

## Migrant Workers from the Perspective of the Israeli Welfare State

Daniel Galily

*South-West University "Neofit Rilski", BULGARIA  
Faculty of Philosophy, Department of Philosophical and Political Sciences*

David Schwartz

*Bar-Ilan University, Department of Political Science, Ramat Gan, ISRAEL*

Received 23 November 2019 ▪ Revised 20 December 2019 ▪ Accepted 21 December 2019

### *Abstract*

The phenomenon of work migration and of the entry of foreign workers into the local labor market is explained as a part of the development of a global capitalist economy that creates inequality between countries with surplus capital and countries with surplus working hands. It is also possible to see this as a gap between core countries and peripheral countries and the relationships of the dependence of the latter on the former. Another possible way to examine this is through the mechanisms of social and economic welfare that exist in these countries that absorb migrant workers and that create a comfortable social infrastructure for the absorption of migrant workers and family members who are interested in ensuring for themselves a better future. In the peripheral countries, there are excess labor forces, which in practice are used to fill gaps in manpower in the economies of the core countries. Lacking sources of income, whether due to shortages or war, many residents of peripheral countries are forced to migrate to developed countries, the majority of which have, to some degree or another, mechanisms of a welfare state and which have developed the demand for unskilled workers who do not hesitate to take on any job. While the Palestinian workers worked in the areas of Israel on a daily basis and returned to their place of residence, the massive absorption of the migrant workers from distant countries led to the formation of foreign communities in the large cities and the agricultural communities in Israel. The steadily increasing process of the friction between the citizens of the state and the migrant workers, alongside the steadily increasing competition for work places, increased the social disputes between the low classes and the migrant workers. The process of the reduction of the number of migrant workers was only partially successful following the continual infiltration of illegal foreign workers and the entry of asylum seekers from Africa. From the moment that the government made the decision to deport migrant workers, the rights of migrant workers worsened. The maltreatment of the migrant workers by their employers worsened because of the workers' constant fear of deportation. Simultaneously, the migrant workers found themselves suddenly stranded in a foreign country without any possibility of approaching the government authorities in cases of the violation of their basic rights.

**Keywords:** migrant workers, employers, Israel studies.

## 1. Introduction

The phenomenon of work migration and of the entry of foreign workers into the local labor market is explained as a part of the development of a global capitalist economy that creates inequality between countries with surplus capital and countries with surplus working hands. It is also possible to see this as a gap between core countries and peripheral countries and the relationships of the dependence of the latter on the former. Another possible way to examine this is through the mechanisms of social and economic welfare that exist in these countries that absorb migrant workers and that create a comfortable social infrastructure for the absorption of migrant workers and family members who are interested in ensuring for themselves a better future.

In the peripheral countries, there are excess labor forces, which in practice are used to fill gaps in manpower in the economies of the core countries. Lacking sources of income, whether due to shortages or war, many residents of peripheral countries are forced to migrate to developed countries, the majority of which have, to some degree or another, mechanisms of a welfare state and which have developed the demand for unskilled workers who do not hesitate to take on any job.

The accelerated development of infrastructures and the increase of the agricultural production and the expansion of the service businesses and professions have increased the demand for a labor force, especially workers who are skilled in the technological, management, business, and service professions. In parallel, the constant rise in the standard of living and the “bourgeoisification” of the existing labor force led to a reduction in the birthrate and a decline in the pace of renewal of the labor force in the core countries. Simultaneously, the class of workers strengthened because of the activity of the professional unions<sup>1</sup>.

The entirety of these processes led to increasing demand both for skilled workers on a regular basis and for unskilled workers, some of whom were required to work in seasonal and temporary jobs such as infrastructure development, construction, agriculture, services and industry. The financial companies, which aspired to increase their profits, and the professional unions, which aspired to protect the social rights they achieved for the domestic workers, joined together to segment the labor market into a “primary” market, of workers who enjoy extra conditions, and a “secondary” market, which offers inferior work conditions. The primary market was preserved for the domestic skilled workers, while the secondary market was allocated to the foreign workers<sup>2</sup>.

If we go to characterize the type of jobs intended for foreign workers, then we find that they have a very low prestige, primarily since they entail physical difficulties, are characterized by an uncomfortable work environment, with poor safety conditions, at a low salary, with few opportunities for occupational mobility and lacking social rights. In addition, the foreign workers are the first to be fired, and often they are employed under conditions of shameful exploitation.

In the State of Israel, the employment of workers who are not the citizens of the State began after the Six Day War, with the entrance of the Arabs from the territories into the Israeli labor market. Until the year 1992, the workers from foreign countries were a marginal factor in the Israeli economy.

There are many differences between foreign workers whose origin is the territories of Judea, Samaria, and Gaza and the migrant worker from a foreign country, when the main one is that while the center of life of the Palestinian Arab was his place of residence (the village or city he came from and he returned to at the end of the work day), the migrant worker who came from a

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<sup>1</sup> Y. Shanel, *Foreign workers in South Tel Aviv-Yaffo* (Jerusalem: Floersheimer Institute for Policy Research, 1999), 10.

<sup>2</sup> P. Knox & J. Agnew, *The geography of the world economy* (London: Edward Arnold, 1989)

foreign country in essence had shifted the center of his life (and in certain cases also his family) to the territory of the State of Israel. This fact created the constraint of providing social services to the migrant worker and his family members.

The increase of terrorism and the policy of the imposition of closures, as a result of security constraints, limited the duration of entry of the Arabs from the territories into the areas of Israel. Consequently, the government of Israel decided in the year 1993 to allow the entry of foreign workers as a temporary solution for the shortage in manpower – primarily in the industries of construction and agriculture. The government permitted the bringing in of foreign workers under administrative processes, which in retrospect turned out to be deficient. The government saw the recruitment of foreign workers to be a step with economic significance only for the short term, but not a government action in which the involved state has the responsibility to assure the living conditions and social rights of the foreign workers<sup>3</sup>.

