

# The Governmentalization of the Trade Union and the Potential of Union-Based Resistance. The Case of Undocumented Migrant Domestic Workers in the Netherlands Making Rights Claims

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## Abstract

Ambivalence about rights is well known: rights may both challenge existing injustices while simultaneously re-enforcing sovereign regulatory control over citizens. In this article, we focus on the paradox that potentially radical and transformative claims to rights are made at a site – civil society – that under liberal governmentality has increasingly become a site of government. By exploring the unionization of undocumented migrant domestic workers (MDWs) in the Netherlands, we aim to show how rights claims are shaped and controlled by civil society. Using the analytical category of (in)visibility, the case study discloses the dualistic role of the union. On the one hand, the union operated as a site of resistance supporting undocumented MDWs to make their rights claims. On the other hand, it operated as a site of government of the same undocumented MDWs by selectively promoting work-related rights claims and excluding more radical claims for the right to come and go.

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## Introduction

Ambivalence about rights is well known: rights may both challenge existing injustices while simultaneously re-enforcing sovereign regulatory control over citizens (e.g. Golder 2011, 2015; Hoover, 2013; McCann, 2006; McNevin, 2013; Perugini and Gordon, 2015; Scheingold, 1974). In this article, we focus on the paradox that potentially radical and transformative claims to rights are made at a site – civil society – that under liberal governmentality has increasingly become a site of government (i.e. the ‘governmentalization of civil society’, Pyykkönen, 2010).<sup>1</sup> This paradox has not yet received sufficient attention. Critical scholars studying rights performances of undocumented migrants generally rely upon one of two explanations: Rancière’s understanding of rights claiming practices as staging a dissensus between the included and the excluded (e.g. Anderson, 2010; Schaap, 2011)<sup>2</sup>; or Arendt’s understanding of a rights claim as a political act that potentially reconstructs the political space (e.g. McNevin, 2013; Parekh, 2014; Zivi, 2012). By contrast, we argue that an exclusive Rancierian or Arendtian perspective on rights claiming practices by undocumented migrants is at risk of overlooking the fact that these emerging political agents may also become subjected to governmental practices arising from *within* civil society (see, e.g. Barron et al., 2016). By exploring the unionization of undocumented migrant domestic workers (MDWs) in the Netherlands, we aim to show how rights claims are shaped and controlled by civil society.

Due to the absence of a legal status, undocumented MDWs often prefer to remain economically ‘invisible’, working in private homes where the risk of getting caught by the police is substantially lower (Kraamwinkel, 2016). However, a considerable number of undocumented MDWs worldwide, including the Netherlands, have chosen to become visible as political subjects by publicly claiming potentially transformative rights (Ally, 2005; Anderson, 2010; Schwenken, 2013). In 2006, undocumented MDWs joined one of the largest Dutch trade unions. This article investigates how the paradox of civil society as a site of conduct and site of resistance has played out in relation to rights claiming unionized undocumented MDWs in the Netherlands. It exposes, in particular, the dualistic role of the union. On the one hand, the union operated as a site of resistance, supporting undocumented MDWs to make their rights claims. On the other hand, it operated as a site of government of the same undocumented MDWs by selectively promoting work-related rights claims and excluding more radical demands, such as the right to ‘come and go’.

Our case study is based on interviews and participant observations. We attended several meetings of MDWs at the office of the trade union and we conducted 19 in-depth interviews with currently or formerly unionized MDWs, union officials, representatives of associations of (among others) undocumented MDWs and representatives of NGOs advocating migrants’ rights.<sup>3</sup> We also drew on observations and interview data gathered in 2009 and 2010 by Günther (2011).

We begin by examining the practice of making strategic and performative rights claims under conditions of liberal governmentality from a theoretical perspective. This section also draws on empirical studies to clarify the role of unions as a site of resistance and of government. We then describe the process of unionization of undocumented MDWs and focus on acts of resistance. This is followed by an examination of how the union not only enabled acts of resistance but also operated as a site of government. Finally, we conclude by revisiting the paradox of the labour union operating as both a site of resistance and of government. We suggest that rights and rights claiming practices are not only ambivalent, they are also multivalent.

### **Making Strategic and Performative Rights Claims and the Paradox of Liberal Governmentality**

In this section, we explain how strategic and performative rights claims may reverse or transcend existing power relations and how, under liberal governmentality, making those rights claims at the site of the union may adversely intensify the power that is exercised over the rights claiming subjects. First, a few words on our perspective on rights. In our opinion, human beings do not *possess* rights because (human) rights are somehow rooted in the essence of humanity. This is a commonly endorsed view in traditional human rights literature (e.g. Donnelly, 2003). As Zerilli (2005) has explained with respect to ‘women’s rights’, the freedom of women cannot be found in rights that they naturally possess; instead freedom is essentially a practice, ‘an active principle without end’ (2005: 86). In addition, when brought into relation with practices of freedom, ‘rights may be used to do more than affirm *what* we already are (...), they can and should affirm our desire to be something more’. Therefore, Zerilli argues, rights are political instruments of freedom that say, ‘go ahead’ (2005: 121): they open up rather than shut down the possibility of political engagements (unlike the idea of ‘*having* rights’). Hence, a critical engagement with rights, which is the aim of our case study, is first and foremost interested in the ‘doing of rights’ (i.e. making rights claims).

