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18 Challenges of Recognition, Participation, and Representation for the Legally Liminal: A Comment

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Abstract

Following the approach to social justice taken in this book, we would like to bring attention to issues of recognition, participation, and representation as these are linked to migrants' legality and their rights in the chapters by Petchot (17), De Vlieger (16), and Mora and Handmaker (15). These three issues are closely intertwined. In this review chapter, we start by recognizing the implications of migrants' liminal legality, of migrants' rights as workers, and of their right to access goods and benefits in society as key to advancing projects of equality and justice more generally. As Fraser (2007) observes, misrecognition is fundamental to inequality, particularly gender inequality.

Keywords: Access to goods and services, liminal legality, migrants, statelessness.

18.1 Comment on Chapter 17 by Petchot

Petchot describes various 'legal grey areas' in the experiences of Burmese migrant children in Thailand. One is the liminal legal status of the migrants themselves; another comes from the different understandings of these children's rights by governing bureaucracies, and a further grey area is found at the intersection of national and supranational legal orders. At the centre of each area lies a tension between the conferral of rights in principle and the difficulty in accessing them in practice. Importantly, Petchot reminds us that the state is far from a monolithic entity, as its various bureaucracies often clash in terms of purpose and even in definitional questions of who is deserving and who is not. Whereas the Thai government acknowledges the *need* for educating migrant children out of security concerns and assimilation projects, and seeks to comply with international treaties to extend rights to these children, it does not nec-

essarily *recognize* these children's *right* to education from a liminal legal position. The universal rights in international treaties clash with the national realities of the immigration and educational bureaucracies and can give way to new forms of inequality. Rather than facilitating access to rights, new social hierarchies emerge, particularly as social positions, such as age and ethnicity in the case of Burmese immigrant children in Thailand, intersect with migrants' legality. Petchot's piece invites reflection about similar cases in other parts of the world, particularly where the presence of migrants is compartmentalized, recognizing their benefit to society while simultaneously curtailing their rights.

18.2 Comment on Chapter 16 by De Vlieger

Projects of recognition to advance migrants' rights do not pertain solely to the recognition of how migrants' legality, regulated by national governments, can curtail access to universal rights, but also on the recognition of the contributions of migrants to the receiving society as workers. This is the case in the piece by De Vlieger, in which she documents the experiences of women domestic workers in Saudi Arabia and the United Arab Emirates. A key factor that shapes the ex-

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periences of the migrant domestic workers as well as their lack of access to their rights as workers is the belief that their work does not represent ‘employment’ because it is performed within the private sphere of the household. Within a context of deep class, gender, and ethnic inequalities, the work these migrant women perform becomes particularly exploitable and disposable because these workers are women and because the work they perform is not fully considered ‘employment’. Indeed, the lack of recognition of domestic work as an occupation in which workers can claim rights and the informality associated with work performed within the home, together with ideas of servility associated with domestic work, set the conditions for rights violations and exploitation. In spite of the formal legal arrangements through which the migrant women depicted by De Vlieger enter this occupation, the organization of the work as a private affair in the home, couched within personalized understandings between two individuals, curtails the women’s rights and leaves them socially and economically vulnerable. Importantly, although these women’s legality is formalized, the organization of work and expectations of the servility attached to it contribute to diminish the women’s citizenship and they end up as vulnerable as liminally legal migrants in other contexts. Even though the cases De Vlieger describes demonstrate extremely limited access to rights and justice, the lack of recognition of domestic work as an occupation like any other and the informality associated with it parallel the cases of migrant women in other societies. Indeed, Hondagneu-Sotelo (2007) argues that a first step in addressing injustices and rights violations among Latina domestic workers in the USA is the formalization of employment arrangements in paid domestic work so that labour protections can be integrated in this occupation. Rights claims and even the recognition of rights can be particularly challenging among these workers because of the isolation they experience in their place of work. As Nakano-Glenn (1988: 61) notes about Japanese-American domestic workers, “her work is unrelated to the activities of other workers”.

