

Regulating Migrant Domestic Work in the Netherlands: Opportunities and Pitfalls

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Aux Pays-Bas, les travailleuses domestiques migrantes font actuellement campagne sur plusieurs fronts pour avoir davantage de droits, pour que leurs droits soient mieux protégés en tant que travailleurs, pour réclamer l'aide sociale, et pour le droit de résider et de travailler aux Pays-Bas. Depuis 2006, elles reçoivent l'appui des syndicats néerlandais. Bien que les soins à domicile et les services ménagers aux Pays-Bas suivent traditionnellement la ligne de faille fondée sur le sexe et qui démarque la main-d'œuvre payée et non payée, on accorde davantage de place aux autres lignes de faille qui distinguent les citoyens des étrangers, et le groupe ethnique dominant des minorités ethniques. Pour assurer le succès d'une campagne menée en collaboration avec les travailleuses domestiques migrantes sans papier et les syndicats néerlandais, il faudra réconcilier les besoins et les désirs d'un groupe de plus en plus divers de travailleuses. Dans le présent article, l'auteure décrit les intérêts divergents, les possibilités de collaboration et les contraintes politiques qui marquent la situation actuelle des travailleuses domestiques aux Pays-Bas, qu'elles soient migrantes ou de souche. Les propositions actuelles pour revoir la loi sur l'immigration aux Pays-Bas peuvent non seulement inspirer une campagne concertée visant à améliorer la situation de toutes ces travailleuses, mais aussi soulever de nouveaux défis. Pour arriver à donner du travail décent à toutes les travailleuses domestiques, il faudra éventuellement chercher au-delà de l'horizon national, en tentant à distribuer plus équitablement les soins, de protéger la main-d'œuvre et d'assurer des avantages sociaux à toutes les travailleuses à l'échelle mondiale.

In the Netherlands, migrant domestic workers are currently campaigning on various fronts for better rights: for protection of their rights as workers; for claims to social security; and for the right to reside and work in the Netherlands. Since 2006, they have received support from the Dutch trade union movement. While home-based care and household services have, in the Netherlands, traditionally been organized along the gendered fault line between paid and unpaid labour, other fault lines that distinguish citizens from aliens, and the dominant ethnic group from ethnic minorities, have become more significant. If a collaborative campaign of undocumented migrant domestic workers and the Dutch trade union movement is to succeed, it will have to reconcile the needs and desires of an increasingly diverse group of workers. In this article, I map out diverging interests, possibilities for collaboration, and political constraints that mark the current situation of domestic workers in the Netherlands, both migrant and native born. Current proposals to revise Dutch migration law may

offer possibilities for a concerted campaign to improve the position of all of these workers, but they also present new challenges. Achieving the goal of decent work for all domestic workers may require thinking beyond the national horizon, towards a more equitable distribution of care, labour protection, and social benefits worldwide.

In a context of growing concern worldwide for the position of (migrant) domestic workers, the almost total silence in the Netherlands on this issue is remarkable. Although there is anecdotal evidence of (undocumented) migrants working in post-Second World War Dutch homes at least as early as the 1990s, to date the research on this topic has been limited to a modest collection of Master's theses.¹ Dutch mainstream and policy-oriented researchers on labour migration have systematically overlooked the fact that many migrants are (illegally) employed in Dutch homes,² while the few quantitative researchers who have investigated the Dutch market in (undeclared) domestic services have remained equally silent on the role that migrants play in this sector.³

Migrant domestic workers themselves, however, are becoming increasingly vocal in the Netherlands, campaigning for a better legal position.⁴ In doing so, they are struggling to set their own priorities and to formulate proposals that will best suit their interests. Since 2006, they have received support from the Dutch trade union movement. FNV Bondgenoten, the largest of the Dutch trade unions, has opened up its membership to domestic workers, regardless of their immigrant status. This fact is remarkable since Dutch trade unions traditionally have resisted an open border policy for migrant labour, fearing that Dutch labour will lose in bargaining power should employers acquire freer access to foreign labour.

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1. See especially Ellen Martinali, "Kwetsbaarheid en Weerbaarheid van Filipijnse Huishoudsters zonder Verblijfsvergunning" (M.A. thesis, Department of Cultural Anthropology, University of Utrecht, 2005) [unpublished]; and Sabrina Marchetti, "'We Had Different Fortunes' Relationships between Filipina Domestic Workers and Their Employers in Rome and Amsterdam" (M.A. thesis, Department of Women's Studies, University of Utrecht, 2005) [unpublished].
 2. See the overview of the relevant literature provided by Sima Nieborg, Marjan Wijers, and Marjolein Goderie in the research proposal they wrote for the Dutch branch organization of temporary employment agencies Algemene Bond Uitzendondernemingen, "Omvang en aard van de illegale tewerkstelling en arbeidsbemiddeling in de persoonlijke dienstverlening" (Utrecht: Verwey Jonker Instituut, 15 February 2007) [unpublished].
 3. See, for example, Esther De Ruijter, "Household Outsourcing" (Ph.D. dissertation, University of Utrecht, 2005) [unpublished]; and Sociaal en Economisch Onderzoek Rotterdam (SEOR), *De markt voor persoonlijke dienstverlening* (Rotterdam: Erasmus University, 2004), <http://docs.szw.nl/pdf/129/2004/129_2004_3_6831.pdf>.
 4. RESPECT.NL, "Campaigning for the Rights of MDWs in the Netherlands," in *Reader Expert Meeting on the Legal Position of (Migrant) Domestic Workers* (Amsterdam, 3 October 2008, organized by Bonded Labour in the Netherlands).

Support from a powerful organization such as a major trade union can mean a tremendous boost for migrant domestic workers campaigning for their rights. Without such support, their chances of success are considerably lessened. At the same time, such collaboration can only succeed if the needs and priorities of both parties find expression in their shared campaign and if the potential conflicts of interest can be reconciled. Moreover, to succeed, proposals for regulatory reform will have to take employers' interests into account as well as the Dutch state's interest in controlling migration.

While home-based care and household services have traditionally been structured through the gendered fault line between paid and unpaid labour, they are increasingly being moulded along other fault lines that distinguish citizens from aliens and the dominant ethnic group from ethnic minorities. This complexity has implications not only for regulation but also for advocacy. If a collaborative campaign of undocumented migrant domestic workers and the Dutch trade union FNV-Bondgenoten is to succeed, it will have to reconcile the needs and desires of an increasingly diverse group of workers.

In this article, I shall map out diverging interests, possibilities for collaboration, and political constraints that mark the current situation of domestic workers in the Netherlands. I shall start by describing the position of those workers who are still primarily of Dutch ethnic origin and who work in the subsidized spheres of health and child care. Next, I shall focus on the position of those workers providing undeclared work in the non-subsidized household services sector. Particularly in the larger Dutch cities, these workers are almost all migrants, many of them undocumented.

In the final section of my article, I shall review recent proposals to revise Dutch labour migration policies. As I shall argue, these proposals may offer possibilities for a concerted campaign to improve the position of *all* workers providing home-based care and household services in the Netherlands, but they also present new challenges. Achieving the goal of decent work for all domestic workers on the national level may require thinking beyond the national horizon, towards a more equitable distribution worldwide of care, labour protection, and social benefits.