In critical sociolegal literature, scholars sometimes make a distinction between strategic or instrumental and performative aspects of the doing of rights (e.g. Zivi, 2012). Strategic or instrumental use of rights refers to rights as a means to achieve certain ends. By contrast, some critical scholars discard a strategic deployment of rights. This is because, instead of liberating the oppressed, a strategic deployment of rights silences them (Coleman, 2015) and obstructs democratic practices (Brown, 2003). However, we believe that a critical engagement with rights should also recognize that an instrumental use of rights may be very effective since the language of human rights is a significant political discourse. As Golder states with respect to Foucault’s strategic approach to rights:

[his] invocations of rights are strategic in this *incongruous* sense as they are situated within (the spaces, the available rhetorical tools, and so forth, of) a political formation but are intended to resist and go beyond that formation, to transform it. (2011: 295)

Indeed, even where it is acknowledged that rights confirm the power of the authorities, people may choose to invoke rights, because of their rhetorical power. This is the

point that McNevin makes as she concludes that irregular migrants and asylum seekers in Germany were perfectly aware

that the human rights regime on which they called for “protection” was deeply flawed and unable to offer a consistent approach to the “humanity” it claimed to defend. At the same time, however, human rights also offered a language that spoke to the dignity, liberty and shared history that irregular migrant activists sought to express. (2013: 197)

In addition, rights claims may visualize systemic vulnerabilities (Scheingold, 1974) or operate as ‘an optics of rightlessness’ (Odysseos, 2015: 1050). Hence, while some critical legal scholars argue that invoking rights in resistance movements is ‘dangerous’ (Sokhi-Bulley, 2014), we would suggest that the rejection of rights-based claims comes with the considerable political risk of not being heard. As a consequence, refraining from the use of rights language may turn out to be the more dangerous option. Therefore, we agree with a ‘certain pragmatism’ in the use of rights language which Golder (2015) ascribes to Foucault (see, in particular, pp. 155–156). At the same time, we acknowledge that instrumentalized rights are at risk of producing contrary effects. As Odysseos (2015) has argued in the context of the Bhopal gas leak, marginalized groups may be falsely promised that the legal instrument will remedy their grievances, resulting in depoliticization and the production of ‘rightlessness’.

A performative approach differs from a strategic means-ends approach to rights in that it exclusively focuses on the (unintended) effects of the speech act (i.e. the perlocutionary act). For example, people claiming rights in effect may stage a dissensus over the question of who has rights and, as such, they may contest their political exclusion (Rancière, 1998). Indeed, theorists of agonistic democracy hold that because rights claims are inherently plural and ambiguous, and political communities are incomplete, performing rights may transform political communities without necessarily reinforcing sovereign power (Honig, 1993). As Zivi has argued, while the language of rights ‘reinforces the idea (perhaps the fantasy) that we can have complete sovereignty over language and political outcomes’, the practice of claiming rights ‘like all speech activity [is] fundamentally unpredictable and always changing’ (2012: 38). Thus, central to the idea of the performative approach to rights is the radical symbolic force implicit in the language of rights. This stands in excess of rights as a legal form.

Thus far, we have argued that strategic right claims and performative right claims may reverse or transcend existing power relations. Yet, it can also be argued that the practice of claiming rights is first and foremost a technique of governmentality. In order to understand this argument, we need to reflect on civil society, which is the site where these rights claims are made. For Foucault, civil society is a constructed space of freedom, which is an important space for the government of the people. The liberal art of government, then, which Foucault calls ‘governmentality’, can be characterized by its government over the liberty, autonomy and capabilities of its main target: *the subject of interests*. This is distinct from previous forms of (sovereign) government that had the *subject of rights* as its main target (Foucault, 2008). Governmentality presupposes the freedom of the people and uses knowledge of their capacities (as a *subject of interest*) for the management of the population. Hence, instead of being a limiting and correcting

force to the state, under liberal governmentality, civil society has become an object of government (Pyykkönen, 2010). This process of governmentalization has been intensified under *neo*-liberal governmentality where 'civil society organizations and private actors [have] become partners of administration and service production, and partially submit their actions to the control of public administration, market rules and legislation' (Pyykkönen, 2015: 24).

This is not to say, however, that under *neo*-liberal governmentality, civil society organizations, such as trade unions, have been transformed into uncritical partners of the state and the market. Unions are also sites of resistance. For Foucault, the paradox is that under (neo)liberalism, government is increasingly conducted in and through civil society organizations, which are at the same time potential sites for *radical political actions*. Indeed, as Pyykkönen (2015) asserts, it is 'in and through [civil society organisations] that new and different interests and subjectivities of citizen emerge and become articulated, and marginalized individuals can get their voices heard' (Pyykkönen, 2015: 27). In other words, civil society is a place where new forms of the self and autonomy are invented, where new identities are formed and where politics takes place. This suggests that resistance may be mobilized within configurations of liberal governmentality. This is what Foucault called 'counter-conduct' (Foucault, 2007).

In this article, we examine how a large Dutch trade union fulfils this double role as a site of government and a site of radical political actions. Trade unions can play a crucial role in the governmentalization of civil society. This is true, in particular, for a corporatist society such as the Netherlands where the national government works closely with unions and employers' organizations through formal structures, on the basis of an exchange of influence for support (Andeweg and Irwin, 2002). This is not the only way in which unions govern people. Like many other (civil society) organizations, labour unions are organizations that actively govern the conduct of people: they structure action and they exclude, control, constrain and constitute actors (Amoore and Langely, 2004). On the other hand, unions offer people tools for looking at their lives in new ways and encourage people to resist dominant governmental practices. Indeed, as Foucault (1994) argued, 'union action might [. . .] in fact open up a space of invention' (p. 374). Hence, the process of increasing governmentalization of civil society confirms one of Foucault's main findings, namely, that power and resistance are tied together: 'where there is power there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power' (Foucault, 1998: 95). By contrast, resistance is inscribed in relations of power 'as an irreducible opposite' (Foucault, 1998: 96).

