now 8,000. She also agreed to give me 24 hours off per week and flexible hours during the work. Now we are good. *We are finally like family.*²⁰⁰

By exerting this power not to be part of the family, the worker was able to make the employer into a responsible family member that treated her with respect and paid her a better wage: “like family.” It is also worth noticing that the employer, in reverse, leveraged the worker’s attachment to the child to keep her within the family.

The freedom to change employers also enables quick exit as a way to reduce abuse, though the limited incidences in my sample cannot represent its effectiveness on a large scale. For example, after narrowly escaping a

196. Interview with Erika (July 14, 2019) (on file with author).

197. Interview with Maria (July 14, 2019) (on file with author).

198. Interview with Cecilia (Aug. 17, 2019) (on file with author); interview with Kate (July 21, 2019) (on file with author).

199. Interview with Jane (July 27, 2019) (on file with author).

200. Interview with Alex (July 16, 2019) (on file with author) (emphasis added).

sexual assault by the male employer when the female employer was on a business trip, Anita contacted several agents and took online interviews for jobs in other cities. When the female employer returned home a week later, Anita politely told her employers that she needed to pack everything and fly back to the Philippines. Turning down her employer's offer of a lift to the airport, she called herself a cab to the train station and started a new job in another city.²⁰¹

Informality also enabled some workers to develop alternative work arrangements and to have a household of their own in the S City. Three of the informants worked full time for one household but did not live on their employers' premises (what the group called "live-outs") while another eight workers had independent lodgings and did part-time jobs with multiple households (what the group called "part-times"). Part-time jobs were paid a higher hourly rate and enabled more flexibility and privacy for the workers.²⁰² Part-time was also a typical arrangement among lesbian Filipina couples, enabling them to live with their partners in their own households. Absent any meaningful sector restraints, some workers even managed to take jobs outside the domestic worker sector.²⁰³ Three of the informants were teaching English in private kindergartens, and one became a salesperson at a trading company.

Aside from more cooperative settings, the illegality of their employment also introduced another weapon into the bargaining—the threat of reporting to the authorities. In other words, Filipina workers and their employers were not only bargaining in the shadow of illegality, but they were also bargaining *with* it. The threat to report played into the power dynamics in contradictory ways—it was a weapon ready to be used by all stakeholders, as they had all engaged in different illegal acts; at the same time, the threatening party did not want to ultimately follow through on the threat, because it might backfire. Under the law, the consequence of such a revelation would be ten to fifteen days detention and repatriation for the worker, fines for the employers and local headhunters, and potential criminal charges for the transnational recruiter.²⁰⁴ An additional drawback for the employer is that their residence would be on the radar of the immigration officials, which might induce future inspection. The inspection, or even just the fear of one, a fear shared by the workers, might constitute a *de facto* blacklisting of that employer from hiring foreign domestic workers.²⁰⁵

Judging from the limited number of incidents mentioned in the interviews, workers were no less active in invoking this weapon than other parties. They

201. Interview with Anita (Aug. 3, 2019) (on file with author).

202. Similarly, Latina domestic workers in informal markets in the United States favor part-time arrangements over live-in arrangements. See HONDAGNEU-SOTELO, *supra* note 72.

203. Almost no formal programs allow domestic workers to switch sectors without leaving the jurisdiction. See Shamir, *supra* note 10, at 480–81.

204. EEAL, *supra* note 153.

205. Group discussion with Sia and others (Aug. 3, 2019) (on file with author).

found it sometimes useful. For example, when Meghan quit her first employer after less than one month, both parties resorted to using this threat as a weapon: the employers tried to use it to coerce her to stay in the contract, and she tried to use it to annul the contract. Meghan said:

The boss wanted to threaten me: ‘There are many immigration officials around. If you just quit, we might report you.’ ‘You think I am afraid? I know your name, your home address, and your company’s name, and your company’s address. If you report me, I would report you and your agent. It’s not legal for you to hire me in the first place. It’s a big company, and you don’t want troubles.’ So he asked me whether I need[ed] extra money for the taxi.²⁰⁶

Workers also deployed this weapon to get their documents back from the transnational recruiters. Denise got her documents back with a threat to sue:

When I was starting to work under my first contract, I called the agent. I told her to send back all of my documents, and I will let her go. Otherwise, I am going to go back to the Philippines and to sue her there. Whatever she is doing is illegal in the Philippines. So she was scared and sent all of the documents back to me.²⁰⁷

Janice, in a similar scenario, was not so lucky: “When I decided to leave my first employer, I went directly to the agent and to threaten to report them. I did [threaten]. But she didn’t give it back anyway.”²⁰⁸ It is hard to predict when such a threat would work and why, as the threat derives its power from the unpredictability of the other party’s reaction and the uncertainty of the punitive legal consequence, as much as from the consequence itself.

The strategy—and ethics—of bargaining were developed and reproduced during the community gatherings. In the first group gathering I attended, an experienced worker taught a newly arrived worker the techniques of quitting and threatening to report. In the end, she added: “But don’t leave your employers in the middle of the week. They both work and have children to care for. We shall be considerate of them too. Pack your stuff and leave them next weekend.”²⁰⁹

On the other hand, informality also severely restrained the workers’ bargaining power and strategies. Only one of my informants went to the police for help in the scenario of wage underpayment, and other reported the recruiter’s document confiscation practice to immigration law enforcement. Support from formal labor unions or civil society organizations was also absent, despite the assistance of an informal network.²¹⁰ The worker’s

206. Interview with Meghan (July 24, 2019) (on file with author).

207. Interview with Denise (July 19, 2019) (on file with author).

208. Interview with Janice (July 17, 2019) (on file with author).

209. Group gathering with Janice and friends (Jan. 7, 2019) (on file with author).

210. See, e.g., Hsia, *supra* note 118.

bargaining position was also restrained by broader structures of political economy, such as income inequality between countries, compelling her to work for a foreign family to support her family at home.²¹¹

Working informally unties the connection between the workers’ market behavior and the risk of deportation, and thus enables a spectrum of bargaining strategies that are not available in a formal migration program. Paradoxically, if a worker had already become deportable upon overstaying her visa, immigration law could no longer *directly* discipline her in her work and life, allowing her to finish her current employment or moving out of the employer’s household.

TABLE 2. THE REPERTOIRE OF BARGAINING STRATEGIES IN CHINA’S INFORMAL MARKET

	Worker	Employer	Recruitment Agency
Before Departure	Going through the immigration process on her own; Connecting with the employer through friends and relatives.	Threatening not to hire the workers.	Threatening the worker that she cannot find an employer; Misrepresenting the market standard and legal status.
Within the Household	Conducting everyday resistance techniques; Establishing family-like bond with the employer; Meddling with family members; Leveraging English.	Confiscating documents; Cutting short rest time; Controlling Wi-Fi; Etc.	Teaching employer controlling techniques.
During Employment	Taking new job interviews to compare conditions; Maintaining connection with multiple headhunters; Threatening to leave; Threatening to report to authorities.	Threatening to fire the worker; Threatening to report to authorities.	