Contested Marginalization: Paid Household Services in the Netherlands⁵

One of the central projects of post-Second World War social democracy was to ensure that all male heads of households could support their families, so that their wives need not go out to work. Housewives, for their part, became key figures in the

5. For a more detailed description of this broader context, see Sarah van Walsum, "Déni de statut: La non-régulation des soins et services domestiques aux Pays-Bas," in Alain Morice and Swanie Potot, eds., *De l'ouvrier immigré au travailleur sans papier: Les étrangers dans la modernisation du salariat* (Paris: Karthala, 2010) 45.

project of post-war modernization and social reform.⁶ In this context, paid domestic work came to be seen as a remnant of a more socially stratified (and colonial) past—although some middle-class Dutch families did still continue to hire local women on a weekly basis to clean their homes.⁷ These women often came from nearby farming or fishing villages. Over the past two to three decades, things have changed. Dutch women—like women elsewhere—have become more active on the paid labour market, and there has been a concomitant increase in the outsourcing of household services and home-based care.⁸ It should be pointed out, however, that the ideal of the housewife as caregiver and homemaker is still strong in the Netherlands. As a result, the percentage of women working part time is higher than in any other country in the European Union (EU).⁹ This is one factor that helps explain why Dutch families still typically hire a domestic worker for only a few hours a week and not on a live-in basis.

Since the end of the Second World War, the practice of hiring domestic workers for a few hours a week has been facilitated by Dutch fiscal, social security, and labour laws that exempt employers from a number of obligations. Although they still qualify as employers, people who hire a domestic worker for less than four (originally three) days a week are not required to pay social premiums or provide pension benefits. Nor are they expected to deduct income tax from wages—this responsibility is left to the domestic workers themselves. Moreover, employers are free to terminate the contract without first having to apply for permission from the Dutch labour authorities.¹⁰

These rules still apply. However, the arguments used to justify this exceptional regime have changed. Initially, and until well into the 1990s, justification was sought in the specific (that is, gendered) nature of household tasks performed in

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6. See Sarah van Walsum, *The Family and the Nation: Dutch Family Migration Policies in the Context of Changing Family Norms* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2008).
 7. Sjoukje Botman, "Transnational Domestic Workers and Employers in the Dutch Welfare State" (paper presented to *Transnational Domestic Workers and the National Welfare State*, European Collaborative Research Projects (ECRP) networking event, Amsterdam, 4-6 December 2008) [unpublished].
 8. De Ruijter, *supra* note 3; SEOR, *supra* note 3.
 9. In 2003, 74 percent compared to an EU average of 34 percent. Susanne D. Burri, "Flexibility and Security, Working Time, and Work-Family Policies," in Judy Fudge and Rosemary Owens, eds., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Oxford: Hart Publishing, 2006) 307 at 307-8. More recent figures indicate that 69 percent of all working women in the Netherlands still work part time. Ans Merens and Brigitte Hermans, *Emancipatiemonitor 2008* (Den Haag: Sociaal en Cultureel Planbureau and Centraal Bureau voor de Statistiek, 2009) at 12.
 10. See Saskia Peters, *Verdund sociaal recht. Onderscheid naar ondernemingsomvang bij medezeggenschap, ziekte en ontslag* (Deventer: Kluwer, 2006). It should be noted that since they are seen as employees, domestic workers in the Netherlands do derive certain rights from Dutch labour law, including minimum wage, a minimum of six days paid sick leave, and paid vacations. FNV Bondgenoten, *Your Rights as a Domestic Worker* (2009), <<http://www.fnvbondgenoten.nl/content/downloads/brochures/1371811?view=Standard>>.

the intimacy of the home.¹¹ Another argument that was put forward was that the employers, mostly housewives, should not be burdened with the costs and responsibilities normally associated with a formal labour contract. Finally, it was held that domestic workers were merely supplementing the income of their breadwinning husbands and, hence, had no need for protection against loss of income as a result of illness or dismissal.¹²

In the current context, such arguments are no longer tenable. Women are now being encouraged to become (more) active on the labour market and to contribute substantially to their families' income. The Dutch government is finally coming to acknowledge that, if women are to spend more time working outside of the home, something will have to be done about the work they leave behind. While previous governments have tried to encourage the redistribution of unpaid chores between spouses, the current government sees paid substitution as a more likely option.¹³ However, rather than looking for ways to fully integrate the providers of household services into Dutch labour and social security law, the present government has elected to expand the scope of the specific regime for household services to include *all* tasks performed in the home—not just those associated with women—and contracted for a maximum of three—not just two—days a week.¹⁴

To justify this manoeuvre, the Dutch cabinet has mobilized the discourse of entrepreneurship. Household services are presented as a growing market, requiring little or no capital investment, which is an ideal opportunity for people with little means but who are eager to take on the challenge of free enterprise.¹⁵ Such an opportunity provides a new argument for excluding the providers of household services from the social insurances and job security normally granted to employees. Where before domestic workers were typified as housewives who only earned money on the side and could fall back on the income of their breadwinner husbands, now they were being depicted as (quasi) self-employed workers who were taking on the risks of illness, economic setbacks, and other calamities on their own.

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11. See, for example, Hoge Raad (Dutch Supreme Court), 23 November 1990, *Rechtspraak van de Week* 1990, 212; Centraal Raad van Beroep (Highest Dutch Administrative Court in Social Security cases), 29 April 1996, no. 95/2907 WW.
 12. Tweede Kamer (Dutch Parliament) 1986/87, 19 810, no. 3, p. 2.
 13. Dutch Ministry of Education, Culture and Sciences, *Emancipatiebeleid 2008-2011*, (Den Haag, Ministerie van Onderwijs Cultuur en Wetenschap, 2007) at 25-7, *Nederlands Vrouwen Raad*, <http://www.nederlandsevroewenraad.nl/docs/Enota_2007_de_nota.pdf>.
 14. This despite the fact that an advisory council, Raad voor Werk en Inkomen (RWI) had developed a proposal that would allow for full integration into Dutch social security and labour law. *Huis houden op de markt: Advies Persoonlijke dienstverlening* (Den Haag: RWI, 26 January 2006), Raad voor Werk en Inkomen, <<http://www.raadwerkinkomen.nl/CmsData/File/2006/PDF/HuishoudenOpDeMarkt.pdf>>.
 15. *Wijziging van enkele belastingwetten en enige andere wetten (Belastingplan 2007)*, Tweede Kamer 2006-7, 30 804, no. 3 (Memorie van Toelichting) at 7.

Household Services in the Subsidized Sectors of Health and Child Care

The specific regime for providers of household services has had implications for workers in the subsidized health and the child care sectors in the Netherlands. Already in the 1970s, Dutch health care services started to offer cash in lieu of care in kind, making it possible for elderly and disabled persons receiving subsidized care to hire providers of household services directly. People hired in this way are referred to as Alpha-helpers. Formally, they fall under the specific regime for household services and, hence, can be excluded from all forms of labour protection and social benefits normally associated with employment. This means considerable savings for those institutions that must bear the costs. Originally, these were the same health care services that also provided more professional forms of health care. In 2007, however, household services became separated from the rest of the health care sector and were brought under the responsibility of the city councils. As is often the case with decentralization, this move was motivated by the desire to cut costs.

In 2005, a *Law on Childcare (Wet Kinderopvang)* came into effect.¹⁶ Tax rebates have been made available to parents sending children to daycare centres or to registered home-based providers of child care, so-called host parents. Although some of these host parents are formally employed by a host-parent centre, most fall under the household services regulation or are qualified as self-employed. Either way, they are excluded from labour protection and social benefits.

