

# **Mobility, Social Reproduction and Exploitation: A Critical Legal Perspective on the Tension between Capitalism and Freedom of Movement**

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## **The entanglements between mobility and social reproduction**

A wide range of literature has placed social reproduction at the centre of migration processes. Alongside biological reproduction, migration has been considered an essential component for the reproduction of the labour force in capitalist economies (Burawoy, 1976), as much as slavery had been before the “free-labour” era (Vogel, 1983). By building on these approaches, the literature on gender and migration has shown how female migrant workers play an essential role in the reproduction of contemporary societies on a global scale (Kofman and Raghuram, 2015), while the lens of social reproduction has been used to unveil gender and class hierarchies in the sexual division of labour as well as in global care chains (Anderson, 2000; Farris and Marchetti, 2017). More recently, the scope of social reproduction analysis has been widened to provide further insights on the conditions of migrant front-line workers during the Covid pandemic and to highlight the conundrum of their forced mobility within a regime of spatial segregation (see also Rai in this issue). Although diversified, this body of literature has mainly considered mobility as functional to reproduction

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processes of either the labour force or society as a whole, and has rarely focused on exploring, in depth, the entanglements between mobility and reproduction. In this brief article, I argue that, from a critical legal perspective, such entanglements are crucial for developing a feminist view on borders and migration that goes beyond the analysis of the female component of migration processes. On the one side, such a focus reveals the extent to which regimes of mobility control are structured around and, at the same time, reproduce a conceptual separation between production and reproduction. On the other side, the challenge that the reproduction and maintenance of life poses to capitalism highlights what is at stake in the tension between border regimes and the claim for freedom of movement. Seen from both these competing perspectives, human mobility appears constitutive (rather than functional) for contemporary social reproduction processes, as much as circulation is for production.

I position my work at the intersection between critical border studies and feminist social reproduction analysis. In an influential book of critical border studies, Sandro Mezzadra and Brett Neilson (2013, pp 87-91) have introduced the concept of “multiplication of labor” to describe the impact of border regimes in the selective inclusion of migrant workers. According to the authors, a perspective “from the border” is unavoidable to read the contemporary transformations of labor on a global scale. Although cutting-edge, I believe that this view is partial unless it also takes into consideration how borders coercively multiply and impose regimes of reproduction that allow disenfranchisement, thus lowering the conditions of reproduction of labour power. Indeed, as the Marxist anthropologist Claude Meillassoux already affirmed in the Seventies, in order to grasp capitalist exploitation, the problem “must be set in the more general terms of the conditions of production and reproduction of labour power”

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(1975, p99). At the same time, such a frame represents a theoretical challenge because it brings to the foreground “domestic relations of production” as well as “personal, non contractual, dependence” (ibid.). Since the Seventies, materialist feminist theory has questioned the conceptual distinction between production and reproduction and has broadened the scope of social reproduction analysis much beyond domestic relations (Fortunati, 1981; Picchio, 1992; Federici 2004). This body of thinking is far from being exhausted and its potential needs still to be addressed from a critical legal perspective.

### **The (de)value of social reproduction**

As already mentioned, the conceptual separation between production and reproduction structures legal regimens of mobility control. Legislation regarding family reunification, access to naturalisation and citizenship rights provide examples of the legal and political devaluation of social reproduction. The migrants who hope to bring a family member into their country of immigration will be asked to demonstrate an income sufficient for the maintenance of themselves and their family,<sup>1</sup> while the contribution that the family members provide to the reproduction of the worker – from making breakfast to ensuring a good night’s sleep and supporting relational skills – finds no recognition whatsoever in the juridical schema for entrance. The language of the European Court of Justice on the freedom of movement and residence within the European Union makes explicit reference to the “*pursuit of effective and genuine*

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<sup>1</sup> See Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification; for the application of the directive in European Union Countries, see the document *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM (2014) 210 final of 3 April 2014.

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*activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary.*<sup>2</sup> Reproductive labour – principally performed by women and without pay – is almost entirely excluded from this definition. As observed by Patricia Tuitt (2013), it is not by coincidence that the European jurisprudence on accessing social benefit has often been brought ahead by the feminisation of migration that, in turn, has forced legal definitions conquering new spaces of citizenship.