The study by Barron et al. (2016) illustrates how labour unions may operate as both a site of resistance and as a partner in liberal governmentality. It describes how the French labour union CGT supported the strikes by undocumented migrant workers ('*sans papier* workers') for regularization. However, in the end, the union became complicit in the government's exclusionary policies in that it decided which strikers would be eligible for regularization. In other words, the performative act of making rights claims, which initially staged a dissensus between the included and the excluded, and thereby gave rise to new political subjectivities, ended up intensifying government. The union played a double role in this process. On the one hand, the claiming of rights contested the boundaries of inclusion and exclusion since it was made with the support of the union.

However, simultaneously, the union attained the dubious role of deciding where exactly this boundary should be drawn.

This article examines the dualistic role of the biggest union in the Netherlands which, like the French union, both supported undocumented migrant workers to make their rights claims and intensified the government of this group. We use the analytical category of (in)visibility (Brightenti, 2007) for our study because it speaks to both Rancierian and governmentality analyses of rights performances. While performing rights in a Rancierian (and Arendtian) sense implies becoming *visible*, from a governmentality perspective, becoming *visible* also means becoming knowable and manageable (Tazzioli and Walters, 2016). Conversely, while being *invisible* may mean being outside of governmental control, governmental practices may also deliberately render subjects *invisible* by obscuring practices of marginalization and exclusion (Ansems de Vries, 2016). We use the analytical category of (in)visibility, in particular, to shed light on the paradox of rights claiming practices as being both potentially transformative yet also technical tools of liberal governmentality.

## The Union as a Site of Resistance

In 2006, in an unprecedented move, the public sector union Abvakabo FNV, which is affiliated to the largest Dutch trade union confederation FNV,<sup>4</sup> opened its doors to undocumented MDWs. In this section, we describe the process of unionization of this group and how the MDWs and FNV shaped their campaigns. Through this history, we demonstrate how the union acted as a site of resistance.

### *The Social Performance of Citizenship at Abvakabo FNV*

A policy change in 1998 had made it increasingly difficult for undocumented migrants to live and work in the Netherlands. Due to stricter controls, it became all but impossible to work regularly, to open a bank account or to obtain health insurance, while facing the constant risk of deportation. In this environment, domestic work was one of the few occupations that remained relatively safe for undocumented migrants. It was also in the context of increased checks that undocumented MDWs started to organize themselves. Before the FNV opened its doors, the group had been organized for almost 2 years in the form of Towards Respect and United Strength for Total Emancipation and Development (TRUSTED), an MDWs' association based in Amsterdam. It was composed predominantly of Filipino members, but also included other nationals, such as Ghanaians, Nigerians and Bolivians. The founding of TRUSTED in 2004 was backed by the Commission for Filipino Migrant Workers (CFMW), an organization which supported the Filipino migrant community, including MDWs. The aim of TRUSTED was the empowerment of domestic workers through both human rights and employment rights. More specifically, its goals were as follows:

1. the recognition of domestic work as proper work,
2. better working conditions and access to social security,

3. work permits based on the legitimacy of domestic work and
4. to give special attention to the rights of MDWs as a particular sector of migrants and to raise this as a central concern of the UN Human Rights agenda (CFMW, 2005).

These objectives suggest that TRUSTED approached rights predominantly in an instrumental means-ends way. However, these rights claims also had a symbolic force: becoming visible, having a voice, and being recognized were of central importance to the organization of undocumented MDWs. One founding member of TRUSTED explained:

Most of us then were not documented, and we wanted to come together with one voice to see if we can be recognized, if we can be heard, but then, nobody is listening to us, nobody wants to see us, most of us are hiding, but where are we, I said to come together, convert together, most people came out from their hiding, [thinking] I might be a voice. (Interview, MDW 2)

The desire to enhance the visibility of undocumented MDWs, and thereby to increase the likelihood of achieving their aims, motivated CFMW and TRUSTED to approach the largest Dutch labour union confederation FNV. In 2006, with the help of a few activist female union officials, the union *Abvakabo FNV* – which belonged to the FNV confederation and represented the public sector and the care sector – opened its doors to the membership of (undocumented) MDWs. Immediately, 250 MDWs joined the *Abvakabo FNV* (Günther, 2011).

For undocumented MDWs, union membership was not only instrumental to the goal of obtaining substantive rights. For them, becoming (visible as) a union member also meant being socially recognized and protected. As one member of TRUSTED declared, after filling in her trade union membership form:

Although this is just the beginning, we are now recognized by the trade union and we now feel we are part of the Dutch society (CFMW press release, 27 June 2005 cited in CFMW, 2006).

Thus, the new members uniquely valued their union membership card and the photo it included: ‘I possess a membership card, hence I exist’ (Interview, FNV official 1).

Some of the MDWs we interviewed used the membership cards as a form of identification, even after the card had expired. Some also recounted stories of union members who had been travelling by train without a valid ticket and whose union membership card had been accepted as ID after they had been caught by the railway guard. While these MDWs were well aware that the union membership card is not an official ID card, they were proud to have it in their wallet. Moreover, despite the fact that the union membership card literally increased their visibility, undocumented MDWs felt more protected as a result.

