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Working with Irregular Status: Undocumented Migrants and the Moral Economy of Employment

*Le travail de l'irrégularité. Les migrant·e·s sans papiers et l'économie morale de
l'emploi*

*El trabajo de la irregularidad. Les migrantes sin papeles y la economía moral del
empleo*

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Le travail de l'irrégularité. Les migrant·e·s sans papiers et l'économie morale de l'emploi

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- 1 By focusing on the issue of vulnerability and humanitarian considerations, scholarship over the past decades on States' handling of recent migration flows has tended to underestimate the place of work as a source of legitimacy and access to rights (Fassin, 2001 and 2005; Ticktin, 2011). Yet, while officially employment is a means of obtaining a residence permit for only a minority of migrants, it remains a determining factor in the existence of migrants with precarious legal status, regardless of how they are officially categorised by the State or the media (economic migrants, asylum seekers, family migrants, etc.). Based on three ethnographic studies of the work of undocumented migrants in France, this article examines the different ways in which the moral economy of employment – the space in which value, merit and legitimacy conferred by employment are negotiated – structures the successive moments of migratory irregularity. The article discusses irregularity as a regime of workforce mobilisation, the role of work and employment in regularisation processes, but also regularisation itself as a form of work.¹
- 2 Since the 1980s, the relationship between migratory status and employment has been considered mainly in a single direction, exploring the effects of legal precarity on economic precarity (Anderson, 2010). This precarity is generally considered in terms of “undeclared work”, which is at odds with the diversity of employment conditions characterising the experience of foreign nationals in a situation of administrative

precarity, and in particular their integration into the formal labour market (Jounin, 2008; Castracani *et al.*, 2021). Moreover, the reverse relationship, that of the potential effects of employment on access to legality, remains far less explored (Barron *et al.*, 2011; Chauvin *et al.*, 2013b). The trope of humanitarianism, by placing vulnerability at the centre of migratory legitimacy, has undoubtedly led many observers to neglect the place of work in the construction of the figure of the deserving migrant. Yet, the extent of the humanitarian mode of recognition is probably less significant than the media representations of recent waves of migration might suggest. Recent research on the health pathways of migrants also shows that obtaining a temporary residence permit on healthcare grounds is an obstacle to establishing regular long-term residence (Gosselin, 2018).

- 3 It is true that, in France, the annual number of first humanitarian permits issued in all categories (refugee and stateless persons, territorial asylum, foreign nationals suffering from illness, etc.) rose from 17,916 in 2013 to 34,979 in 2018, i.e. almost doubled (DGEF, 2019: 29-30 and 2020). Despite this increase, in 2018 this figure represented only 13.5% of the total number of permits (compared to 8.7% in 2013). The majority were family permits, which accounted for 35.2% of the total. So-called economic permits represented 13%, while student permits, based on the promise of future employability, accounted for 32.3%. Broad policy categories of migration, which schematically distinguish between “unchosen” and “chosen” migration according to their supposed utility, or typically contrast “refugees” and “migrants” (Akoka, 2020; Brücker *et al.*, 2019), fail to reflect the complexity of individual situations. A person regularised as the spouse of a French national may well be in paid employment but will still appear in the statistics as a family migrant. Decisions to grant permits combine considerations of vulnerability, family ties and economic, civic or cultural performance (Chauvin *et al.*, 2013a; Bonjour and Chauvin, 2018; Dahinden *et al.*, 2021). Although “exceptional permission to reside” granted to foreigners already on French territory officially included 8,056 regularisations on the grounds of “employment” in 2018, i.e. 25% of the total (DGEF, 2020), the main grounds and types of permit issued fail to reflect the plural and heterogeneous rationales leading to their delivery, particularly insofar as permission is officially granted “by taking into account all the elements of the personal situation of the person concerned” (DGEF, 2019: 73). The description of the “detailed grounds” for these regularisations also includes headings that are emblematic of the interweaving of partly contradictory considerations, such as the category “humanitarian or exceptional grounds and ten-year residence”, which accounted for 3,247 regularisations in 2018, i.e., 10% of the total (DGEF, 2020). Whatever the grounds for regularisation, applicants are regularly required to be able to demonstrate their integration into the employment sphere (Le Courant, 2022; Welfens and Bonjour, 2021). Economic conditionality also affects the family circle, for example the host spouse in the context of family reunification (Kofman, 2018). In France, a person seeking to qualify for family reunification has to prove monthly resources proportional to the size of their family.²
- 4 In an attempt to capture this complexity, this article first examines the multiple implications of civic precarity for the employment relationship and the resulting interactions between undocumented workers and their bosses. It then highlights the different forms of work involved in regularisation dynamics and the strategies deployed by migrants and their supporters to have them recognised and approved. Finally, it examines the effects of regularisation by describing the changes it brings

about without erasing the traces of past irregularity and other sources of discrimination – notably racial – linked to it. The article highlights the ambiguous effects on individual trajectories of the injunction to economic performance in a context marked by employment precarity.