There are clear parallels between host parents and Alpha-helpers. Both categories are excluded from labour protection and social benefits. At the same time, however, they are both generally linked to intermediaries that (1) act as brokers between workers and households; (2) administer payments and taxes; (3) set rates and standards; (4) monitor the quality of work provided; (5) mediate in the event of conflicts; and so on. Currently, an Alpha-helper who had been forced to stop working due to a broken wrist is putting this construction to the test. Her claim is that the relationship between her and the agency that arranges her placements, monitors her work, and administers her payment is such that it should be seen as a regular employment relationship. Hence, she should be entitled to full sick leave benefits.¹⁷

16. *Wet kinderopvang*, Staatsblad 2004, 455, Stichting Adviesgroep Bestuurescht, <http://www.st-ab.nl/wetten/0589_Wet_kinderopvang_Wk.htm>.

17. Proefprocessenfonds Clara Wichmann (a Dutch feminist test case fund), <http://www.clara-wichmann.nl/actueel.php?item_id=46&list_type=search&type_content=Alphahulp>.

A Racially Segmented Sector?

Studies of domestic work in other countries indicate that this is a sector that can be strongly racialized.¹⁸ Dutch figures indicate that in the subsidized sector of home-based care, ethnic minorities are not over-represented—at least not yet.¹⁹ According to data collected in 2006, ethnic minorities are neither over- nor under-represented in the formalized child care sector, are slightly under-represented in institutionalized forms of health care,²⁰ and are largely under-represented in home-based care (including subsidized household services).²¹

There is reason, however, to suspect things may have changed since the decentralization in the provision of subsidized household services took place in 2007. One of the results of this decentralization has been a marked increase in the percentage of Alpha-helpers engaged in the provision of subsidized household services from 20 to 80 percent.²² This shift has been accompanied by a growth in the recruitment of personnel via commercial cleaning companies,²³ a segment of the Dutch labour market in which ethnic minorities are strongly over-represented.²⁴

It would be interesting to know what the ethnic background is of the growing number of Alpha-helpers now being put to work in the subsidized household services sector and, in particular, whether they are being engaged via cleaning companies. To my knowledge, no relevant data are available yet. What is known is that Dutch municipalities have been pressuring unemployed ethnic minority women and housewives to take up low-skilled work in the care sector and that these women have been

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18. Bridget Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* (London: Zed Books, 2000); Pierrette Hondagneu-Sotelo, *Doméstica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence* (Berkeley: University of California Press, 2001); Rhacel Salazar Parreñas, *Servants of Globalization. Women, Migration and Domestic Work* (Stanford: Stanford University Press, 2001).
 19. I use the term ethnic minorities because it is frequently used in the Dutch literature, although it does not do justice to the complexity of Dutch society, which is structured along intersecting lines of race, gender, ethnicity, religion, nationality, and immigrant status in ways that are constantly changing and sometimes counter-intuitive. The only constant factor is that white middle-class men of Dutch ethnic origin consistently remain in the upper echelons of the Dutch “vertical mosaic.” See, for example, Rosi Braidotti, Charles Esche, and Maria Hlavajova, eds., *Citizens and Subjects: The Netherlands, For Example: A Critical Reader* (Utrecht: Basis voor Actuele Kunst, 2007).
 20. Homes for the elderly forming the major exception.
 21. André Van der Kwartel et al., *Arbeid in Zorg en Welzijn 2007* (Utrecht: Prismant, 2007).
 22. Price Waterhouse Coopers, *Transparantie in de kostenstructuur van hulp bij het huishouden* (report written at the request of the Dutch Ministry of Health, Welfare and Sport, December 2008) at 19, <<http://www.ggzbeleid.nl/2008/1717.pdf>>.
 23. According to the branch organization in the Dutch health care sector ActiZ, there has been a 30 percent reduction of household services provided through health care centres. At the same time, there has been an increase in services provided through cleaning companies (radio news bulletin Radio 1, 30 September 2009, <http://www.nos.nl/nosjournaal/artikelen/2009/9/30/300909_huishoudhulp.html>).
 24. Chantal Melsers, Jo van Cruchten, and Leo van Toor, “Waar zijn allochtone werknemers in dienst?” Sociaal-economische trends, 2e kwartaal 2004, 38-44, <<http://www.cbs.nl/NR/rdonlyres/3B052212-4A98-4823-996E-DB5F89C41DF0/0/2004k2v4p038art.pdf>>.

resisting this pressure.²⁵ What is also becoming increasingly evident is that, particularly in the larger Dutch cities, the supply side of the non-subsidized and largely undeclared market in household services has come to consist almost exclusively of migrant workers, many but not all of them undocumented.²⁶ Where twenty to thirty years ago, one would normally have seen ethnically Dutch students, mothers on welfare, or housewives from nearby villages cleaning homes in the more affluent neighbourhoods of Amsterdam, for example, now one will see women—and some men—originating from Latin America, Eastern Europe, west and north Africa, or southeast Asia. Anecdotal evidence suggests that in the smaller towns and rural villages, where gender relations are still more traditional and migrants less prevalent, a comparable shift from ethnically Dutch to (undocumented) migrant workers has not yet taken place in the non-subsidized household services sector, but I know of no research that can confirm this impression.

Thus, besides changing gender roles and processes of racialization, international migration is also affecting the landscape of care work and household services in the Netherlands. The increased responsibility of women to earn has not been limited to more affluent societies but is, rather, a global phenomenon.²⁷ Increasingly, women have left the poorer regions of the world to seek earning opportunities in the richer ones, often leaving behind children or other family members dependent on them for material support and the engagement of “long distance” care.²⁸ In some cases, their migration has been actively encouraged by state actors in their countries of origin or by commercial agents.²⁹

In the following section, I shall take a closer look at the position of migrants providing undeclared household services in the city of Amsterdam. I shall try to show how their positions can differ, depending on where they are situated on the intersecting axes of race, gender, and immigrant status, how these differences affect their interactions with their employers, and how they shape their priorities in struggling for better rights.

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25. Ineke Bloemendaal, Sandra de Kroon, and Francisca van der Velde, *Allochtone vrouwen in de zorg. Motivaties, preferenties en belemmeringen voor het werken in de zorg bij Turkse en Marokkaanse meisjes en vrouwen* (Utrecht: Prismant, 2008).
 26. Sjoukje Botman, *Gewoon Schoonmaken. De troebele arbeidsrelaties in betaald huishoudelijk werk* (Ph.D. dissertation, Department of Social Sciences, University of Amsterdam, 2010); Martinali, *supra* note 1.
 27. United Nations Department of Economic and Social Affairs, Division for the Advancement of Women, *2004 World Survey on the Role of Women in Development: Women and International Migration* (New York: United Nations Publishing Section, 2006) at 11.
 28. Rhacel Salazar Parreñas, *Children of Global Migration: Transnational Families and Gendered Woes* (Stanford: Stanford University Press, 2005); Hondagneu-Sotelo, *supra* note 18; Helma Lutz, ed., *Migration and Domestic Work: A European Perspective on a Global Theme* (Aldershot, UK: Ashgate, 2008); UN Development Programme (UNDP), *Overcoming Barriers: Human Mobility and Development*, Human Development Report 2009 (New York: UNDP, 2009) at 25-6.
 29. See Anna Romina Guevarra, *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers* (New Brunswick: Rutgers University Press, 2010).

Migrant Domestic Workers in Amsterdam

The findings reported on in this section are based on thirty-two semi-structured interviews held during the first half of 2008 with migrant domestic workers, fifteen of whom came from Ghana and seventeen from the Philippines. Among the Ghanaians were nine women and six men. The Filipinos included twelve women and five men. Three of the Ghanaian participants in this research were legally resident in the Netherlands, as was one of the Filipinos. All of the participants were, at the time that they were interviewed, working as day-workers, and not as live-in domestics, although four (all from the Philippines) had worked in the Netherlands on a live-in basis in the past.³⁰ In the rest of this section, I shall first discuss the position of those who were legally resident, before discussing the implications of undocumented status for the remaining group.