Becoming visible was a first step to gaining recognition, but how would the unionized MDWs proceed? During the first years of union membership, the *Abvakabo FNV* strategy was to encourage the MDWs to further organize themselves. This was on the basis that they had to become stronger before they could really push forward the claim to

regularization (FNV official 2). For one thing, a membership of a few hundred would not be sufficient to successfully make this kind of claim (Günther, 2011). ‘Becoming stronger’ also implied that MDWs should learn the Dutch language; then they could seek to obtain other rights, such as the right to receive healthcare, the right to open a bank account and the right to improve working conditions. Becoming empowered through obtaining all of these rights would make the next step of obtaining a work permit easier, according to the union. By then, undocumented MDWs would have become an unavoidable element in the Dutch community. It was argued that the claim that ‘we are here and we are workers’ would ultimately be followed by the logical next step, namely the issuing of a work permit (Interview, FNV official 4).

This shows that Abvakabo FNV approached rights mainly as a means to reach a certain end, for example, to obtain health insurance, or to get a bank account for undocumented MDWs. In this period, the union regularly consulted with medical insurance companies and banks to discuss the possibilities. But the union also approached rights as strategy. The piecemeal attainment of ‘smaller’ rights would make the attainment of *the* right – residence – inevitable. While this strategic use of rights may, as Foucault suggested, resist and transform existing political formations, it did not constitute a *political* act, in that it did not challenge the boundary between the included and the excluded. Rather, it involved the *social* performance of citizenship. The main idea was that by increasingly acting like Dutch citizens – including using Dutch medical facilities, bank accounts and enjoying 4 weeks of annual holiday leave – it would become difficult for the Dutch authorities to ignore the existence of undocumented MDWs in the Netherlands or to expel them. Hence, the strategy of the union assumed that, in the end, the (visible) social performance of worker citizens would result in the attainment of citizenship rights (by way of comparison, see Isin, 2008).

However, despite various union activities, little progress was made in terms of access to medical facilities or to bank accounts, let alone the obtaining of residence permits. In 2008, it became clear that Abvakabo wanted to end cooperation with this group of workers and, in 2009, MDWs were transferred to a different union within FNV: FNV Bondgenoten. This union, which also represented the cleaning sector, had some experience with undocumented workers<sup>5</sup> and was also more experienced in *organizing* workers (Günther, 2011). Dissatisfied with the results achieved at Abvakabo, the remaining union members signed a policy contract with FNV Bondgenoten, containing among other terms, the following demands: the recognition of domestic work as decent work, better conditions of employment, access to social security and access to work permits. These were largely the same demands as had been raised by TRUSTED a few years earlier. Only the demand ‘to give attention to the rights of MDWs as a particular sector of migrants and to raise this as a central concern of the UN Human Rights agenda’ was left out. This was because it did not fit with the union’s focus on the protection of workers’ rights, a point to which we will return.

### *The Political Performance of Rights at FNV Bondgenoten*

Even though undocumented workers are, in principle, entitled to basic human rights and (Dutch) labour rights, undocumented MDWs still ‘lacked the right to have rights’, which



was necessary to effectively enforce them (compare Anderson and Shutes, 2014; Triandafyllidou, 2013). The MDWs, in their discussions with FNV Bondgenoten, were aware of how ‘having rights [could] lead to agency and how agency [could] lead to having rights’ (Nuriyati and Pabon, 2009). They came to the conclusion that one way to draw attention to their *rightlessness* was to go out on the streets collectively demanding their rights; literally demonstrating that ‘they are here’, by actively participating in Dutch society.

The first time the unionized MDWs appeared collectively in public space was in 2010 when they joined in the actions in support of a cleaners’ strike. This was both an act of solidarity and a way of presenting themselves to the cleaners as members of the same union section (Nuriyati and Pabon, 2009; Interview representative of an association 3). It was also a way to push forward their own demands. This was because being part of the cleaners’ action made it both easier and safer for the undocumented MDWs to (also) demand labour rights for domestic workers (Interview, MDW 2).

A second opportunity for collective action involved the refusal of the Dutch government to ratify ILO Convention 189, which it had signed 2 years earlier. The ILO Convention recognizes domestic work as ‘decent work’ and requires that (documented) domestic workers are covered by the same employment protection as other workers. After the refusal of the Dutch government to ratify the Convention, the undocumented MDW members of FNV Bondgenoten wanted to voice their disappointment. On 2 November 2013, 500 people (MDWs and supporters) marched through the streets of Amsterdam. They carried signs which read ‘Ratify ILO 189’; ‘domestic work = work’; ‘we care for your children’; ‘migrant rights are human rights’; but also ‘legalize our work’. The protesters also wore keys around their neck, symbolizing their access to the private homes of Dutch citizens for whom they were providing care. This also indirectly symbolized their participation in Dutch society.

