

Safe, Orderly and Regular Migration: Coloniality of Law and Communities of Practice

Migración segura, ordenada y regular: colonialidad del derecho y comunidades de práctica

Migração segura, ordenada e regular: colonialidade do direito e comunidades de prática

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ABSTRACT

In this paper, I argue that the safe, orderly, and regular migration paradigm, as promoted by the Global Compact, reproduces the coloniality of legal knowledge. While regular migration is safer, strict national legislations often make it inaccessible for people from the Global South, leading to irregular migration as the only available option. The Global Compact aims to reduce irregular migration, but fails to address the structural inequalities that cause it. I propose a decolonial approach to transformative constitutionalism, reframing migrants as a community of legal practice. By leveraging their legal knowledge and acts of resistance, migrants can challenge the colonial legal structures that systematically marginalize them. This perspective aims to expand the discussion on non-citizens' experiences and provide new decolonial avenues for understanding migration law and transformative constitutionalism. The paper first outlines this decolonial framework, then critiques the safe, orderly, and regular paradigm, and finally, suggests a methodological approach centered on the narratives and practices of people on the move.

Keywords: migration; decoloniality; transformative constitutionalism; pluriversality; community of legal practice.

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RESUMEN

En este artículo se sostiene en que el paradigma de migración segura, ordenada y regular, tal como lo promueve el Pacto Mundial, reproduce la colonialidad del conocimiento jurídico. Si bien la migración regular es más segura, las estrictas legislaciones nacionales a menudo la hacen inaccesible para poblaciones del Sur Global, lo que lleva a que la migración irregular sea la única opción disponible. El Pacto Mundial tiene como objetivo reducir la migración irregular, pero no aborda las desigualdades estructurales que la causan. Se propone un enfoque decolonial del constitucionalismo transformador, replanteando a las personas migrantes como una comunidad de práctica. Al aprovechar su conocimiento legal y sus actos de resistencia, las personas migrantes pueden desafiar las estructuras legales coloniales que las oprime sistemáticamente. Esta perspectiva busca ampliar la discusión sobre las experiencias de quienes no son ciudadanos, ofreciendo nuevas vías decoloniales para comprender el derecho migratorio y el constitucionalismo transformador. Este artículo primero esboza este marco decolonial, luego analiza el paradigma de la migración segura, ordenada y regular, y finalmente, sugiere un enfoque metodológico centrado en las narrativas y prácticas de las personas en situación de movilidad.

Palabras clave: migración; decolonialidad; constitucionalismo transformador; pluriversalidad; comunidad de práctica.

RESUMO

Neste artigo, argumento que o paradigma da migração segura, ordenada e regular, promovido pelo Pacto Global, reproduz a colonialidade do conhecimento jurídico. Embora a migração regular seja mais segura, legislações nacionais rigorosas frequentemente a tornam inacessível para pessoas do Sul global, levando à migração irregular como única opção disponível. O Pacto Global visa reduzir a migração irregular, mas não aborda as desigualdades estruturais que a causam. Proponho uma abordagem decolonial ao constitucionalismo transformador, reformulando os migrantes como uma comunidade de prática jurídica. Ao aproveitar seu conhecimento jurídico e suas práticas de resistência, os migrantes podem desafiar as estruturas legais coloniais que os marginalizam sistematicamente. Essa perspectiva busca expandir a discussão sobre as experiências dos não cidadãos e oferecer novas vias decoloniais para entender o direito migratório e o constitucionalismo transformador. Este artigo primeiro delinea esse quadro decolonial; em seguida, critica o paradigma da migração segura, ordenada e regular; por fim, sugere uma abordagem metodológica centrada nas narrativas e práticas das pessoas em movimento.

Palavras-chave: Migração; decolonialidade; constitucionalismo transformador; pluriversalidade; comunidade de prática

Introduction

In this paper, I aim to analyze how the ‘safe, orderly and regular migration’ paradigm reproduces the coloniality of legal knowledge towards the Global South. The *Global Compact for Safe, Orderly and Regular Migration* (hereinafter ‘Global Compact’) is worth our attention, as it proposes a common response to migration worldwide. I pose that the latter introduces the ‘safe, orderly and regular migration’ paradigm in a self-reflexive, categorial, and binary manner. The architecture of this paradigm tends to constrain international movement within strict categories, mainly regular and irregular. I argue that while regular migration appears to be a desirable aim, as it is undeniably safer than migrating otherwise, it is not a universal possibility. Since the applicability and access of national immigration legislations and programs are limited for people from the Global South (quotas, financial requirements, extended delays, etc.), irregular migration is often the most accessible way of migrating and seeking asylum. Although one of the objectives of the Global Compact is to limit irregular migration (see Objective 11), and while it calls for the creation of new and more flexible regular pathways (see Objective 5) and the minimization of the root causes of migration (see Objective 2), it does not address the structural inequalities behind the irregularization of citizens from the Global South. Thus, it reproduces a colonial distribution of wealth and privileges. In this context, procedures for regular migration (visa applications, medical examinations, and related processes), as well as regularization mechanisms and programs, serve as tools to filter and discipline subaltern populations.

