
LABOR, MIGRATION, AND THE COMMON GOOD: A COMPARATIVE CONSTITUTIONAL ANALYSIS OF MIGRANT WORKER PROTECTION IN TAIWAN AND INDIA

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I. Introduction: The Constitutional Problem of Migrant Labor

The governance of migrant labor presents one of the most instructive test cases for constitutional theory in the contemporary era. In both Taiwan and India, hundreds of thousands of workers perform essential economic and social functions operating factory production lines, caring for aging populations, and sustaining construction projects while remaining excluded from the full compass of constitutional protection ordinarily afforded to those who reside and labor within a political community's territory. Liberal constitutionalism has largely theorized this exclusion in terms of citizenship status and individual rights, treating the limited protections afforded to migrant workers as a calibrated departure from the general norm of rights-equality rather than as a structural constitutional deficit. This paper argues that such a framing is inadequate, and that the resources for a more compelling account are available within the classical natural law tradition as recovered by Common Good Constitutionalism.

Common Good Constitutionalism (CGC), as systematically elaborated by Adrian Vermeule, holds that law is fundamentally "a reasoned ordering to the common good"¹ a formulation drawn directly from Thomas Aquinas's definition in the *Summa Theologica*, where law is characterized as "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."² On this view, the constitutional validity of governance arrangements cannot be assessed by reference to procedural compliance alone, but must be measured against the substantive requirement that public authority be directed toward the genuine flourishing of the political community. Where administrative

¹Adrian Vermeule, *Common Good Constitutionalism: Recovering the Classical Legal Tradition* (Polity Press, Cambridge, 2022).

²Thomas Aquinas, *Summa Theologica I-II, Q.90, A.4* (Fathers of the English Dominican Province tr., Burns Oates & Washbourne, London, 1920).

structures systematically produce conditions of exploitation, dependency, and social exclusion for those whose labor sustains the community's material reproduction, the constitutional deficit is not merely political or ethical in character it is legal, in the deepest Thomistic sense.

This theoretical argument is reinforced by Lorenz von Stein's account of the administrative state as the principal institutional mechanism through which the modern polity addresses the structural antagonism between capital and labor. For Stein, the state is not a neutral umpire between competing social forces but a substantive actor with an affirmative mission: the reconciliation of social classes through the elevation of the dependent classes to conditions of genuine freedom and participation.³ When the administrative apparatus of a modern state organizes migrant labor governance around instruments of control and dependency rather than liberation and integration, it betrays the constitutive telos that Stein identified as the social state's reason for being.

The comparative dimension of this paper serves to test the generalizability of these theoretical claims across jurisdictions with distinct constitutional traditions, colonial legacies, and administrative architectures. Taiwan, a newly industrialized democracy whose labor import regime was established in 1992, and India, a post-colonial federal republic whose constitutional text explicitly prohibits forced labor and whose legislature has addressed internal migration since 1979, offer illuminating points of convergence and divergence. In both jurisdictions, formal legal protection and structural vulnerability coexist in ways that challenge the adequacy of liberal rights discourse and invite the richer normative account that CGC provides.

Part II of this paper develops the theoretical framework, elaborating the Thomistic foundations of CGC, the Steinian account of the administrative state, and the concept of non-domination drawn from republican political theory. Part III analyzes Taiwan's migrant labor governance architecture through this theoretical lens. Part IV undertakes a parallel analysis of India's constitutional and statutory framework. Part V draws comparative conclusions and proposes a framework of constitutionalized labor solidarity as the normative implication of a CGC approach to migrant worker protection.

³Lorenz von Stein, *The History of the Social Movement in France, 1789-1850*, Kaethe Mengelberg tr. (Bedminster Press, Totowa NJ, 1964) [originally published 1850].

II. Theoretical Framework: Common Good Constitutionalism, the Administrative State, and Labor

A. The Classical Natural Law Foundation

The theoretical foundation of this paper lies in the classical natural law tradition, as transmitted through Thomas Aquinas's *Summa Theologica* and recovered for contemporary constitutional theory by Vermeule's Common Good Constitutionalism. Aquinas's account of law begins with the proposition that all law is fundamentally ordered to a common end the good of the community considered as a whole.⁴ Law, on this account, is not the expression of sovereign will, nor the codification of individual preferences, but a rational determination of what human flourishing requires under given material and social conditions. The legislator and the administrator alike participate in a teleological ordering of social life toward goods that are, in the last analysis, constitutive of humanity's highest capacities: reason, association, and virtue.