211. EHRENREICH & HOCHSCHILD, *supra* note 3.

TABLE 2. CONTINUED

	Worker	Employer	Recruitment Agency
Changing Employment	Running away (if under the first contract); Changing employers; Taking part-time and side jobs.	Taking on new workers; Taking part-time workers.	Enabling free job changes to keep the worker under the first contract; Colluding with opportunistic job-hopping workers.
Invoking the State	Threatening to report a violation of immigration law; Reporting other violations, such as wage theft.	Threatening to report a violation of immigration law; Reporting other violations, such as theft.	Threatening to report a violation of immigration law.

D. *Surviving and Thriving in the Informal Economy*

This section turns to the informal economic network that enabled the workers’ livelihood outside their workplaces and, ultimately, strengthened their bargaining power in the workplace. In China, a formal residency status determines the individual’s access to many essential public services. Thus, living as an informal immigrant meant exclusion from these provisions, a legal disability. Meanwhile, a lively informal market, where the Filipina worker both provided and consumed services in place of public channels, supported the everyday life of the community, such as housing, leisure traveling, small goods trading, and sending remittances back to the Philippines. Again, this group of informal workers avoided the formal labor migration programs’ prohibitions on participating in other trades as a part-time worker or sometimes as an entrepreneur.²¹²

Such an informal support network outside the workplace also empowered the Filipina domestic worker in the following ways. First, it enabled her to live a more independent life, less reliant on the employer household’s provision of everyday goods, including housing. Second, it provided an alternative to income from domestic service and a cushion to fall back on between jobs. Third, it also incentivized attending and contributing to the Filipina workers’ community in the S City. However, this informal network failed to find a solution for some crucial legal disabilities, including reliably traveling between home and receiving countries.

212. Shamir, *supra* note 10.

TABLE 3. INFORMAL FILIPINA WORKERS’ INFORMAL NETWORKS OF EVERYDAY LIVELIHOOD

Formal Legal Disability	Provision from Informal Network	Alternative: Reliance on Employer
Living with a legal lease	Living in a “boarding house”	Living in employer’s house
Accessing financial services, especially transnational transfer	Using informal remittance services	Opening a bank account under the employer’s name
Registering a telephone number	Using a sim card under a friend’s name	Using a sim card under the employer’s name
Shopping online with registered online bank	Shopping and trading on social media	Shopping online under the employer’s name
Using public inter-city transportation in the country	Hiring private drivers for Filipina workers	Tagging along on an employer’s trip
Travelling outside the country and re-enter	No provision	No provision

Examples of remittances, housing, and trading illustrate how the workers balanced their lives between the informal economic network and the employer’s household to fulfill their consumptive needs and to generate income.

1. *Remittance*

Sending remittances is a shared goal of overseas Filipina workers around the world. Remittances help a worker’s family members to live a decent life, their children to receive education, and the worker themselves to accumulate wealth to purchase property or start new businesses. Moreover, the Philippines has named remittances part of overseas workers’ “civic duty” and made it a legal duty for formal migrants to send remittances through official financial institutions.²¹³ However, formal financial institutions were hardly accessible for undocumented workers in China, as local banks required identification documents to open a bank account. Living off-the-record also put them off the radar in the Philippines. An informal network operated to circumvent this lack of access to public financial infrastructure.

Filipino traders in China, with the help of some Filipina domestic workers, operated private remittance services. For example, Alex was a live-in domestic worker who also participated in operating an informal private remittance network. Alex’s “boss” owned multiple trading companies and thus had multiple bank accounts in both countries. The “boss” hired around twenty

213. See Ong, *supra* note 7, at 162; RODRIGUEZ, *supra* note 70, at 81–86.

nannies to moonlight advertising the service to fellow Filipinas on social media platforms. Lacking a formal system to underwrite the monetary transactions, the existing bonds from the close-knit migrant community played a crucial role in establishing trust. The solicited worker deposited RMB to a Chinese bank account held by the trading company or handed the cash over to the moonlighter nanny, in exchange for a receipt, usually an online message. The next day, the boss's helpers in the Philippines, sometimes the moonlighters' family members, collected PHPs from the company's bank account in the Philippines and then sent the money to the bank account designated by the sender. For each remittance of up to 5,000 or 8,000 RMB, the business charged 50 RMB (a minimum rate of 1 percent). Of that sum, 20 RMB went to the moonlighter who had recruited the transfer, and 30 RMB went to the "boss."

The network could further informalize, detaching itself from the trading company. If a domestic worker had access to bank accounts and some connections in both countries, she could fully operate a small-scale remittance business herself. For example, Alex and her girlfriend in the Philippines were starting their own remittance business. Alex's girlfriend had previously worked as a domestic worker in China under a miscategorized student visa, and thus had bank accounts in both countries. By soliciting senders for their own business, they got to keep all of the 50 RMB charge.²¹⁴

2. *Housing*

Housing testified to the importance of this informal support network. The municipal government of S City had enacted a regulation requiring every lease to be registered with the housing department and prohibited landlords from leasing to individuals without identification documents. It also set many habitability restrictions on leases, such as maximum occupancy and a prohibition on leasing the room to multiple non-related individuals.²¹⁵ In reality, informal housing markets, including both illegal developments and informal group rentals, were rampant across the city, especially in the so-called "urban villages" on the cities' outskirts.²¹⁶ Millions of migrant workers from other regions in China found affordable dwellings from this informal housing market, where both landlords and tenants circumvented formal regulations.

Filipina domestic workers found lodging in this same informal housing market. More than 75 percent of the informants had leased an independent room, sometimes shared with a Filipina friend, for weekend or full-time stays, which they called their "boarding house." They usually leased the room full time. The monthly rent was between 600 and 1,200 RMB (~85-

214. Interview with Alex (July 16, 2019) (on file with author).

215. See Procedures of S City on the Administration of Residential Tenancy (2011) (citation changed to preserve anonymity of the city).

216. See SHITONG QIAO, CHINESE SMALL PROPERTY: THE CO-EVOLUTION OF LAW AND SOCIAL NORMS 8–11 (2017).

170 USD), around 7.5 percent to 15 percent of their average monthly salary. A studio containing a kitchen and bathroom could cost 1,500 RMB (~212 USD). Workers who lived in their employers' homes during work often retreated to their boarding house on Saturday evenings and spent the night there. Live-out and part-time workers lived in boarding houses throughout the week.

Their undocumented status urged them to find a "good" landlord who provided more than the living space. Hosting tens of thousands of internal and international migrants, the "urban villages" were perceived by the local government as a threat to social stability and had higher police presence. Consequently, the migrant domestic workers needed friendly landlords who could speak simple English or use translation apps to protect them against police inquiries. A "good" landlord could tip them off to police presence in the community, answer routine checks on their behalf, and, in some cases, assist them in evading a hostile police officer.