Domestic Work as an Option

Many migrants in the Netherlands, particularly those of the first generation, experience difficulty in finding work suited to their qualifications. The Dutch language forms an obstacle, and foreign diplomas may not be recognized. Statistics show that migrants are over-represented in temporary, casual, and low-paid jobs and suggest, moreover, that racism, as well as language and other barriers, block migrants' access to better jobs.³¹

Under these circumstances, providing undeclared services to private households can be a relatively attractive option. In addition to not paying taxes, my documented informants named the following advantages: the freedom that they enjoyed working without a boss or supervisor and the flexible hours. One Ghanaian woman had previously had a regular job as an outsourced worker cleaning offices. This is how she compared this work with her current work as a domestic worker:

[When you work for a cleaning company] the boss gets after you all the time. You have to work fast, too much work to do in too little time. [In a private home] I can put on some nice music to swing to, and make myself at home. And there is nobody to distract me, so I can concentrate and get on with the job.

30. For more information on the position of (undocumented) Philippine and Ghanaian migrants in Amsterdam, see respectively Martinali, *supra* note 1; and Valentina Mazzucato, "Ghanaian Migrants' Double Engagement: A Transnational View of Development and Integration Policies," Global Migration Perspectives no. 48 (Global Commission on International Migration, 2005), <[http://www.gcim.org/mm/File/GMP%2048\(1\).pdf](http://www.gcim.org/mm/File/GMP%2048(1).pdf)>.

31. Govert E. Bijwaard and Justus Veenman, *Unequal Chances on a Flexible Labor Market, The Case of the Netherlands*, Tinbergen Institute Discussion Paper no. TI 2008-005/4 (Rotterdam: Tinbergen Institute, 2008) at 21; Manuel Abrantes, "A Momentum for Old Divisions: Responses of Brazilian Immigrant Workers to the Policy Framework of Flexicurity: A Case Study" (Master's thesis, Social Sciences, University of Amsterdam, 2008) at 4.

Flexibility was also an important issue for this woman. She had a child with a serious disability. Her work for private households made it possible for her to negotiate the freedom she needed to plan appointments with doctors and social workers.

In their description of their work in private Dutch homes, the documented informants such as this woman echo the experiences of the second and third generation Chicana domestic workers in the United States, who were interviewed by Mary Romero in the latter half of the past century.³² As chief advantages of their work, they too named autonomy on the job and flexible hours. However, as Romero points out, these were not inherent features of domestic work. On the contrary, as literature on live-in domestics emphasizes, in particular, domestic work can be abusive and exploitative, leaving the workers little or no control over their working hours, working conditions, and tasks to be performed.³³

In her analysis, Romero reconstructs how Chicana workers in the United States have managed to transform the nature of this work. The shift from live-in to day-work forms a first step in this process, but it does not stop there. As day-workers, the women she studied developed a further set of strategies to eliminate the most oppressive aspects of the occupation and to maximize its advantages and financial rewards. Romero summarizes this process as one of "transform[ing] the domestic-mistress relationship to a customer-vender relationship."³⁴ The domestic workers whom she interviewed were trying to "restructure the work as a small business by transforming it from wage labour to an occupation involving labour services."³⁵ As specific strategies, Romero names: charging a flat rate instead of by the hour; arranging to be able to work in an empty house (that is, no supervision by the employer); and limiting the tasks to be performed, particularly the elimination of the more personal tasks, such as ironing.³⁶

What Romero glosses over in this analysis is that this strategy implies continued exclusion from the labour protection and social benefits normally associated with an employment contract. In this respect, it is significant that, like most of the people in Romero's study, my documented informants are not solely dependent on the undeclared wages they earn working in private homes. They all have partners earning an income in the formal economy or have part-time formal jobs of their own. None of them, then, is completely without access to some form of social security, whether in their own right or via their spouse. Those who have reached middle age are also

32. Mary Romero, *Maid in the U.S.A.* (New York: Routledge, 1992).

33. See, for example, Guy Mundlak, "Gender, Migration and Class: Why Are 'Live-In' Domestic Workers Not Compensated for Overtime?" in Sarah van Walsum and Thomas Spijkerboer, eds., *Women and Immigration Law: New Variations on Classical Feminist Themes* (Abingdon: Routledge-Cavendish, 2007) 123; Romero *supra* note 32; Anderson, *supra* note 18; Parreñas, *supra* note 18.

34. Mary Romero, "Chicanas and the Changing Work Experience in Domestic Work," in Wenona Giles and Sedef Arat-Koç, eds., *Maid in the Market: Women's Paid Domestic Labour* (Halifax: Fernwood Publishing, 1994) 40 at 52.

35. *Ibid.* at 47.

36. *Ibid.* at 42-4.

looking for ways to stop working in private homes altogether, both because of the lack of social benefits and because of the physical strain that the work entails.

On these issues, their concerns lie close to those of the growing number of (quasi) self-employed workers in the subsidized sectors of child and health care. As discussed earlier, these workers too are involved in a process of restructuring their working relationship, but in a direction that is opposite from that described by Romero. Rather than moving away from an employment relationship, they are trying to move towards it.

A Stratified Market

In her analysis, Romero emphasizes the fact that her informants were all American citizens, born and bred in the United States. Implicitly, she suggests that they would never have succeeded in restructuring their work to the extent that they did, had they been undocumented migrants lacking the security of citizenship. My own results suggest that the relationship between immigrant status and negotiating power on the market of household services may be more subtle than Romero apparently assumes. Consider, for example, the following description that one of my undocumented informants gave of the way she negotiated her terms at the start of a new job:

I first go to inspect the house. Often when I first come, the house is a mess and needs a thorough cleaning. I always try to do this in a weekend so that I can spend a whole day doing it. For this general cleaning I charge €12.50 an hour . . . After having done a general cleaning, I make an estimate of the number of hours needed to keep the house clean on a weekly basis. I don't negotiate an hourly rate, but a flat rate. I explain to the employers that the time that I need can vary, depending on how fit I feel and how well I can concentrate. I prefer to work in an empty house, for example, because then I can concentrate better. But then it can happen that I finish in three hours what I would normally do in four hours. I tell this up front, so that the employers will trust me and know I am being open with them, and not pay any attention if neighbours warn that I have spent only a couple of hours cleaning . . . Usually I ask €40—to €50—per house. The work is the usual: toilet, bathroom, kitchen, vacuuming. I also do ironing, but then after hours and for extra money.

Although this woman is not typical of all my undocumented informants, she is not exceptional either. Other undocumented domestic workers were able to set their terms with equal confidence. One even managed to negotiate two weeks paid vacation per year with all of her employers—a feat none of my documented

informants could match. Clearly then, immigrant status is not the only distinguishing feature between those who are able to negotiate advantageous working conditions and those who are not. Other factors must also be taken into account.

Race

In the course of my research, it became clear to me that domestic workers from the Philippines were in higher demand than those from Ghana. None of my Ghanaian informants, for example, whether documented or undocumented, earned more than €10 per hour. Five at least had accepted work for less, including one woman with working documents. In contrast, none of my Filipino informants worked for less than €10 per hour, and four at least (all undocumented) had succeeded in negotiating higher rates—one even managed to charge €15. Thanks to their stronger bargaining power, my Filipino informants were also in a better position to refuse contracts than their Ghanaian colleagues. Thus, an undocumented Filipino woman explained:

I try to be the one who determines how many hours a house needs. I had a disagreement once about the hours needed. I set the time at four hours; the employer only wanted to pay for three. So I refused the job. I won't take jobs that cause too much stress. After all, jobs are easy to find. I have excellent contacts.