What this means for the governance of migrant labor is that the question of constitutional validity cannot be exhausted by asking whether workers have been formally notified of their rights, or whether administrative procedures have been duly observed. The deeper question which Aquinas's framework compels us to ask is whether the governance arrangement as a whole conduces to the genuine flourishing of those subject to it.⁵ An administrative structure that formally extends labor protections while systematically producing conditions of dependency, debt bondage, and social isolation fails this test not only as a matter of policy but as a matter of constitutional principle, understood in its classical sense.

Vermeule's recovery of this tradition in Common Good Constitutionalism makes a number of moves that are directly relevant to the present analysis. First, he argues that the administrative state should be understood not as a threat to constitutional order but as its fulfillment the institutional embodiment of the polity's commitment to ordered communal flourishing.⁶ Second, he insists that administrative officials bear substantive obligations that go beyond procedural compliance, including the obligation to direct their discretionary authority

⁴Aquinas, *supra* note 1, Q.90, A.2.

⁵Thomas Aquinas, *Summa Theologica* I-II, Q.96, A.4, *supra* note 1.

⁶Vermeule, *supra* note 2 at 44-46.

toward the genuine good of those subject to their governance.⁷ Third, he argues that the classical tradition provides resources for critiquing administrative arrangements that merely formalize inequality rather than substantively addressing it a critique that applies with particular force to the governance architectures examined in this paper.

B. Lorenz von Stein and the Social Administrative State

The second theoretical pillar of this analysis is drawn from Lorenz von Stein's theory of the administrative state, developed in his monumental *History of the Social Movement in France, 1789-1850* and his subsequent works on the theory of public administration. For Stein, the emergence of industrial capitalism created a structural antagonism between property-owning and propertyless classes that could not be resolved through parliamentary politics alone.⁸ The state, and in particular its administrative apparatus, was called to perform the function of social integration of elevating the dependent classes to a condition in which they could exercise genuine freedom rather than merely formal liberty.

Stein's insight that the administrative state has a constitutive social mission not merely a regulatory function provides a framework for evaluating the migrant labor governance regimes examined in this paper. When Taiwan's Ministry of Labor constructs a licensing system that mediates migrant workers' access to their employers through private brokers, and when India's labour administration fails to enforce the protections nominally available to inter-state workers, the failure is not merely regulatory in character.⁹ It represents a departure from what Stein would identify as the administrative state's fundamental purpose: the creation of conditions under which all persons within the political community including those whose presence is formally temporary can develop their capacities and participate in social life on terms of genuine rather than merely nominal equality.

The convergence between Stein's social administrative theory and Vermeule's CGC is not accidental. Both traditions share a commitment to understanding state authority in teleological terms as directed toward substantive ends that are constitutive of political legitimacy rather than merely procedural conditions for its exercise. Both also share a skepticism toward the liberal model of the state as a neutral framework for the pursuit of

⁷Vermeule, *supra* note 2 at 60-63.

⁸Stein, *supra* note 4 at 46-50.

⁹Stein, *supra* note 4 at 102-108.

privately determined ends, insisting instead that public authority bears an affirmative responsibility for the material conditions of social life. It is this convergence that makes the combined framework particularly apt for the analysis of migrant labor governance, where the inadequacy of formal liberal protections is most visibly exposed.

C. Non-Domination, Structural Vulnerability, and the Constitutional Claim

The third theoretical resource drawn upon in this analysis is Philip Pettit's republican theory of freedom as non-domination, developed in *Republicanism: A Theory of Freedom and Government*.¹⁰ For Pettit, freedom is not merely the absence of actual interference but the absence of arbitrary power the condition in which no agent has the capacity to interfere in one's choices with impunity.¹¹ Domination, on this account, is a structural feature of social relationships rather than a function of whether dominant parties choose to exercise their power on any given occasion. A person is dominated whenever they are subject to an authority that could interfere arbitrarily with their choices, regardless of whether that authority is currently exercising this capacity benevolently.