This special issue seeks to explore the decolonial potential of transformative constitutionalism. In order to engage in this challenging exercise, I propose that migrants be considered a community of legal practice in a transformative constitutionalism perspective. Indeed, since migrants have legal knowledge, perform acts of resistance and nourish information and advocacy networks, they can embody a community of legal practice against the coloniality of knowing, being, doing, and moving. Although they are not citizens –not even subcitizens (see Medici, 2016, p. 94)– within the transit and destination territories, they own an agency of resistance towards violent legal structures that systematically

irregularize, deport, detain, and disappear them. The objective is to contribute to expanding the reflection and discussion on transnational experiences of non-citizens in transformative constitutionalism, thus providing decolonial avenues to explore.

In this paper, I first expose the decolonial analysis framework applied to migration law. Second, I propose a decolonial critique of the ‘safe, orderly and regular migration’ paradigm by unveiling and emphasizing its colonial origin, architecture, and consequences. Third, I suggest a methodological step towards a pluriversal understanding of law and migration. This is built from the narratives and practices emerging from the main subjects of migration law: people on the move. They are then shifted away from the margins of legal production and legitimized as a community of legal practice capable of transforming the ways we imagine migration and law, with the potential of other actors leading the claims through constitutional processes, hence challenging the frontiers of citizenship.

Theoretical Framework: Decoloniality and Migration

In this paper, I rely on a decolonial analysis framework to show that the Global Compact, as an epistemic product of Western modernity and coloniality, reproduces structural hierarchies.

Regarding modernity, decoloniality points out the limits of modern law solutions. The modern legal epistemology is based on the myth that modern law offers a solution to all modern problems (Ndlovu-Gatsheni, 2020, p. 376), and its mechanics are self-referential. Its limits are even more evident when facing situations such as ‘mass’ migration, presented as a ‘crisis’ (Imbert 2022). The so-called ‘migration crisis’ would, in fact, equate to a “crisis of modernity” (see on this concept, Ndlovu-Gatsheni, 2020, p. 368), since modern legal tools –such as ‘re-borderization’ (Ndlovu-Gatsheni, 2020, p. 383)– mobilized in this so-called ‘global crisis’ appear to be ineffective and inadequate responses to a global and transhistorical phenomenon such as migration. And yet, despite a decolonial need for “deborderization” (Ndlovu-Gatsheni 2020, p. 383) and the fact that walls may be described as “illusory” or mainly “serv[ing]

the logic of perception” (Vallet, 2014, p. 3), walls and fences are still being raised, and borders are enforced in other ways.

Modern law has been conceptualized as a *limit* concept, tracing an inside and an outside, “whereby some zones are juridical and others are not (or are ‘less and less’ so, as Foucault would have it)” (Esmeir, 2015, p. 27). However, a decolonial approach describes the non-juridical others as part of the legal order, obliging to rethink modern law as a “zone of multiple legalities” (Esmeir, 2015, p. 41). This critique of modern law applies more specifically to migration law, where the binary construct ‘regular – irregular’ exists well inside the scope of legality. Modern law creates the limits of regularity and irregularity, so that the other the irregular – is intrinsically shaped by the law. From this perspective, preventing irregular migration – as announced in the Global Compact – means preventing the irregularization of persons through the law, rather than preventing the irregular migrants from crossing borders.

In law, coloniality is the continuity of colonial epistemological structures and effects within the legal order, hence reproducing racial, patriarchal and capitalist oppressions. Coloniality is, together with modernity, what determines the contours and scope of ‘irregularity’ in the context of migration. The imposition of documents on a certain part of the world’s population follows a colonial logic, as Prieto (2019) states, “the logic behind the emergence of slavery is also found in these migrations, however the forced nature of the latter appears embedded in a voluntariness that is only apparent, while the structures remain relatively hidden and/or naturalized. Both exercises allow us to see the continuities in the emergence of these subaltern population groups of global mobility, framed under the civilizational project evolution of Western modernity” (author’s translation).

Visa requirements and other legal mobility restrictions based on—mainly—the place of birth contribute to the racialization and hierarchization of international movement of persons, and can be seen as an example of “structures [...] hidden and/or naturalized” (Prieto, 2019, p. 26). In this context, migrating ‘regularly’ appears as a privilege for specific nationalities or socioeconomic minorities within the Global South. Prieto shows that there are territories of “restricted nationality,” where the freedom of movement provided by their passports is lesser

than that provided by other passports (Prieto, 2019, pp. 28-29; see also Passport Index).