18.3 Comment on Chapter 15 by Mora and Handmaker

The clash between different regulatory regimes and between the social rights extended by the international regime of human rights and those that are located in the nation state is also central to the case of

Peruvian migrants in Chile discussed by Mora and Handmaker. This tension often serves to exacerbate regimes of inequality to create new forms of stratification based on the migrants’ legality, as also described by Massey (2007) in relation to the USA. In the case of Peruvian migrants in Chile, non-governmental organizations (NGOs) that assist them have responded to restrictions imposed by the receiving country’s immigration laws through the recognition of the migrants’ universal rights and of the limited structures within which to exercise them as workers. However, the NGOs’ efforts to recognize these migrants’ rights (both their rights as workers and their social rights as human beings) fall short because they act within the same confining structures and inadvertently reproduce the segregation of Peruvian workers in Chile. It should be noted, however, that like the domestic workers whose isolation often prevents them from relating to others as workers (and becoming conscious of their rights), the Peruvian migrant workers in Chile might engage themselves in projects of recognition of their own rights and advocate for justice and humanity from their own social locations. There are parallels to successful movements that migrants have organized. Notable among them are those of day labourers in the USA (Cordero-Guzman/Martin/Quiroz-Becerra/Theodore, 2008), the youth organized around the *Development, Relief, and Education for Alien Minors* (DREAM) Act (Nicholls 2012), and the political demonstrations organized by migrants in uncertain legal statuses (Pantoja/Menjívar/Magaña 2008) who otherwise have been inhabiting legitimate spaces in society (Coutin 2000). Such mobilizations by the migrants themselves not only lead to a recognition of their presence but also of their rights as workers and as human beings.

18.4 Factors facilitating or precluding migrants’ mobilization

By analysing factors that facilitate or preclude migrants’ mobilization, these three chapters shed light on the possibilities that migrants have to achieve greater participation and thus increased levels of social inclusion. Mora and Handmaker suggest that international forums provide a vehicle through which the Chilean government can be called to account for failing to prevent the discrimination experienced by Peruvian migrants. Filing a complaint before the International Labour Organisation, they argue, would be a proactive step that would sharpen NGOs’ rights focus

and enable them to develop more expansive notions of citizenship and of gender, notions that denaturalize Peruvian women's participation in domestic labour.

Petchot argues that the Thai state's failure to address the liminality of migrant children prevents educational structures from meeting these children's educational needs. Though migrant children have the *right* to education, they are unable to *participate* in the educational system at rates comparable to Thai children. De Vlieger documents a strikingly blatant institutional insensitivity on the part of Saudi officials who are responsible for human rights issues. These officials denied the possibility that domestic workers could experience problems, instead depicting these women as problems and as sexually deviant. Furthermore, the very offices to which domestic workers were supposed to bring complaints did not actually exist. A common feature of all the cases discussed by these authors is a level of institutional unresponsiveness that, far from recognizing the migrants' rights, misrecognizes them, in Bourdieu's (2004) conceptualization of misrecognition and its implications. Hence, migrants' rights are mislabelled as something else, rendering the realities of migrant women and children invisible.

18.5 Racialization and Stigmatization of Migrants in Popular Imaginations

Closely linked to state and even NGO unresponsiveness are limitations in the ways that migrants are represented in the popular imagination. Mora and Handmaker point out that Peruvian migrants in Chile experience a form of racialization according to national origin, setting them apart from Chileans as a distinct population. Racialization is common in the USA case as well, where Latinos are accused of being foreign 'invaders' even in areas of the country that historically were part of Mexican territory and where some residents' roots pre-date these territories being annexed by the USA (Chavez 2008). The racialization of Peruvian migrants in Chile presumably takes different forms, perhaps linked to shifts in or redefinitions of the composition of migrant populations, for example from students and refugees to domestic and other workers. Similarly, international discourses and legal structures that are used to criminalize unauthorized movement (Walters 2002) may contribute to a deeper stigmatization of migrants there. Mora and Handmaker contend that social recognition, such as access

to health care and employment opportunities, may be more important to Peruvian migrants than political integration. This position is echoed by Kamal Sadiq (2009), who critiques migration theorists for focusing on south-to-north movements, to the exclusion of regional and other migrations. Sadiq stresses that political integration and voting rights, which are often taken as the key marker of citizenship within immigration studies, are less important in flows that move in other directions. By redefining citizenship as a *process* rather than as a *status*, Mora and Handmaker help to refocus attention on these multiple dimensions of integration.