The relevance of this framework to migrant labor governance is immediately apparent. Migrant workers in both Taiwan and India are subject to employer and broker authority that is, in Pettit's technical sense, arbitrary: it can be exercised without accountability to the interests and perspectives of the workers themselves.¹² The dependency created by the tied-visa regime, by the broker fee debt cycle, and by legal exclusions from the scope of protective legislation is not a contingent feature of how particular employers choose to behave. It is a structural feature of the governance architecture itself one that systematically places workers in a position where they cannot contest adverse exercises of power without risking the loss of their employment, their legal status, and in some cases their freedom of movement.

The constitutional import of this analysis is that the elimination of domination from migrant labor governance is not merely a desirable policy objective. It is, on a CGC reading of constitutional authority, a legal obligation. A constitutional order oriented toward the common good toward the genuine flourishing of all those within the political community cannot, consistent with its own normative logic, maintain governance arrangements that systematically

¹⁰Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Clarendon Press, Oxford, 1997).

¹¹*Id.* at 52.

¹²Pettit, *supra* note 8 at 55-58.

reproduce conditions of domination for those whose labor it has, in structural terms, recruited and relied upon.¹³ The argument from the common good and the argument from non-domination converge on the same normative conclusion: migrant labor governance that produces structural domination constitutes a constitutional deficit, and the administrative state bears an affirmative obligation to remedy it.

III. Taiwan: The Employment Services Act and the Architecture of Dependency

A. The Legal Framework: Formal Protection and Structural Exclusion

Taiwan's framework for the governance of migrant labor was formally established by the Employment Services Act (就業服務法, hereinafter ESA), promulgated in 1992 and significantly amended on multiple subsequent occasions.¹⁴ The ESA established a licensed labor import system premised on employer demand and sectoral restriction, permitting the employment of foreign workers in designated categories principally manufacturing, construction, maritime fishing, institutional care, and domestic care subject to the grant of a work permit by the Ministry of Labor. This architecture has remained substantially intact, notwithstanding progressive amendments intended to address documented abuses, and it continues to shape the structural position of the approximately 730,000 migrant workers currently present in Taiwan.

The structural logic of the ESA framework produces a governance architecture defined by a fundamental tension between the formal extension of labor rights and the systematic reproduction of dependency. Article 46 of the ESA defines the categories of work for which foreign workers may be employed,¹⁵ while Article 52, as amended in 2003, originally required migrant workers to depart Taiwan for a mandatory cooling-off period upon the expiration of their contracts.¹⁶ Though this exit requirement has since been relaxed, it exemplified the ESA's foundational logic: migrant workers are recruited for their labor rather than welcomed as persons, and the governance architecture is designed to facilitate the economic extraction of that labor while minimizing the formation of durable social ties or claims to long-term membership.

¹³Vermeule, *supra* note 2 at 68-70.

¹⁴Employment Services Act (就業服務法) (Act No. 48, 1992, as amended 2016), art. 46, para. 1.

¹⁵*Id.* art. 38.

¹⁶*Id.* art. 52 (as amended 2003).

The private broker system occupies a central role in the reproduction of this dependency. Under the ESA's licensing scheme, private employment agencies have functioned as the primary intermediaries between foreign workers in their home countries and Taiwanese employers.¹⁷ Workers typically incur substantial broker fees ranging from USD 1,500 to USD 6,000, equivalent to several months' wages as a condition of obtaining employment in Taiwan.¹⁸ This debt creates a structural incentive to remain in employment even under exploitative conditions, since departure or complaint risks the loss of the income required to service the debt. The 2016 amendments to the ESA introduced provisions for direct hiring channels intended to reduce broker fee burdens, but have not succeeded in substantially curtailing the broker system, which remains the dominant mode of labor recruitment.

B. Domestic Care Workers: The Constitutional Periphery

The most structurally vulnerable population within Taiwan's migrant labor regime consists of domestic care workers (外籍看護工), who constitute the largest single category of migrant workers in Taiwan and who are among the most extensively excluded from the protections nominally available to workers in other sectors. Under the combined operation of Article 46 of the ESA and Article 3 of the Labor Standards Act (勞動基準法), domestic care workers and household helpers are explicitly excluded from the scope of the Labor Standards Act.¹⁹ This exclusion means that the minimum wage protections, working hours regulations, severance pay entitlements, and occupational safety standards established by the Labor Standards Act do not apply to the care workers who constitute a substantial proportion of Taiwan's migrant workforce.