The possibility of regular border-crossing is thus determined by one's "accident of birth within particular geographical borders [...] [or] based on the sheer luck of descent." (Shachar, 2009, p. 7), which are both criteria for membership determination within a polity, which is, the "birthright lottery" of citizenship. As a result, one's nationality is more or less restricted, which not only contributes to reproducing the world's citizen hierarchy, but also determines the part of power, wealth and opportunity to which one has access on planet Earth depending on an inherited privilege essentially determined by luck. In this context, migrating 'irregularly', or without the authorized documents, is not simply the result of a deliberate (Prieto, 2019, p. 18) and uninformed (De Vries & Weatherhead, 2021) choice. 'Safe, orderly and regular migration' then appears as a limited and inadequate modern law solution to a modern law problem: irregular or irregularized migration. Indeed, if it is true that regular migration or regularization objectively correct irregular migration, it is important to recall that irregular migration doesn't exist in essence. Rather, it is the political result of restrictive legislations and threatening executive actions. As Dauvergne states: "without immigration law there is *no such thing as illegal migration*." (Dauvergne, 2008, p. 2; cited by Dehm, 2021, p. 687). Prieto develops the concept of 'migratory subalternity':

'Migratory subalternity' refers to a permanent historical condition, a product of the dialectic between modernity and coloniality, in which complex structural and historical hierarchies are condensed, continuously resignified. Failure to hold documents is no longer the problem: it is about emphasizing that it is created and used to justify restrictive and discriminatory policies; the migrant is made invisible as an actor or potential interpreter of them or of possible alternatives; responsible for the development of their country of origin, and accused of national treason for having abandoned it; rejected by all the countries involved in their movement, which justify the discretionary limitation of their rights while benefiting widely. In spite of everything, migrating without documents and insisting is an expression of rebellion

against the epistemological violence that defines, limits, controls and instrumentalizes them. (Prieto, 2019, p. 21; free translation)

Such a conceptualization highlights the historicity of the otherization process of ‘irregular’ migrants and its intersection with racialization, capitalism, and patriarchy. When migrating, individuals and groups who have historically been *othered* by these dynamics are also more likely to be irregularized, even criminalized, due to their lack of access to ‘legal’ means of migration.

However, migrating irregularly can also be considered as an act of resistance or ‘rebellion’ against a system that controls, sanctions and immobilizes the migrants (Prieto, 2019, p. 21) given their status within the ‘global hierarchy of mobility’ (Dehm, 2021, p. 685). Apropos Achiume proposes “migration as decolonization” as a means of historical redress against the systematic exclusion of citizens from the Global South in the Global North, arguing that migration laws and institutions should rather follow a path of “distributive and restorative justice” (Achiume, 2019, p. 1517).

The role of institutions in the Global North is key for maintaining colonial structures of migration laws and policies, erasing knowledge production about migration in the Global South (see Spijkerboer, 2021), and producing asylum and migration policies in a racialized fashion:

[...] within this conjuncture colonial legacies of the construction of the racialized Other are reactivated and wrapped in a racist vocabulary, drawing on a racist imaginary combined with *new forms of governing the racialized Other through migration control* (emphasis added). (Gutiérrez Rodríguez, 2018, pp. 17-18)

When actors from the Global South are invited to contribute to migration regulation projects, it is mainly through institutions of Western origin and design such as the United Nations, International Organization for Migration (hereinafter ‘IOM’), and UN Refugee Agency. Bradley (2022) has shown the IOM’s historical role in colonial and neocolonial migration projects, in sustaining exclusive entry and internal movement policies, and in fostering selective white migration, such as in Australia, apartheid

South Africa (Bradley, 2022, p. 25), United States (Bradley, 2022, p. 31), and Latin America (Bradley, 2022, p. 32). The Provisional Intergovernmental Committee for the Movement of Migrants from Europe –IOM’s predecessor, then renamed Intergovernmental Committee for European Migration (ICEM)– would even “make arrangements for the transport of migrants”, insuring orderly (white) migration to countries overseas (Bradley, 2022, p. 30). The ICEM would primarily consider itself a “loyal and responsive service provider for its member states—including colonial powers and settler colonial states” (Bradley, 2022, p. 26). Importantly, no publicly available archive accounts for the organization’s history, which contributes to what Bradley calls the IOM’s “colonial unknowing” and results in the narrative of the institution’s history being told from within the institution, often in “technocratic and triumphal terms” (Bradley, 2022, p. 25). Although the organization’s 1951 Brussels Constitution provided for human rights standards for migrants and fostered free movement of persons, the 1953 version subordinated human rights to the states’ discretion, and the free movement principle would serve to justify the exclusion of Communist states from the organization (Bradley, 2022, p. 31). The history and architecture of the Global Compact for Safe, Orderly and Regular Migration cannot be understood independently from this historical framework and normative project of selective free movement and human rights along colonial and neocolonial lines.

Contemporary normative frameworks do not usually establish migratory restrictions in a racial language.¹ Bureaucratic vocabulary and apparently neutral categories are rather used in a migration ‘management’ approach. ‘Irregular’ migration is thus presented as an anomaly that must be corrected by more law. The individual’s irregularity is posed as a status, although it is embodied. Even when their status is regularized, the risk of irregularity never completely disappears. Regularity rests on merits or victimhood (see Ambrosini & Hajer, 2023, p. 76), which fosters an individualistic and hyper-bureaucratic approach where the burden of compliance to the injunction of ‘migrating regularly’ rests on the individual and is framed in neutral terms that do not take into account

¹ Although this tendency is currently reverting in the United States: <https://www.theguardian.com/us-news/2025/sep/09/supreme-court-immigration-los-angeles-reaction>.

structural conditions of origin, or the fact that irregular migration is a relational concept that does not exist without a State's normativity (see Echeverría, 2020, p. 12).