The phenomenon of the integration of the foreign workers in the Israeli economy created a difficult moral and ethical problem: a decent society is a society that does not humiliate those who depend on it. Since the issue is human dignity and it is forbidden to humiliate any person, then a differentiation should not be made between a person who is a member of the society and a person who depends on the society although he is not a member of it<sup>4</sup>. The policy of the deportation of the migrant workers, which was decided upon on June 16, 1997, reflects a lack of willingness on the part of the State of Israel to deal with the challenges posed by the phenomenon of foreign workers to the Israeli welfare state. However, this policy has implications on the situation of the foreign workers in Israel: the constant threat to the foreign workers prevents them from standing up for their rights, turning to the government authorities, and organizing<sup>5</sup>. In parallel, the government does not act effectively against employers, manpower companies, and other parties of interest in the Israeli economy. As a result, the government facilitates the continuation of the exploitation of the foreign workers, more than once in complete contradiction to the convention that the country has signed<sup>6</sup>.

The formative ethos of the Jewish people is the period of slavery of the children of Israel in Egypt, which transformed the tribes of Israel into a crystallized historical nation. However, we are seeing a reality in which the migrant worker has become like the serf of his employer.

At the start of the 21<sup>st</sup> century, the issue of the attitude of the State of Israel towards the migrant workers was brought before the Israeli supreme Court, which in the year 2006 determined unanimously that the arrangement that the government had determined for the employment of migrant workers is unconstitutional. Therefore, the government was required to formulate regarding the migrant workers a new arrangement for employment that would prevent the harm to the social rights of the migrant workers in Israel<sup>7</sup>.

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<sup>3</sup> H. Fisher, Foreign workers – A picture of the situation, a formal framework, and a Government policy, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 13, 14-16.

<sup>4</sup> A. Margalit, The decent society and the question of citizenship, *Interior – The fund for professional advancement* (February 1999), Number 8.

<sup>5</sup> E. Fishbein, Defenders of the labor law have become hunters of foreigners, *Haaretz Newspaper*, 10/99, A-1, A-10.

<sup>6</sup> Y. Shanel, *Foreign workers in South Tel Aviv-Yaffo* (Jerusalem: Floersheimer Institute for Policy Research, 1999), 55-56.

<sup>7</sup> High Court 4542/02, “Line for the Worker” Association and others v. the Government of Israel [unpublished], decision from March 30, 2006.

## 2. Rationale of the employment of foreign workers

### 2.1 *Labor market in Israel*

In a capitalist economy, the salary paid to the worker is determined through two factors: the supply of work and the demand for work. In principle, the supply and demand curves are different from one work sector to another, but the basic principle remains the same: the point of encounter between the supply curve and the demand curve – the point of equilibrium – represents the salary that will be paid to the workers.

In industrialized countries the cost of labor is expensive. The high salary paid in these countries is an achievement for the modern welfare state. This is an achievement that derives from the respect for the social human rights of the people concerned with the work in those countries<sup>8</sup>. The respect of the social human rights is expressed in two ways. The first is the respect for the human rights concerning labor that obligates giving workers just and fair wages and work conditions, which cannot be less than the basic standards determined in the labor codex of the International Labor Organization. The second is the respect for the organizational human rights concerning labor, which enable the organization of the workers in professional unions and the holding of collective negotiations<sup>9</sup>.

In contrast, in the developing countries the cost of labor is cheap. The low salary derives from the lack of respect of the social human rights concerning labor. Consequently, the workers earn less than the basic standards obligated by the social human rights concerning labor and they are also prevented from organizing and thus attempting to improve their work conditions through collective negotiations.

The process of globalization, which mainly involves the free movement of capital and production between countries, has not passed over the labor market. We see the prominent mobility of workers between the different countries<sup>10</sup>. The process of globalization creates new dictates for the workers and for the employers. The local employers are forced to compete on the one hand with the cheap import and on the other hand with other manufacturers around the world that compete with them over the same export markets.

The possibilities on the agenda are innovation in the development of products, the move of the factory to a foreign country where the cost of labor is cheap, or the bringing in of migrant workers. When talking about local employers who engage in the construction and services industries, the moment that the pattern of the employment of migrant workers is decided upon and the moment that a certain employer in the industry imports workers from foreign countries, the competitors are forced also to employ migrant workers since otherwise they cannot compete. Therefore, it is possible to see that the foreign workers enter the economy in different industries, and in some of the industries there is a high percentage of foreign workers and in others there are none at all<sup>11</sup>.

The employment of foreign workers is easier in the professions that do not require a higher education or complicated training. Following political and social considerations, in the

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<sup>8</sup> R. Ben-Yisrael, *Labor laws – Volume 1* (Tel Aviv: The Open University, 2002), 223.

<sup>9</sup> R. Ben-Yisrael, *Labor laws – Volume 1* (Tel Aviv: The Open University, 2002), 223.

<sup>10</sup> R. Kalinov, The contribution of migration for the purpose of work to the economic growth of the origin countries of the workers, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz HaMeuchad, 1999), 226, 227.

<sup>11</sup> Guest lecture of the migration economist Barry Chiswick, at Tel-Aviv University in the year 2002. From the website: <http://www.bdidut.com/il/work3.htm>.

professions employing local people of an established socio-economic character the employment of migrant workers will not be welcomed.