Occupying an independent room in the S City had significant implications for their bargaining power in the workplace. Most obviously, having overnight accommodation substantiated the weekly twenty-four hours of rest. Without it, the worker needed to return to the employer's home before the end of the twenty-four hours to sleep under a roof. In comparison, Filipina domestic workers in Taiwan, Hong Kong, and Singapore, all of whom had a legal right to 24 consecutive rest hours per week, often had only twelve free hours due to employer's curfews.²¹⁷ The boarding house also accommodated the worker and her personal property between jobs, enabling the workers to switch jobs and leave undesirable employment. Thus, workers in this informal market seldom saw housing as a deterrent that kept them in unwanted employment. In addition, an independent room could shelter a new friend who just ran away from her first employer or a relative who just got off the plane from the Philippines.

Having an independent living space also made it easier to move out of the employer's household and to start one's own. A part-time worker named the cost of housing a key factor in her decision to start working part-time: "The rent's the same. The live-ins are paying for the boarding house too; they only sleep there for one night. The room is empty most of the time for live-ins."²¹⁸ With some entrepreneurial spirit, workers also easily turned the living space into a business space such as selling food to fellow Filipinas.

The boarding house was also a site of community gathering. A small group of friends often leased separate rooms or shared a room in the same neighborhood or the same house, forming their own family away from their employer. A worker sharing a room with her friend told me she chose to lease the room to maintain her connection to the community: "I got to see old friends in the

217. CONSTABLE, *supra* note 33, at 97; Schumann & Paul, *supra* note 177, at 1697–98.

218. Interview with Ming (July 28, 2019) (on file with author).

house and meet new ones at parties. Sometimes we party at the house. It's cheaper. I don't keep stuff at the boarding house. I keep the room for my friends."²¹⁹ Access to the boarding house also sheltered their romantic relationships, whether long-time girlfriends, visiting husbands, or short-term boyfriends met online.

In sum, enabled by their comparatively high salary, the supply of cheap informal housing, and the lack of zoning law enforcement, Filipina domestic workers found access to housing independently away from their employers.

3. *Shopping and trading*

Aside from shared legal disabilities due to their informal immigration status, the workers' capabilities in navigating everyday life varied widely due to a combination of social factors, such as holding an unexpired passport, having a strong connection with the employer, and possessing strong language abilities. Workers with entrepreneurial spirits transformed these capabilities into business opportunities.

Soon after I entered the Filipina domestic workers' social network, I noticed that some workers were posting commercial advertisements on the local social media (WeChat). More than half of the posts were about gold jewelry, both new and second-hand. A typical post said: "18K China Gold. [Emojis of a ring.] 100% pawnable authentic PM ME for Inquiries." Accompanying the words were several photos of different gold rings on a scale. Moving among different countries for most of their lifetime, this group of female workers turned to the universal currency of gold to store their wealth. Social media-based moonlight traders operated a network of sale and resale, enabling the workers to liquidate and materialize their wealth at their convenience and to own the luxurious embodiment of feminine beauty.

The sales of gold jewelry operated as a chain, with Filipina domestic workers filling all the roles: sellers, buyers, and traders in the middle. Once a Filipina had some jewels to sell, she usually notified her close trader friends about the piece and the price. The trader posted the piece on her social media and in her buyers' group chats. Other moonlighting traders could re-post the advertisement on their own account if permitted by the original trader. A prospective client privately contacted the trader for a price. Each trader in the reposting chain added her own small service fee to the price. Some traders also bought the product themselves and resold it for a higher price. Thus, "how much you get for the gold depends on which seller you buy it from."²²⁰ The purchased piece was usually delivered by common friend at a weekend party.²²¹ The whole system operated on reputation in a community in which everybody loosely knew of each other.

219. Interview with Yulia (July 21, 2019) (on file with author).

220. Interview with Sia (July 13, 2019 & Aug. 3, 2019) (on file with author).

221. Interview with Shelly (July 27, 2019) (on file with author).

This informal market also offered everyday goods, like snacks, vitamins, shampoos, outfits, or homemade food. Only traders with independent access to outside markets or private means of production could operate this business. In one case it was a relative who imported vitamin beverages. In another, a previous employer taught a worker how to shop on Chinese online shopping platforms. This business, contrary to the previous one, could induce losses if the stock did not sell within the group, because the trader both purchased and stored goods.

Overall, the profits from trading were lucrative. The earnings from the business could even exceed the salary from her domestic care job.²²² As the income was almost exclusively from the network of her friends and acquaintances, a worker who operated a remittance or trading business had an additional economic incentive to befriend more fellow Filipinas both online and offline and to sustain the community. Thus, the traders not only extensively reached out to fellow Filipinas on social media but also created group chats and hosted in-person parties to foster communication with the group. Profits sometimes also drove the group into competitive networking. During my field study, two old friends competed over a shared customer base, deploying aggressive strategies such as defaming each other on social media, threatening to report the other's violations of the law, and organizing more group events to recruit new members.

The trading network not only brought access to commodities and income to the sellers and buyers, but also enriched the community as a whole. It was within this informal community that the Filipina migrant workers found emotional belonging, economic profit, and empowering support.

V. A COMPARISON BETWEEN THE SINGAPORE'S FORMAL SYSTEM AND THE CHINA'S INFORMAL MARKET

The following section compares the bargaining dynamics among migrant domestic workers, employers, and intermediate agents in the informal market in China with those in the formal one in Singapore. The first part outlines the formal Singaporean law with regard to migrant domestic workers, the law in action, and then uses sociological research and NGO reports to explore bargaining dynamics in the shadow of this specific set of rules.²²³ The second section draws some tentative comparisons among jurisdictions.

222. In fact, I have delivered the goods on several occasions.

223. Social science literature has densely studied foreign domestic workers in Singapore since the 1990s. Most of the research doesn't make distinctions between foreign domestic workers from the Philippines and other Asian countries. Thus, the literature I include here also covers foreign domestic workers from Indonesia, Sri Lanka, and Thailand, among other Asian countries. One widely noted difference among the worker groups is that the Filipina workers are comparatively more active in bargaining for their interests and they are on average paid higher wages because they speak better English than workers from other countries. See Varia, *supra* note 58; Goh, Wee & Yeoh, *supra* note 94; Ueno, *supra* note 134; WESSELS, ONG & DANIEL, *supra* note 134; Schumann & Paul, *supra* note 177; Shirlena Huang & Brenda S.A. Yeoh, *Emotional Labour and Transnational Domestic Work: The Moving Geographies of "Maid Abuse" in Singapore*, 2 MOBILITIES 195 (2007); Audrey Verma, Multiple Forms of Violence in

Singapore's migrant domestic worker program, built in a typically formal mode, serves as a model comparison for S City's informal market for domestic workers. I chose Singapore as the formal system for comparison due to its geographic and cultural adjacency to the China market.²²⁴ I also chose it because Filipina domestic workers perceive it as a relatively desirable formal program among Asian destination markets.²²⁵

A. *Singapore's Migrant Domestic Worker Program*

Singapore, hosting 253,800 documented foreign domestic workers (FDWs) as of 2018, is the largest receiving country of Filipina domestic workers in Southeast Asia.²²⁶ Like many other formal migration programs, the country recruits migrant domestic workers through licensed private agencies and governs them with stringent work permit regulations under the Employment of Foreign Manpower Act (EFMA).²²⁷ Although Singapore has not officially ratified the Domestic Worker Convention, the 2012 Regulation benefits from the momentum that the Convention has created.²²⁸ After decades-long efforts by labor advocates, a regulation was passed in 2012