By avoiding a perspective in which a mere administrative-bureaucratic status is addressed through technocratic and neutral language as in the Global Compact, decoloniality makes it possible to refocus the analysis on persons, thus obliging legal research to understand the individual contexts and motivations and how individuals and groups experience the law. It reveals that migrating 'irregularly' is not a mere mistake, the result of a bad decision (Prieto, 2019, p. 18) or lack of information (De Vries & Weatherhead, 2021, p. 305), but an act of resistance against a system that tends to erase them, or 'prevent' them. Refocusing on persons helps transcend victimhood without evacuating the violence suffered. It restates the centrality of transnational non-citizens in legal production.

In the next section, I specifically analyze the Global Compact for Safe, Orderly and Regular Migration.

A Decolonial Assessment of 'Safe, Orderly and Regular Migration'

The Global Compact for Safe, Orderly and Regular Migration is a non-binding international instrument negotiated within the United Nations. The final version of the Global Compact was adopted on 13 July 2018 following international negotiations held on 10 and 11 December 2018 in Morocco, within the framework of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration. The *Global Compact for safe, orderly and regular migration* [emphasis added] establishes a clear distinction between migrants and refugees, as the latter is covered by another compact (Global Compact on Refugees).

The Global Compact comprises twenty-three (23) objectives, for each of which a general commitment is established, as well as a series of actions to achieve them. In particular, 'safe, orderly and regular migration' is the key principle.

Scholars have celebrated the Global Compact for a number of reasons. Although the instrument itself is not binding and its application depends on cooperation and monitoring, the human rights obligations it contains are binding in international law (Guild et al., 2019, p. 43). Indeed, the instrument reiterates and thus reinforces certain basic principles of international migration law, including the prohibition of collective expulsions and arbitrary detention, the principle of non-discrimination, as well as the best interests of the child (Chetail, 2020, p. 255). Thus, the Global Compact stands as a foundational element of the international migration regime and provides a normative globally accepted framework (Ferris & Donato, 2020). In the same vein, the Global Compact has been compared to the Universal Declaration of Human Rights, as a key document guiding the global efforts towards migrants' protection (Ovacik & Crépeau, 2025, p. 5).

Some scholars nevertheless criticize the fact that certain principles could have been more progressive, such as non-discrimination and *non-refoulement* (Gest et al., 2019, p. 64). Notwithstanding the Global Compact's potential to protect migrants in an irregular situation from discrimination, its "ambiguity or retrograde language" protects from discrimination depending on its interpretation and application (Gest et al., 2019, p. 64).

Although these appraisals and critiques are rigorous and indispensable for understanding the Global Compact's context and potential, they remain framed in a modern law language and fail to grasp the impacts of the instrument (and the institutions it relies on and reinforces) on the reinforcement of "harmful processes and structures of illegalization" (De Vries & Weatherhead, 2021, p. 294).

In this section, I propose elements for a decolonial critique of the Global Compact. I do *not* make a normative assessment from a positivist perspective. I rather focus on the normative categories that are deployed in the document as a means of creating and reproducing modern-colonial legal categories and hierarchies. I do so by showing that a) as a product of modernity-coloniality, the ambiguous writing of the Global Compact enables and enhances modern-colonial meanings; and that b) the normative categories it mobilizes reinforce already existing hierarchies of international mobility.

Ambiguous Writing: Modern-colonial Meanings

The Global Compact does not precise the meaning of the expression ‘safe, orderly and regular migration.’ Although it seems to be evident that the lack of clear definition was intentional and necessary for the achievement of a global consensus on international migration (Pécoud, 2021, p. 17), I argue that such an indeterminacy leaves the door open for a myriad of interpretations and applications, including restrictive and punitive unilateral approaches that contribute directly or indirectly to the very phenomenon of “unsafe, disorderly and irregular” (Guild, 2018) migration.

Indeed, the concepts needed to be “depoliticized” (Pécoud, 2021, p. 17) and translatable to a managerial and technical logic. Although the Global Compact “cannot eliminate the controversies and disputes over migration”, it neutralizes them, thus depoliticizing the document as a condition for consensus (Pécoud, 2021, p. 17):

In light of the different meanings of the concept, depoliticisation is here understood in the following way. The GCM [Global Compact on Migration] (1) voluntarily *stays away from the confrontations* that characterise debates over migration in other arenas; this serves its purpose of (2) *actively silencing political disagreements and dilemmas* [emphasis added], through (3) the reliance on a *technocratic and neutral language*, and in order to (4) privilege a consensus that is presented as the only way forward for migration policy (thereby excluding alternative world-views). The GCM’s depoliticised language is therefore the opposite of discourses that favour antagonisms or conflicts. Such depoliticisation is frequently associated with IOs, because these organisations cannot work without a certain degree of intergovernmental consensus and themselves contribute to sideline contention’. (Pécoud, 2021, p. 17)