It is important to note here that in both actions – the solidarity action with the cleaners and the rally for the ratification of ILO C189 – the main claims were not directly related to improving the situation of the *undocumented* MDWs. The rights claims articulated by undocumented MDWs were not instrumental in that sense. In the solidarity action, the undocumented MDWs supported the cleaners’ claim to fair wages and working conditions. In the rally for ratification, the MDWs supported, in point of fact, the rights of those who could actually claim these rights before the court (i.e. MDWs in possession of either a residence permit or Dutch citizenship status). However, these acts of rights claiming were important for quite different reasons. They had the effect of bringing undocumented MDWs of different nationalities into the public space as a political group. Our interviews confirm this performative aspect of this rights claiming activity. Interviewees emphasized that the participating MDWs were proud to become *visible*, to be able to show themselves in public. Some of them even cried (Interview, FNV official 3). They could finally express themselves in public space:

It was evidence or proof that you don’t have to be afraid. It’s your right, you don’t violate any laws. It is freedom of expression, you want to express your feeling, your sentiment about the issue involving your rights. (Interview, MDW 4)

Indeed, the collective visibility involved in their performance of rights claims was at least as important to the participating MDWs as the substance of those claims. First and foremost, they desired social recognition: they wanted to show that they were here, actively taking part in Dutch society. They were in fact saying: ‘We are part of this society, acknowledge us, respect us’ (Tazzioli and Walters, 2016: 452).

These performances of rights had an important symbolic meaning for the undocumented MDWs at the moment of the events. However, this ‘staging of a dissensus’ had very little political effect. To the disappointment of the MDWs, nothing substantive came out of it, such as the recognition of domestic work or improved working conditions. Nevertheless, what seemed to bother them most was the fact that there was no prospect that their work and presence in the Netherlands would be legalized. In 2011, one of the initiators of the cooperation between MDWs and FNV – the CFMW – withdrew its support. Some years later, TRUSTED also left the union. When we conducted our empirical research, union meetings had become less regular and MDWs’ union membership had declined from some 400 members in 2012 to about 100. We would argue that this can partly be explained by the role of the union as a ‘governor’ of the unionized MDWs. We turn to this hypothesis in the next section.

## The Union as a Site of Government

Why would undocumented migrants turn to the union to perform their rights claims? There are plenty of examples of undocumented migrants who have been making claims to rights without the help of a union. For example, in the Netherlands, a grass-roots movement – the ‘We are here’ movement – consisting mostly of rejected asylum seekers unable to return to their country of origin has been a constantly visible political actor for several years. The same is true for the *sin papeles* movement in Spain (Barbero, 2012). We agree, however, with Parekh’s interpretation of both Arendt’s theoretical work on rights and Rancière’s account of rights performances: for rights claims of undocumented people to be recognized as meaningful political practice, the state of appearance of the claimants should be ‘reliable and durable’. People do not necessarily need to have ‘the right to have rights’ in order to make rights claims nor need they only make these claims in an institutionalized context, but political action by undocumented migrants often lacks the conditions to make their ‘opinions significant and actions effective’ (Arendt, 1978; 296, cited by Parekh, 2014: 656).

FNV<sup>6</sup> was able to guarantee this reliable and durable appearance. With more than one million members, FNV is an important partner in Dutch corporatist society. Indeed, as almost all interviewees emphasized, the undocumented MDWs needed the powerful stage provided by the union in order to ensure that their voices would be heard, despite the fact that collaboration with the union was at times unsatisfactory. As one representative of an MDW association put it:

There is always the fact that this is a little bit like Calimero and the big organization, and that’s also why a lot of domestic workers found it really very important to stay in the union, to fight, and hope etc . . . It is of course a formal, recognized, organization in the Netherlands that has quite insolvable power structure, and it’s big of course. We, as Calimero do not have that power organization. (Interview representative of association 1)

Indeed, the MDWs had need of FNV Bondgenoten to organize the protest, together with the cleaners as well as their own rally, in November 2013. They would never have been able to do this on their own (Interview representative of an association 1). Moreover, it was because of the involvement of the union that many of the undocumented MDWs, who previously had preferred to remain *invisible* in order to avoid getting caught by the police, dared to risk marching openly on the streets without legal documents. Ironically, they were to be escorted by the same police during their march in 2013.

However, the case of the undocumented MDWs raises a possibly insurmountable problem: whereas union membership provided a stable and durable political appearance for undocumented MDWs as a result of which they were able to make meaningful rights claims, the labour union also operated as a central vehicle by which the art of *government* became stabilized and durable (Thompson, 2011).<sup>7</sup>

The government of unionized undocumented MDWs occurred in several ways. First, the registration of union workers made MDWs knowable and therefore governable subjects. Even though the union did not administer the address and bank account of the undocumented MDWs, we observed that a substantial part of the meetings we attended was dedicated to administrative issues involving, among other things, the payment of union fees, the receipt of attendance fees and the issuing of membership cards. However, at the same time, the union membership card also resisted official (migration) policies since, for some MDWs, the card served as an (official) form of identification.

A second example of union government concerned FNV's organization of unionized MDWs along nationality lines, such as the 'Filipinos' and 'Indonesians'. This ignored the fact that workers from one nationality could be members of several different (MDW) associations (this is especially the case for nationals of the Philippines). By contrast, other workers were not organized according to nationality. For these members, the FNV actively constructed new identities and MDW associations such as 'the Latin-American group', 'the African group' and 'the Indian group'. The organization of portions of the membership along the lines of (visible) nationality was clearly contrary to FNV policy, which emphasized (general) workers' rights. Nevertheless, it seemed to work effectively as an instrument of governmentality.

There was a third and more important way in which the labour union intensified the government of undocumented MDWs. The union produced the undocumented MDWs as 'union workers', as a result of which, other identities and relationships were unacknowledged or even suppressed. This included the identity of an undocumented migrant struggling to build a life without legal documents, the relationships with non-unionized co-nationals and associations and the identity of a transnational worker whose centre of (family)life remains located in his or her home country. We turn now to those suppressed identities and relationships.