My undocumented Ghanaian informants were less confident. One man told me that he had tried initially to stick to a minimum rate of €10 per hour, but when he noticed he was missing out on jobs, he felt forced to lower his rates. Another point that my Filipino informants were better able to negotiate than the Ghanaians was continued payment during their employer's absence for vacations or business trips. While most of the Filipinos, including those without papers, had successfully negotiated this issue, none of the Ghanaians had, including those with papers.

So while there is reason to suspect that current developments in the regulated segment of home-based care in the Netherlands are resulting in ethnic or racial segregation—the ethnic majority remaining dominant among the regularly employed professional care workers and ethnic minorities becoming more prevalent among the (quasi) self-employed workers providing household services—race and ethnicity are clearly evident as structuring factors in the undeclared segment of household services. Not having interviewed any employers, I can only speculate on the underlying causes. I suspect the worldwide reputation of Filipino women as “ideal providers of care and household services”—a reputation actively promoted by both the Filipino government and commercial brokers—plays a role.³⁷

37. Guevarra, *supra* note 29. On the racialization of Filipino domestic workers, see also Parreñas, *supra* note 18.

Ghanaian domestic workers enjoy no such status. While they may be able to bank on the fact that the Ghanaian community has acquired a niche in the commercial cleaning sector, they are probably also affected by the bad press accorded to Nigerians who are portrayed in the Dutch media as criminals involved in cyber crime, human trafficking, and drugs.

While their reputation puts Filipinos at an advantage *vis-à-vis* other undocumented domestic workers, it could also work against them should they ever acquire a legal status in the Netherlands. Branded as “ideal domestic workers,” they might experience difficulties gaining access to other segments of the Dutch labour market that are not ethnically marked to their advantage. This is a point of concern that campaigns for regularization should take into account, particularly given the current trend to segregate household services from other forms of subsidized home-based care.

Gender

In addition to national origin, gender also continues to determine a domestic worker’s position on the Dutch market in undeclared household services. All of my informants agreed that Dutch employers generally saw domestic work as women’s work and tended to prefer women. All of the men in my sample, whether Filipino or Ghanaian, had experienced difficulties finding work, unless they had been brought into the business as the “assistant” of their wives. An undocumented Filipino man reported:

My girlfriend was able to find work quite quickly via her contacts. Dutch people seem to prefer a female cleaner. I started to get impatient. I needed money for my children. I couldn’t afford to wait a few months before building up a full portfolio of jobs. So I was referred to a Philippine woman who had very many contacts and who was willing to pass on references in exchange for money.

Again, parallels can be drawn with the formally regulated labour market, which, in the Netherlands, is highly gendered—women being strongly over-represented in both the care and the educational sectors.³⁸ An important difference, however, is that formally employed workers are in a position to challenge gendered differences in wage levels and career opportunities through equal opportunities legislation.

Immigration Status

While my data provided evidence that Filipino workers were more in demand than Ghanaians, and women more than men, I found no evidence that

38. Merens and Hermans, *supra* note 9 at 94-5.

undocumented migrants experienced more difficulty finding a job than their documented countrymen and women. Nor were any of my documented informants better able to negotiate wages or other terms of contract at the start of a new job than those without documents. However, it would be a mistake to conclude that immigrant status is of no significance. Besides excluding workers from the formal labour market, lack of status also affects how their informally regulated employment relationships develop after these have been initiated.

To understand why this is so, it is important to have some insight into the position of undocumented migrants in the Netherlands today. Since the 1990s, their position has become increasingly marginalized. Since 1991, anyone applying for a social insurance number must submit proof of legal residence.³⁹ In 1993, a law was passed requiring that employers inform themselves as to whether or not a new employee has legal access to the Dutch labour market.⁴⁰ Presently, a fine of €4,000 is charged per migrant illegally employed by a private person and €8,000 per migrant illegally employed by a business firm.⁴¹

In 1998, a law was passed linking virtually all provisions of the Dutch welfare state to legal status.⁴² All that remained accessible to undocumented migrants was education for children younger than eighteen years of age and legal aid. They also remained entitled to emergency health care, but such health care was not free of charge. One of the consequences of this so-called *Linkage Act* has been the exclusion of undocumented migrants from the Dutch social housing sector, which, particularly in the major cities, has accounted for a large percentage of the available low-cost housing. Another consequence has been their exclusion from regular health insurance.⁴³

In addition to the problems they face in accessing work, accommodation, and health care, undocumented migrants must also take care to avoid any contact with the police or other controlling authorities, since this can result in detention and deportation. They dare not return to their countries of origin to visit their families. If they have over-stayed their permitted time, they will not be allowed back into the EU for at least five years. For many, this is the most painful aspect of residing without documents. One of my informants, a man from Ghana, had not seen his wife and six children in fifteen years. Another informant, a woman

39. Circulaire no. 157522/91/DVZ/SBO, 11 November 1991.

40. *Wet op Identificatieplicht* (Staatsblad, 1993) at 660.

41. *Beleidsregels boeteoplegging Wet arbeid Vreemdelingen 2008*, Stcrt. 2006, 250, Arbeidsinspectie <http://www.arbeidsinspectie.nl/Images/Beleidsregels%20boeteoplegging%20Wet%20arbeid%20vreemdelingen_tcm290-263449.pdf>. It should be noted that the definition of a labour contract in Dutch immigration law is extremely broad, so that workers who might otherwise be typified as freelancers or self-employed are also included. See, for example, the comment by T. de Lange on "Afdeling Bestuursrecht van de Raad van State 3 June 2009" (2009) 344 *Jurisprudentie Vreemdelingenrecht* 1655.

42. *Koppelingswet* (Staatsblad, 1998) at 204, <<http://www.st-ab.nl/1-98203.htm>>.

43. See, for example, Lieneke Slingenberg, "Koppelingspoging mislukt? Over onrechtmatig verblijf als basis voor uitsluiting van voorzieningen" (2009) 6 *Migrantenrecht* 232.

from the Philippines, still grieved because she had been unable to return home to attend the funeral of a deceased child.

Undocumented Migrants: Domestic Work as a Survival Strategy

The exclusion of undocumented migrants from formal employment has resulted in a market in false papers.⁴⁴ In reaction, the Dutch government has sharpened its control on the illegal employment of migrant labour and raised the fines. As a result, the employment of undocumented migrants on the formal market has become increasingly risky, for both migrants and employers. Work in private homes, where demand is high, undeclared work the norm, and controls rare,⁴⁵ has become increasingly attractive, not only for undocumented migrant women but also for men.

There are also other reasons why domestic work can be attractive to undocumented migrants. Excluded from state-financed services and provisions, these migrants must rely on their social networks for access to housing, healthcare, and material support in the event of loss of income. Thanks to the intimate nature of work performed in private homes, domestic workers are in a position to engage their employers in a personal relationship that, in time, can result in mutual favours. By doing so, they can add their employers to their system of support networks. In this way, they differ from undocumented migrants employed in other sectors such as the construction industry. Again, my Filipino informants were in a better position than the Ghanaians. On the whole, their employers were more affluent and better connected than those of the Ghanaians, and included medical specialists, media stars, and expatriates hired by multinationals. While my Ghanaian informants relied almost exclusively on family members, church congregations, or hometown associations to provide them with accommodation, medical care, or other forms of support, my Filipino informants could also turn to their employers. At least four of them had access to medical treatment through their employers, who included medical specialists and dentists. Others were able to find an apartment to live in through their employers' networks. In a couple of cases, an employer even went so far as to act as a sponsor, so that her domestic worker's husband or child could come to the Netherlands on a tourist visa, thus enabling family reunification.⁴⁶

Such generosity, however, has its shadow side. A worker whose employer has provided for shelter, health care, or other basic needs will feel indebted and dependent as a result. As Sabrina Marchetti has argued convincingly in her Master's

44. Mazzucato, *supra* note 30 at 9-10.

45. In a letter of 9 June 2006 to the Dutch Parliament on the regulation of household services, Deputy Ministers Van Hoof and Wijn claim that legal and practical obstacles prevent authorities from controlling undeclared work performed in private homes, <http://docs.minszw.nl/pdf/34/2006/34_2006_3_9175.pdf>.