“Technocratism” (Pécoud, 2021, p. 17) or “technical neutrality” (Geiger & Pécoud, 2010, p. 89) and “hyper-legalism” (Inder, 2010, p. 220) in migration management serve as a means of reducing the normative framework to a formalistic endeavor, thus depoliticizing its content and direction, and neutralizing progressive global agendas. “Technical neutrality” presents migration policies, not as the result of political

decisions, but rather as “‘technical’ considerations and informal decision-policy making processes on the most appropriate and successful way of addressing migration.” (Geiger & Pécoud, 2010, p. 11). Evacuating power and politics from policy-making is also a functional condition of inter-governmental organizations’ work, which is not to interfere with the states’ political choices (Geiger & Pécoud, 2010, p. 11-12). In that sense, maintaining “technical neutrality” is a means to improve capacity for addressing global issues. Regarding “hyper-legalism” (which can be characterized for the purpose of this argument as the prominence of the language of law), it frames the narrative in legal rather than political or ethical terms, and legitimizes migration management by presenting “lawful” as “right” (Inder, 2010, pp. 233, 236). As a result, the normative content is legally coherent but politically indeterminate, and states are left with a vast range of more or less opposed interpretations and mechanisms that fall within the scope of the Global Compact. For instance, border control is externalized through the prism of border management coordination, using a myriad of political² and legal strategies, including safe third country agreements and similar creative legal designs, such as the “Stay in Mexico” program analyzed by Maresca (2023) or the Safety of Rwanda (Asylum and Immigration) Act adopted in the United Kingdom (The National Archives, 2024).

Particularly, the ambiguity of the expression ‘safe, orderly and regular migration’ in the Global Compact is worth exploring briefly. The International Organization for Migration defines the concept as the “movement of persons in accordance with the laws and norms governing exit, entry, return and stay in countries, as well as States’ obligations under international law, and occurring in a context in which the human dignity and well-being of migrants are preserved; their rights are respected, protected and enforced; and the risks associated with the movement of people are detected and mitigated” (IOM, 2025).

However, if this definition proposes an overall description to the expression in question, it fails to define individually and intersubjectively

² See for instance, Los Angeles Times, “Sheinbaum and Trump discuss migration and security after clash over tariffs between Mexico and USA”, November 27, 2024: <https://www.latimes.com/espanol/politica/articulo/2024-11-27/sheinbaum-y-trump-hablan-de-migracion-y-seguridad-tras-choque-sobre-aranceles-entre-mexico-y-eeuu>.

each and every element that compose it. *Individually*, each element can be defined as follows:

Table 1. **Definition of safe, orderly and regular migration**

<i>Element</i>	<i>Definition</i>
Safe migration	The use of cross-border mobility routes and methods in which the safety, integrity and lives of migrants are not put at risk
Orderly migration	Border crossing in locations with control agents and, therefore, where the administrative formalities of entry or transit are complied with
Regular migration	The compliance, by a foreigner, with the requirements of the national law of a given State regarding migration

Note. Taken from Boivin (2024, p. 53); based on a reverted definition of Guild’s conceptualization of ‘unsafe’, ‘disorderly’ and ‘irregular’ migration (Guild, 2019).

I postulate that to grasp the full expression one cannot only define the elements individually—nor altogether. However, such individual definitions allow to think critically about the *intersubjective*—and hierarchical, as described in section “Continuing Modern-Colonial Hierarchies” below—relationship among elements.

The distinct elements of ‘safe, orderly and regular migration’ cannot be understood as horizontal and additive, since some are conditional upon others. I pose that ‘regularity’ is a *causal* factor that enables the other two elements: ‘safe’ and ‘orderly’ migration. Indeed, a person who intends to migrate, but who does not have the possibility do so ‘regularly,’ is significantly unlikely to do so in a *safe* and *orderly* fashion. In contrast, a person who intends to migrate, and who *has* the possibility to do so ‘regularly,’ is more likely to be able to do so in a *safe* and *orderly* manner—supposing that this person, given their birthright privileges and socioeconomic status, would need or wish to migrate in the first place. Referring to ‘safe, orderly and regular migration’ as a sole concept without distinguishing its composing elements and their intersubjective relationship, contributes to reproduce the myth according to which all elements have the same priority and effect.

Despite the multilateral effort in consolidating existing core obligations in international migration law and setting the stage for a global agenda on migration, the Global Compact can roughly be considered

a paradigmatic change. Rather, it stands in continuity with modern-colonial epistemic categories of thinking and regulating as it reinforces the impossibility to migrate without risking the life, security and liberty of those who do not bear the right documents. Most importantly, such a bureaucratic requirement is disproportionately burdensome on populations from the Global South in contrast with the Global North. By ignoring this double standard, the injunction to migrate ‘regularly’—enhanced by the Global Compact—reinforces already existing global movement hierarchies.

Continuing Modern-Colonial Hierarchies

The normative categories mobilized in the Global Compact tend to reinforce already existing colonial hierarchies of international mobility. Drawing from Prieto’s concept of migratory subalternity (see Prieto, 2019), I suggest that the persistence of dichotomic normative categories such as ‘regular’ and ‘irregular’ reproduces violent patterns towards persons who are targeted by the obligation to hold traveling documents—in addition to passport and simple travel authorization—and invisibilizes those who fail in obtaining them. Nonetheless, since most citizens from the Global South fall into this category (see Prieto, 2019, p. 28), the Global Compact does not redress this unequal distribution of mobility privileges; it rather allows the reinforcement of the normative structures—such as passport inequality—that systematically immobilize irregularized populations.

