

# The "human" right of migrant workers: Equality in post-Westphalian era -- An example of Lesbian Factory

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本文試圖以T婆工廠為範例來講述「移工」在凱恩斯—威斯特伐利亞架構下所承受的不公正以及可能解決的辦法。移工所受到的不公平通常以「平等」與「身分」之間的關係來呈現。面對這種暴力，希望利用Giorgio Agamben、Nancy Fraser、Foucault...等人的概念來試著將問題清楚的呈現並提出對應之道。事實上，已很概括的方式來看，這三位學者的思考有一個共通點：典範轉移(paradigm shift)。Foucault對「瘋狂」(madness)的分析，就是一個很典型的典範轉移的問題：對科學接受的「區分假設」的拒絕。Agamben對例外狀態(state of exception)、暴力的分析，Nancy Fraser對肯定(affirmation)與改造(transformation)方案的區分，通通都是對準這個典範轉移而來，試圖用另一種帶來「平等」的「差異」來代替原有的「假設區分」，或許這極為類似Karl Marx所討論的「無階級社會」的問題。當然這裡有兩個問題是需要被釐清：身分是否為另類的勞動力，無階級社會中「差異」的問題。然而由於篇幅及能力的不足，本文就直接從「身份剝削」這個「假設」出發，探討在移工這個現象中帶來「平等」的「差異」與「假設區分」之間的問題。

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## Introduction

This article attempts to use the Lesbian Factory as an example to describe the unequal condition of migrant workers in the "Keynesian-Westphalian frame". The unequal condition of migrant workers is often expressed in terms of the relationship between "equality" and "identity". Face to this kind of violence, we hope to use the concepts of Giorgio Agamben, Nancy Fraser, Foucault to try to clearly present the issues and propose solutions. In fact, in a very general way, there is one thing in common in three scholar's thinkings: a paradigm shift. Foucault's analysis of "madness" is a typical paradigm shift. Agamben's analysis of the state of exception and violence and Nancy Fraser's distinction between affirmation and transformation are all directed at this paradigm shift which attempts to replace a "presupposition of difference" with the "equality indifference". Perhaps this is very similar to the issue of "classless society" discussed by Karl Marx. Of course, there are two issues that need to be clarified: whether the identity is the other version of labor power, and the problem of "difference" in a classless society. However, due to the lack of space and capacity, this article proceeds directly from the "assumption" of "identity exploitation" to discuss the issue of "presupposition of difference" and "equality indifference".

According to the (T婆工廠) documentary, the case about plant closure of Fast fame (飛盟) is not far from the other labor dispute cases. Most of the problems are related to salary in arrears, severance

pay, and the transfer of employers. However, what is special about this dispute is that there are more than 100 Philippine migrant workers among the victims and these workers are eye-catching because of their "uncertain sexual orientation". In fact, according to the documentary, the requirements of these workers are actually not far from the "local" ones. However, "they" need to worry about other things, that is, the repatriation and transfer of employers. With regard to repatriation, these peoples must race against time in two-level. One is the employer who runs away, and the other is the expiration of the residence permit. Regarding the transfer of employers, although it should be the same as what is required of local workers, the actual situation is totally opposite. In fact, the migrant workers do not have the right to choose the employer. Instead, they must put themselves in the "slave market" to allow employers to choose. This is why these people are unsure about their future and the lover must withstand the pain of separation. Faced with these problems, although the documentary does not clearly propose a solution, it can vaguely see its strategy of fighting discourse, which is to move toward "human" rights. The narrations appearing in the documentary: "The current law does not guarantee human rights", "In the process of changing employers, everyone can be respected as a human" and "They are humans, not commodities", are a kind of paradigm shift of Thomas Khun which attempt to undermine existing logic and empowering the workers. What is the paradigm to be transferred? This is what Nancy Fraser called the Keynesian-Westphalian framework.

With regard to the issue of "paradigm shift", the views of various scholars are extremely different, and this depends entirely on the objectives of their analysis. This article analyzes the "paradigm shift" of Agamben, Foucault, and Fraser, and thinks about the help they can bring to the problem of migrant workers.