18.6 Concerns about Migrant Children's Education and Migrants' Liminal Legality

Likewise, the public representation of migrant children in Thailand is at issue in efforts to meet these youths' educational needs. It is significant that public concern in Thailand focuses on the *need* for public education of migrant children, rather than regarding such education as a public burden, as is sometimes the case in the USA (Abrego/Gonzalez 2010). And yet Petchot indicates that the Thai concern seems to stem from the sense that if they are not educated, children may pose a security risk, and is therefore an instance of a more widespread slippage between concerns for children at risk and the anxiety that children pose a risk. Once again, this is certainly an issue in the USA and in other countries in which key facets of youth culture have been criminalized (Ferrell 1999). There is therefore a clash between the educational priorities of the Thai state and the ostensible purpose of education. Migrant children in Thailand are granted the right to education in order to keep children occupied and out of trouble, to integrate these children into Thai society, and to comply with treaty obligations. Education does not seem designed to equip children for success in life, which presumably is the rationale for making education a *right*. Instead, school officials interviewed by Petchot appear as begrudging, suggesting that the youth are the ones who need to adapt to Thai educational standards and that migrant children are fortunate to have educational opportunities. The representation of migrant children as interlopers appears to be significant here as well.

These representations of Peruvian domestic workers and of Thai children derive, ultimately, from their liminal legality, a form of liminality experienced by

domestic workers in Saudi Arabia and the United Arab Emirates as well. Liminal legality is produced by national laws in receiving states that with increasing frequency grant new migrants nothing more than temporary statuses that limit their social rights and access to justice (Menjívar 2006). Calavita (2005) has documented the cases of Spain and Italy, in which seemingly generous immigration laws were, in practice, unworkable, thus enabling nation states to appear to satisfy demands for rights and calls for restriction (see also De Genova 2002). The papers discussed here, however, demonstrate that liminal legality can also be produced through other means, including clashes between national and supranational legal orders, tensions between state bureaucracies of the same government, or even ideologies regarding gender, race, and ethnicity, also in conjunction with formal legal orders. Mora and Handmaker, for example, examine the multiplicity of legal regimes that are relevant to migrants' lives and that produce the grey areas in which the liminally legal live. Petchot examines how the liminal legality of Burmese migrant children is produced by tensions between the Thai immigration and education bureaucracies around recognizing the rights of children. De Vlieger demonstrates that even when migrants are recognized formally as migrants by receiving states, ideologies of gender and race and ethnicity create marginal spaces of legality and vulnerability and constrain access to justice. By investigating not only different orders (local, state, international), but also different areas of law (family, health, citizenship) and different regulatory mechanisms (policing, providing health care, registering a birth or marriage) these chapters broaden our understandings of the legal frameworks within which immigration is conceptualized and offer new avenues of theorizing migrant legality. The chapters also show how civil society actors respond to the exclusions associated with liminality. We wonder whether there are also other, less formal ways to respond – a point to which we return below.

The liminal legality experienced by domestic workers in Saudi Arabia and the United Arab Emirates is, according to De Vlieger, a form of quasi-statelessness. Domestic workers' diminished citizenship stems from their lack of access to the public sphere, exacerbated by their dependence on employers, who frequently are the very men about whom they may have a complaint and who may be the ones who would have to represent them in any formal legal proceeding. This situation creates a crippling double bind for women, whose only recourse to formal justice requires representation by the very person about whom

they complain. This double bind, De Vlieger argues, is a more extreme version of a diminished citizenship that is common to (a) all women and (b) to a lesser extent, to all citizens (including men), due to the seemingly poor functioning of the legal system, a system in which even the requirements of *sharia* law are ignored. Men, particularly those who are employers, are nonetheless able to compensate for their diminished citizenship through social capital derived from their ties to others. We wondered, however, whether women are able to develop informal ties and strategies for at least trying to improve their situations. Legal anthropologists who are attentive to gender issues have sometimes documented ways that women are able to work behind the scenes, strategizing even in seemingly stark or impossible conditions (see, for example, Hegel-Cantarella 2011 on legal strategies that underlie Egyptian marriage contracts). The circumstances of the domestic workers analyzed by De Vlieger are certainly dire; however, we wondered how these women respond, and whether their responses are ever communicated to other potential migrant domestic workers in their homelands.

18.7 Migrants' de Facto and Formal Statelessness

The de facto statelessness discussed by De Vlieger is paralleled by the formal statelessness documented by Petchot. Some migrant children born in Thailand fail to acquire citizenship either there or in their parents' country of origin. This statelessness is brought about by bureaucratic challenges (for example, children's births have to be registered in their parents' country of origin within one month in order for them to receive citizenship) and thus seems to be administratively imposed, rather than treated as a deliberate exclusion. Children's liminal legality in Thailand is exacerbated by different institutional priorities (pro-control or pro-employment) of Thai ministries. Echoing Mora and Handmaker's account of the contradictions between different legal regimes that govern migrants' lives, Petchot details the ways that migrant children fall between legal orders. These children are protected by the Convention of the Rights of the Child, but are vulnerable in that most do not actually receive the education that the Thai state recognizes as their right. The multiple legal orders that produce liminality include illegalities that develop around unauthorised movement. Even the state, through police who accept bribes and through other forms of cor-