- 5 This summary is based mainly on a comparison of the results of three ethnographic studies conducted in France at the turn of the 2010s by the authors. Stefan le Courant conducted fieldwork in an administrative detention centre in the Paris region between 2006 and 2009, and observed the daily lives of undocumented migrants, between 2008 and 2013, who had escaped deportation (Le Courant, 2022). Sébastien Chauvin and Lucie Tourette carried out a collective ethnography (with Pierre Barron, Anne Bory and Nicolas Jounin) on the large-scale coordinated strikes of undocumented workers in the Paris region between 2008 and 2011 (Barron *et al.*, 2011). Ten years after the beginning of this movement, Lucie Tourette investigated the professional development of regularised strikers through a series of interviews (Tourette, 2018). As these fields are mainly focused on men-dominated sectors, in order to better grasp the implications of the gendered division of labour on the experience of irregularity, the analysis is also based on several studies in more women-dominated sectors conducted in the 2010s (Meynaud, 2011; Sohler and Lévy, 2013; Girard *et al.*, 2014; Le Bars, 2018; Moujoud, 2018; Chuang Ya-Han and Le Bail, 2020).

Irregular Workers and their Bosses

Why Employ Undocumented Migrants?

- 6 Analysis of the results of the policy of controlling irregular immigration leads to a simple observation: only a tiny minority of migrants without legal status in France are permanently removed from the territory.³ With regularisations offsetting new entries, the number of foreign nationals in an irregular situation in the country – which is, by its very nature, difficult to quantify with precision – has remained relatively stable at around 400,000 people over the past decades (Héran, 2017). Numerous studies have highlighted the way in which the “deportability” of undocumented migrants shapes the modalities of their exploitation in the world of work (De Genova, 2002; Anderson, 2010). According to these analyses, immigration control responds to economic interests: while the dispositif for expulsion from the territory plays only a marginal role in reducing the number of undocumented migrants, the mechanisms of exclusion from legality have the effect of providing a large and pliable workforce that is particularly well suited to the requirements of the neoliberal economy, especially in sectors that already make massive use of immigrant labour: hotels and restaurants, construction, cleaning and agriculture (Heyman, 1998; Jordan and Düvell, 2002; De Genova and Peutz, 2010; Terray, 1999).
- 7 The expulsion from the territory of a minority of people in an irregular situation thus leads to the “differential inclusion” (Mezzadra and Neilson, 2011) of a majority excluded from the rights and protections reserved for people in a regular situation. From this perspective, irregularity and deportability are the contemporary incarnations of the production of a “constrained workforce” (Moulier-Boutang, 1997). As the conditions of employment adapt to changes in the economy, the industrious worker required for assembly-line work – the “lifelong *ouvrier spécialisé*” (specialised

worker)” described by Sayad (1999) — is replaced by an undocumented worker offering the employer the advantage of flexibility. Given the fragility of their residence status, undocumented workers can be dismissed at any time. An employer can dismiss an employee at will without having to pay compensation⁴ and without fearing that the employee will sue. Taking legal action would require disclosure of the employee’s irregular status, exposing them to the risk of expulsion. Furthermore, the sanctions that theoretically apply to employers are difficult to enforce as the law provides that financial compensation is only paid once the employee has left France (Ferré and Carrère, 2018).

- 8 However, analyses that subordinate State security practices to market requirements tend to obscure the diversity of employment situations occupied by undocumented migrants and to erase the complexity of the economic and moral relationships that tie them to their employers. From informal work to declared and tax-paying employment, undocumented migrants occupy all positions in the spectrum of employment possibilities. This was highlighted by the first major concerted strike of undocumented migrants in April 2008, when several hundred workers stopped work and occupied their companies to demand regularisation. For many months, the strikers held up their pay slips and tax returns, as much to affirm their compliance with the requirement that migration should serve France’s “economic needs”, as to demonstrate the regularity of their work situation, opening the possibility of claiming regularisation of their stay. The first workers to go on strike with the support of the unions were selected because they had an employment contract and thus had tangible proof of their employment. Most of them had been on permanent contracts for several years and were also able to prove that their bosses knew their administrative status. This constraint partly explains why women were poorly represented at the beginning of the strike movement. The first undocumented women to go on strike in May 2008 were part of a second wave of workers in a more precarious situation. They were employed in the cleaning sector, in the company DMMS.⁵ There, the division of labour was such that men and women had little or no contact with each other. Women were part-time chambermaids in hotels, while men were cleaners in workplaces or apartment buildings (Barron *et al.*, 2011). To form the group of strikers, it was above all the networks of connections linked to the countries of origin that were mobilised, the same networks that may have been used to obtain employment in the company (Jounin, 2014).
- 9 Men and women workers who manage to conceal their administrative status — by using forged residence permits, borrowing or renting the residence permit of an acquaintance — generally enjoy the same conditions of employment as their colleagues. For the employer, the cost of hiring is identical and it is legally risky to discriminate too systematically or too visibly against undocumented migrants (by proposing a lower hourly wage, for example), since differential treatment would be tantamount to admitting knowledge of their situation. Under these conditions, the employment of undocumented migrants has limited advantages: the possibility for the employer to dismiss these employees if the nature of their documents is (pretended to be) discovered; the advantage of an employee who, because of the fragility of his or her stay, will more readily seek to conform to the image of the model employee in order to secure their place in the company.