### *Collectivization of the Demands of Undocumented MDWs and Documented Domestic Workers*

The interview data clearly showed that the FNV viewed and treated the group of MDWs primarily as *workers*. It mostly rejected special treatment of the unionized MDWs based on their undocumented status. For example, when asked about affiliated associations of

the MDWs, an FNV official emphasized that ‘the only thing that counts for us is that they are all domestic workers’ (Interview, FNV official 6). Another FNV official, to whom we asked about the extent to which the FNV took the lack of residence status of the unionized MDWs into account in their campaigns, responded: ‘I only know two kinds of workers: workers who are member of the union and workers who are not a member of the union. I do not know any other differences’ (Interview, FNV official 3).

This view clearly failed to recognize the most important demand of the undocumented MDWs: the legal recognition of their work and hence of their presence in the Netherlands. Moreover, although the FNV had opened union membership to *undocumented* MDWs, the union was not willing to *really* fight for the legalization of that work. To some extent, this may be explained by the union’s role in corporatist government. For example, one of the reasons that undocumented MDWs had to transfer from Abvakabo FNV to FNV Bondgenoten apparently was because the representation of undocumented workers did not fit with a public sector union which has strong connections to the government. FNV Bondgenoten was less troubled by this affiliation. It had even been collaborating with labour unions in other European countries in order to consider new models for work permits that would better cover the needs of contemporary undocumented workers (Interview, FNV official 4). However, despite the fact that Bondgenoten was more sympathetic to the legalization of undocumented MDWs, it did not actively lobby for legal status. This was noted by an (disappointed) MDW: ‘they don’t want to bring the issue about this up, immigration status they say it must be from the labour rights. That’s why it is not going anywhere now’ (Interview, MDW 7). One of the union officials confirmed that it was not the policy of the FNV to actively address the issue of work permits (Interview, FNV official 6, 2015). According to another FNV official, the union generally avoided touching on divisive issues such as legalization: ‘as soon as it becomes controversial, as is the case with illegal persons, FNV is inclined to hide in order not to become open to critique’ (Interview, FNV official 2).

An important consequence of the categorization of undocumented MDWs as workers was that it obscured their specific demands. This can be illustrated by the FNV lobby for the ratification of ILO Treaty 189. As we noted above, Dutch ratification would not (directly) improve the working conditions of the undocumented MDWs. Hence, the rallying of undocumented MDWs actually defended the interests of the absentees, namely the native Dutch and documented MDWs. One representative of an MDW association was well aware of this situation:

I think that as far as FNV is concerned, it was the main content of that campaign. (. . .). It is fine because of course for the first time in history, the rights – the domestic workers are recognized as workers with full rights as workers with the rights of labour. That’s fine. That is trail-blazing but for the undocumented domestic worker, it doesn’t really mean anything because in the first place, they are undocumented. So what rights can they avail themselves of being, you know, in this country, when they are not even legal – considered to be legal, in this country. (Interview representative of an association 3)

Meanwhile, despite the fact that undocumented MDWs were playing an important role in the preparation of ILO Convention 189,<sup>8</sup> in the lobby at the ratification, the

FNV continued to focus on the position of ‘regular’ domestic workers.<sup>9</sup> In addition, it chose not to lobby for the specific situation of undocumented MDWs (Interview representative of an association 1).<sup>10</sup> Thus, the production of the undocumented MDWs primarily as workers, whose demands could be assimilated into those of documented domestic workers, not only mistook the identity of undocumented MDWs as people struggling to build a life without legal documents. It also ultimately rendered undocumented MDWs *invisible*.

### *Decollectivization of Undocumented MDWs*

Being categorized as (union) workers also misjudged the relationship of unionized MDWs with their associations. In the past, FNV co-ordinators had called on associations of MDWs to unify themselves, on the basis that this would bring more members to the union and help to overcome structural barriers – such as lack of a common workplace – to organizing domestic workers (Günther, 2011; Nuriyati and Pabon, 2009; Van Hooren et al., 2016). Union officials had even actively supported the founding of the Indonesian association Indonesian Migrant Workers Union in 2011. However, when we conducted our empirical research (2015–2016), there was little collaboration between the FNV and the different (mainly nationality based) associations.

Some of the MDW associations, such as CFMW and TRUSTED, had ended their collaboration with FNV because they felt that there was no equal partnership between the grass-roots organizations and the union. Their view was that the FNV did not really want to build on the years of campaigning experience of the MDWs. Affiliates of these associations mainly criticized the top-down approach of the union. For them, it seemed as though the FNV told the MDW associations what they had to do instead of collaborating with them on equal terms. As one TRUSTED member argued: ‘it is no more a marriage, it is no more working together, it is now an instruction’ (Interview, MDW 2).

Other organizations remained supportive, but criticized the lack of good communication structures between the MDWs and the FNV. According to one MDW member, they had little say on the agenda that was already set by the FNV (Interview, MDW 4). This was confirmed by our observations of the regular meetings at which the FNV officials set the agenda and the MDWs played a rather passive role.

The friction between the union and some of the MDW associations is further illustrated by the following anecdote. In 2012, a few MDW associations took the initiative to form an alliance. The idea was that this alliance would serve as a springboard for the monthly meeting of the MDWs at the FNV office. According to one of the initiators, there was a need for such an alliance because some of the undocumented MDWs were hesitant to go to FNV meetings because of their visibility and the associated perceived risk of exposure. Some MDWs allegedly even thought that the FNV was part of the government (Interview representative of an association 4). Creating an alliance, the initiators believed, would make the FNV campaign for MDWs stronger. However, the FNV officials were sceptical. According to the initiators, the officials were afraid that deliberations within the alliance would replace the monthly FNV meetings. In the end, the idea failed.