The structural implications of this exclusion are far-reaching. Domestic care workers are typically employed under twenty-four-hour residential arrangements in which the employer household also functions as the worker's home. The absence of external working hours regulation means that workers are in practice available for labor at all hours, with no legal entitlement to overtime remuneration or mandatory rest periods. The residential dependency

¹⁷Employment Services Act, *supra* note 13, art. 46 (as amended May 18, 2016, allowing direct hire channels and broker fee caps).

¹⁸Scott Simon, "Revisiting Taiwan's Response to Migrant Workers Issues, and Recommended Reforms" Global Taiwan Institute Briefs, available at: <https://globaltaiwan.org/2022/03/revisiting-taiwans-response-to-migrant-workers-issues-and-recommended-reforms/> (last visited on January 15, 2025).

¹⁹Employment Services Act, *supra* note 13, art. 46, para. 1, items 8-9 (care workers and domestic helpers excluded from Labor Standards Act coverage by operation of art. 3, Labor Standards Act).

compounds the power asymmetry created by the broker fee debt, since any challenge to exploitative working conditions risks not only employment but also housing. The prohibition on passport retention under Article 57 of the ESA²⁰ provides a nominal safeguard against the most egregious forms of document-based coercion, but the practical enforcement of this prohibition within private households is extremely limited.

Assessed against the CGC framework developed in Part II, the governance architecture applicable to domestic care workers reveals a structural constitutional deficit of the first order. The administrative state has constructed a system in which a category of workers who perform socially indispensable functions the care of aging and disabled populations is deliberately placed outside the principal protective framework of labor law, subject to employer authority that is, in Pettit's terms, paradigmatically arbitrary. The Steinian critique is equally compelling: the administrative apparatus, far from fulfilling its integrative social mission, has ratified and institutionalized a regime of dependency that reproduces the subordination of the care workforce to the interests of capital and households. And the Thomistic critique is foundational: a governance arrangement that deliberately denies to one category of workers the protections it extends to others, without principled justification grounded in the requirements of the common good, fails the test of legal justice that Aquinas identifies as the necessary condition of law's binding force.²¹

C. Bilateral Labor Agreements and the Limits of Diplomatic Governance

Taiwan's migrant labor governance also operates through a framework of bilateral labor agreements concluded with major labor-sending countries, including Indonesia, the Philippines, Thailand, Vietnam, and more recently India.²² These agreements establish institutional channels for the oversight of migrant worker welfare, create mechanisms for the resolution of labor disputes, and articulate minimum standards for the treatment of workers during their employment in Taiwan. They represent the most prominent expression of the Taiwanese state's recognition that the governance of migrant labor is a matter of international

²⁰Id. art. 57, items 5-6.

²¹Aquinas, *supra* note 1, Q.96, A.4 (distinguishing just laws that bind in conscience from unjust laws that are 'acts of violence rather than laws').

²²Ministry of Labor, Republic of China (Taiwan), "Bilateral Labor Agreements" available at: <https://www.mol.gov.tw/en/> (last visited on January 10, 2025) (Taiwan has concluded bilateral labor agreements with Indonesia, the Philippines, Thailand, Vietnam, and India, respectively).

as well as domestic constitutional concern.

The limitations of the bilateral agreement framework are, however, substantial. These instruments operate primarily as diplomatic rather than constitutional mechanisms: their enforcement depends upon the willingness of both parties to prioritize worker protection over economic and diplomatic interests, and their practical effectiveness is mediated by the institutional capacity and political will of both the sending and receiving state administrations. Where worker welfare conflicts with the export earnings and remittance flows that labor-sending states depend upon, the diplomatic framework tends to produce accommodation rather than protection. The result, as documented by civil society observers in both sending and receiving countries, is a governance architecture in which formal bilateral commitments coexist with systematic informalities broker fee overcharges, unauthorized contract modifications, and employer violations that the administrative apparatus of neither state has the capacity or the will to address.