46. Compare with Marchetti, *supra* note 1 at 79.

thesis on the position of Filipino domestic workers in Amsterdam and in Rome, the dependency *vis-à-vis* the employer that results from an undocumented status keeps the workers that are involved caught up in a dialectic of favours/gifts and expressions of gratitude, making it difficult for them to extricate themselves from a certain degree of servility.⁴⁷

As Dutch immigration policies become more restrictive, undocumented Filipino domestic workers with wealthy employers may become more dependent. One of my informants told me she knew several Filipinos who worked as live-in domestics in an affluent suburb outside of Amsterdam, where the houses are roomier than in the Dutch city centres and more conducive to such arrangements. Formerly, according to this informant, a Filipino woman would have been eager to leave such a live-in arrangement. She would have moved to the city, found a place to stay, and looked for work on a live-out basis. The women she spoke to more recently, however, seemed reluctant to leave their employers' homes because of the increased risks involved in illegally subletting an apartment in the city. In an effort to gain more control over the low-cost housing sector, Dutch housing associations have become more active in tracking down people who sublet illegally.⁴⁸ Rumours circulate of Filipinos being caught during such controls, handed over to the immigration authorities and deported. As an active member of a self-organization of domestic workers and of the Dutch trade union, my informant worried about Filipino domestic workers clinging to the safety of their employers' homes. Whenever she approached such workers to encourage them to organize, they generally refused, saying their employers would not approve.

My undocumented informants from Ghana were also dependent on their employers but for different reasons than the Filipinos. Their relatively weak position on the ethnically segmented market in household services, combined with their undocumented status, meant that they were highly dependent on their employers for income. Experiencing more difficulty than the Filipinos in finding enough work to support themselves, they had to take extra care not to lose a job once they had one. One undocumented Ghanaian woman described an incident whereby she had been asked to tidy up the shoes and boots of her employer's children. One pair of sneakers was soiled with dog feces. She did not feel that cleaning this mess should be her responsibility, but she did it nonetheless since she did not want to risk a conflict with her employer. "People like me," she observed, "because I work hard and never complain."

In contrast, the documented Ghanaians in my sample, although careful not to overplay their hand when applying for a job, did feel sufficiently secure to leave employers whom they found to be unreasonable or disrespectful. Having access

47. *Ibid.* at 77-84.

48. See, for example, "Corporatie [that is, a housing corporation] boekt zege op onderverhuurder," *NRC Handelsblad* (Dutch daily newspaper) (19 July 2008).

to alternative options on the Dutch labour market, they could afford themselves the luxury of only staying with employers with whom they were on good terms:

One employer once took off on vacation without warning us ahead of time. When we arrived at the house, all the doors were locked. We were very upset. Why didn't she warn us? She wasn't treating us with respect. We still have the key. But we are not going to phone her. We want the woman to phone us to arrange to have the key returned. If she does phone, we will not agree to go back to work for her.

While lack of immigrant status does not seem to play an important role in the initial phase of the working relationship between migrant domestic workers and their employers, it does affect how their relationship develops. This fact, along with the general social exclusion that undocumented status implies, the constant fear of apprehension, detention, and deportation, and the forced separation from family in the country of origin, explains why organizations of migrant domestic workers have been campaigning for years for legal immigrant status.

At the same time, the specific position of undocumented migrant workers helps explain why they are not likely to share the trade union's preoccupation with combating precarious work. Coming from countries in which self-employment in the informal sector is the norm and state-regulated social security and employment relations is the exception, dependant on personal networks for survival in the Netherlands, and still focused on contacts in their countries of origin due to the real risk of a forced return, undocumented migrants are not primarily concerned with the rights associated with a formal Dutch employment contract. Social security and labour protection in the Netherlands only become urgent issues to them once they are entitled to settle, bring over their spouse, children, and any other dependent family members, and stay on after retirement. Many undocumented domestic workers in the Netherlands are motivated to join the trade union and to provide it with active support, but their continued engagement will depend on the union's ability to integrate their struggle for legal status into its own struggle against precarious work.

Exploring the Roads to Legal Admission

During an expert meeting on the position of undocumented migrant domestic workers in the Netherlands, which was held in Amsterdam on 3 October 2008, E-Quality (a publicly financed knowledge centre for gender, family, and diversity issues) proposed to campaign for the admission of workers as live-in domestics, who would be allowed to stay for a two-year period. This proposal was rejected out of hand by those migrant domestic workers present at the meeting. Aware of similar regimes in Canada and Spain, for example, they knew the degree of

dependency involved and declared themselves unwilling to campaign for regularization under those conditions. A recent report released by the Dutch National Rapporteur on Human Trafficking confirms their fears. According to this report, the three categories of domestic workers most likely to be exploited are not necessarily undocumented but are often legally resident as family migrants, au pairs, or household members of the diplomatic corps.⁴⁹

An alternative proposal was to campaign for policy reforms that would allow for admission as a self-employed person providing household services and home-based care on a live-out basis. Under present Dutch law, people wishing to enter as a self-employed person or entrepreneur must either be able to lay claim to a unique talent or skill or provide proof of financial security in the form of substantial capital assets—something most migrant domestic workers are not in a position to do.⁵⁰ At the expert meeting, it became clear that the Dutch trade union would not support a campaign to adapt these rules since admission as a self-employed person would imply continued exclusion from the labour protection and social benefits associated with regular employment. Therefore, the best option, it was agreed, was to strive for legal admission as a foreign employee. In the rest of this section, I shall discuss the possibilities that this route might offer.

Current Dutch Labour Migration Law

Current Dutch labour migration law distinguishes between foreign employees who are assumed to be in high demand and those who are not. The former category includes any worker from outside of the EU whose employer in the Netherlands is willing and able to pay more than €49,087 a year as a gross salary (for workers over thirty years of age) or €35,997 (for workers under thirty years of age).⁵¹ They can be employed without an employment permit, are admitted via an accelerated procedure, and their employers can qualify for tax cuts.

Employers who are unable or unwilling to pay such high salaries must first apply for an employment permit before they can hire an employee from outside of the EU. Such a permit will only be issued if there is no Dutch, EU, or legally resident

49. *Mensenhandel: Vijfde rapportage van de national rapporteur* (Den Haag: Bureau Nationaal Rapporteur Mensenrechten, 2007) at 233-8.

50. For example, the person involved will have to give proof of annual earnings of at least €45,000, of a capital investment of €50,000 (Tweede Kamer, 2005-6, 29 696, no. 3.), *Officiële bekendmakingen*, <<https://zoek.officielebekendmakingen.nl/kst-29696-3.html>>.