Maid-employer Relations in Singapore (Aug. 4, 2010) (M.A. thesis, National University of Singapore) (on file with author); Minu Thomas & Sun Sun Lim, *Migrant Workers' Use of ICTs for Interpersonal Communication—The Experience of Female Domestic Workers in Singapore* 1–15 (May 2010) (unpublished working paper) (on file with author); *The Price of a Job: New Domestic Workers and Efforts to Reduce the Costs in Starting Employment in Singapore*, TRANSIENT WORKERS COUNT TOO (Oct. 19, 2016), <https://perma.cc/V6NQ-FPQ3> [hereinafter TWC2]; Maria Platt, Grace Baey, Brena S.A. Yeoh, Choon Yen Khoo & Theodora Lam, *Debt, Precarity and Gender: Male and Female Temporary Labour Migrants in Singapore*, 43 J. ETHNIC & MIGRATION STUD. 119 (2017); Chieh-Hsuan Wang, Chien-Ping Chung, Jen-Te Hwang & Chia-yang Ning, *The Foreign Domestic Workers in Singapore, Hong Kong, and Taiwan: Should Minimum Wage Apply to Foreign Domestic Workers?*, 51 CHIN. ECON. 154 (2018).

224. The two markets share multiple similarities. First, the employer population in Singapore and S City share cultural and economic traits. The majority of Singaporeans (74.3 percent) are of Chinese ethnicity. See DEP'T OF STAT. SING., *Census of Population 2020—Statistical Release 1 Demographic Characteristics, Education, Language and Religion* (2021), <https://perma.cc/9K8M-PX8U>. The employers of foreign domestic workers in Singapore are composed of roughly 2/3 local Singaporeans and 1/3 expatriates, including expatriates from China, a similar composition to the employer population in S City. Second, foreign domestic workers in both jurisdictions mainly work in the household, not institutions, as in the case of Japan. The workers are also not limited to certain sectors of domestic work, like elder care, as in the case of Israel and Taiwan. Third, both countries are geographically adjacent and culturally similar to the sending countries, compared to destinations in the Middle East. Lastly, the broader political economy also has some similarities. Though differing drastically in political institutions, the two countries have authoritarian governments with strong state capitalism. Undoubtedly, the two markets differ in other aspects than legal arrangements, the focal point here. With almost no local domestic workers, foreign domestic workers have a much stronger presence in Singapore: on average, one in ten households in Singapore have one. In contrast, S City has more local domestic workers than foreign ones. Though Filipina domestic workers enjoy some language dividends in Singapore, it is less so than their S City counterparts. The majority of workers in Singapore are Indonesian (56 percent), and Filipinas constitute the second largest group (32 percent), while Filipina predominates the foreign domestic worker market in S City. Singapore also has a longer history with Southeast Asian domestic workers since the 1990s, while the parallel market emerged in the past ten to fifteen years in S City. See WESSELS, ONG & DANIEL, *supra* note 134, at 19.

225. See Paul, *supra* note 17, at 1849.

226. See *Foreign Workforce Numbers*, MINISTRY OF MANPOWER, <https://perma.cc/MQ9Z-G9YE> (last visited Apr. 16, 2022); PHIL. STAT. AUTH, *supra* note 77.

227. See Employment of Foreign Manpower Act hap. 91A (Sing.) [hereinafter EFMA].

228. 2012: *A Year of Progress for Domestic Workers*, HUM. RTS. WATCH (Jan. 10, 2013), <https://perma.cc/FU6R-QQYL>.

(hereinafter “the 2012 Regulation”) which prohibits many labor-abusive behaviors by employers but does not touch the structure of the recruitment program.²²⁹ The work permit for domestic workers falls under the categorization of unskilled labor. The work permit for unskilled labor is eligible for a specific employment for up to two years.²³⁰ Until 2012, this work permit could only be renewed up to four years. Now the work permit is renewable until the worker turns the age of fifty, and if the worker stays with the same employer, the age of sixty. Through her entire stay in the country, the worker must have a valid work permit sponsored by her employer, and she must leave the country within seven days of the work permit expiring.²³¹

Before the worker’s arrival, the employer must, by themselves or through a licensed agency, apply for a work permit from the Ministry of Manpower (hereinafter MOM) on behalf of the worker. The MOM scrutinizes the eligibility of both the employer (age and mental and financial capacity to hire domestic workers) and the employee (gender, age, nationality, and education²³²) and also determines the amount of the monthly levy the employer has to pay to the MOM based on the urgency of the employer’s household’s care needs.²³³ Before applying for the work permit, the employer is also required by the EFMA to post a security bond of S\$5,000 (~3,500 USD) through a licensed finance institution. The security bond not only covers the health and accident insurance for the domestic worker,²³⁴ but also becomes forfeit to the state if the state finds that the employer breaks the EFMA requirements or fails to ensure the worker’s compliance with the EFMA or other Singaporean laws.²³⁵

The 2012 Regulation specifies that the employer’s duties include: paying a fixed monthly salary; not abusing or injuring the worker; not assigning dangerous jobs, especially cleaning exterior windows; providing adequate food, medical treatment, and acceptable accommodation; not confiscating documents; sending the worker to medical examination every six months; and

229. See Employment of Foreign Manpower (Work Passes) Regulations (No. S 569, 2012) (Sing.) [hereinafter EOFM 2012 Regulations].

230. *Key Facts on Work Permit for MDW*, MINISTRY OF MANPOWER, <https://perma.cc/4QEF-7EZM> (last visited Mar. 9, 2022) [hereinafter *MOM*].

231. EOFM 2012 Regulation, *supra* note 228, at Fourth Schedule § 20-23.

232. Singapore only accepts female foreign domestic workers, and workers must be from twenty-three to fifty years old; workers above fifty can only renew their work permit with the same employer until sixty. All workers must come from an approved source of origin of thirteen Asian jurisdictions and have received a minimum eight-year education with a recognized certificate. See *Migrant Domestic Worker Eligibility*, MINISTRY OF MANPOWER, <https://perma.cc/KD6S-5VDD> (last visited Mar. 9, 2022).

233. See *Paying Levy for a Migrant Domestic Worker (MDW)*, MINISTRY OF MANPOWER, <https://perma.cc/3HMD-DP2D> (last visited Mar. 9, 2022).

234. EOFM 2012 Regulation, *supra* note 228, at First Schedule, Part II, §§ 2-2A; WESSELS, ONG & DANIEL, *supra* note 134, at 21.