In Israel, the employment of foreign workers (the Arabs from the territories and later migrant workers) was in the past perceived as a solution with a temporary character (which in the meantime perpetuated itself) for the problem of the shortage of manpower at a certain level of salary and work conditions. This solution brings economic benefit in the short term, both to the employers and to the economy. In a situation close to full employment, the availability of a flexible supply of workers moderates the salary costs and the pressures of prices and enables economic growth. The disadvantages are expressed in the intermediate and long term – the cost of the employment of migrant workers, beyond the direct costs, does not fall on the single employer but on society at large and the economy. Therefore, a conflict is created between the particular interests of the employers and the interest of overall society, as a result of the load that is added to the welfare systems of the country<sup>12</sup>.

The entrance of migrant workers into the Israeli labor market moderated the cost of labor and the cost of the products and services in industries where it is customary to employ migrant workers. The foreign labor even prevents shocks in these industries. Conversely, the possibility of the employment of migrant workers increases the gap between the salary of skilled workers and that of unskilled workers. The employment of migrant workers harms the employment potential of unskilled Israeli workers and reduces the incentive to increase efficiency and to develop technologically and even perpetuates the lack of efficiency in the labor-intensive industries<sup>13</sup>.

Regarding the long-term implications, there is the risk of the formation of poor neighborhoods and neglected housing and of the creation of a population that lacks equal opportunities and does not enjoy the full range of social services that the modern welfare state has to offer but is still a social class that uses basic social services such as health, education, and welfare and thus in essence places a further burden on the already weak classes. The addition of hundreds of thousands of people places a strain on infrastructures, especially at the municipal level<sup>14</sup>. This load on the municipal infrastructures is a further burden on the ongoing lives of the residents of the disadvantaged neighborhoods in which migrant workers find places of residence.

## 2.2 *Employment of migrant workers in Israel*

The massive employment of migrant workers in Israel began in the middle of the year 1994 as a solution to the pressures of employers in the industries of construction and agriculture. The process began without the planning and the setting of a comprehensive policy but as an immediate response to a shortage of working hands<sup>15</sup>. The quotas of workers and their periods of stay in Israel were always subject to the government decisions. The government all the time made sure to declare that it strongly opposed the employment of migrant workers in Israel and that its

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<sup>12</sup> H. Fisher, Foreign workers – A picture of the situation, a formal framework, and a Government policy, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 13, 14-15.

<sup>13</sup> *Ibid.*

<sup>14</sup> Y. Shanel, *Foreign workers in South Tel Aviv-Yaffo* (Jerusalem: Floersheimer Institute for Policy Research, 1999), 19.

<sup>15</sup> H. Fisher, Foreign workers – A picture of the situation, a formal framework, and a government policy”, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 13, 33.

decisions were just a temporary solution<sup>16</sup>. It can be hypothesized that as long as the shortage of local and unskilled manpower willing to work for a low wage continues the demand for migrant workers will continue to exist.

On the part of the migrant workers, Israel is perceived as a desirable destination country, where there is the demand for working hands and a salary that is many times higher than in their countries of origin<sup>17</sup>. When it became known in the countries that export workers that in Israel there was now a demand for foreign workers, because of the need to replace the Palestinian workers, the pressure was created on the population to migrate to Israel. This pressure increased following the worsening situations in the immigration policy of other developed countries that in the past had absorbed foreign workers<sup>18</sup>.

The entry of the migrant workers in Israel was directed primarily to the fields of construction, agriculture, and nursing care. In this way, people with “white collar” positions and the employees who worked at organized workplaces were not harmed by the entrance of the foreign workers, who were employed in positions that require “low skills”. Ostensibly, this situation harmed only the local workers who engaged in the same professions that were opened to competition with the foreign workers. The entrance of migrant workers into the Israeli market led to a decline in the average wage in these occupations, and consequently also the employers began to profit more.

Some of the Israelis who support the deportation of migrant workers do not espouse this action for reasons of revenge against the foreign workers for taking the workplaces from Israeli workers but because of the harm to other areas of life caused to many population classes in Israel<sup>19</sup>. The situation of the low classes has greatly worsened in recent years because of the continuous decline in the real salary, the incentive to employ migrant workers, and the forced insertion of the migrant workers into the residential neighborhoods with a low socioeconomic background where there already lives a relatively weak local population. This situation in essence results in harm to all the classes of the population: the laws of work morality deteriorate, the unemployment increases, the crime increases due to the channeling of police resources to the handling of foreign workers, the pressure on the welfare services of the state steadily increases, and the social and economic gap steadily becomes deeper. Moreover, as the number of people who are unlawfully employed increases, in the State of Israel there are more people who lack rights, whose dignity is trampled, and who are disconnected culturally and are isolated and frightened<sup>20</sup>.

### 3. Attitude of employers towards migrant workers

According to the Foreign Workers Law (Unlawful Employment), 1991, the employers are obligated to provide for their workers appropriate residences, to pay for them the National

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<sup>16</sup> L. Filovsky, ‘Absent present’, the research of the functioning of manpower organizations for the treatment of migrant workers in Israel and the relationship between them and the authorities, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 41, 44.

<sup>17</sup> *Ibid.*

<sup>18</sup> Y. Shanel, *Foreign workers in South Tel Aviv-Yaffo* (Jerusalem: Floersheimer Institute for Policy Research, 1999), 12.

<sup>19</sup> R. Natanson & R. Bar-Zuri, Survey of public attitudes towards workers from foreign countries, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 90, 105-116.

<sup>20</sup> Guest lecture of the migration economist Barry Chiswick, at Tel-Aviv University in the year 2002. From the website: <http://www.bdidut.com/il/work3.htm>.