It is worth analyzing Objective 11 of the Global Compact, “Manage borders in an integrated, secure and coordinated manner” from this perspective. It reads as follows:

We commit to manage our national borders in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for States, communities and migrants, and facilitating safe and regular cross-border movements of people *while preventing irregular migration* [emphasis added]. We further commit to implement border management policies that respect national sovereignty, the rule of law, obligations under international law, and the human rights of all

migrants, *regardless of their migration status* [emphasis added], and are non-discriminatory, gender-responsive and child-sensitive. (Global Compact, para. 27)

More specifically, action f –under this objective– invites states to:

Review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay and, if so, to ensure that they are proportionate, equitable, non-discriminatory and fully consistent with due process and other obligations under international law. (Global Compact, 2019, para. 27 f)

Although the same level of protection is theoretically guaranteed to both regular and irregular migrants and fundamental principles of international human rights law are reminded as a counterweight to States discretion, Objective 11 simultaneously guarantees, on the one hand, that all migrants should be protected irrespective of their situation and implies, on the other hand, that irregular migrants are individuals whose presence justifies sanctioning and requires managing and coordinating borders and migration control.

The juxtaposition of such polarized standards in the wording of a sole objective is concerning, since it presents a very broad scope of recommended actions, even opposed ones—for instance the protection of irregular migrants at the same time as the prevention of irregular migration through border enforcement. It bears the risk of converting the Global Compact in a *menu à la carte* rather than a roadmap.

Furthermore, the review of national laws and regulations under action f) critically lacks structural scope. As such, independently reviewing national normative frameworks is insufficient in addressing global mobility hierarchies. However, it is true that national laws and regulations alone are a leading factor in the irregularization of migrants. Border coordination and enforcement are not the only way to ‘prevent irregular migration’—I would therefore argue that it does not ‘prevent’ irregular migration as such, but only ‘prevents’ migrants from entering a specific territory without the requested authorizations. As a result, irregular migration keeps existing as a structural phenomenon. A more

productive—and structural—way of preventing irregular migration is to avoid people to be placed in an irregular situation initially. It is the purpose of Objective 5 of the Global Compact, “Enhance availability and flexibility of pathways for regular migration”, which reads as follows:

We commit to *adapt options and pathways for regular migration* [emphasis added] in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to *expanding and diversifying availability of pathways for safe, orderly and regular migration* [emphasis added]. (Global Compact, para. 21)

It is evident that ‘expanding and diversifying availability of pathways for safe, orderly and regular migration’ is a way of preventing irregular migration. Regular pathways are increasingly limited, and regularization programs and mechanisms offer a partial solution to irregularized populations.

First, existing regular pathways are increasingly limited. They are often subordinated to market and demographic needs. Thus, governments successively broaden and narrow either *temporary* or *permanent* pathways to regular migration. The last developments in migration policing indicate a willingness from Global North governments to reduce, or even close, pathways to permanent migration, while maintaining but limiting temporary migration avenues³. Although presented from a technically neutral narrative, such as statistics and the so-called ‘welcoming capacity’, without reference to specific countries of origin—which is in colorblind or universal terms—the application of restrictive policies affects disproportionately citizens from the Global South.

³ In Quebec and Canada, many measures have been taken to reduce the granting of both temporary and permanent residencies, for instance: Quebec ‘pauses’ family reunification: <https://immigration.ca/quebec-pauses-family-reunification-applications-until-june-2026/>; cap on international students entering Canada: <https://immigration.ca/new-study-visa-rules-international-students-implemented-by-ircc-canada/>; end some branches of *Programme de l'expérience Québécoise* that allowed foreigners who studied and graduated in Quebec as well as temporary working foreigners to seek permanent residency in the province of Quebec: <https://ici.radio-canada.ca/nouvelle/2193005/pstq-peq-travailleurs-qualifie-quebec>; reduced cap for new permanent residents at the federal level: <https://immigration.ca/immigration-levels-plan/>.

In Canada, for instance, denial of visitor visas for scholars⁴ and students⁵ from the Global South is frequent—in particular the African continent, additionally to the establishment of a student permit cap to limit the general number of foreign students⁶. When applying for a work permit, a job offer is generally requested⁷, as well as sufficient evidence that the foreigner will go back to their usual country of residence at the end of the contract. In other words, potential visitors and temporary students or workers must prove that the migration is *temporary*: “A temporary resident [...] must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry” (Immigration and Refugee Protection Act (S.C. 2001, c. 27), Section 29(2)). One of the arguments often presented in the common narrative is that temporary permits are used as a ‘springboard’ for permanent immigration⁸. Paradoxically, I sustain, it might be precisely due to the lack of—or inaccessibility to—regular pathways to permanent migration that foreigners from the Global South decide to rely to temporary migration with the objective of establishing permanently, assuming that they fill the requirement to migrate temporarily in the first place.