A representative of an NGO suggested that the refusal of the FNV to genuinely collaborate with MDW associations was due to increased competition between civil society organizations on human rights issues. This was true in particular for the FNV which has experienced a decline in membership in the past decades. Due to its need for new members, the FNV would want to claim credit for the activities organized on behalf of MDWs (Interview, NGO representative 1). This could well have been the case, as the FNV has put considerable effort into becoming more attractive to different types of workers. However, what is more important for our purposes is that by refusing to genuinely cooperate with the MDWs' associations, the FNV in fact decollectivized the more radical demands of the undocumented MDWs for legal status.

### *Tying the Demands of Undocumented MDWs to the Nation State*

In addition to decollectivizing the demand for legal status, the FNV also failed to recognize the identity of the unionized MDWs as transnational workers whose centre of (family) life is still located in their home country. This is illustrated by a disagreement between FNV officials and unionized MDWs during an expert meeting that took place several years ago. Van Walsum (2011) describes how, during a discussion on the possible direction of action, a substantial part of the MDWs demanded a permanent work permit for self-employed workers. This would give them more freedom to work for whoever they wished and to return to their home country. What mattered for these MDWs was not necessarily access to national labour rights. Instead, they desired first and foremost a legal right to come and work in the Netherlands and to return to their home country at will. After all, most undocumented MDWs are (female) migrants who work in a foreign country in order to take financial care of their children and other family members that they have (temporarily) left behind in their home country (Yeates, 2012).

FNV officials did not support the proposal of the MDWs because, as self-employed workers, MDWs would not be entitled to employee protection. This rejection on the part of the labour union was understandable from the union point of view. If MDWs gained self-employed status, other *documented* domestic workers could also be denied the status of worker and hence fail to gain access to (the full range of) workers' rights. Nevertheless, the FNV's focus on (national) workers' rights clearly failed to recognize the fact that most undocumented MDWs are transnational workers.

Our interviews also revealed that not all MDWs aspired to a conventional residence permit or a work permit. What mattered most to some of the interviewed MDWs was that they would have a document that would keep them 'out of trouble' while working in the Netherlands. Therefore, the 'ID card' issued by the trade union was valued highly: it provided the MDWs with some kind of security. Nevertheless, they preferred a document that would give them access to important services which are unavailable to undocumented individuals, such as the ability to open a bank account, health insurance and obtaining an indispensable chip card for public transport. In return for access to these services, they would gladly pay taxes.

It could be argued that these MDWs demanded a new form of citizenship, one that transcended the boundaries of inclusion and exclusion: they were claiming 'a right to come and go' (instead of the right to 'come and stay'; Fernandez and Olson, 2011). Of

course, it can be debated whether this is a *new* right – most international legal scholars in the eighteenth and nineteenth centuries simply assumed the existence of a right to free movement for persons (Dembour, 2015: 118). Significantly, invoking a right to come and go puts the current dominant principle of state sovereignty in a different perspective. Yet, claiming these rights should not only be viewed as a means to reach a certain end. We should also examine the effects of such a claim to rights. The claim for a right ‘to come and go’, for example, may have the effect that we start thinking about what it means to live in a globalized world, in which people do not remain in the country where they are born and raised for the rest of their lives. Indeed, articulating the right to come and go could have the effect of reimagining social and political relations, and it could problematize the corporatist government of the social citizen that is tied to the nation state (Rose, 1999).

### **Conclusion: Government, (In)visibility and the Multivalence of Rights**

Undocumented migrants performing rights are potentially dangerous for the status quo in nation states, as they embody the contradiction in the arrangements that exclude them (Krause, 2008). In this article, we have examined the paradox that civil society, in which both strategic and performative rights claims are made, is at the heart of a liberal governmentality that has the *subject of interests* as its main target. We have considered how this paradox has been played out in the case of the unionization of undocumented MDWs in the Netherlands.

The case study has shown that, in the first period of union membership, undocumented MDWs who were *invisible* – working in the shadows of the economy – emerged as *visible* and thus governable (and manageable) subjects of the FNV. In the second stage, the FNV rendered the potentially radical rights claims of undocumented MDWs *invisible* by (1) aligning the rights claims of undocumented MDWs with those of documented domestic workers (i.e. collectivizing demands), (2) detaching the rights claims of unionized MDWs from the rights claims of their associations (i.e. decollectivizing demands) and (3) shaping the claim to a right by undocumented MDWs to come and go into workers’ rights tied to the nation state. FNV thus moulded rights claims of undocumented MDWs into national workers’ rights, excluding more radical claims that would dispute the boundaries of inclusion and exclusion. Moreover, this rendered undocumented MDWs in effect *invisible* and prevented the FNV from compromising its domestic policies and role in corporatist government. In sum, the labour union FNV – as a site of civil society – not only managed (and governed) the *economic subject of interests* but also the *subject of rights*. It did this by channelling potentially radical and passionate expressions of discontent and demands for structural changes into the language of workers’ rights (Odysseos, 2010).