51. The system is somewhat more nuanced. Lower income requirements may apply to academics, foreign graduates from a Dutch college or university, performing artists, and other workers in the creative industry, including technicians (Decision of 23 August 1995, regarding the application of the *Wet Arbeid Vreemdelingen* (Dutch law on foreign labour), Article 1(d).

non-EU national available for the job.⁵² Repeatedly, the current Dutch Cabinet has stated its opinion that there is no lack of Dutch, EU, or legally resident non-EU nationals to provide home-based care or household services.⁵³ Yet, in the past, attempts to mobilize the long-term unemployed for this work have failed, due both to most unemployed peoples' lack of interest in domestic work and employers' dissatisfaction with the performance of those who did accept the offer to do it.⁵⁴ There is a long-standing misconception that domestic work is unskilled. In fact, it requires considerable social skills, organizational talent, and resourcefulness.⁵⁵ As long as the skilled nature of this work remains unrecognized, however, it will remain difficult to argue that the Dutch labour market cannot supply the workers needed.

An additional problem is that, in order to qualify for an employment permit, an employer must be prepared to pay his or her foreign employee a monthly salary equivalent to the Dutch minimum wage.⁵⁶ Moreover, foreigners admitted as employees must provide proof of sufficient income to support themselves during their stay. Normally, this is interpreted to mean that taxes and premiums have been paid over their wages, providing for insurance against loss of income due to unemployment or long-term illness.⁵⁷ Given the fact that the vast majority of people in the Netherlands employing a domestic worker do so for just a few hours a week, and given the fact that, under those circumstances, they are made exempt from the fiscal and social security obligations normally associated with a Dutch labour contract, acquiring an employment permit for foreign domestic workers becomes problematic for these reasons as well. Consequently, the Dutch Social and Economic Council has made the point that, even if one is to assume that there is a demand for domestic workers coming from outside of the EU, regulating their admission remains problematic as long as the sector itself is not properly integrated into Dutch social security and labour law.⁵⁸

Immigration policies are subject to change, however. The challenge is to manoeuvre initiatives for change in a direction that could make migrant domestic workers less, and not more, dependent on their employers. In order to win the support of the trade unions, proposals for a new regulatory regime would moreover have to address the currently precarious nature of household services. And if one wishes to tackle racial segregation, something will have to be done to reverse the growing divide between household services and other segments of the health and child care sectors.

52. *Wet Arbeid Vreemdelingen*, *supra* note 51, art. 8, para. 1(a).

53. Most recently in a written reaction (letter addressed to Dutch Parliament of 17 December 2007) to a suggestion made by E-Quality that an admission policy be introduced for domestic workers, <http://docs.szw.nl/pdf/34/2007/34_2007_3_11296.pdf>.

54. SEOR, *supra* note 3 at 34 and 74.

55. Compare with De Ruijter, *supra* note 3.

56. *Wet Arbeid Vreemdelingen*, *supra* note 51, Article 8, paragraph 1(d).

57. *Vreemdelingenbesluit* (Aliens Decree), Article 3.73, paragraph 1(a).

58. Sociaal Economisch Raad (SER), *Advies Arbeidsmigratiebeleid* (Den Haag: SER, 2007) at 171-2.

Future Plans I: Regulating Labour Migration through a Sponsor

On 9 September 2009, the Dutch Cabinet presented a plan to modify the regulation of labour migration.⁵⁹ According to this plan, any third country migrant coming to the Netherlands for other reasons than asylum will have to have some sort of sponsor. Except in the event of family migration, the sponsor will have to be a registered company or some form of (educational) institution. Certain sponsors will be granted a privileged status. They will be free to determine which migrants they wish to bring to the Netherlands, regardless of the situation on the Dutch labour market, and any admissions procedures instigated at their request will be dealt with through an accelerated procedure. Companies licensed to bring over employees in high demand will be among these privileged sponsors. Remarkably, au pairs will also only be eligible for admission if they are being brought into the country by a privileged sponsor. Since private persons cannot qualify for the status of privileged sponsor, these will have to be au pair agencies.

The new system will impose statutory obligations on all sponsors to collect, administer, and pass on all information that is relevant for a migrant's entitlement to admission and continued residence. Failure to comply with these obligations can result in administrative fines, loss of the privileged sponsor status (if applicable), or even criminal sanctions. In the event that the migrant loses his or her residence rights and has to be forcibly repatriated, the sponsor will be held financially accountable.

Pitfalls and Promises

As the Dutch Advisory Committee on Migration Affairs has pointed out in an advisory letter directed at the Dutch Cabinet,⁶⁰ should these proposals be implemented it will have consequences for the relationship between the sponsors concerned and "their" migrants. The migrants will be brought into a dependent position—as soon as their relationship with their sponsor ends, so does their right to reside—while the sponsor will have a vested interest in controlling the behaviour of "his" migrant. Although sponsors are supposed to also protect the interests of the migrants involved, the main thrust of the proposals is to protect the Dutch state's interest in saving administrative costs while maintaining or even increasing the level of control over migration.

Nonetheless, it may be interesting to try and imagine how such a system might serve to regulate the position of (migrant) domestic workers in the Netherlands. As I already discussed in the first section of this article, many people providing care work and/or household services in the Netherlands are affiliated in one way or

59. Tweede Kamer, 2008-2009, 32 052, no. 2 and 3.

60. Letter from Adviescommissie voor Vreemdelingenzaken to Ms. N. Albayrak, Deputy Minister of Justice, Netherlands (5 March 2009).

another to a health or child care centre or some other care broker such as a cleaning company. Such care brokers could, in theory, serve as sponsors for migrant domestic workers, just as au pair agencies will be required to do for au pairs.

As indicated in the first section of this article, the ambiguous position of care brokers *vis-à-vis* Dutch workers providing household services and home-based care is already a topic of debate. Bringing in the issue of migrant domestic workers might add an interesting angle to this debate. Why should Dutch providers of household services and/or care be expected to work as quasi self-employed workers, when this is deemed an unacceptable basis for the admission of migrant workers?

In trying to negotiate a route to legal resident status, migrant domestic workers could prove interesting allies for those Dutch workers providing household services who claim they should be seen as the formal employees of the health and child care centres or cleaning companies that broker their services. However, for the success of both of these campaigns, it is of great importance that tax rebates be introduced, or some other compensatory scheme, to prevent people in need of household services from reverting back to undeclared or unpaid labour. Moreover, to prevent racial segregation, measures would have to be taken somehow to (re-)integrate providers of household services into health and child care and other relevant sectors such as hospitality, landscaping, and home repairs and renovation—whether through coordinated permanent education programs or some other integrative strategy.

Future Plans II: Circular Migration

Due to pressure from the EU to reduce the volume of undocumented migrant labour, the Netherlands is trying to devise ways to make the regular Dutch labour market more accessible to low-skilled workers from outside of the EU than is presently the case. At present, the Dutch government is experimenting with pilot projects in circular migration.⁶¹ Under these pilots, two hundred low-skilled migrant workers from outside of the EU will be allowed to enter the Netherlands for a maximum of two years. Employers from designated sectors will be allowed to bring these people over regardless of the situation on the Dutch labour market. They will, however, have to provide accommodation and (access to) health care, while the workers themselves will remain excluded from any claims to permanent residence or family reunification.

The social risks for the Dutch state will be minimal, while the scope of the employer's control over their foreign employees will be considerable. If migrants from outside of the EU stand a chance of being admitted to the Netherlands as domestic workers under current and imminent Dutch immigration law, I suspect it will most likely be on this basis—as “circular migrants” placed in a highly dependent

61. Staatscourant, 22 July 2009, no. 10982 and 11044.

position *vis-à-vis* their “sponsors”—and without any prospect of acquiring a more solid position within Dutch society.