- 10 For bosses, regardless of whether they know the true administrative situation of their employees, recruiting foreigners in an irregular situation means surrounding themselves with loyal employees, whose daily presence at work is guaranteed by the difficulties of changing jobs, which would require them to repeat the process of providing false or unlawfully held documents to be verified (Jounin, 2008). This is illustrated by the trial of the boss of a construction site cleaning company observed by Stefan Le Courant in March 2009 at the Bobigny High Court. The trial only concerned non-compliance with employment legislation, as employees were given endless short-term contracts. Working and housing conditions were to be the subject of a later hearing. Health and safety standards were not respected: in order to avoid the cost of reprocessing, toxic waste was burnt on site and asbestos was hidden by the workers, with their bare hands and without masks, in bags of rubble. Some employees were housed in old offices that had been crudely converted into rooms for a prohibitive rent which was directly deducted from their salary. However, in court, the employer expressed his surprise at seeing his employees united against him in this way. Since he liked to “work as a family”, he often recruited his employees’ cousins. He asked everyone to call him “dad”. More generally, certain employers of undocumented migrants, particularly in the temporary sector, are quick to compare themselves to “social workers”, highlighting the generosity they show in agreeing to employ the unemployable, and the moral debt that should result from this for the recipients (Jounin and Tourette, 2014).
- 11 Pay slips and declared work do not shield employees forced by their administrative situation to carry out the most arduous and least remunerative tasks. However, analyses that link irregularity and profit for employers tend to associate the multiplicity of working conditions of undocumented migrants with undeclared work alone. The entry into French law in 2005 of the notion of “illegal work” appeared to confirm the link that had gradually been established since the early 1970s between “undeclared work” and the employment of workers without a residence permit (Morice, 1997). However, undocumented workers are far from the only ones carrying out undeclared work. Such work represents 78% of the total number of infringements recorded by the Labour Inspectorate, whereas the employment of undocumented foreign nationals only represents 13%.⁶

Work and Dependency

- 12 Over the last two decades, the tightening of migration policies has been accompanied by an increase in the number of entities that can control the legality of residence. The field of labour has been particularly affected by this proliferation of controls. The inclusion of labour inspectors in control operations carried out by the police or gendarmerie is evidence of this expansion of repressive logics to services that were previously mainly responsible for defending the rights of workers, regardless of their administrative status.⁷ Since 1 July 2007, employers have been required to systematically submit residence permits to the prefectural services prior to hiring foreign nationals. This requirement, coupled with technical devices for producing documents that are increasingly forgery-proof,⁸ has profoundly transformed the market for residence permits. For foreign nationals in an irregular situation, access to the most stable jobs involves the production of “alternative legalities” (Coutin, 2003). The degree of integration into the formal economy and the stability of the employment

situation depend on the ability to obtain documents that will be convincing enough at the time of hiring.

- 13 Since then, forged or falsified documents, which are easy to detect, have given way to the use of genuine documents belonging to a third party. Yet, the purchase of a forged document does not create the same kind of dependency as the use of documents belonging to someone else (Horton, 2015 and 2016). This dependence also varies according to the nature of the agreement between the borrower and the person providing the documents: a temporary assumption of the holder's identity to fill a gap (Zougbede, 2016: 249-251), a simple loan based on solidarity around common origins (Tarrus, 2002; Mahler, 1995), or a genuine rental. The worker who uses another's documents is caught up in a series of dependencies, sometimes experienced as intersubjective participation expressed in the language of kinship (Andrikopoulos, 2017).
- 14 The threat of denunciation leads to silent acceptance of the titleholder's scams (for example, when a salary paid into a lender's bank account is never returned). In a Parisian cleaning company studied by Lucie Tourette in 2018, the boss's right-hand man directly organised the "document" market, thus reinforcing the dependence on the employer while allowing the latter to officially declare that they "do not hire undocumented migrants". Often, the purpose of this "document" economy is not so much to deceive an employer at the time of hiring as to manage irregularity in a legal system based on the plausibility that the employer is ignorant of the administrative status of employees. Many undocumented persons frequenting temporary employment agencies have been asked to return with a document bearing a photo that is a "closer resemblance". This requirement of resemblance allows the employer to claim that they have been deceived in the event of an inspection in their company (Jounin and Tourette, 2014). The employee, on the other hand, will find it more difficult to avoid the consequences of document and identity fraud.⁹
- 15 The variety of employment conditions of undocumented migrants is largely based on the complex economy for residence permits to which not everyone has similar access. Those who lack the knowledge or support networks to provide "proper documents" are not only driven into the most precarious forms of salaried employment, but also see their irregularity prolonged as formal proof of work is a key part of applications for regular status.
- 16 The relationship between employers and employees is often based on a shared tacit understanding: while irregularity is not ignored, it is not publicly discussed. And although employees doubt their employers' credulity, they know that maintaining the appearance of regularity is necessary to secure their place in the company. To achieve this, identity documents are not enough: in all work interactions, the employee must be able to answer in the name under which they were hired. These strategies involving documents and identities sometimes lead to unexpected situations. Sally Touré, one of the interviewees in Stefan Le Courant's study, described how he was summoned one day to his employer's office with another employee with whom he shared the same residence permit. The purpose of the employer's summons was to determine who owned the identity document and who was just using it. The employer must have been unaware that his two employees were in fact in the same situation: without knowing it, both had been working under the same identity and had not realised that they had used the same intermediary.

- 17 How are these methods of entering the labour market, and in particular the documentation strategies deployed by the employees concerned, reflected in their applications for regularisation? What are the consequences of employment precarity for the possibility of regularisation? The following section discusses the tensions inherent in the emphasis on employment as a source of legality.