IV. India: Constitutional Ambition and Administrative Failure

A. The Constitutional Framework: Articles 14, 19, and 23

India's constitutional framework provides, on its face, robust protections for migrant workers. Article 14 guarantees equality before the law and equal protection of the laws to all persons within the territory of India, without distinction as to citizenship status.²³ Article 19(1)(g) protects the right to practice any profession or to carry on any occupation, trade, or business, subject to reasonable restrictions in the public interest.²⁴ Most directly relevant to the situation of migrant workers, Article 23 prohibits traffic in human beings and all forms of forced labor, and declares that any contravention of this prohibition shall be an offense punishable in accordance with law.²⁵ The breadth of Article 23's prohibition extending to all forms of forced labor and not merely to slavery or debt bondage in their most extreme manifestations creates, in principle, a constitutional foundation for the protection of migrant workers against the structural conditions of coerced labor that characterize their situation in practice.

²³The Constitution of India, art. 14.

²⁴Id. art. 19, cl. (1)(g).

²⁵Id. art. 23.

The constitutional framework is complemented by a substantial body of Directive Principles of State Policy that impose affirmative obligations on the state to secure for all citizens the right to an adequate means of livelihood, to ensure equal pay for equal work, and to provide conditions of work that protect the health and strength of workers (Articles 39, 41, 42, and 43 of the Constitution). While the Directive Principles are not directly enforceable as constitutional rights, the Supreme Court of India has progressively used them to inform the substantive content of the justiciable Fundamental Rights, particularly the right to life under Article 21. This process of constitutional integration has produced, over several decades of judicial activism, a body of labor jurisprudence that is substantially more robust than a formal reading of the constitutional text would suggest.

B. Legislative Framework: The Inter-State Migrant Workmen Act and Its Successors

The principal statutory instrument for the protection of migrant workers in India is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter ISMWA).²⁶ Enacted following the recommendations of a Compact Committee convened in 1977 to address the documented abuses of the contractor-mediated inter-state migration system, the ISMWA applied to every establishment employing five or more inter-state migrant workmen on any day of the preceding twelve months.²⁷ Its provisions required the registration of establishments and the licensing of contractors, mandated the issue of passbooks to migrant workers, and established entitlements to displacement allowances upon recruitment,²⁸ journey allowances for outward and return travel,²⁹ minimum wages equal to those applicable to local workers, and basic facilities including housing, medical care, and protective clothing.

The ISMWA's structural design reflected an awareness of the specific vulnerabilities created by the inter-state migration context: the geographic dislocation of workers from the social networks and institutional resources of their home states, the information asymmetries that enable contractor exploitation, and the difficulty of enforcing worker rights across state boundaries. These are precisely the vulnerabilities that a CGC-informed constitutional

²⁶The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Act 30 of 1979).

²⁷Id. s. 1(4) (applicable to establishments employing five or more inter-state migrant workmen on any day of the preceding twelve months).

²⁸Id. s. 14.

²⁹Id. s. 15.

framework would identify as requiring affirmative administrative attention. The challenge, however, has been not in the normative ambition of the legislation but in its enforcement.³⁰ Documented violations of the ISMWA's provisions have been widespread, including the non-payment of displacement and journey allowances, the failure to register workers, and the non-provision of required facilities.

In 2020, the ISMWA was repealed and replaced by the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code), which consolidated twenty-nine labor enactments into a single legislative instrument.³¹ The OSH Code's provisions on migrant workers substantially replicate the structural framework of the ISMWA, retaining the five-worker threshold for applicability and the contractor-mediated model of governance.³² Critics have argued that the consolidation has reduced rather than enhanced protection by eliminating some ISMWA-specific protections while introducing definitional ambiguities that may narrow the scope of coverage. More fundamentally, the OSH Code does not address the enforcement deficits that characterized its predecessor, and its implementation across India's complex federal system remains at an early stage.

C. Constitutional Adjudication: From PUDR to Bandhua Mukti Morcha

The most significant contributions to India's constitutional framework for migrant worker protection have come not from legislative action but from the Supreme Court's public interest litigation jurisprudence. The landmark decision in *People's Union for Democratic Rights v. Union of India* established foundational principles that continue to govern the constitutional analysis of migrant labor exploitation.³³ The case arose from an investigation by social scientists into the conditions of construction workers employed on Asian Games infrastructure projects in Delhi, who were found to be receiving wages below the statutory minimum and to be working under conditions that violated multiple labor enactments, including the ISMWA.