Insurance fees, and to take out medical insurance for them. By law, it is forbidden for companies to act as manpower companies for workers who are not Israelis. The sole handling of foreign workers whose employers can, officially, transfer them to another factor was the recruitment of the workers and the bringing of the workers to Israel. A total of 51 organizations received the permission from the Ministry of Labor and welfare to engage in international mediation and to thereby serve as private labor bureaus. In March 1996, the Employment of Foreign Workers by Manpower Contractors Law was passed. The relevant sections include a section that states that it is possible to receive a permit to act as a manpower company for foreign workers by meeting certain conditions. The law went into effect in September 1996. Therefore, a situation is created in which the manpower companies handle the foreign workers when they are already in Israel (which is not contradictory to the law but also is not officially recognized by the authorities)<sup>21</sup>.

A most problematic point is the concern for the health of the foreign workers. The employment approvals of the foreign workers are conditional upon the fact that the person receiving the approval must obtain a health insurance policy for the worker. This health insurance policy needs to be equivalent in its service to what is given to a citizen who has the state health insurance. The employers are committed to insure the foreign workers with medical insurance but in actuality a clear definition is lacking as to the type of insurance and the range of services of the insurance. The medical insurance is taken out from different suppliers of health services, at different scopes, according to the contract between the employer and the provider. The cost of the insurance is about a dollar a day for a worker. Today a situation has been created in which many employers prefer to insure the foreign workers who are employed by them using private insurance companies that offer discounts conditional on the workers not needing many medical services. Consequently, coverage does not exist for all cases. For instance, the medical insurance does not cover chronic illnesses. In principle, the employers in the construction and agriculture industries must make certain that the workers will have medical testing before their arrival in Israel but it was never defined which checks should be performed and there is no supervision to ensure this obligation is filled. The medical insurance policies sold by the private medical insurance companies do not cover many different treatments. Therefore, a situation is created in which the foreign workers prefer to obtain medical care in clinics in East Jerusalem (primarily the unlawful foreign workers)<sup>22</sup>.

The examination of the reality of the employment of foreign workers in Israel in recent years delineates a difficult and serious picture. It becomes clear that the arrival in Israel of workers from foreign countries is possible only after these pay high sums of money, sometimes by mortgaging their property and taking out loans, to intermediaries and manpower companies. These sums of money are shared by the manpower companies in the origin countries and the manpower middlemen in Israel<sup>23</sup>. In this way, the profit that in essence is embodied in the bringing of the foreign workers to Israel (which derives from the payments that the foreign workers are willing to pay in their country of origin in return for the right to work in Israel) motivates different middlemen to bring foreign workers to Israel in as large numbers as possible, whether they have a place of work in Israel – or not. The working and living conditions offered to the foreign workers are poor, and it was found that many of them live in overcrowded and difficult conditions. They do not enjoy the effective protection of protective legislation,<sup>24</sup> they are exposed to maltreatment,

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<sup>21</sup> N. Klein, *Background document for discussion on the topic of the foreign workers in the nursing care industry* (Knesset: Center of Research and Information), 14 December 1999. See: <http://www.knesset.gov.il/MMM/doc.asp?doc=m00079&type=rtf>

<sup>22</sup> *Ibid.*

<sup>23</sup> State Comptroller, Annual Report 53B, p. 655-656.

<sup>24</sup> E. Yadlin, Foreign work in Israel, in A. Barak, S. Adler, R. Ben-Yisrael, Y. Aliasof & N. Finberg (Editors), *The Menachem Goldberg Book* (2001), 350.



abuse, and exploitation and find it difficult to bring their matter to the courts, because of the lack of knowledge and the lack of funds required to conduct legal proceedings and their high dependence on their employers.

The Israeli employers find ways to bypass the directives of the law on the issue of their dual functioning as employers and as manpower companies for foreign workers. In addition, the mandatory provisions regarding health insurance are not fulfilled.

The foreign workers walk in our streets and present us with a great moral challenge. The strength of a society is measured not only in its attitude towards the weak among it, which are flesh of its flesh, but also in the manner in which it treats those who have no voice, the foreigners, those who are not part of the community and society – the transparent people. In certain human societies it is accepted to think that the morality, the justness, and the world of values are valid only regarding the members of society who are defined as citizens. In contrast, there is an inferior class of foreigners who are not citizens and therefore do not have rights. These people are always the first to be hurt by the brutality of people in the dominant society. This was the case in the democracy of Ancient Greece, and this is unfortunately the case in many societies today.

#### 4. Social rights of foreign workers

##### 4.1 *Migrant workers in Israel – A new subclass*

In countries that see themselves as democratic states sensitive to individual rights and yet do not see themselves as migration countries, there is a dilemma how to preserve the social rights of migrant workers, without allowing them to settle in and attain citizenship.

Moreover, many of the absorbing countries are interested in preserving normal relationships with the sending countries, which do not view with approval the mass deportation of their citizens. In Israel, the problem was especially exacerbated for two main reasons. First, the Zionist ideology leads to the definition of the State of Israel as a country for the immigration of Jews alone and also sanctifies the Zionist value of “Jewish labor”. Second, the question of migrant workers today has and in the future will have implications in the political dimension on the relationships of Israel with the Palestinians, the residents of the Territories, who in the past constituted the main labor force in the areas of occupation with low status and salary<sup>25</sup>.

Labor migration presents the weak points of globalization. It reveals the structural contradictions of these processes in a most concrete manner, when the main one is the ‘schizophrenia’ that exists for the long term between the neoliberal economic interests (which pressure for the increased flexibility of borders and the crossing of the borders by capital, merchandise, and manpower) and national interests, which seek to strengthen as much as possible the borders against the unwanted passage of people from one side or another<sup>26</sup>.

In Israel, there is a policy that directs at the supervision of labor migration, but it does not have a policy that directs at the integration of migrant workers in the welfare systems of the state and in the general social system. From this respect, the migrant workers in the view of the state are first and foremost “foreign workers”, without any intention to change their status to

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<sup>25</sup> L. Filovsky, ‘Absent present’, the research of the functioning of manpower organizations for the treatment of migrant workers in Israel and the relationship between them and the authorities”, in R. Natanson & L. Achdut (Editors), *The new workers – Workers from foreign countries in Israel* (Tel Aviv: HaKibbutz Hameuchad 1999), 84.