Work in Regularisation Dynamics

Work: an Ambiguous Source of Legitimacy

- 18 Despite the introduction of an official pathway to regularisation through work at the end of the 2000s, work retains an ambiguous significance in the construction of undocumented migrants' legitimacy. While neoliberal policies, following the "workfare" paradigm, have in recent decades led to the promotion of the acceptance of work under any conditions, thereby making employment a duty, the parallel rise of restrictive nationalism has tended to construct work as a privilege reserved for citizens and foreign nationals with permits, more generally transforming the duty to "deserve" into an exclusive favour (Chauvin *et al.*, 2013a). For many migrants, work appears both as a duty of "sub-citizens", proof that they fall within the category of "chosen immigration" (i.e. chosen by employers), and a privilege restricted to a small club.
- 19 Undocumented migrants are thus put in the position of having to commit an illegal act in order to make themselves more legitimate, to work in order not to be on welfare, to defraud in order to pay their taxes, etc. This contradictory dual injunction paradoxically puts "deserving" undocumented migrants at constant risk of appearing "more illegal" on the basis of the very documentary and economic attributes that are supposed to increase their civic capital (Chauvin and Garcés-Mascreñas, 2012). These political-administrative dilemmas were exacerbated during the undocumented workers' strikes of the late 2000s. Reference to employment and working conditions had been rather toned down in the mobilisations of undocumented workers in previous decades, not least because of the fear that emphasis on unauthorised paid employment would work to the disadvantage of those concerned, both in the public arena and in administrative procedures for regularisation. In the past, even when changes in labour law led to protest movements by irregular migrants, the dominant theme remained vulnerability or the assertion of a common humanity, as Iskander (2007) demonstrated in relation to the *Sentier* strike in the 1990s. During the 2000s, both trade unions and public authorities were uncertain about the value to be given to evidence of integration into formal employment (pay slips, social security numbers, tax returns, etc.) that characterised many applications for regularisation. It was only after clashes and experimentation that these signs were finally established as positive elements and a necessary condition for obtaining residence permits (Barron *et al.*, 2014). During the 2008 strikes, the payslip was at the centre of the discourse of both trade unions and employers: as proof that undocumented workers belonged to the workforce, it seemed to make the employer more legal, creating a temporary community of interest on both sides around the legitimisation of an application for regularisation seen as a simple administrative validation of an existing legitimate situation.
- 20 Nevertheless, work retains an ambiguous value within the moral economy of precarious migration, which is reflected in the ambivalence of many undocumented

migrants towards “regularisation through work”. Indeed, “employee” residence permits generate more legal fragility and dependence on the employer than other permits, since their renewal is conditional on continued employment. Paradoxically, “private and family life” permits confer a more unconditional right to employment than “employee” permits and are therefore preferred by applicants, even when they could qualify for the latter. Thus, when submitting all the “evidence of presence” to justify regularisation on the basis of years of residence in France, some people carefully eliminate all traces of employment - pay slips, employment contracts, tax returns - so as not to have their application for a “private and family life” permit reclassified as an “employee” permit by the prefecture official (Le Courant, forthcoming). In doing so, they weaken the quality of their application and run the risk of having their application rejected.

- 21 The uncertainty of undocumented migrants about the best path to take in a context where criteria of legitimacy can continually change is also reflected in strategies to increase their chances by diversifying them. Thus, Veron described how his interviewees participating in the 2008-2010 strikes were “affiliated to several collectives, members of several associations, or members of various unions” (Veron, 2019: 33). Masséré Sissoko, interviewed by Stefan Le Courant during his study, saw his attempts to regularise his situation on the grounds of economic performance (he took part in the strike movement and convinced his employer to draw up an employment offer) hampered by a judicial expulsion order. Tired of waiting, he started to create an administrative alias by creating an application demonstrating his presence in France under another name in order to apply through the humanitarian route on the grounds of vulnerability. This alias ended up acquiring a form of existence: in an interview, Masséré Sissoko referred to it in the third person when he described the progress of his regularisation application (Le Courant, 2019).

When Regularisation Comes up against Multiple Forms of Precarity

- 22 Legitimation through economic performance is not without contradictions. Sometimes, the emphasis on formal integration – reflected in the documents and “evidence of presence” to be provided – can reveal biographical fragilities: absenteeism, dismissals, unpaid bills or poor evaluations (Chabin and Scopsi, 2013). The work itself may be illegitimate in its content, both socially and in the eyes of the administrative authorities, as in the case of sex work (Chuang and Le Bail, 2020). Ultimately, both symbolically and in terms of conducting strikes, the strategy of using the material power associated with economic integration as a lever, rather than solidarity and humanitarian compassion, presupposes that such power actually exists and limits this option to the most integrated of the illegalised migrants.
- 23 Those who are furthest from legitimate forms of employment prove to be too precarious for legal status. During the 2008-2010 movement, this was the case for undocumented women who were particularly involved in informal employment. In the “second act” initiated in autumn 2009, there were approximately 400 women out of 6,800 strikers, and in the end 247 applications were filed. Nationally, women’s cases represented only 5% of applications for regularisation through work (Meynaud, 2011). For women in particular, the closure of channels for regularisation based on their professional activity encourages them to seek alternative routes, such as marriage

(Moujoud, 2018: 283-284). However, this situation is not inevitable, as shown by the case of Italy, where certain regularisation mechanisms focused on domestic work and domestic care services can favour women (Bonizzoni, 2017).