On a more general level, it is possible to claim that the devaluation of care and reproductive labor is not only a matter of unpaid work, but also a matter of the legal and political value (un)recognised to this set of activities. The load of work shouldered by women or other caregiving figures in favour of their families and communities, including their self-sufficient members, does not count as viaticum to access legal status and rights on the territory. At the same time, this lack of recognition strengthens relations of personal dependence – from husbands, fathers or other “official” wage-winners – that perpetuate patriarchal hierarchies and racialised constraints.

Alongside these examples, it is above all through the categories of economic and forced migration – and the different mobility regimes deriving from these – that the separation between the spaces of production and reproduction becomes evident. The entire regime of refugees and international protection seekers has been historically constructed in opposition to the image of the industrious citizen (Nyers, 2006;

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<sup>2</sup> The expression contained in decision Levin C- 53/81, 23 March 82 is a recurrent reference in the case law on the definition of workers. For a discussion, see Rigo (2022), for the updated case law, see <https://ec.europa.eu/social/main.jsp?catId=953&intPageId=1221&langId=en> (accessed, 12 October 2023)

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Salvatici, 2015), beginning with the legislative regimes that limit asylum seekers' access to work, or complicate the passage from the *status* of asking protection to that of migrant workers, through to the discursive regimes that represent seeking refuge as a parasitic condition, a burden on host states and their social security systems. Forced migration is designed by the law as a *transitory* condition, not-destined to stabilise within countries of arrivals and therefore not entitled to autonomous choices about their living and working conditions (Rigo, 2021; 2022). It is hard to say whether the transitory character by which international protection is framed precedes or follows – whether logically or historically speaking – limitations on access to work and occupational segregation. In either case, the result is the imposition of regimes of “humanitarian reproduction” - from refugee camps, to reception centers for asylum seekers, to rehabilitation shelters for victims of violence – where the “autonomous social reproduction activities and spaces of liveability are hindered” (Tazzioli, forthcoming).

In recent years, the discursive framework of crisis has been functional to turning *transitory* conditions into *enduring* governmental discourses. The multiple “migration crises”, in particular, have stabilised emergency measures of containment as ordinary ways of managing migration, as well illustrated by the cases of the refugee camps on Greek islands and the increasing use of migrants' administrative detention to govern European borders. This *permanent temporariness* – to borrow the concept of Abdelmaleck Sayad (1999) – inevitably marks a *caesura* in the maintenance and reproduction of life. Nonetheless, reading the recurrent “crises” linked to migration management as social reproduction crises functions as an antidote to the tendency of considering them extraneous to capital accumulation processes. If, on the one hand,

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the imposition of coercive reproduction regimes on migrants and asylum seekers sheds light on the “reproductive contradiction” of unlimited capitalist accumulation (Fraser, 2016), on the other, it is this very contradiction that questions the possibility of separating the problem of the reproduction of society as a whole from the reproduction of increasingly marginalised, racialised and excluded sections of population (Bhattacharyya, 2018).

### **Modes of reproduction and exploitation**

When exploitation is approached from a critical legal perspective, it is easy to notice that the law incorporates it according to a *contractual* model. While profit extraction is the legitimate aim of the labor contract and even a constituent component of the parties’ obligation, the law tackles and limits exploitation only when a defect of consent is ascertained. To use the words of the Palermo Protocol, exploitation is unlawful and therefore relevant for criminal and international law in presence of “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability.”<sup>3</sup> As noticed by the international law scholar Susan Marks (2008, p.299), this consent-based model reduces exploitation to a form of “contingent” injustice, a matter of force or abuse that occurs between perpetrators and victims rather than a political issue related to structural conditions. Further, by focusing on the unfair relations between the parties this frame of comprehension

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<sup>3</sup> United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially women and children, supplementing the UN Convention against Transnational Organized Crime and its Protocols, 15 November 2000

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erases from the picture the multiple beneficiaries of exploitation; or, to use the words of materialist analysis, it diverts the attention away from the processes of capital accumulation. Indeed, if there is a common ground in feminist debates about social reproduction, it precisely concerns the centrality of this lens to grasp capitalist accumulation. Even leaving aside different views on the generation of value, it is undeniable that social reproduction processes constitute an “unacknowledged supplement” (Bhattacharyya 2018, p. 46) to capital accumulation beyond contractual relations and wages. In turn, this supplement needs to be taken into consideration when exploitation is at stake.