<sup>26</sup> A. Camp & R. Reichman, Foreign workers in Israel, in *Information on equality* (Adva Center: June 2003). See: [http://www.adva.org/ivrit/EQUALITY\\_MIGRANT\\_HEB.pdf](http://www.adva.org/ivrit/EQUALITY_MIGRANT_HEB.pdf).



“immigrants”. The presence of “foreign workers” is tangible as long as it addresses “labor” and they are almost totally absent in all that pertains to the rest of the areas of life<sup>27</sup>.

The significant entrance of migrant workers who are not Palestinians during the 1990s created a new minority group in the social structure of the State of Israel, whose marginality is anchored in three dimensions: economic, political, and social. In essence, this is a new underclass in Israeli society.

The scholar Diane Sainsbury presents a number of models for the examination of the issue of immigration to capitalist countries. In the United States, where there is a liberal welfare government (rights based on need), the giving of rights to immigrants in general and migrant workers in particular is most comprehensive – the rights are given according to the person’s citizenship and place of birth. In Germany, where there is a conservative government, the welfare policy adopts a model of exclusion and giving work rights according to local labor laws. In Sweden, the social-democratic model is accepted and the social rights are granted on the basis of residence, or in other words, a resident in Sweden, regardless of his origin, is entitled to the full rights of the Swedish welfare state<sup>28</sup>.

In Israel, given the lack of a clear policy towards the migrant workers, it is possible to identify a “switching” between the three models described by Diane Sainsbury. While the official policy of the government of Israel is the absolute exclusion of migrant workers from the different systems of the Israeli welfare state, at the same time the judicial system applies the principles of labor law in all that pertains to the granting of social rights to the migrant workers and the family members of the migrant workers receive government services such as health and education, like with the American model.

#### 4.2 Social human rights in the State of Israel

Many cynics will assert, especially in the present era, that that it is difficult to find in the Western world a society that departs from basic standards of social justice like Israeli society, a society where fewer and fewer people enjoy fundamental freedoms, where inequality acts to benefit the capital owners and harms the weak, and where educational opportunities become steadily more the province of those with means. It seems that the Israeli perception of social justice has adopted Darwinist principles.

A free person is a person who enjoys as many freedoms as possible, from the freedom to express the self, to believe, to demonstrate, to participate in the political process, and other freedoms. These are called civil and political rights. However, these rights do not have meaning without the assurance of another group of rights – the social rights. These are the rights that are embodied also through the modern welfare state.

What meaning does the right to privacy have for the person who lacks a residence? What benefit do political rights have for a hungry or sick person? What is the essential value of the right to freedom of expression for the person who lacks an education? What does the definition of the State of Israel as a democratic state help when the masses of migrant workers and their families walk among us with constant fear, live in horrible conditions, and are subject to the cynical exploitation on the part of their employers? In the Israeli liberal discourse the freedoms and rights

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<sup>27</sup> H. Fisher, International comparative examination of the employment of foreign workers, 1996, in *Information on equality* (Adva Center: Volume 13, June 2003).

<sup>28</sup> D. Sainsbury, 2006. Immigrants’ social rights in comparative perspective: Welfare regimes, forms of immigration and immigration policy regimes. *Journal of European Social Policy*, 16, 3: 229-224, in Z. Rosenhek, “Welfare State: Citizenship, Rights, and Distribution of Resources – Part 3”, p. 325.

of those who are not found at the heart of the social-political experience still have not been accorded considerable recognition, especially their rights in the field of labor.

In the approach of the President of the High Court, Professor Aharon Barak, under the category of positive rights, rights that impose the obligations to act to benefit the person, it is possible to find most of the social rights, such as the right to work, the right to health, and the right to housing. This framework also includes a number of cultural rights, such as the right to obtain a basic education<sup>29</sup>.

According to Guy Mondelek, the State of Israel relies on a moral constellation that produces a steadily increasing inequality between individuals, among whom the feeling of social belonging is steadily disappearing. He notes that there are factors in society that have high hopes for the legislation of the Basic Law: Social Rights (legislation that has been often talked about but has yet to materialize). Mondelek objects to the dichotomy that sees the political civil rights to be “the rights of the strong” and the social rights to be “the rights of the weak”. Such a dichotomy clearly leads to a reduction of the value of the social rights<sup>30</sup>.

##### 5. Moral functioning of the state in the treatment of migrant workers

The authorities that enabled the entrance of migrant workers into the State of Israel are also supposed to supervise the way in which the employers utilize the permits granted to them and are also supposed to provide the services of the welfare state, and at least basic services, to these migrant workers who have come through the gates of the State of Israel in the past three decades.

For three decades many foreign workers have worked in the State of Israel, when the authorities have turned a blind eye towards the exploitive conditions under which these workers are employed and the Israeli public has accepted the phenomenon, which includes inappropriate residential conditions, withholding of wages, lack of payment for extra hours and wages lower than the minimum wage, confiscation of the passports by the employers, and so on. The lack of the enforcement of the law against employers continues, and the state acts energetically against the exploited workers and does not uphold the law with the exploiting employers. The enforcement of the laws that are supposed to protect the workers is slow, and even when a fine is leveled against a criminal employer the State refrains from actually collecting it. The data of the Association for Civil Rights in Israel indicate that in actuality only 7% of all the fines imposed on employers who acted against the law were collected<sup>31</sup>.