That said, the case study also showed that the FNV operated as a site of resistance. First, the practice of claiming (instrumental) rights, such as the right to a bank account and to medical insurance, while at the same time performing social citizenship, *visualized* – in a non-political way – the simultaneous inclusion and exclusion of undocumented MDWs in Dutch society. Second, the union provided a platform for the political

performance of rights when undocumented MDWs appeared as *visible* political agents on the public stage. The act of claiming rights had a radical symbolic force in that it was first and foremost about gaining social recognition. Moreover, the union's government of the unionized undocumented MDWs – as subjects of rights – did not prevent them from staging a dissensus over their political inclusion and exclusion when they marched through the city of Amsterdam (Ranci re, 1998). Put differently, by making rights claims, MDWs shared their private stories with the public and, in this way, they enacted their political inclusion (Eleveld, 2015).

The case study further illustrates that civil society institutions may create counter-conducts (Foucault, 2007; Sokhi-Bulley, 2014) that problematize forms of government of the same civil society institution. 'Doing rights' on the big political stage, facilitated by the FNV, increased the self-confidence of unionized, undocumented MDWs. It also spurred some of the unionized MDWs to think of alternative rights outside the toolbox of the FNV, and problematized the FNV's art of government of citizens as tied to the nation state. This finding was confirmed when we returned to the field and visited another meeting of the union and the MDWs in autumn 2016. We wanted to discuss our research results with our respondents. Besides finding our results broadly confirmed, we also witnessed a revival of activism by the MDWs. Their associations now took the lead in setting a new agenda for activism, while the union was merely invited to participate.

In conclusion, there is no easy solution for the dilemma that the union operates simultaneously as a site both of resistance and government. For one thing, the MDWs would not have entered public space in such great numbers without the help of the FNV. In addition, making rights claims in public always needs some degree of organization, which creates new forms of exclusion and control. This is true even where rights claims are entirely performed by the so-called grass-roots organizations. For Foucault, these games of power should be played with 'as little domination as possible' (Foucault, 1997: 299). In our opinion, it is likely that more active collaboration between associations of undocumented MDWs and the FNV, as has been the case in the United Kingdom, would be helpful in achieving the goal of minimizing relations of domination. It should be noted, however, that the successful collaborative campaign of MDW associations and the union in the United Kingdom, resulting in the legalization of undocumented MDWs, also re-inscribed the power of the state to draw new exclusionary boundaries (Anderson, 2010). Hence, even a rights claim to come and go, that reimagines social and political relations, may end up re-enforcing regulatory sovereign control over citizens when it is interpreted as a claim to temporary residence rights for a specific group of migrant workers.

We want to end this article by suggesting that a rights claim to come and go may also have a third, unintended effect, namely, that of enhancing a neo-liberal governmentality that, compared to liberal governmentality, 'is more "tolerant" of difference' (Hamann, 2009: 53). Indeed, a world without borders fits perfectly well with a neo-liberalism that seeks to enable the global 'natural' movement of economic *subjects of interests*, such as transnational MDWs. These workers are needed by an increasing number of families in the Netherlands who are outsourcing cleaning and care worker because both partners are engaged in paid employment. We therefore raise the question whether we should conceptualize rights claims not (only) as *ambivalent*, but (also) as *multivalent*. The



*multivalence* of rights suggests that the act of claiming rights is not limited either to challenging existing injustices or exercising (sovereign) regulatory control that limits the ‘freedom’ of people (e.g. by creating new exclusions). The act of claiming rights could also have the effect of creating spaces of freedom that enable the global neo-liberal governmentality of transnational workers.

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### **Notes**

1. In this article, we will use the term ‘government’ in a Foucauldian way. This means that we do not understand government as ‘the state’ or ‘sovereign power’. Instead, ‘to govern is to conduct’ and ‘[g]overnment is the conduct of one’s (and others’) conduct’ (Golder, 2015: 53). Government thus refers to an attempt to modify behaviour and actions which is not confined to the management of the state.
2. For Rancière (1998), politics is about challenging the existing police order, which determines who has a part in an existing order, who counts. Therefore, he argues, politics is essentially about staging a dissensus of the previous (police) order.
3. The interviews and participant observations took place between November 2015 and March 2016. We selected our interviewees through snowballing and by approaching those who were present at the meetings we attended. As a consequence of this sampling method, our interviewees were among the most active migrant domestic worker (MDW; former) union members.
4. In 2015, most of the unions belonging to the FNV confederation merged to form one large union which was also called FNV. Therefore, while most of our interviews were done with ‘FNV officials’, some of them had previously been part of the public sector union Abvakabo FNV, while others belonged to the private sector union FNV *Bondgenoten* (members).
5. In particular, Polish workers in the early 2000s.
6. This applies to both FNV *Bondgenoten* and Abvakabo FNV, which were among the largest unions of the Netherlands. In 2015, they merged into one new union, called simply FNV.
7. This is not to say that undocumented workers would have been able to escape government if they had discarded union membership or if they had gone ‘underground’ (Papadopoulos et al., 2008). Undocumented workers, then, will always (have to) anticipate forms of control.

- Meanwhile, remaining invisible as an undocumented worker comes with the cost of not being heard or recognized and of being deprived of some essential human rights.
8. A Dutch FNV delegation, including two MDWs actively participated in the preparation of this Convention at the 2011 labour Convention in Geneva.
  9. For example, see FNV, 2013. The FNV brochure on the legal position of domestic workers (FNV, 2013) that was published after the rally only spends a few lines to the specific position of undocumented MDWs, and the recommendation of this brochure does not refer at all to undocumented MDWs.
  10. In this case, in fact to RESPECT, a network organization that is also related to a European network of domestic worker representatives.

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