I will elaborate on this point by returning to the argument that borders coercively multiply reproduction regimes and, in doing so, they lower the conditions of reproduction of labour power. Several examples can be given by looking at labour sectors where the component of migrant workers prevails. Migrant domestic workers that cohabit with employers do not necessarily “choose” this kind of accommodation, but it is rather a requirement often imposed by the legislation on the entrance and residence in the country. By moving from domestic to agricultural workers, the cases of the self-built shelters and the tent-camps, where migrants seasonal workers live near to the tomato fields and citrus groves of Southern Italy, provide another effective example. If, in the first case, the time during which the worker is at the disposal of the employer inevitably expands, in the second case, the time needed to self-build the shelters and organise collective services is not valued as part of work time.

The living conditions of migrant seasonal workers in agriculture are often denounced by the media and politicians as evidence of semi-slavery exploitation and are

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considered a consequence of the criminal gangmaster system. Rarely the analysis takes into consideration the “supplement” of profit provided to the food industry by the way in which the agricultural labour force is reproduced. It is more than simply a question of low wages: it is exactly these material conditions of life that allow for the reduction of costs in the value-chain. Rather than a side-effect of the gangmaster system, the so-called “ghettos” of migrant workers represent a “mode of reproduction” of labour power that is co-constituent of the agricultural mode of production, as much as cohabitation with employers is a “mode of reproduction” that reduces the costs of domestic wage labour. In both cases, the material living conditions of the reproduction of labour power are not objective circumstances, but rather *political conditions* - in the sense that Antonella Picchio (2008, p.288) indicates as “relations of power among groups and classes” – in relation to which border and migration policies play a central role.

The lens of social reproduction is crucial to acknowledge the structural dimension of exploitation beyond the legal definitions that interpret it as an unfair relation among the parties and which therefore call for the increase of punishments to do justice. Recent decisions of the European Court of Human Rights on the issue of forced labour, point to structural conditions when they indicate vulnerability as a situation related to the status of irregular migration (see, *Chowdury*, 30 March 2017; *Zoletic*, 7 October 2021). Although the Court does not use the same language of materialist feminism, the attention is drawn to the basic needs and services that are essential to the maintenance and the reproduction of life. Similar considerations apply to the definition of severe work exploitation implemented by the Italian penal law when the housing conditions are considered relevant even when the accommodation is not provided by the

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employer. As observed by Gargi Bhattacharyya, racial capitalism ascribes the subjects into a hierarchical set of relations in the spheres of reproduction as much as in the fields of production. When migrants fight for their right to be admitted to the territory, to acquire legal status and to resist deportation, they also fight for the subversion of these hierarchies.

### **The struggle for freedom of movement is a feminist struggle**

The lens of social reproduction provides a radical feminist view on freedom of movement by bringing to the foreground the challenge posed by the reproduction and the maintenance of life to the mutually sustaining systems of capitalism, patriarchy, and colonialism. What is at stake in mobility control is not only labour regimes, but the way in which growing portions of the planet's population are forced to reproduce their lives. As Achille Mbembe notes, “[borders] are not only obstacles to free movement. They are boundaries between species and varieties of the human. As such, they play a crucial role in contemporary modes of production of human difference and relatedness” (2019, p. 11).

It would however be misleading to give the impression that feminist materialism unequivocally sustains the freedom of movement as a struggle for liberation and against exploitation. The free circulation of workers is frequently seen as a by-product of neoliberal policies that encourage mobility as a last resort of life reproduction, thus legitimising the withdrawal of the welfare system. The “left case” against open borders is still a popular position among social-democratic protectionists who, however, cannot avoid coming to terms with the thousands of deaths caused by the alleged

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protection of borders. The claim for freedom of movement is not a claim for one or another legal regime of circulation, it is rather the acknowledgment that the struggle of migrants across borders is a radical political action. To use the words of the TWAIL scholar Tenday Achiume, “The unauthorized movement of Third World migrants across international borders, as they reject the partial sovereignty of Third World nation-states, should be understood to enact an important step in a process that offers the individual her best chance at self-determination [in absence of] real decolonization” (Achiume, 2019, p. 1567). It is not a struggle for merely applying the existing international order of rights but a concrete practice that demands its transformation.

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