Following the criticism of the arrangement for the employment of foreign workers in Israel, which was called the ‘binding arrangement’ because it binds the foreign worker to the employer and creates favorable conditions for the worker to be exploited by the employer, and following the ruling of the High Court of Justice, the state published work procedures for employers that arrange the rights of migrant workers and their employment conditions. These procedures were changed a number of times following public pressure, and they undergo a process of constant improvement. However, the implementation of the procedures in the field is problematic, and the officials in the Population Administration Bureau continue to act as if they do not exist. Moreover, in actuality these procedures are implemented only in the industries of nursing care and agriculture. In the manufacturing and service industries the employers operate according to old work procedures, while in the construction industry there is an arrangement according to which the workers are employed by manpower companies, through which they can

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<sup>29</sup> A. Barak, *Interpretation in law – Gate of god* (Jerusalem: Nevo Press), p. 364

<sup>30</sup> G. Mondelek, Social-economic rights in the new constitutional discourse, in *Labor Annual*, 7, 65.

<sup>31</sup> The Association for Civil Rights in Israel, *Situation Report*, 2005.

change their employers and once in a set period they can move from company to company. To date, it is quite clear that the various arrangements adopted in Israel regarding the employment of migrant workers have not achieved their goal. As a result of the different procedures, there is lack of clarity in the field. It is not clear which procedure applies to the specific worker; many workers are not aware of the different procedures and sometimes also the workers of the Population Administration Bureau and the people in the enforcement unit of the Ministry of Interior are also not aware. The price is paid by the migrant workers who are forced to tie themselves to manpower companies and find it difficult to obtain social services and are even exposed to detention and deportation if they do not operate according to the manpower companies that helped them attain the lawful work permits.

The collection of payments for labor supply or labor recruitment is considered by international law and in many countries to be a practice of human trafficking, since it creates a relationship of 'debt bondage' between the employer and the worker, who is required to work for a long period under disgraceful conditions in order to repay the loans and obligations he undertook to pay the brokerage fees. Instead of acting against the unacceptable practice of charging large amounts from foreign workers who come to Israel as brokerage fees, and instead of increasing enforcement against the factors that operate against the law, the Ministry of Industry and Commerce chose to "permit the impermissible" and promoted an amendment to the Law on the Employment Service that enables for the first time the manpower companies and the individuals involved in the process of the recruitment of foreign workers abroad and in Israel to charge brokerage fees from the workers. This amendment to the law was met with strong opposition on the part of different social factors.

## 6. Perspective of the welfare state

### 6.1 *Exclusion of migrant workers in the Israeli welfare state*

The Bible of Israel states: "The same laws and regulations will apply both to you and to the foreigner residing among you" (*Numbers 15:16*). In other words, the Biblical commandment expresses the first principles of equality that constitute the foundation of a civilized society.

In all that pertains to the granting of social rights through the welfare state, it is possible to identify two models<sup>32</sup>:

1. The universal model. It is necessary to provide benefits/support to the entire population, without the clarification of every individual's status or economic status.
2. The selective model. It is necessary to provide benefits/support according to the differentiation between the status or economic status of the individual asking for / receiving support.

Social human rights cannot be realized as long as they were not defined quantitatively (for instance, the degree of social security to which the worker is entitled and in which areas), and as long as the economic resources for their realization have not been allocated. In other words, the amorphous recognition of social human rights does not make them rights that can be realized on the legal level. It is possible to describe this reality with the determination that the social rights are not executable by themselves, but rather additional legislative and administrative measures are needed to complete them. The social rights can be realized through the implementation of instruments that are used in the international dimension. The Conventions and Recommendations of the International Labor Organization (ILO) can provide a basis for

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<sup>32</sup> A. Doron, *The welfare state in the era of changes* (Jerusalem: Magnes Press, 1985).

quantification and determine the defined content of the social human right in a flexible way in that every state – which uses foreign workers – can shape according to its economic situation. Today, it is possible to find precise definitions in all that pertains to social human rights in the constellation of the conventions and recommendations of the International Labor Organization, which together form a codex of labor law and social security. The very existence of this codex obligates that on the one hand there today are universal human rights in all that relates to employment, appropriate work conditions, fair wages, and equality at work, the nature and scope of which are defined in them, and on the other hand what is determined in these conventions and recommendations on the social human rights at work is the core of these human rights that every state is supposed to anchor in its domestic legal method. Every country can add to the defined rights but not subtract from them, and every such subtraction will be considered a violation of these human rights<sup>33</sup>.

The phenomenon of migrant workers is steadily expressed in the public discourse following a large number of reasons. In the past decade, all the governments have attempted to deal with the problem of migrant workers through a policy of the reduction of their number, both through the reduction of the number of work permits and through the increase of the inspection and enforcement regarding illegal aliens, their deportation from Israel, and their detention, which was controversial, in the “Holot” open detention facility.

However, despite the corrections a significant reduction in the number of unlawful foreign workers was not seen. The difficulty derived from the multiplicity of government organizations that are handling the phenomenon of the foreign workers and the unlawful migrants: the employment service, the Ministry of Labor and Welfare, the Ministry of Public Security, the Ministry of the Interior, and the Foreign Ministry. It is not surprising, therefore, that the main recommendation of the inter-office committee appointed to form recommendations on the topic of the handling of the foreign workers was to concentrate all the handling in one organization – the Immigration Authority. This organization will handle all aspects relating to immigration: it will grant entry permits to Israel for every defined purpose, it will handle requests to obtain citizenship, and it will perform actions of inspection and enforcement of the law regarding the foreigners who enter and leave the state and stay in it. Another recommendation of the committee, which submitted its report in July 2002, is “to ensure a constant reduction in the number of foreign workers employed in Israel legally and illegally”<sup>34</sup>. In actuality, the Immigration Authority is an organization that operates on behalf of the state so as to limit the application of the welfare state for the migrant workers and the members of their family. The establishment of the Immigration Authority is perceived as a positive and vital step for a sovereign state that holds the legal right to pose limitations on the flow of immigration into it. The increase of the supervision over the entering foreigners, whether through the reduction of the number of work permits or whether through the increased effectiveness of the activity of the border police, is proper. Beyond this there are essential differences of opinion. Some maintain that the duty of the state is to deal harshly with all foreigners who are staying there illegally and to deport them from the state, lest the phenomenon expand to much more alarming proportions. In contrast, some hold that alongside the right of the state to limit the immigration into it there is the obligation to care for those who are already found in it, primarily those who were born in Israel (second generation of the foreign workers) and thus do not know any other reality. The ‘laundering’ of the foreigners who are found in Israel will grant them important social rights and will enable them to live with dignity, to integrate into society, and to enjoy the benefits of the Israeli welfare state. This policy, according to the proponents of this solution, will put Israel on the same level as many Western