235. *Id.* at Enacting Formula, §§ 12–13. Common situations of forfeiting the bond listed by the MOM include when the employer does not pay the salary, the employer does not ensure the worker’s return to her home country on expiration, and the worker goes missing. *Security Bond Requirements for MDWs*, MINISTRY OF MANPOWER, <https://perma.cc/25DR-X245> (last visited Mar. 13, 2022).

ensuring the repatriation of the worker upon termination.²³⁶ Physically abusing workers is subject to criminal prosecution. The perpetrator also must pay compensation to the worker, and the MOM bans the perpetrator's family from future hiring.²³⁷ The employer also has the duty to inform the worker of these general conditions at least three days before her departure for Singapore.²³⁸ The most debated clause focuses on the rest day. Although the law stipulates the worker's right to an unpaid weekly rest day, it also allows the parties to contract it away in exchange for an additional payment.²³⁹

The same regulation reiterates the stringent restrictions on the workers, and the employers' duty to ensure the workers' compliance.²⁴⁰ The workers are not allowed to: do non-household work such as working for the same employer's factory; work for other employers than her work permit sponsor; take part in any other business or start their own business; reside or work away from the address set by the employer; get pregnant or contract sexually transmitted disease; or marry a Singaporean citizen without MOM's approval.²⁴¹ They also have to carry their original work permit all the time for inspection when they go outside the employer's household.²⁴² Hiring or working without a work permit is punishable by high fines, caning, and prison terms.²⁴³

Employment agencies deploy the majority of FDWs to Singapore and play a substantial role in managing the employment conditions from arrival to departure from Singapore. The 2012 Regulation permits agencies to deduct placement fees from the FDW's salary by up to two months' pay on a two-year contract, and additional transfer fees up to two months' salary if the unsatisfied employer sends her back to the employment agency.²⁴⁴ Similar to informal workers in China who migrated via an agency, the migrant domestic workers in Singapore also go through two stages in their employment: the wage-deduction period, when they are most vulnerable to other players' exploitation and have limited access to financial resources and the migrant communities, and the period afterward, when they commonly enjoy more control

236. EOFM 2012 Regulation, *supra* note 228, at Fourth Schedule (codified in scattered sections of Part I).

237. *Abusive FDW Employers are Barred by MOM from Hiring*, MINISTRY OF MANPOWER (Aug. 21, 2019), <https://perma.cc/GD8T-PLZD>.

238. EOFM 2012 Regulation, *supra* note 228, at First Schedule, Part II, § 1.

239. Schumann & Paul, *supra* note 177, at 1708.

240. EOFM 2012 Regulation, *supra* note 228, at Fourth Schedule, Part I, § 15; Part II, §§ 1–3.

241. *Id.* at Fourth Schedule (codified in scattered sections of Part II and Part VI).

242. EFMA, *supra* note 227, at 1990 Part II § 5.

243. *Id.* at art. 5, §§ 5–8. The corporal punishment is usually waived with leniency in actual practice.

244. WESSELS, ONG & DANIEL, *supra* note 134, at 20. The employer is forbidden to receive any benefit from the agency in relation to the worker's employment. Conditions and Regulatory Conditions of In-Principle Approval for Work Permit, Part I, art. 5 (Nov. 8, 2012) (Sing.).

over their lives.²⁴⁵ The wage deduction period often exceeds the length and amount set by the law, amounting to five to six months.²⁴⁶ Unlike the Chinese case, however, the workers in Singapore receive no salaries but an allowance under S\$80 (~58USD) during the deduction period.²⁴⁷

The Singaporean program's meticulous regulation and stricter law enforcement leaves less room for parties to negotiate and re-arrange their employment compared to the informal Chinese market. However, even a highly formalized regime like Singapore's cannot prevent bargaining in the shadow of the law and, in some cases, straightforward violation of the written laws.²⁴⁸ For example, the Singaporean laws strictly prohibit the employers from document confiscation; however, research from 2017 shows that 67 percent of the migrant domestic workers still have their documents confiscated.²⁴⁹ Thus, similarly, the law and the market norms it cultivates use prohibition, permission, and even mandates to condition each players' bargaining strategies, with enforcement mechanisms of various effectiveness, and thus sway the power dynamic in one direction or the other.²⁵⁰

The law conditions the power imbalance between the migrant workers and their employers and recruiter agencies by enabling different respective mechanisms to enforce or breach the employment contract. According to the contracts, both the employer and the employee can end the employment with a notice, a salary in lieu of the notice, or a mutual agreement.²⁵¹ However, the immigration law gives the two parties structurally different power. When the employer decides to terminate the employment, they can either bear the repatriation cost and cancel the work permit or send the worker back to the recruitment agency and transfer back the work permit, first to the agency and then to the next employer. The EFMA requires both the current and new employers' consent to transfer the work permit, even after the expiration of the original employment contract.²⁵² Therefore, in the best-case scenario when the worker has found another employer within the timeframe of the work permit, the current employer still has the power to reject the work permit transfer and, ultimately, the power to remove the worker from Singapore. As a result, it is much harder for the worker to change her employer in this jurisdiction than it is for the employer to change the worker. In practice, the agency often offers the employer a free option to change domestic workers

245. Goh, Wee & Yeoh, *supra* note 95.

246. WESSELS, ONG & DANIEL, *supra* note 134, at 20; Ueno, *supra* note 135, at 508; Schumann & Paul, *supra* note 177, at 1697; TWC2, *supra* note 223, at 3. Before the 2012 Regulation, some workers were not able to receive a salary for up to eleven months.

247. TWC2, *supra* note 223, at 10.

248. Mnookin & Kornhauser, *supra* note 13.

249. WESSELS, ONG & DANIEL, *supra* note 134, at 31.

250. Hale, *supra* note 170; Mnookin & Kornhauser, *supra* note 13; Kennedy, *supra* note 170.

251. *Contracts and Safety Agreement for Foreign Domestic Worker*, MINISTRY OF MANPOWER, <https://perma.cc/6JP4-CHLZ> (last visited Apr. 16, 2022).

252. *Transfer a Migrant Domestic Worker Directly to a New Employer*, MINISTRY OF MANPOWER, <https://perma.cc/K3GX-ZLB6> (last visited Apr. 16, 2022).

within a certain trial period, whereas the worker, if sent back to the agency, has to pay an extra transfer charge equivalent to two months' salary as a result of the termination.²⁵³ Some opportunistic agencies also deliberately mismatch the worker with incompatible employers so that they can repeatedly charge the worker the two month salary transfer charge or push the worker to go back to her home country and pay for the initial commission fee again for another chance at employment.²⁵⁴ In the most extreme case, a worker did not receive a salary for the entire first year due to being charged multiple transfer fees.²⁵⁵

As a result, the work permit mechanism also restricts workers' options to exit their employment. The structure usually gives workers more autonomy at the end of the standard two-year contract to find a more compatible employer for better terms or to renegotiate the terms with the previous employer. Outside this window, the worker who initiates a job change faces the hefty transfer fee. Even within this window, the worker has to find a new employer and complete the transfer procedure within the short grace period that the worker can legally stay in the jurisdiction without active employment.²⁵⁶