Justice Bhagwati, writing for the Court, held that the payment of wages below the

³⁰Prachi Shrivastava, "Laws Governing Inter-State Labour Migration in India: A Critical Analysis" 6 *CMR Journal of Law* 1 (2021).

³¹The Occupational Safety, Health and Working Conditions Code, 2020 (Act 37 of 2020) (consolidating and replacing the Inter-State Migrant Workmen Act, 1979 and twenty-eight other labour enactments).

³²*Id.* s. 2(zf) (definition of 'migrant worker' retaining the five-worker threshold and contractor-mediated model of earlier legislation).

³³*People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

statutory minimum constituted forced labor within the meaning of Article 23, because it deprived workers of the freedom to choose their employment on terms reflective of their actual bargaining power.³⁴ The reasoning was significant not merely for its expansion of the forced labor prohibition but for its identification of the structural relationship between economic coercion and constitutional rights: where poverty and the absence of alternative employment place workers in a position where they must accept exploitative terms in order to survive, the legal characterization of their consent as voluntary is a fiction that the Constitution's substantive commitment to human dignity cannot sustain. The Court also held that the principal employer the Union of India and its associated authorities could not escape constitutional responsibility for violations committed by private contractors acting in the execution of public works.

The companion decision in *Bandhua Mukti Morcha v. Union of India* extended these principles to the paradigm case of bonded labor in stone quarries, where migrant workers from multiple states were found to be working in conditions of debt bondage without access to basic facilities.³⁵ The Court held that bonded labor constitutes a species of forced labor prohibited by Article 23, and that the right to life under Article 21 encompasses the right to live with human dignity a right whose content extends to the material conditions of labor, including access to adequate wages, health care, and educational facilities.³⁶ The Court issued comprehensive directions to the Union and State governments requiring the identification, release, and rehabilitation of bonded workers, and appointed a Commissioner from the Ministry of Labour to monitor compliance.

Assessed against the CGC framework, the Supreme Court's public interest litigation jurisprudence represents the most sustained attempt within India's constitutional order to give substantive content to the constitutional commitment to the common good in the domain of labor governance. The Court's insistence that constitutional rights must be interpreted in light of the social conditions that make their formal exercise possible or impossible that the right against forced labor must be understood in the context of the structural conditions of economic coercion that characterize the migrant labor market is precisely the move that a Thomistic constitutionalism demands. The Aquinian test is not whether the law formally prohibits

³⁴Id. at 1485-1487 (Bhagwati J.) (holding that payment below minimum wage amounts to forced labour within Article 23).

³⁵*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

³⁶Id. at 820-824 (Bhagwati J.) (holding that bonded labour constitutes forced labour under Article 23 and that Article 21 encompasses the right to live with human dignity).

exploitation but whether the governance arrangement as a whole conduces to the genuine flourishing of those subject to it.³⁷ The Court's decisions establish that, measured against this standard, the administrative apparatus's failure to enforce statutory protections for migrant workers constitutes a constitutional violation.

D. The Enforcement Deficit: Constitutional Ambition Unrealized

The gap between the constitutional and statutory framework's normative ambition and its practical realization represents the central challenge of India's migrant labor governance. The ISMWA and its successor, the OSH Code, the Bonded Labour System (Abolition) Act 1976, and the Supreme Court's PIL jurisprudence collectively establish a framework that is, in formal terms, substantially more protective of migrant workers than the administrative architectures of many comparator jurisdictions. Yet the documented reality of inter-state migrant worker conditions in India characterized by unpaid wages, debt bondage, occupational hazards, and social isolation suggests that the formal framework exercises limited practical governance over the conditions of workers' employment.³⁸ The enforcement deficit is not primarily a function of insufficient legal authority; it is a function of the institutional design of the administrative state, which lacks the capacity and, at times, the political will to enforce protections against the interests of powerful employers and contractor networks.