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<sup>33</sup> R. Ben-Yisrael, *Labor laws – Volume 1* (Tel Aviv: The Open University, 2002), 194-195.

<sup>34</sup> *Report of the Inter-Office Committee on the topic of foreign workers and the establishment of an immigration authority*, Jerusalem, 2002.

countries that maintain integration and co-existence between the supervision and control of immigration and the granting of broad rights to immigrants who already reside in the country<sup>35</sup>.

### 6.2 *The International Convention of the International Labor Organization*

According to the International Convention of the International Labor Organization (ILO), which discusses the issues of foreign workers, a convention that the State of Israel has signed<sup>36</sup>:

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of the following matters:

(a) In so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities:

(i) Remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

(ii) Membership of trade unions and enjoyment of the benefits of collective bargaining.

This convention was never assimilated into internal law through a legislative act of the Knesset (Israel Parliament), but this does not mean that the convention has no implications on Israeli law. In the ruling of the High Court it was determined that this convention has interpretative implication and that it is presumed that the purpose of any law is to comply with the international obligations of the state<sup>37</sup>. Professor Aharon Barak further adds that "of two possible interpretations of the legislation it is necessary to choose the interpretation that is commensurate with public international law"<sup>38</sup>.

There is no doubt that the judicial system has adopted a principle according to which the State of Israel must act fairly towards migrant workers and their families. The controversial question is to what extent migrant workers can or should be included in the welfare state. In all that pertains to the migrant workers, there is a strong interest, which is the guiding light of the policy of the Knesset and the government, to prevent their immigration to Israel and to do all that is possible so that their stay in Israel will be temporary. The result is that the attitude displayed towards the foreign workers, both on the part of broad sections of the Israeli population and on the part of the different government systems, causes essential and significant harm to the rights of the foreign workers, thus contradicting the fundamental principles of international law regarding the work migration and the fundamental principles recognized in the different rulings of the Israeli judicial system.

Equality in our case means equal treatment for those who are equal and different treatment for those who are different. Discrimination means different treatment those who are

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<sup>35</sup> Editorial, Immigration policy in a changing global reality, in *Parliament Number 38*, December 2002 (Israel Institute for Democracy), 1.

<sup>36</sup> Convention on the Migrant Workers, Convention D, p. 37, Mark 6.

<sup>37</sup> High Court 2587/04 *Yizchak Buchris v. Assessor of the City of Hadera and others*.

<sup>38</sup> A. Barak, *Interpretation in law – Gate of god* (Jerusalem: Nevo Press), p. 576.

equal and equal treatment for those who are different. However, equality does not obligate identity. Sometimes to achieve equality, it is necessary to act from the difference; not every treatment that is different is discriminatory treatment. The principle of equality is based on the perception of relevance, as noted by Court President Agranat on the Boronovsky matter<sup>39</sup>.

“The principle of equality, which is but the other side of the coin of discrimination and which the law of every democratic state aspires for reasons of justice and fairness to illustrate it, means that it is necessary to address for the purpose of the discussed goal the equal attitude towards people, among whom there are no real differences, which are relevant to the same goal. If they are not treated differently, then we face discrimination. In contrast, if the difference or differences between different people are relevant to the discussed goal, then this would be a permissible distinction, if they are treated, for the purpose of the same goal, differently, as long as the differences justify this.”

The principle of equality between all workers, regardless of citizenship, nationality, and religion is anchored in a list of international conventions, when the main ones were also recognized by Israeli law. These international conventions define and arrange the status of the migrant workers. The article of Dr. Leonard Hammer, “Migrant Workers in Israel”<sup>40</sup>, examines the international legislation regarding the rights of migrant workers and the way in which it is expressed in Israeli law.

Dr. Hammer establishes his argument for the principle of equality between migrant workers and citizens on the following points:

- The universal declaration of human rights of the United Nations, which obligates the granting of basic fundamental rights to every person as a person.
- Two additional conventions of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural, and Social Rights, which were ratified by the State of Israel in 1991. The International Covenant on Economic, Cultural, and Social Rights recognizes the right of the state to give priority in the employment of its citizens but obligates it to treat equally every worker employed in its territory on the basis of the arrangements existing in its laws.
- The Convention of the International Labor Organization (ILO), which addresses domestic and foreign workers as equals. In the year 1952 Israel ratified Convention Number 98 of the ILO. This Convention was integrated into Israeli law alongside a number of other conventions, which define the rights of all workers. In Israeli law agreements are anchored regarding hours work and rest, forced labor, right to unionize, minimum wage, and equality in social benefits.
- The United Nations International Convention on the Protection of the Rights of All Migrant Workers, passed by the United Nations in the year 1990. Although this convention has not been ratified until today, it constitutes a source of moral authority that obligates the equal treatment for workers who lack work permits<sup>41</sup>.