In more extreme scenarios, desperate workers run away from abusive employers to the police or to civil society organizations and expose the abuse through formal complaints with the police. The most severe cases lead to penalties to the employers.²⁵⁷ The informal Chinese market does not extend similar formal labor protection to workers in the most desperate circumstances. However, the Singaporean program's constraints on the workers' bargaining strategies also constrains the benefits of formal protections. Leaving the employer, even in the case of a labor rights violation, is likely to compromise future job opportunities. Most of the reported cases are of extreme abuses, such as repetitive starving and sexual abuse.²⁵⁸ More common violations like document confiscation and more subtle violations like under-provision of food and housing rarely trigger a report.²⁵⁹ The lack of data makes it hard to compare the volume of tolerated labor abuses between the informal and formal systems. But it is safe to say that the formal system underperforms its promise to abolish abuses due to the vast under-reporting.²⁶⁰

Though highly punitive regulation prohibits multiple types of abusive behaviors on both the employer and the worker's sides, the prohibitions have different enforcement mechanisms against the two parties. As a result, the

253. Ueno, *supra* note 134, at 241–42.

254. Schumann & Paul, *supra* note 177, at 1695–97; TWC2, *supra* note 223, at 17.

255. TWC2, *supra* note 223, at 17.

256. See Schumann & Paul, *supra* note 177, at 1697.

257. See WESSELS, ONG & DANIEL, *supra* note 134, at 22; Verma, *supra* note 223, at 10.

258. WESSELS, ONG & DANIEL, *supra* note 134, at 32.

259. *Id.* at 71–72; Verma, *supra* note 223, at 37–38, 44.

260. WESSELS, ONG & DANIEL, *supra* note 134, at xxii; Verma, *supra* note 223, at 17; TWC2, *supra* note 223, at 5.

workers often have to comply with the regulation more diligently, while the employers' violations are more likely to be tolerated. Without pervasive labor inspection, the employers' violation of regulations can only be exposed through the worker's self-report. The worker constantly faces the dilemma that "asserting her rights risks her overseas employment chances" in the current system.²⁶¹ In contrast, the employer has not only the capacity but also the economic incentive to control and to enforce the disciplinary regulation on the workers. The employer's failure to assure their worker's compliance with the law will lead to their own financial losses, especially violations which the government's routine scrutiny is highly likely to expose, such as the pregnancy ban.²⁶²

This set of rules, although diverging from the rules operating in the informal market in China, also distribute bargaining strategies among the workers, employers, and recruiters in the shadow of the law.²⁶³ Within the household, the Singaporean employers frequently use various strategies to control the workers and to establish dominance in the relationship, including confiscating documents, restricting food consumption, or installing in-home surveillance cameras, among others.²⁶⁴ In turn, workers employ various everyday resistance techniques to channel their dissatisfaction, such as using sarcasm and gossiping about their employers with fellow domestic workers.²⁶⁵ More active strategies include subtly manipulating the relationship in the family, especially the relationship with a female employer, whose family role the worker usually is hired to assist or to replace.²⁶⁶ One strategy is to establish a sisterhood with her that opens the worker to some familial benefits, including soliciting loans and seeking her protection from less respectful family members.²⁶⁷ The opposite strategy is to meddle with the female employer's relationship with other family members, such as invoking jealousy by showing intimacy with her husband or child, or causing friction among family members.²⁶⁸ Some workers also protest by producing noise in the middle of the night and causing disruption to the family's schedule.²⁶⁹

Workers have also developed some bargaining strategies outside the employers' household, even though they are more constrained compared to the informal China case, with the state and their employer closely enforcing the restrictions set by the EMFA. Similar to Filipina workers in China, their

261. Schumann & Paul, *supra* note 177, at 1713.

262. *Id.* at 1697.

263. Paul, *supra* note 17, at 732–33; Ueno, *supra* note 134; Schumann & Paul, *supra* note 177, at 1698–1700; Verma, *supra* note 223, at 32–33.

264. Ueno, *supra* note 134, at 244; WESSELS, ONG & DANIEL, *supra* note 134, at 12; Verma, *supra* note 223, at 94.

265. Ueno, *supra* note 134, at 250.

266. Huang & Yeoh, *supra* note 223; Verma, *supra* note 223, at 47–49.

267. Verma, *supra* note 223, at 47–49.

268. Ueno, *supra* note 134, at 250; Verma, *supra* note 223, at 47–49.

269. Verma, *supra* note 223, at 4. A strategy particularly common among Indonesian workers is to attempt "black magic" rituals in the hope of manipulating their employers.

strategies heavily rely on the community with fellow migrants, especially those from the same country.²⁷⁰ Singapore has a larger and more diverse migrant worker community than China, hosting roughly one million migrants from dozens of Asian countries.²⁷¹ However, the prohibition on FDW involvement in trading restrains economic exchange between them.²⁷² Sociological research has found that the Filipina community has developed a strategy to informally connect an employer or a recruitment agency in Singapore directly with another worker who is still in the Philippines, which allows the new hire to bypass part of the commission fee and thus to reduce the wage deduction period.²⁷³

The most common bargaining emerges around the worker's waivable right to the weekly rest day under the 2012 Regulation. With exceptions, the employers usually prefer not to give the workers the day off, while the workers typically prefer the rest day to compensation-in-lieu.²⁷⁴ From the employer's perspective, denying the worker the rest day guarantees more stable labor in the household. More importantly, this also establishes their control over the worker by secluding the worker from her community and minimizes the risk of her violating other laws, such as getting pregnant or gambling.²⁷⁵ Most workers prefer going out and socializing with their community outside the household after a week of non-stop work, even when they need to forego an additional day's wage and to incur costs of the social activities.²⁷⁶ Most workers are well aware of their legal right to the weekly rest day, yet most of them still give it up as a calculated decision once the employer brings it to the table.²⁷⁷ In other words, the employer has an upper hand in the bargaining over the weekly rest day.

Both the formal laws and the unequal market power of the two sides contribute to this lopsided power balance at each step of the bargaining. The tilted bargaining dynamic starts before the workers' arrival. During their online interviews, the employers and the recruitment agencies often ask for the workers' consent to reduce monthly rest days and receive compensation-in-lieu, which they quickly record into the terms and conditions of her employment contract. The employer sometimes signals an unwillingness to hire if the worker hesitates. The agencies also hint at the possibility of not being able to find another interview for her before the job interview. Some of them inform the workers that no weekly rest day is the market norm in

270. Paul, *supra* note 117, at 1863.

271. *Foreign Workforce Numbers*, *supra* note 226.

272. EPFM, *supra* note 227, at 2012 Regulation, Part VII, §1.

273. Paul, *supra* note 117, at 1872.

274. There exist reasons for both sides to prefer the contrary, too. Some employers prefer the workers to go out so that they can have family time and some workers prefer the extra financial compensation. Schumann & Paul, *supra* note 177, at 15.