⁴ See: <https://www.science.org/content/article/canada-denied-visas-dozens-africans-big-artificial-intelligence-conference>; <https://www.bbc.com/news/world-us-canada-50426774>; <https://www.cicnews.com/2025/03/visitor-visa-refusals-for-canada-are-on-the-rise-heres-how-you-can-avoid-them-0352304.html>; <https://lactualite.com/actualites/les-visas-de-visiteurs-un-frein-aux-grandes-conferences-et-aux-congres/>

⁵ See: <https://ici.radio-canada.ca/nouvelle/1842994/etudiants-afrique-canada-immigration-universites-quebec-cegep-refus-permis>; <https://ici.radio-canada.ca/nouvelle/1888475/immigration-canada-quebec-etudiants-prejuges-raciaux-ottawa>; <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/ollo-november-4-2024/refusal-international-students-africa.html>; <https://www.lapresse.ca/actualites/education/2024-09-03/eleves-africains-boursiers/des-refus-totalement-injustifies.php>;

⁶ See at the federal level: https://www.lemonde.fr/international/article/2024/01/22/le-canada-limite-le-nombre-d-etudiants-etrangers-pour-une-période-de-deux-ans_6212328_3210.html; <https://universitystudy.ca/canadas-international-student-study-permit-cap-what-you-need-to-know/>. See in Quebec (provincial level): <https://ici.radio-canada.ca/nouvelle/2143432/quotas-quebec-immigrant-etude-permis>.

⁷ Document Checklist: Work Permit (Applied outside Canada) [IMM 5488] points 6, 7 & 8, online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5488.html>.

⁸ See: <https://ici.radio-canada.ca/nouvelle/2071474/ecole-asile-quebec-demandeurs-etudes-permis>

While these caps and other technical limitations to temporary and permanent migration are not *a priori* contrary to the Global Compact, they do fail to address the needs of populations who are systematically irregularized. This leads to the strengthening of their already-existing bureaucratic burden and structural administrative difficulties or impossibilities to migrate regularly.

Indeed, a persons' nationality, their socioeconomic status and the prevalence of informal labor markets in the Global South are important bureaucratic obstacles to regular migration. Let's mention –to name just a few examples– insufficient funds for the application process, necessary translations, and attorney; scarce level of literacy to navigate highly technical processes; difficulty or impossibility to travel to the State of residence's capital for obligatory steps of the process such as interviews and registering of biometric data; unfeasibility of proof of employment due to inexistent payroll receipts or employer's letter in the case of informal labor; impossibility to provide evidence of available funds to sustain travel since workers are in precarious labor conditions or do not have a bank account, etc. Moreover, irregular status in and of itself may operate as an obstacle to seek regular pathways of migration. Indeed, it is a general requirement that legal status must be demonstrated in the country of residence when applying for any visa⁹.

Second, regularization mechanisms and programs offer a limited solution to irregularized populations (Basok & Rojas Wiesner, 2017), when accessible (see Ambrosini & Hajer, 2023, pp. 76-78). Additionally, and equally important, asylum seekers who are unable to obtain the required travel documents (on time) face the dilemma of either staying in a threatening situation or traveling in an unsafe, disorderly and irregular manner in order to arrive in a territory where they can claim asylum. Although the Global Compact doesn't theoretically apply to refugees and asylum seekers –a separate Global Compact on Refugees was adopted parallelly to the Global Compact on Migration– “preventing irregular migration” (Global Compact, para. 27) in this context poses

⁹ See for instance, Document Checklist: Work Permit (Applied outside Canada) IIMM 54881 at p 2, point 4, online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5488.html>

the risk of prejudicing the right to seek asylum (UDHR, art. 14; 1951 Convention, art. 33). Asylum seekers may be unable to satisfy the visa requirements of the potential host country due to a myriad of factors. Although the issue of refugees and asylum seekers is addressed in a separate compact as well as specific international obligations—namely the 1951 Convention Relating to the Status of Refugees and Additional Protocol, migration and asylum cannot be superficially separated, since the set of containment measures hardly distinguish between ‘irregular migrants’ and ‘asylum seekers.’ To some extent, many asylum seekers are irregular migrants too. While the Global Compact on Refugees is founded on the guiding principles of non-refoulement (UN 2018a, para. 5), the incapacity to move regularly and orderly across borders—due to the lack of documents—push asylum seekers to migrate unsafely and disorderly, thus increasing their vulnerability to human rights violations on their way, especially in “space of disappearance” (Schindel, 2020) such as the Darién Gap in Panama-Colombia’s borderland, and the Chihuahuan and Sonoran deserts in the North of Mexico.

In sum, irregular migration is not exclusively due to the inexistence or insufficiency of regular pathways, rather it is a consequence of the *non-universal access to regular migration*. Colonial structures, such as passport inequality and capitalist inequalities, are key to hinder regular—and so, safe and orderly—migration. Without addressing such structural inequalities, ‘preventing irregular migration’ is doomed to be reduced to coercive actions by the States. By systematically denying historically altered subjects’ access to regular migration, States compel those of them who wish or need to migrate to do so in an unsafe, disorderly and irregular manner, thus putting their safety, integrity and lives at risk.