The law applies, as aforementioned, to all workers, as arises from the report Israel submitted regarding the implementation of the United Nations International Covenant on Economic, Cultural, and Social Rights. However, the report said that these laws were not forced in Israel in a serious and systematic manner<sup>42</sup>.

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<sup>39</sup> Additional Court Hearing 10/69, Boronovsky v. Chief Rabbis, *Court Ruling*, 25(1) 357.

<sup>40</sup> L. M. Hammer, Migrant workers in Israel: Towards proposing a framework of enforceable customary international human rights.

<sup>41</sup> *Ibid*, p. 21.

<sup>42</sup> *Ibid*, p. 26.

The Report of the Adva Institute from June 2003 addresses another covenant of the International Labor Organization on the topic of worker pension rights. Covenant Number 48 of the ILO “obligates the state to provide pension rights of migrant workers, as accepted for its employed citizens. The State of Israel ratified this covenant in January 1963”<sup>43</sup>.

The trend that determines that the rights of the foreign worker will not be discriminated against in comparison to the rights of the local worker was reinforced in the decision made by the government of Israel when it began to massively import migrant workers<sup>44</sup>. The decision, first published in the national press by the employment services on 17 May 1993, included a number of conditions for the employment of a foreign worker:

- The contractor will pay the foreign workers according to law (minimum wage) and according to the collective agreements in effect in the construction industry.
- For every foreign worker the contractor is obligated to hire two unprofessional Israeli workers.

### 6.3 Status of the Labor Organization Convention on the issue of migrant workers

The international conventions regarding migrant workers have not been incorporated into Israeli domestic law by means of legislation. It would seem, therefore, that they do not create an obligation on this level. However, the position of the Courts in Israel is more liberal and the prevalent approach is that the international conventions have acquired customary status<sup>45</sup>.

In High Court 2857/04 the President of the High Court Aharon Barak permits the question of the customary status of the convention regarding migrant workers to be examined<sup>46</sup>. However, in an earlier ruling, High Court 4542/02, which was previously mentioned, Justice Edmund Levy determined that on the matter of the Convention for Foreign Workers “It is accepted by all that by virtue of the ‘presumption of conformity’ between domestic law and the provisions of international law, we are required to interpret legislation – like the authority acquired by a governmental authority – in a manner consistent with the provisions of international law ... and in the principle of the lack of discrimination between workers who are citizens and workers who are from foreign countries, which is anchored in the convention on migrant workers.”

However, the ruling of the High Court mentioned above addresses the rights of migrant workers according to labor laws. In all that pertains to social rights, it was recently determined that the personal fundamental rights of infiltrators and migrant workers, lawful or not, should not be harmed. This decision addresses in essence only the personal rights, and it cannot establish rules regarding the application of additional social rights<sup>47</sup>.

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<sup>43</sup> A. Camp & R. Reichman, Foreign workers in Israel, *Information on equality*, Adva Institute, Number 13, June 2003.

<sup>44</sup> Report of the Authorized Administration Number 9, Insurance and Pension Fund of the Workers of Construction and Public Works, Appendix 4.

<sup>45</sup> Y. Shany, Social, economic, and cultural rights in international law: What use can the Israeli courts make of them, *Economic, social, and cultural rights in Israel* (Y. Rabin, Y. Shani, Editors, 2004) 297, p. 342.

<sup>46</sup> See paragraph 15 of the court ruling of the President in High Court 2587/04, in Y. Shany, Social, economic, and cultural rights in international law: What use can the Israeli courts make of them, *Economic, social, and cultural rights in Israel* (Y. Rabin, Y. Shani, Editors, 2004) 297, p. 342.

<sup>47</sup> High Court 13/8425, Zary Gavrisiliasi and others v. The Knesset and others, *Court Ruling*, September 22, 2014.



## 7. Conclusion

Foreign labor is not a new phenomenon in the labor market in Israel. After the Six Day War, in Israel the model formed of the employment of Palestinian foreign workers on the basis of commuting. During the 1970s, the pattern of the employment of Palestinian workers from the territories steadily became established in Israel, when simultaneously the demand for unskilled workers, in the fields of agriculture, construction, cleaning, and nursing care, steadily increased.

In the 1990s, following the increase of terrorism and the policy of the imposition of closures, the model of the employment of Palestinian workers on a daily basis was replaced with the model of the absorption of migrant workers, on the basis of temporary contract, from the countries of Eastern Europe and the Far East. As the phenomenon of infiltration from the Egyptian border increased, the employment of migrants from Third World countries increased, particularly from Africa.

It would seem that the change in the composition of the workers in the foreign manpower did not cause an essential change in the labor market, since the percentage of foreign workers from all the work force did not change drastically. In actuality, the process presented Israeli society with new challenges because of the problems entailed by the absorption of the work migration.

While the Palestinian workers worked in the areas of Israel on a daily basis and returned to their place of residence, the massive absorption of the migrant workers from distant countries led to the formation of foreign communities in the large cities and the agricultural communities in Israel. The steadily increasing process of the friction between the citizens of the state and the migrant workers, alongside the steadily increasing competition for work places, increased the social disputes between the low classes and the migrant workers. The process of the reduction of the number of migrant workers was only partially successful following the continual infiltration of illegal foreign workers and the entry of asylum seekers from Africa.

From the moment that the government made the decision to deport migrant workers, the rights of migrant workers worsened. The maltreatment of the migrant workers by their employers worsened because of the workers' constant fear of deportation. Simultaneously, the migrant workers found themselves suddenly stranded in a foreign country without any possibility of approaching the government authorities in cases of the violation of their basic rights.

## Acknowledgements

This research did not receive any specific grant from funding agencies in the public commercial, or not-for-profit sectors.

The authors declare no competing interests.