- 24 Very early on in the strikes in France, the public authorities had a policy of slowing down the regularisation of undocumented migrants by invoking the weak institutional recognition of their precarious forms of employment, whether multiple employer, part-time or temporary work. In response, some strikers tried to get out of atypical forms of employment by putting pressure on employers. Thus, in the temporary work sector, among the first occupations by strikers were those of client companies in order to demand their immediate employment on a permanent basis as a condition for their regularisation. In the face of the limited success of these attempts, other movements fought to have the atypical form of employment recognised as a pathway to regularisation, this time occupying temporary employment agencies and putting pressure on the public authorities. In this upside-down struggle, a conservative government was forced to concede that some forms of employment resulting from its own policies were too precarious, while the *Confédération générale du travail* (CGT) fought for the lowering of the work requirement.
- 25 The strategies used by employers, public authorities and trade unions to deal with the various forms of precarity are perhaps most emblematic in the case of the recognition of people who have worked under another identity. In 2008-2010, faced with the influx of applications to be processed, the Parisian federation of the CGT produced a printed form on which, for each application, all the required documents could be ticked off when they were included. The form was then used to facilitate and systematise the preparation of applications; it was informally recognised by the prefectures as a precursor to their own bureaucratic work. However, many of those wishing to apply for regularisation had worked for their employers under fictitious names or with papers in the name of the person who had lent them. Initially, these frauds were listed by the union as “anomalies” (this one was called “non-correspondence”). After several weeks, the anomaly was converted into another item in the official checklist, with the document to be ticked off now called “certificate of correspondence”. The Parisian federation produced a model declaration to be filled in by employers of people who had worked under aliases. The declaration stated “I, the undersigned [employer], certify that [employee] worked for me under the name X” (Barron *et al.*, 2011). However, such certification by the employer, whether or not under the supervision of a trade union, of the correspondence between two names is by no means guaranteed, and once again employees and former employees face mechanisms of favours, dependence and returning favours in their interactions with the employer when making this request (Zougbede, 2016).
- 26 When filling in the applications of strikers in 2008-2010, the Parisian federation of the CGT worked to distance itself from the humanitarian trope by removing from the applications all medical documents likely to signify vulnerability or to create “confusion” in the minds of the prefectural officials. Nevertheless, in highly precarious sectors characterised by evident exploitation, the vulnerability framework could also be turned into a resource, particularly when it was overdetermined on the basis of gendered representations linked to femininity. Thus, women hairdressers and manicurists, employed outside any legal framework, who went on strike in 2014 in Paris, with the support of the CGT, succeeded in having the courts recognise a situation

of “human trafficking”, and in obtaining their regularisation by this means. The use of this term, usually employed in relation to prostitutes who are victims of mafia networks, minors or people with disabilities forced to beg, was a first in a trade union struggle (Girard *et al.*, 2014). This example shows that regularisation through work can itself entail a resurgence of the vulnerability frame. While the prevalence of certain stereotypes about women paradoxically opens up some possibilities of access to rights, provided that they present themselves primarily as “victims” (Lesselier, 2004: 8), this option remains clearly gendered.

Working with Regular Status

The Immigrant behind the Regular Status

- 27 Going beyond the unique analytical framework of the internalisation or multiplication of the border, several authors have recently pointed out that civic status is not the origin of all discrimination at work within borders, and is often intertwined with contextual factors, as well as with social relations based on race (Whitley, 2017; Moffette and Walters, 2018) or class (Bonjour and Chauvin, 2018). In France, regularisation through work leads to an “employee” residence permit marked, valid for one year. The newly regularised person benefits from freedoms, not least the freedom to move around without fear of random identity checks and to cross borders to visit relatives in their country of origin. But they also discover that irregularity was not the only reason that they were confined to the lowest-status jobs.
- 28 When undocumented colleagues continue to be in the majority in a company or team, illegality sets the tone. Although, as we have seen, undocumented workers are not necessarily paid less than their colleagues in equivalent jobs, they tend to work in the lowest paid sectors and positions. A few years after being regularised, Amadou Maïga, whom Lucie Tourette interviewed several times between 2009 and 2017, worked as a temporary worker in the construction industry, surrounded by undocumented colleagues. When he asked to be given protection and a compulsory medical examination on an asbestos removal site, his undocumented colleagues were the first to try to dissuade him, fearing that their administrative situation would be revealed. And when he tried to convince them to try to get their situation regularised, his contract was terminated, and the temporary employment agency that employed him told him: “You work well, but you have been trained by the unions”.
- 29 The employment-based temporary residence permit – which can stipulate the sector of employment in which the holder can be employed – extends the cycle of conditionality. The prefectures are entitled to refuse the first and even second renewal of a residence permit in case of a change of employer or sector of activity, or in case of unemployment. People who have been regularised therefore often have to wait before leaving a boss or a sector to which their irregular status tied them. In 2011, shortly after the second renewal of his permit, Abdoulaye Sacko, an employee of a restaurant chain interviewed by Stefan Le Courant, considered refusing a transfer to a restaurant located a long way from his home, as the three hours of daily transport and working hours corresponding to those of service made his days interminable (he calculated that he would have to get up at 7 a.m. and would not be back home until 2 a.m. the following day). The director of human resources strongly encouraged him to accept the offer,

reminding him that a refusal might “cause problems for [his] documents”. Adopting the same reasoning, the unions also encouraged him to take up the job, considering that he was part of the first generation to be regularised through the strike and that the renewal of his residence permit was far from guaranteed. In fact, most of the recently regularised people who change jobs get a second residence permit: thus, the spectre of non-renewal is primarily used as an argument to prolong dependency beyond irregularity.