From a Steinian perspective, this enforcement deficit represents the administrative state's most fundamental failure: its abdication of the integrative social mission that constitutes its reason for being. The state that formally acknowledges the constitutional right of migrant workers to freedom from exploitation while maintaining administrative structures that make the practical exercise of that right impossible has not, in any meaningful sense, fulfilled its constitutional obligations. Stein's insight was that the formal recognition of rights is insufficient without the administrative capacity to give them substantive effect a capacity that requires not merely institutional infrastructure but a genuine political commitment to the interests of the dependent classes over those of the propertied.³⁹ The administrative failures documented in the literature on India's migrant labor governance reflect precisely the political economy that Stein

³⁷Aquinas, *supra* note 1, Q.90, A.2 ('a law, properly speaking, regards first and foremost the order to the common good').

³⁸Shrivastava, *supra* note 31 at 8-10.

³⁹Stein, *supra* note 4 at 115-120.

identified as the primary obstacle to the social state's fulfillment of its integrative mission.

V. Comparative Analysis: Convergence, Divergence, and Constitutional Solidarity

A. Convergent Architectures of Dependency

The comparative analysis of Taiwan and India reveals a pattern of structural convergence that is theoretically significant. Despite the substantial differences in their constitutional traditions, colonial histories, and administrative architectures, both jurisdictions have constructed governance frameworks for migrant labor that exhibit the same fundamental deficiency: the systematic reproduction of conditions of dependency and vulnerability for workers who are economically incorporated into the political community while remaining institutionally excluded from its principal protective structures.

In Taiwan, this exclusion takes the form of the deliberate legal carve-out of domestic care workers from the Labor Standards Act, the structurally disempowering debt created by the broker fee system, and the tied-visa architecture that makes workers' legal status in Taiwan contingent upon the continued goodwill of their employers. In India, it takes the form of the ISMWA's five-worker threshold that excludes the majority of migrant workers from statutory protection, the chronic non-enforcement of applicable protections, and the contractor-mediated employment structure that interposes layers of private authority between workers and any institutional mechanism of accountability. In both cases, the state has, in Pettit's terms, created and maintained conditions of structural domination rather than the conditions of non-domination that a constitutionally ordered political community is obligated to secure.⁴⁰

The convergence of these architectures is not coincidental. Both Taiwan and India have constructed their migrant labor governance frameworks under conditions of acute economic demand for cheap, flexible labor and substantial political pressure from the employers and industries that benefit from the current regime. The administrative state, in both jurisdictions, has functioned not as the instrument of social integration that Stein envisioned but as the mechanism through which the instrumentalization of migrant labor is rationalized and institutionalized.⁴¹ The formal legal protections that exist in both jurisdictions reflect the influence of international labor standards and civil society advocacy, but they have been

⁴⁰Pettit, *supra* note 8 at 67-73.

⁴¹Stein, *supra* note 4 at 138-142.

insufficient to overcome the structural logic of a governance architecture premised on the economic utility rather than the constitutional membership of migrant workers.

B. Constitutional Divergence: Rights Discourse and Administrative Capacity

Despite this convergence of structural outcomes, there are important differences in the constitutional resources available for challenging the existing governance architecture in each jurisdiction. India's constitutional framework provides, in Articles 14, 21, and 23, a basis for constitutional litigation that has been productively deployed by the Supreme Court's PIL jurisprudence to impose affirmative obligations on the administrative state. The decisions in PUDR and Bandhua Mukti Morcha demonstrate the transformative potential of a constitutional court that interprets rights in light of structural conditions of economic coercion rather than merely formal legal status. Taiwan's constitutional framework, while providing analogous protections under the Constitution of the Republic of China, has not produced a comparable body of PIL jurisprudence in the specific domain of migrant labor, in part because the structural exclusion of domestic care workers from statutory protection operates, paradoxically, through a legislative choice that is formally within the legislature's constitutional authority.

The administrative capacity of the two states also differs in ways that are relevant to the prospects for reform. Taiwan's relatively compact administrative structure and high levels of inter-ministerial coordination provide institutional resources for the implementation of reformed governance frameworks that India's vast and internally diverse administrative system cannot easily replicate. Conversely, India's federal structure and the tradition of decentralized labor law enforcement may, in principle, provide laboratories for the development of innovative governance approaches at the state level that could subsequently be adopted nationally.⁴² The challenge in both cases is to develop administrative frameworks that are not merely institutionally adequate but constitutionally oriented directed, in the Thomistic sense, toward the genuine goods of those they govern rather than the interests of those who employ their governance subjects.