275. Ueno, *supra* note 134; Verma, *supra* note 223, at 17.

276. Schumann & Paul, *supra* note 177, at 114.

277. *Id.*

Singapore.²⁷⁸ Faced with the alternative of not being able to secure an overseas job that they and their families desperately need, the workers often willingly submit to the request to leave a good impression on her potential employer. Even after her arrival and going through various state-organized orientation seminars, the worker commonly agrees with the employer's request in order to avoid conflict in the household where they will be living. Not only do the workers often agree to give the day up, they often do it in a submissive manner. Some state that they do not want to take the day off themselves, in order to gain good will and distinguish themselves from the stereotypical, socially active "troublemakers" that the employers would have second thoughts about retaining or feel compelled to keep an eye on.²⁷⁹

Usually, at the end of the two-year contract, the worker has the option to transfer to another employer and thus has another opportunity either to assert her weekly days to her new employer or to renegotiate the issue with her old one.²⁸⁰ However, even when the worker is at the peak of her bargaining power, her choice is still conditioned by the immigration law. If the current employer does not want to renew the contract and the worker cannot find another employer by the end of seven days after the expiration of her current work, she will have to go back to her home country and apply for new employment from there, going through the six-month salary deduction period again. Sometimes the worker also agrees to the employer's renewal despite her dissatisfaction with her current job for fear that the current employer will not agree to transfer her work permit.²⁸¹

B. *Comparing the Two Systems from the Workers' Perspectives*

Some tentative bargaining-power comparisons between the Chinese informal market and other Asian formal migration programs emerged based on my informants' responses and life trajectories.

For the workers, this cross-jurisdiction comparison between formal and informal migration corridors was more than a hypothetical exercise. My informants consciously did a similar analysis in their group meetings to figure out life plans for themselves and their families.²⁸² When discussing their choice of destinations, all of the participants picked China as a better destination than the Gulf Cooperative countries, while they were more ambivalent about the competition among East Asian countries.²⁸³ They universally agreed that the Chinese market produced significantly higher wages and

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. Six of them have worked in the Middle East, fifteen in East Asia, and many others have families and friends in other jurisdictions.

283. Group discussion with Jane and others (Jul. 27, 2019) (on file with author); Group discussion with Anita and others (Aug. 3, 2019) (on file with author); Group discussion with Cecilia and others (Aug. 17, 2019) (on file with author).

better quality of life, but also came with the risk of immigration law enforcement. Regarding treatment by employers, the workers debated this in group discussions: one camp argued that employers in S City treated Filipina workers with less disrespect while the other insisted that it still came down to the specific employer.²⁸⁴ On documentation confiscation, experienced workers reported that it rarely happened in certain formal markets (Hong Kong), while many other employers in both informal ones (China) and formal ones (Singapore and Gulf Cooperative Council countries) still did it.²⁸⁵ Some workers explicitly pointed out that their bargaining advantage in the informal system lay in the exit conditions. “Here, it’s always the nannies who quit employers; elsewhere, like Hong Kong, it’s employers who fire nannies. No nannies can quit the employers even when they treat us like something less.”²⁸⁶

Sociologist Anju Mary Paul has discovered that the workers’ migration trajectories, especially their very intentional movements, can be revealing about the desirability of possible destinations. Workers often leveraged a job in less desirable destinations to enter better ones.²⁸⁷ Paul found that Singapore was among the top tier destinations in Asia, but fell behind Canada and Italy, where the legal system offered the option of permanent settlement.²⁸⁸ I have found that some workers are leveraging their previous jobs and legal status in other formal migration programs to enter the informal market in China. Three workers directly left their formal jobs in Hong Kong and Macau to work in mainland China. Six workers had arranged or were arranging for their young adult daughters or other younger family members to come. Two of them specifically mentioned that they were sending their daughters to other jurisdictions so that they could get a tourism visa from China more easily. One said:

Of course I want my daughter to come here, not Singapore (where she started a job recently). But getting a Chinese tourism visa directly from the Philippines is becoming harder, especially for a new passport without any visa stamps. So I told her to apply for a tourism visa (to China) from Singapore when she is about to finish her contract there.²⁸⁹

Another mother was more ambivalent, given the undesirability of the gig: “I don’t want my eldest daughter to work illegally here like me. But I don’t want her to go to work in Dubai even more.”²⁹⁰

284. *Id.* Research in other jurisdictions also reports that the specific employer impacts migrant domestic worker’s working condition in addition or despite the jurisdiction. Parrenas & Silvey, *supra* note 131; WESSELS, ONG & DANIEL, *supra* note 134.

285. Group discussions, *supra* note 283.

286. *Id.*

287. Paul, *supra* note 17, at 1844.

288. *Id.* at 1848.

289. Interview with Maria (Dec. 23, 2019) (on file with author).

290. Interview with Ming (July 28, 2019) (on file with author).

Given that the workers often have to make migration decisions based on incomplete information, we should not over-interpret their trajectories.²⁹¹ Also, my sample of informants is highly biased, because it has been exclusively drawn from those who are working in China.²⁹² Still, it hints at the desirability of this market, at least among some participants in this transnational industry, and further studies of workers' own comparisons conducted elsewhere would shed more lights on this point.

Comparing the formal Singapore market with the informal China one, I find that the law enables and disables bargaining strategies for different parties. Further, the law conditions the goals parties are bargaining for. At one end, the well-enforced part of the regulation guarantees some rights for workers without any need of bargaining, such as their access to health and accident insurance, the right not to be assigned visibly dangerous tasks, and the right to repatriation; at the other, some arrangements are also beyond their reach in the formal system, like arrangements to live outside the employer's household, or opportunities to engage in side businesses such as small trading among migrants. The law also frames the focal point of the bargaining around the negotiable weekly rest days, rather than other benefits like salary. The power imbalance between worker, employer, and recruitment agency—which is also tasked as private immigration law enforcer by the law—contradicts some of the labor rights the formal program wants to guarantee.

The two systems lead to two distribution patterns of utilities and risks. The informal China case poses more immigration violation risks for all of the parties involved. Yet the workers are able to extract more salaries, longer rest hours, and alternative arrangements from the employers. The employers also have to treat workers better because the law itself does not help the employer retain workers. The Singaporean system, by contrast, constructs the labor market in favor of the employers and the agencies. While the stringent law aims to regulate every party involved, it still more effectively disciplines the workers than the others, producing less costly and more obedient workers that serve the interest of employers. The law further enables and obligates the employer and agency to privately discipline the workers, exacerbating the power imbalance.

On a macro level, other than enabling and disabling various bargaining strategies, both states' regimes affect the supply-and-demand equilibrium through immigration law in action. The Singaporean state more explicitly alters the supply, through issuing work visas, and the demand, through the charges and reduction of levies. By contrast, the Chinese state impacts the supply haphazardly through intentionally or unintentionally issuing miscategorized tourist visas and tightening or loosening deportation enforcement. The latter is less transparent and adds more randomness to the market. The

291. Paul, *supra* note 17, at 1880.

292. See *supra* section IV.A.

increased information costs and legal risks might select for a group of more resourceful and risk-loving workers, while the Singaporean system enables the government to quickly increase the number of imported workers in response to rising demand.²⁹³ Despite the common myth that the global care work market is characterized by a bottomless reserve of women from poor countries, they only become a labor supply in a given society through specific legal systems, and their bargaining position is determined less by the size of the global workforce than by the local rules they are bargaining in the shadow of.

VI. CONCLUSION

How shall we interpret this heterodox case of informal labor migration in the context of global labor governance?