- 30 Abdoulaye Sacko saw this reassignment as evidence of racism, as he felt that all his colleagues had been treated better. Once regularised, many are confronted with the fact that race-based hierarchies dictate certain positions and hinder career development (Jounin, 2008). In the end, Abdoulaye Sacko refused the offer and embarked on a frantic race to sign an employment contract before being summoned to the prefecture to renew his permit. He responded to an advertisement for a kitchen job and was pleased when he met his future employer, who apparently accepted all his conditions: a higher salary than in his previous job and the possibility of taking several months off each year to visit his family. Three weeks after starting work he was concerned that he had still not signed a contract. His boss told him that if he wanted to continue working for the company, he would have to accept the same salary conditions as the other kitchen employees, all of whom were in an irregular situation: €1,000 per month, undeclared. In sectors where there is massive recourse to undocumented labour, the irregularity of colleagues becomes one of the main obstacles to improving employment conditions.
- 31 Companies that sponsor labour regularisations commit themselves to maintaining the employment relationship with regularised employees. This is a prerequisite for regularisation. In this context, years of irregularity leave their mark. When undocumented workers eventually returned to their country of origin, some of those who obtained regularisation through strike action returned to France with gifts for both the trade unionists who accompanied them in their mobilisation and their bosses. For those who felt indebted to their bosses for the “help” given to regularise their situation and who feared the consequences of a long period of occupation of the company’s premises on relations that had previously, at least on the surface, been cordial, offering gifts on return from their first trip back to their country of origin was a way of ensuring that the relationship would continue.

Unrestrained Employment: Professional and Personal Development

- 32 Once renewal is secured, it becomes possible to envisage professional development which was held back by administrative irregularity. To complete the process of compliance, some have had their skills recognised through diplomas. Mohamed Diego N’Diaye, whom Lucie Tourette interviewed on several occasions between 2009 and 2018, had just been regularised when he enrolled on a training course and obtained a forklift truck driver’s licence, which at last authorised him to drive one, although he had been doing so for several years without the relevant certificates. Mohamed Diego N’Diaye participated in the strikes between 2008 and 2010, and after training he was able to find work as a lorry driver, entering a sector of activity where there are no workers in an irregular situation. He used the negotiation skills he had acquired in the context of mobilisation of undocumented workers. He had

negotiated on many occasions with the bosses of temporary work agencies and acted as a staff representative without having an official mandate, demanding payment for all hours worked for himself and his colleagues. And when he heard about better pay conditions in a competing company, he had no hesitation in resigning. Other regularised workers, who had remained for many years in jobs in which their administrative situation maintained them, experienced rapid promotions. They were no longer afraid of attracting attention by applying for training and knew that the identity check at the entrance to the training course was now no more than a formality. Some of them even found themselves having to choose between management positions and trade union responsibilities, as the two did not seem compatible.

- 33 Ten years after going on strike, former undocumented migrants interviewed again by Lucie Tourette in 2017-2018 all had improved working and employment conditions. Amadou Maïga, who was doing “small temporary jobs”, was hired by a large construction company in 2012, where he quickly moved from laying wooden frames for pouring concrete (formworker-carpenter) to transposing plans on the building site (plotter), a less physical job, which used his skills in reading plans and managing a team. Having been a pipe fitter (installing large outdoor pipes), Bandjougou Traoré obtained a vocational training certificate in plumbing and heating, which enabled him to work in better conditions: indoors, with less heavy loads, for a better salary. Moussa Coulibaly became a Quality Manager. Originally from the suburbs of Dakar where his father worked in the chemical industry, he had just obtained a Master’s degree in cell biology when he found himself undocumented after the university administration lost his file. “No registration, no residence permit”, he summarised. He was forced to stop his studies and for eight years he worked as an extra in the catering industry. He was regularised in 2010 and then followed a two-year work-study training programme to become a Quality Manager. He would have liked to continue his trade union involvement but had to give it up: *“When I took the job, I realised that it was impossible. The quality manager is between a rock and a hard place; he is the management’s linchpin. Securing my professional future meant that I had to give up this trade union work”*.
- 34 The mobility gained through regularisation in some cases alienated former undocumented migrants from the unions that organised the strikes that led to their regularisation. Those who relocated in order to follow a training course or simply to provide a better living environment for their families found themselves cut off from their trade union networks. Possessing activist knowledge that is not so easy to export, they were sometimes surprised to knock on the door of local unions that were not familiar with “their” strike movement and did not show much interest in the skills they had developed in managing an occupation or in negotiating. Undocumented strikers who were often between twenty and thirty years old, were by then ten years older and some had families that made them less available for activism. This is also evidence that they had become part of a certain “norm”: in union meetings, young parents are often the main absentees.
- 35 In a few companies, trade union sections emerged, led by regularised undocumented migrants. This was the case in a cleaning company in the Essonne department. The boss, who was initially very reticent, multiplied obstacles to the new section’s suggestion of an expert assessment by the Health, Safety, and Working Conditions Committee (*Comité d’hygiène, de sécurité et des conditions de travail* – CHSCT), but it eventually took place. The expert assessment recommended diversifying the company’s

activity, which until then had been focused on cleaning at one-off events (trade fairs, exhibitions, etc.), by developing a cleaning activity for office buildings, which could provide both more hours of work and more regular income. A few months later, the changes recommended by the assessment proved to be profitable, leading the boss to reconsider his aversion to the union section. While following the end of the strikes some employers adhered to a basic respect for legality, at least as far as former strikers were concerned, they made repeated attempts to discourage them by giving them the hardest jobs, which started the earliest or were the furthest from their homes. In such cases, many left the companies at the first opportunity, to take up employment elsewhere.