C. Constitutionalized Labor Solidarity: A CGC Framework for Reform

Against this background, this paper proposes a framework of constitutionalized labor solidarity as the normative implication of applying a CGC analysis to migrant worker

⁴²Vermeule, *supra* note 2 at 112-116.

governance in both jurisdictions. This framework has three principal dimensions.

The first dimension concerns the substantive content of constitutional obligation. A CGC-informed constitutional order requires that the governance of migrant labor be directed toward the genuine goods of those subject to it: dignified work, adequate remuneration, freedom of association, access to health care and education, and the conditions of social belonging that enable the development of human capacities over time.⁴³ These goods are not concessions to rights-claiming minorities; they are expressions of what the political community owes to those whose presence and labor it has, in structural terms, incorporated. The administrative state's obligation to secure these goods is a constitutional obligation, grounded in the telos of political authority as Aquinas and Vermeule understand it.⁴⁴

The second dimension concerns the institutional design of labor administration. The enforcement deficits documented in both Taiwan and India reflect governance architectures that interpose private intermediaries brokers, contractors, employer households between workers and the state's protective mechanisms. A reformed architecture, consistent with the Steinian account of the administrative state's social mission, would require the state to assume direct responsibility for the conditions of migrant workers' employment rather than delegating this responsibility to private actors with divergent interests. In practical terms, this implies the elimination of broker fee obligations for low-wage migrant workers, the extension of the Labor Standards Act to all categories of migrant employment in Taiwan, the strengthening of the enforcement capacity of India's labor administration with respect to inter-state migrants, and the development of portable rights and benefits systems that provide workers with continuous legal protection independent of the identity of their employer.

The third dimension concerns the constitutional recognition of migrant workers' social membership. A governance architecture premised on the temporary and contingent nature of migrant workers' presence within the political community is structurally inconsistent with the requirement, derived from the common good tradition, that the state act as an impartial promoter of the flourishing of all those within its governance. The temporal boundaries of a migrant worker's formal status do not diminish the constitutional significance of the obligations that the state bears toward that worker during the period of their employment. A

⁴³Vermeule, *supra* note 2 at 127-130.

⁴⁴Vermeule, *supra* note 2 at 168-172.

constitutionalized labor solidarity framework requires the recognition that these obligations are not discretionary concessions but constitutional necessities expressions of the political community's shared commitment to the conditions of dignified labor for all who contribute to its flourishing.

Philip Pettit's non-domination principle provides the most directly operational normative criterion for evaluating specific governance reforms: a reformed migrant labor governance architecture is constitutionally adequate only if it removes the capacity for arbitrary interference from the structural relationships that currently define migrant workers' position in the labor market.⁴⁵ This criterion that no agent should be able to interfere with migrant workers' choices and plans with impunity provides a clear test for the constitutional sufficiency of particular reform proposals and a basis for ongoing judicial and administrative accountability.

VI. Conclusion

This paper has argued that Common Good Constitutionalism, informed by the Thomistic natural law tradition and supplemented by Stein's social administrative theory and Pettit's republicanism, provides a more adequate normative framework for evaluating migrant worker protection than the liberal constitutionalism that has dominated scholarly and policy discourse on this question. The comparative analysis of Taiwan and India demonstrates that both jurisdictions have constructed governance architectures that systematically reproduce conditions of structural dependency and domination for migrant workers, despite the formal availability of legal protections, and that this structural deficit constitutes a constitutional failure in the deepest sense a departure from the telos of political authority as the classical tradition understands it.

The framework of constitutionalized labor solidarity proposed here does not require either Taiwan or India to abandon their existing constitutional structures. It requires them to fulfill the normative implications of those structures by directing the administrative state's considerable institutional resources toward the genuine goods of those whose labor it has incorporated into the political community. Migrant worker protection, understood in these terms, is not a peripheral issue in constitutional theory. It is one of its most pressing and most revelatory challenges a domain in which the gap between formal constitutional commitment

⁴⁵Pettit, *supra* note 8 at 185-190.

and substantive constitutional reality is widest, and in which the resources of the classical tradition offer their most productive and their most urgent application.⁴⁶

⁴⁶Vermeule, *supra* note 2 at 98-101.

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