ruption, participates in such illegalities. Petchot's analysis of the registration system to which migrant youth are subject is fascinating; their experiences parallel the bureaucratic maze that USA-born children of Mexican immigrant parents navigate when their parents are deported from the USA to Mexico and the children enter the Mexican school system (Medina 2011). School officials, parents, and youth themselves experience dilemmas about whether or not to register, when to register, what registering means, and what rights and obligations are conferred by registration. Importantly, Petchot discusses a range of statuses that individuals may have, thus helping to overcome the limitations of seeing legality as binary, as either being 'legal' or 'illegal' (Menjívar 2006). This status continuum has also been documented by legal scholars such as Hiroshi Motomura (2006), who points out that in the USA, mere presence confers a form of territorial personhood that merits legal recognition (see also Bosniak 2006). We suspect that, though tragic for migrants themselves, liminality is also productive for employers, markets that thrive on migrant illegalities, and perhaps the state itself, in terms of the potential for social control of various populations. Therefore, in addition to seeing liminality as a form of social exclusion, as a lack or a gap, we suggest also examining what liminality generates or enables, and for whom.

18.8 The Case of Refugees from El Salvador and the US 'Deferred Action' Programme

Lastly, we cannot conclude our comment without noting parallels to the case of El Salvador, with which we both are familiar through our own research and advocacy work. Those who left El Salvador during the 1980–1992 Salvadoran civil war experienced a form of quasi-statelessness not unlike that documented by these authors. Denied protection, or actively persecuted by Salvadoran authorities, migrants who travelled to the USA experienced social exclusion there as well, through legal processes that represented Salvadoran migrants as 'economic migrants' rather than as 'political refugees' deserving of asylum. Migrants nonetheless participated in social life to some degree in both the USA and El Salvador, obtaining jobs, often in the shadow economy, having families, and sending remittances to relatives in El Salvador. Additionally, migrants launched social movements opposing US military assistance to the Salvadoran government and advocated on behalf of Salvadoran and

Guatemalan asylum seekers (Perla/Coutin 2010). In the post-war period, even Salvadoran authorities, including the Procuraduría de Derechos Humanos, a human rights office established through the Salvadoran peace accords, joined the effort to secure immigrants' rights to remain in the USA. This informal participation and formal organizing led to legal victories that gave some Salvadoran migrants the ability to become legal permanent residents and eventually US citizens, while others remained temporary or undocumented residents, and thus liminally legal. Thus, the challenges posed by the Thai registration system sound very familiar to us, given our knowledge of the ways that registration for *Temporary Protected Status* (TPS) has worked in the USA (Mountz/Wright/Miyares/Bailey 2002). Furthermore, we have found that it is not uncommon for one family member to apply for TPS and thus assume a risk of exposure to authorities, leaving other family members undocumented and, in the long run, legally unprotected. Such strategies, though logical in the short run, result in the sort of mixed-status families described in the chapters of this section.

At the time of writing, migrant youth in the USA have been facing a new set of documentary challenges given the Obama administration's new 'Deferred Action' programme, which permits individuals who entered the USA before the age of 16, lived continuously in the USA for at least five years, graduated from a US high school or served in the US military, and have no criminal convictions, to obtain a work permit (Department of Homeland Security 2012omHh). Though certainly a step forward for migrant youth, it is not yet clear what documentation will be required to demonstrate eligibility, or whether this programme will survive the 2012 presidential elections. Furthermore, the programme grants only employment authorization, not a path to citizenship, and thus constitutes a new form of liminal legality.

18.9 Concluding Remark

The cases documented in the chapters in this section, as well as parallel cases we have referenced in our comments, remind us that as more immigrant receiving governments adopt new forms of temporary statuses that 'irregularize' immigrants (Calavita 2005), migrant workers' social rights are simultaneously diminished. Strategies to keep immigrants as guests and temporary workers may appear as solutions that confer migrants the right to work, but at the same time

encode restrictions on migrants' rights. Projects that advocate for immigrants' welfare can be critical in also pointing to the inequalities and injustices that the legal regimes of receiving governments create. These projects start with recognizing the fundamental hu-

man rights of migrants, their rights as workers, and their social rights in the countries in which they reside so as to align national and supranational orders and various state bureaucracies to produce lasting conditions of justice for the immigrants.

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