Conclusion

- 36 Based on studies of the employment conditions and regularisation procedures of undocumented workers in France, this article explores various issues related to work as a source of legitimacy in the context of precarious migration. It demonstrates that it is not possible to understand the legal, political and trade union issues linked to regularisation involving employment without a realistic representation of the diversity of undocumented workers' modes of integration into the formal and informal labour market. The rhetoric of chosen immigration has not necessarily increased hostility towards migrant workers or negative representations of them, quite the contrary. But the precarity of the employment sectors and the jobs held by undocumented migrants make this route to legality problematic for many, and inaccessible to some. Finally, the chain of interdependencies and loyalties that make long-term employment of undocumented migrants possible is again mobilised both at the time of the often-conflictual process leading to regularisation, and in the civic and professional trajectory triggered by it.
- 37 The article focused on the role of work in the French migration regime. Compared to other European countries, such as Germany, the Netherlands or Sweden, those who are regularised in France are less likely to go through the asylum system (König, 2014). However, the explanation is not only related to the French institutional framework. The reason that many of those who can claim to be "victims" or who have had their vulnerability recognised as a reason for regularisation prefer to emphasise their work as the source of the legitimacy of their presence, is that being a worker does not only imply complying with the expectations of the country of residence, but also very often means meeting the requirements of the social group to which they belong in the country of origin for immigrants who are also emigrants.
- 38 In many ways, the "refugee crisis" of the 2010s in Europe gave rise to a new version of the "border spectacle", which, according to De Genova (2013), ensures that migratory "illegality" is rendered natural by its punitive display on the periphery, in ways that both disguise and help to organise the subordinate inclusion of illegalised migrants. While this time the spectacle was embodied in the twin tropes of humanitarian catastrophe and threatening victims at the gates of Europe (Cuttita, 2012), until the 1970s, refugees were seen as "just another labour force" (Spire, 2004) and a work contract was, prior to the official interruption of flows, easier to obtain than a refugee status (Fassin and Kobelinsky, 2012).

- 39 Despite the continuing dominance of the humanitarian trope today, a growing body of research is analysing the effects of the “refugeeisation” of the labour market. These analyses now approach refugees as workers, often following the lead of the authorities themselves, whether to denounce their exploitation or to assess their integration (Dines and Rigo, 2015; Di Cecco, 2016; Palacios-Arapiles and Madziva, 2017; Maroufi, 2017; Tcholakova, 2017; Okba, 2018; Keyhani, 2020). Yet, although work comes into play within the moral and symbolic framework of humanitarianism, it retains an ambiguous place in the dynamics of access to legal status: while illegitimate at the time of initial recognition as vulnerable insofar as this is based on dis-identification with the figure of the “economic migrant”, material independence and employability are nevertheless, along with the prospects of cultural “integration”, factors taken into account in access to less precarious status, but also more generally in the evaluation of migratory merit (Gourdeau, 2018; Le Courant, 2022).
- 40 In the NGO space, even the “humanitarian” support workers and social workers who accompany asylum seekers perceive work as a source of legitimacy, distancing migrants from the stigma of fraud or a possible burden on the host society (Kobelinsky, 2010: 229). To avoid adding further offences to the residence infringement while allowing migrants to become “deserving”, some programmes encourage investment in training or even volunteering, unpaid work permitted to non-authorised individuals, sometimes with minimal compensation, whose “civic” value goes beyond the goal of regularisation and can be more generally experienced as the performance of good economic citizenship for those in a probationary legal and moral position (Aubry, 2019; Di Cecco, 2016; Di Cecco *et al.*, 2020). Thus, the legitimisation and humanitarian treatment of flows is also marked by the recognition given to work, and is not free of selection dynamics, particularly in terms of social class, which qualify the notion of systematic targeting of the most vulnerable, and typically make long-term residence conditional on the anticipation of future civic productivity (Van Hear, 2004; Tcholakova, 2017; Chauvin and Garcés-Mascreñas, 2018; Ravn *et al.*, 2020). In doing so, humanitarianism promotes a figure of the redeemable victim, which makes performance appear not so much as the opposite of vulnerability but as the new definition of good vulnerability.