I am by no means arguing that this case study informs the debate as a “good practice” example that can or should be replicated across other jurisdictions. Living undocumented in China can be cruel and precarious. The workers must make a tradeoff between losing the job opportunities in this jurisdiction and not being able to return to their home country for years. The prosperous informal market is contingent on the Chinese government’s lenient attitude towards enforcement.²⁹⁴ The whole industry of migrant labor, informal or formal, has become more unpredictable than ever due to the global COVID-19 pandemic, and the scale of labor emigration from the Philippines in general has shrunk for the first time in the past decade.²⁹⁵ The fear of contracting the virus drives both the sending and receiving countries to be more xenophobic than usual, which put the migrants and returning migrants at unprecedented risk.²⁹⁶

Instead, the local reverse of the formal/informal hierarchy challenges the entrenched presumption in international labor law that informal work is always worse than its formal counterpart.²⁹⁷ It shows that both informal and

293. Amarjit Kaur, *International Labour Migration in Southeast Asia: Governance of Migration and Women Domestic Workers*, 15 INTERSECTIONS: GENDER, HISTORY & CULTURE IN ASIAN CONTEXT 383 (May 2007).

294. In a comparable Israeli case, the lively community of informal Filipina migrants in Tel Aviv shrank dramatically in six months when the Israeli government started a deportation campaign against undocumented immigrants. LIEBELT, *supra* note 65, at 154.

295. PHIL. STAT. AUTH., *supra* note 77.

296. For example, African immigrants, many of them also undocumented, have experienced large-scale discrimination in Southern China. Jenni Marsh, Shawn Deng & Nectar Gan, *Africans in Guangzhou Are on Edge, After Many Are Left Homeless amid Rising Xenophobia as China Fights a Second Wave of Coronavirus*, CNN (Apr. 12, 2012), <https://perma.cc/2766-GRUJ>. Also, migrant construction workers in Singapore have disproportionately suffered from the disease and poor treatment because of uneven healthcare coverage and desperate living conditions. Weiyi Cai & K. K. Rebecca Lai, *Packed with Migrant Workers, Dormitories Fuel Coronavirus in Singapore*, N.Y. TIMES (Apr. 28, 2020), <https://perma.cc/Q7WC-L4HD>; Hannah Beech, *Covid Infections, and Blame, Rise Along Southeast Asian Borders*, N.Y. TIMES (Dec. 8, 2020), <https://perma.cc/N5UT-LAK9>; Melani Perera, *COVID-19: Repatriated Sri Lankan Migrants Seen as Infectious*, ASIA NEWS (Dec. 17, 2020), <https://perma.cc/ZGB9-FGRU>.

297. Rittich, *supra* note 16.

formal regimes can produce different packages of benefits and risks and rules working in favor of or against the workers.²⁹⁸ A considerable number of workers, with varying levels of knowledge and options, prefer the compromises in an informal system when the alternative formal system works significantly to their disadvantage. This is not an attempt to reverse the dichotomy or a naive celebration of the informal. Instead, I urge international labor law scholars and practitioners to look beyond legality into concrete distributional rules in a case-by-case manner. This approach necessitates understanding the informal economy from within and from the workers' perspectives. This more contextualized approach better aligns the pro-labor agenda with the needs of various worker groups.

I further propose that bargaining power is a more meaningful framework to analyze, evaluate, and compare specific regimes, and to lead prospective labor reforms. Bargaining power can be measured in quantifiable metrics such as incomes and working conditions. More importantly, the bargaining power framework attends to the workers' control over the work-related relationships that both formal and informal rules enable. The workers' control over their work and life is especially salient for domestic workers, whose employment relations inside the household workplace emerge out of a tradition of subordination and servitude, and their personal life often gets subsumed into this employment relationship.²⁹⁹ Given the intimate nature of the work, intrusion and subordination can happen in numerous subtle forms beyond what domestic and international law can possibly regulate. Thus, transforming the asymmetrical bargaining power structure itself has a more fundamental impact than prohibiting its specific manifestations.

In addition, this case raises a local critique to the *status quo* formal regime of labor migration, especially for migrant domestic workers. Studying the counterexample of an informal market reveals the paradoxical role of the law, particularly the interplay between contracts and immigration law, in entrenching the asymmetrical power structure between migrant domestic workers and employers in the formal regime. By quickly turning to a formalization agenda, the ILO has failed to sufficiently challenge the limitations within these formal arrangements.³⁰⁰ Specifically, this Article identifies several pro-worker rules that can inform further labor reforms.

The first potential measure is to alter the legal rules of formal migration programs so that they reflect the pro-worker rules produced in this informal market. The most important pro-worker rule is that workers can change the employer or renegotiate their employment relationship after arriving in the host society. With respect to bargaining power, pre-departure is not the best timing for workers to draw contracts. At that moment, even though the

298. BLACKETT, *supra* note 24.

299. *Id.*

300. *Id.*

worker has not yet incurred the vulnerability caused by migration, she is disadvantaged in bargaining for many other reasons: the low cost of labor in the sending country, limited knowledge and support network in the destination society, and the need to find a job. She is competing with many other women in multiple labor-export countries who are ready to take bad jobs. In comparison, once she becomes a participant in the destination jurisdiction's labor market, she is competing with the limited group of workers that the society's immigration law determines. The worker also has more information about the society and the specific household. This additional information enables her to better identify and bargain for relational benefits. In addition, employers in more advanced economies are increasingly dependent on migrant workers for caregiving needs, and host societies are experiencing a shortage in local care workers. All these factors suggest that workers are in a better bargaining position after arrival than pre-departure.

To enhance workers' power to renegotiate, the legal and non-legal rules governing their exit options are as important as the ones over their employment relationship. Migrant domestic workers' exits are predominantly governed by immigration law and practices. Thus, disconnecting the immigration law consequences from workers' workplace behaviors, such as changing employers and structure of their work, through either formally abolishing the work permits laws or informally relaxing immigration law enforcement, will significantly raise the workers bargaining power vis-à-vis other players.

A second pro-worker reform is to nurture the informal economic and social network among migrants through legal and social interventions. In this case, the network significantly enhanced the workers' bargaining positions during or between employments. The community functions as an effective information platform for bargaining strategies and job opportunities. The community also provides alternative income and essential livelihood supplies, like housing, which function as a safety net outside their domestic work jobs. Thus, this Article joins many sociological studies in emphasizing that the social community among peer migrants plays the most essential role in enhancing workers' welfare.³⁰¹ Both legal rules (e.g., whether the immigration law allows migrant workers to conduct small trading businesses) and social conditions (e.g., whether there exists a low-cost informal housing market) shape the size and liveliness of the network. Hence, national or international pro-labor forces can seek interventions via both avenues.

As powerful as the global labor agenda for migrant domestic workers is, it is pivotal to calibrate its energy with bottom-up comparative studies attending to workers' lived experience and to find contextual interventions to empower workers in the global care chain.

301. See generally PARREÑAS, *supra* note 73; CONSTABLE, *supra* note 33; LIEBELT, *supra* note 65; SWIDER, *supra* note 23; Paul, *supra* note 17.