Pitfalls and Promises

I seriously doubt that labour migration for domestic work can be successfully regulated in a temporary fashion. Research shows that, for those hiring the services of a domestic worker, trust and continuity are key issues.⁶² My own data show that this applies for the workers as well. Once they are with an employer they feel comfortable with, they like to stay on for periods of five years or more. As one woman put it, the worst thing about losing an employer is having to adjust to a new house. Another woman told me she had actually stopped working for expatriates, even though they paid well, because they never stayed put for more than a couple of years. Another problem is that migrant domestic workers need long-term earnings to finance their projects and commitments. All of my informants needed funds for children’s school fees, medical treatment for their parents or other relatives, and financial security for their own old age, which was often sought in the form of life insurance, real estate, or other investments. Earnings over a period of two years could not suffice to meet such targets.

A possible solution for this problem of continuity could be to allow domestic workers, as “circular migrants,” to come back to the Netherlands after having first spent some time in their countries of origin following each two-year stint. Most of my undocumented informants assured me that they would prefer such an arrangement to the present stress of being trapped in the Netherlands while facing the threat of deportation. It is questionable, however, if the Dutch government can justifiably maintain a regime that allows employers to repeatedly, and at their own discretion, bring in foreign workers who remain excluded from permanent residence. The accusation of facilitating precarious work by creating dispensable foreign labour is readily made.⁶³

Regulating Decent Work for Domestic Workers: The Challenges Involved

When examining the current position of migrant domestic workers in the Netherlands, we run up against various lines of distinction, enforced by the law, and the divisions and inequalities that these lines of distinction precipitate. The first distinction is the public/private divide, and the concomitant division

62. De Ruijter, *supra* note 3.

63. See the interesting decision of the Haute Autorité de lutte contre les discriminations et pour l’égalité (HALDE, <<http://www.halde.fr>>), *CODETRAS (Collectif de défense des travailleurs étrangers dans l’agriculture) v. l’administration des Bouches-du-Rhône* no. 2008-283, 15 December 2008.

between paid and unpaid labour, which has been vigorously challenged by feminist lawyers for several decades now. Domestic workers themselves are also effectively contesting this divide by restructuring their position from one of servility embedded in patriarchal family relations to one of contracted service provision. In the process, they are not only validating the work that they do as professional service providers, but they are also retroactively validating the unpaid tasks and responsibilities that unpaid housewives took for their account before outsourcing them.⁶⁴

However, in making this step—important though it has been for their emancipation as workers—domestic workers risk placing themselves behind another line of distinction, namely the line that falls between employees and non-employees, leaving them caught in the realm of what is increasingly being referred to as precarious work. As I have discussed earlier, domestic workers in the more regulated sectors of the market, namely those associated with health and child care, are starting to challenge this form of exclusion by laying claim to a formal employment relationship with the agencies that act as brokers between them and the families for whom they work. This is one route that migrant domestic workers too could explore, and, in doing so, they could very well advance their campaign for legal admission as migrant workers.

If Dutch and migrant domestic workers opt to follow this route, however, there will be a number of issues with which they will have to contend. What conditions will have to be met to ensure that they can successfully compete with workers still operating in the shadow economy? To what degree will they, as employees, be able to maintain the degree of autonomy that some at least have attained—as (quasi) self-employed—in determining whom they will work for, what tasks they will perform, during which hours, under which conditions, for what price, and for how long? And, once admitted as domestic workers, will they be able to further their careers or will they be racially marked as suited to this form of employment and none other?⁶⁵

An alternative approach would be to challenge the validity of the labour contract as a line of distinction. As chains of production and services become more complex, the distinctions between employers, self-employed, and employees are becoming increasingly vague. Each of these players is caught up in, and trying to cope with, the insecurities of the fragmented, mobile, and volatile markets of today. This suggests that the increase in precarious work is not just a simple manoeuvre, on the part of employers, to avoid having to conform to the relatively costly norm of full-time and permanent employment, but that it is an expression of fundamental

64. Romero, *supra* note 34 at 53; Rhacel Parreñas, “‘Partial Citizenship’ and the Ideology of Women’s Domesticity in State Policies on Foreign Domestic Workers” (keynote address to the ECRP networking event Transnational Domestic Workers and the National Welfare State, Amsterdam, 4-6 December 2008).

65. For a proposal for regulation that addresses some of these issues, see Margriet Kraamwinkel and Marcel Reurs, “Heeft u een zwarte of een witte werkster?” (2010) 10 *Nederlands Juristenblad* 615-20.

and structural changes in the way production and services are currently being organized in modern industrialized countries.⁶⁶

In a report that he wrote for the European Commission, the French law professor Alain Supiot takes this position and concludes that the whole concept of social security will have to be radically revised.⁶⁷ In his vision, this would involve linking social insurance and job security to all forms of productive and reproductive work, irrespective of how the work relationship is to be defined. Even the unpaid labour performed within family relations would have to be included. While Supiot's proposal may well inspire future debates on the role of the labour contract within the EU, it leaves unanswered the question of how entitlements to labour protection and social benefits are to be attributed, if not via the labour contract.

The most obvious route would be to expand the range of provisions already being granted by the state on the basis of national citizenship (welfare benefits, child allowances, state pensions, national health care insurance, and so on) to also include benefits now reserved for workers with an employment contract. However, such an approach confronts us with the third line of distinction that migrant domestic workers must contend with, namely that of nationality and immigrant status. If all citizens involved in any form of productive or reproductive labour are to be granted the full range of entitlements that until now have been limited to formal employees, what will be the implications for immigration law? Will the Dutch state not then have a vested interest in expanding the number of categories of migrants to be excluded from entitlements on the grounds that they are "temporary" and in making permanent admission conditional of requirements that are increasingly selective? There is a real risk that then only able-bodied workers will be admitted, causing increasing pressure on the social resources in the countries of origin. The children, elderly, and infirm who are already being left behind by family members seeking work abroad will then be joined by returning relatives who have lost their jobs, become disabled, or retired. A truly inclusive model for the regulation of domestic work may well have to link social insurances and job security to structures that reach beyond the borders of the nation-state.⁶⁸ As Fiona

66. See, for example, Robert Knegt, ed., *The Employment Contract as an Exclusionary Device: An Analysis on the Basis of Twenty-Five Years of Developments in the Netherlands*, vol. 16 (Antwerp: Intersentia, 2008); Mary K. Zimmerman, Jacqueline S. Litt, and Christine E. Bose, eds., *Global Dimensions of Gender and Carework* (Stanford: Stanford University Press, 2006); Fudge and Owens, *supra* note 9; Joanne Conaghan, Richard Michael Fischl, and Karl Klare, eds., *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford: Oxford University Press, 2002).

67. Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford: Oxford University Press, 2001).

68. Compare with Guy Mundlak, "The Limits of Labour Law in a Fungible Community," in Conaghan, Fischl, and Klare, *supra* note 66, 279; Alan Hyde, "A Closer Look at the Emerging Employment Law of Silicon Valley's High-Velocity Labour Market," in Conaghan, Fischl, and Klare, *supra* note 66, 233.

Williams put it in a report that she wrote recently for the United Nations Research Institute for Social Development on the recognition and redistribution of care, “[m]igration has stretched people’s care commitments across the globe and as such challenges the national basis of eligibility to benefits and pensions.”⁶⁹ In their struggle for emancipation and social justice, migrant domestic workers force us to think beyond the public/private divide, beyond the limits of the labour contract, and beyond the borders of the nation-state. They challenge us to find ways to validate care in economic terms, to respect workers’ autonomy as well as their rights to protection and social security, and to invent ways to redistribute social risks and responsibilities equitably, not just on a national, but also on a global, scale.

69. Fiona Williams, *Claiming and Framing in the Making of Care Policies: The Recognition and Redistribution of Care* (report written for the United Nations Research Institute for Social Development, 2009) at 26.

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