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NOTES

1. Since migratory irregularity is manifested both in the precarious nature of employment (short contracts, undeclared work, ease of dismissal, etc.) and in the substance of work (arduous nature of jobs, discipline, dependence, etc.), this article will tend to examine these two dimensions together. By convention, the common expression “regularisation through work” will therefore be used here in a general sense to refer to this intertwining of employment and working conditions.
2. The minimum monthly resources necessary to qualify for family reunification are €1,231 for a family of three and €1,456.77 for a family of six (see <https://www.service-public.fr/particuliers/vosdroits/F11166>).
3. On 6 November 2018 the then French Minister of the Interior, Christophe Castaner, told the National Assembly that a turning point had been reached in the fight against irregular immigration resulting in a “marked upturn in removals”. While in 2017, 14,859 people were forcibly removed, an increase of 14.6% compared to 2016, just under half were removed to a country outside the European Union (see <https://www.vie-publique.fr/discours/207187-declaration-de-m-christophe-castaner-ministre-de-linterieur-sur-les>). In the same year, of the 103,940 removal orders issued in total, only 17.4% were carried out (source: MI-DCPAF/DSED).
4. Termination of the employment contract of an employee in an irregular situation follows a derogation procedure according to which it is not necessary to give reasons for dismissal. In theory, there is provision for compensation in the sum of three months’ salary, but few employees are aware of this and even fewer take the risk of claiming it, given their administrative situation, as this would mean exposing their irregularity to the authorities and facing the possibility of arrest and expulsion.
5. The companies and individuals mentioned in this article have been anonymised.
6. *Direction générale du travail* (General Labour Directorate) (2019) *Analyse de la verbalisation du travail illégal en 2017*, July, p. 22.
7. The Labour Code (Article L.341-6-I) guarantees equal rights for workers, regardless of their situation.
8. Following the regulation adopted by the Council of the European Union on 18 April 2008, the deployment of biometric residence permits commenced in France in June 2013.
9. Forgery and the use of forgeries are punishable by three years’ imprisonment and a fine of €45,000; the use of a third party’s residence permit or passport is punishable by five years’ imprisonment and a fine of €75,000 (Articles 441-1 and 444-8 of the Criminal Code).

ABSTRACTS

By focusing on the issue of vulnerability and humanitarian considerations, scholarship on recent migration flows has underestimated the role of work as a source of legitimacy and access to rights. Yet, while officially employment is a means of obtaining a residence permit for only a minority of migrants, it remains a determining factor in the existence of migrants with precarious legal status. Based on the French case, this article describes the different ways in which the moral economy of employment structures the successive moments of migratory irregularity. It examines the effects of administrative precarity on a range of employment relationships, the documentation strategies that make them possible and the moral

arrangements that result between undocumented workers and their employers. It then highlights the different forms of employment and the various actors involved in the dynamics of obtaining legal status. Finally, it examines the effects of regularisation, identifying the biographical changes it brings about while revealing the lasting effects of past irregularity. The conclusion reintroduces the issue of economic performance in the critical analysis of humanitarianism by reminding us that the latter is also permeated by neoliberal considerations, valuing promising victims. By underlining the role of work within the moral economy of the migration-citizenship nexus, the article exposes the ambiguities of the injunction to economic performance in the construction of migratory legitimacy.

En plaçant en leur cœur la question de la vulnérabilité et la raison humanitaire, les travaux récents sur les nouveaux flux migratoires ont sous-estimé la place du travail comme source de légitimité et d'accès aux droits. Or, s'il reste officiellement un moyen minoritaire d'obtention d'un titre de séjour, l'emploi est pourtant un élément déterminant de l'existence des migrant·e·s au statut civique précaire. À partir du cas français, cet article décrit les différentes manières dont l'économie morale de l'emploi structure les moments successifs de l'irrégularité migratoire. Il examine les effets de la précarité administrative sur une diversité de relations d'emploi, les stratégies documentaires qui les permettent et les arrangements moraux qui en résultent entre les travailleurs et travailleuses sans papiers et leurs patron·ne·s. Il met ensuite en lumière les différentes formes d'emploi et d'acteur·rice·s entrant en jeu dans les dynamiques d'accès à un statut légal. Enfin, il questionne les effets de la régularisation, pointant les évolutions biographiques qu'elle suscite tout en mettant en évidence les conséquences durables de l'irrégularité passée. La conclusion réintroduit la question de la performance économique dans l'analyse critique de l'humanitarisme en rappelant que ce dernier est lui aussi traversé par une raison néolibérale valorisant les victimes prometteuses. En soulignant la place du travail au sein de l'économie morale du lien migration-citoyenneté, l'article met en évidence les ambiguïtés de l'injonction à la performance économique dans la construction de la légitimité migratoire.

Ubicando en el centro del análisis la cuestión de la vulnerabilidad y la razón humanitaria, las investigaciones recientes sobre los nuevos flujos migratorios han subestimado el lugar del trabajo como fuente de legitimidad y de acceso a derechos. Aunque oficialmente sea un medio minoritario para obtener un permiso de residencia, el empleo es un elemento determinante de la existencia de migrantes cuyo estatus legal es precario. Basándose en el caso francés, el artículo describe las diferentes maneras en que la economía moral del empleo estructura los momentos sucesivos de la irregularidad migratoria. Examina los efectos de la precariedad administrativa sobre una diversidad de relaciones de empleo, las estrategias vinculadas a los papeles que éstas permiten, así como los arreglos morales entre los y las trabajadoras sin papeles y sus empleadores. Luego destaca las diferentes formas de empleo y de actores/actrices que intervienen en las dinámicas de acceso a un estatus legal. Por último, cuestiona los efectos de la regularización subrayando las evoluciones biográficas que suscita, al tiempo que destaca las consecuencias durables de la irregularidad pasada. La conclusión reintroduce la cuestión del rendimiento económico en el análisis crítico del humanitarismo recordando que éste también está atravesado por una razón neoliberal que valoriza a las víctimas prometedoras. Subrayando el lugar del trabajo en la economía moral del vínculo migración- ciudadanía, el artículo pone en relieve las ambiguëdades del mandato de rendimiento económico en la construcción de la legitimidad migratoria.

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