The "paradigm shift" in Agamben's analysis is clearly explained in the following paragraph: "[t]he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real [wirklich] state of exception, and this will improve our position in the struggle against fascism" (Agamben, 2005; p. 57). The so-called "real" exception is Walter Benjamin's concept of violence. This is a paradigm shift that really abolishes the law. So what is the "artificial" state of exception? I understand it in this way. Foucault's criticism of "humanism" lies in the hypothesis of madness accepted in scientific progress. The "artificial" state of exception criticized by Agamben is another version of "humanism". This is the so-called "fictitious lacuna" of the law (Agamben, 2005; p. 31). For this "fictitious lacuna", an analysis of "biopower" was developed by Foucault, and in Agamben, there is a "bare life". As everyone knows, these two concepts are quite different. According to my reading, the main difference is the relationship between sovereignty and economy. In detail, from the dismantling of the madness's legal rights to the so-called punishment of the soul in disciplinary techniques, the judicial structure has always been linked to the subject. This is in contrast to Agamben's analysis. Instead, the law must first recognize who it is and start to operate. This is what Foucault calls "humanism". Afterward, Foucault will expand the analysis to the problems between the state, the market, and the population. From this perspective, if Agamben's analysis of the relationship between the market economy and the subject seems to be lacking, doesn't Benjamin's concept of violence produce a huge blind spot for "humanism"?

From the perspective of the market economy, you can see the uniqueness of Foucault's analysis. A basic definition of Foucault's market is Laissez-faire. In other words, the concept of power is no longer oppression but a regulation. The criterion of regulation lies in the market economy. Therefore,

according to this idea, the state power must "submit" to the movement of capital and think about the things which will maintain/destroy the economy. But what needs more analysis here is that the accumulation of capital will eventually beyond "national boundaries". As a result, due to this requirement, the traditional national boundaries will be completely changed from repression to governance, and the most obvious phenomenon is what Etienne Balibar described as the boundary moving from the edge to the center. To be more detailed, the so-called capital flow will make the traditional definition of national borders sinister. In fact, it means that the flow continues but slowly progresses. Under such circumstances, it is the "controlling society". In the concept of Balibar, it is the racial economy. However, such brilliant analysis does not also offer a solution. For Foucault, what is the true paradigm shift and the "humanism" that escapes the capture of the biopower?

Fraser's paradigm shift lies in her famous "redistribution" and "recognition". The former is a worker's movement that requires economic redistribution. The latter refers to cultural and social movements such as the homosexual movement. For these two issues, Fraser proposed two ways: affirmation, transformation. For the affirmation, due to the incomplete structural transformation, it belongs to the superficial justice, such as social assistance, insurance system, recognition of multiculturalism, and so on. On the contrary, in terms of transformation, it involves a modification of deep structures such as the Marxist class theory or queer theory.

From these three scholars, Agamben and Foucault's paradigm shift is still vague. If the analysis about Agamben is correct, the problem that Benjamin's concept of violence has to the addressee is multi-level. First, we must question whether the state of exception is a hypothetical division, just like "madness" in Foucault's analysis. The next step is to face oppressive relations such as economic exploitation and ethnic discrimination. From this point of view, Fraser's project appears to be more crucial. Then, what is the actual situation of the Fraser project in the lesbian factory? According to the above description, the discourse of "human rights" in the lesbian factory is similar to the queer theory mentioned by Fraser, but at the national level. More interestingly, TIWA (Taiwan International Workers Association) staff, Wu Jing-Ru reminded us in an article that obtaining "citizenship" is a biased analysis of the problem of migrant workers. Because, first, this presupposes that there is a "desire" to become a citizen of an immigrant country. This has the meaning of ethnic evolution. Second: migrants usually enjoy the freedom of "moving" and the current stay may only be prepared for the next stop. From this point of view, the appeal for "human rights" should be more suitable for the status of migrant workers in comparison with "civil rights." Although the human rights discourse was put forward, the "lesbian factory" did not touch on the issue of redistribution that Fraser said. Of course, it is very difficult to thoroughly discuss Marx's theory in the documentary. It's the same for this article. However, the unequal treatment of migrant workers is obviously related to identity and labor exploitation. The questions about classless society and identity as a form of labor force should further help in understanding the issue of migration. And this will also complement Benjamin's concept of violence.

## References

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