Beyond the material effects exposed above, many dispositions of the Global Compact have potential consequences on knowledge production. The Global Compact not only produces a conception of safe, orderly and regular migration, but it also reinforces its opposite, the *other* forms of migrating: unsafely, disorderly and irregularly (De Vries & Weatherhead, 2021, p. 297). De Vries and Weatherhead sustain that the concepts of migration management that are mobilized in the Global Compact are tied to an epistemological framework that has been historically construed and institutionalized through illegitimate

migration policies, thus “reinforc[ing] harmful processes and structures of illegalization.” (De Vries & Weatherhead, 2021, pp. 297). Hence, the doctrine of safe, orderly, and regular migration tends to impose individual –moral, if not legal– responsibility on migrants themselves. In other words, when irregular migration occurs, the migrant, rather than the State, is considered guilty.

Paradoxically, while migrants are individually made accountable for their disorderly and irregular border-crossing movements, they are, at the same time, paternalized by some dispositions of the Global Compact. As De Vries and Weatherhead (2021) argue, the phrasing of Objective 3 of the Global Compact suggests a presumption of ignorance or misinformation of irregular migrants: “By tying accurate information to state frameworks for regular migration and positioning (irregular) migration as an object for control through information provision, *the GCM implicitly portrays migrants as uninformed or wrongly informed* [emphasis added] – and hence potentially a(t) risk.” (De Vries & Weatherhead, 2021, p. 305). By implying that information must be “provided” to migrants (De Vries & Weatherhead, 2021, p. 302), the Global Compact reinforces an assumption that irregular migrants are passive subjects who are not migrating regularly because they are un- or misinformed, instead of structurally addressing the legal processes involved in the irregularization. Additionally, as Prieto (2019, p. 18) contends, “migrating without the proper documents cannot be reduced to a bad or erroneous decision that can be corrected with some will.” Thus, the idea that irregular migrants are uninformed, misinformed, or unwilling tends to erase their agency in law- and policy-making, and relegates them to passive roles of “receiving” and knowing the law instead of considering them active and legitimate actors of migration law.

This, I argue, contributes to transfer the responsibility of irregular migration from States to individuals who are required to navigate the increasing restrictions on international mobility¹⁰. The safety of international migration specifically depends on the States’ actions and omissions.

¹⁰ See, for instance, “Migrant father charged with son’s death on journey to Greece”, *Independent* (18 March 2021), online: *Independent* <<https://www.independent.co.uk/news/migrant-father-charged-with-sons-death-on-journey-to-greece-greece-samos-europe-european-union-turkey-b1818856.html>>.

On the one hand, when restricting irregular migration—for instance through border enforcement and militarization—States contribute to create favorable conditions for the smuggling business (Ambrosini & Hajer, 2023, p. 87). On the other hand, when deliberately converting—by absence or omission—borderland spaces into no man’s lands (and seas), States also produce spaces of disappearance. Schindel (2020) highlights that “traveling through the desert on the way to the United States described by Jason De Leon (2015), as well as the sheer geography, the distances, and the unmediated exposure to nature’s forces are not a prior fact, but the product of a political construction integrated into the complex assembly of the migration regime and borders. The fact that they become spaces of disappearance is a (bio)political operation, the work and effect of these policies and their association with criminal practices” (author’s translation).

If transnational migrants hold rights and obligations, they should also have a say in the normative approach that governs them. To do so, I now turn to proposing pluriversal understandings of law and migration built from the legal perspectives, narratives and actions of the very actors who have been historically confined to zones of irregularity.

Pluriversalizing Communities of Practice

Throughout the intellectual process leading to this special issue, we have been invited to reflect about transformative constitutionalism, according with the communications with Prieto, as a “knowledge-based undertaking”, the ways through which “the law is developed, applied, contested and reproduced by a community through a particular set of practices, a community of practice that produces legal knowledge and knowledge about the law, and participates in a communicative process that establishes normative expectations that are then fulfilled, or betrayed”, as well as “the role of communities of practice in the re-imagination of what a decolonial public law could look like” (Personal communication, October 25, 2024).

According to Wenger (2011, p. 1), communities of practice are “groups of people who share a concern or a passion for something they do

and learn how to do it better as they interact regularly.” Communities of practice have three main characteristics. First, they share a “domain of interest” (*domain*); second, they “build relationships that enable them to learn from each other” (*community*); third, they “develop a shared repertoire of resources: experiences, stories, tools, ways of addressing recurring problems” (*practice*) (Wenger, 2011, pp. 1-2).

In Latin America, a community of practice has mobilized to shape a common legal framework for human rights protection and promotion:

Ius Constitutionale Commune en América Latina (ICCAL) is an academic concept that describes, explains, and fosters a particular instantiation of transformative constitutionalism in the region. It outlines the norms, institutions, and legal rationales deployed to operate such linkage, placing at the center of its conceptual endeavor, the Inter-American Human Rights System (IAHRS) and the national constitutional “openings” that domestic regimes have established to facilitate the interplay with regional international law. (Céspedes-Báez et al., 2025, p. 459)

In the ICCAL context, potential members of the community of practice include, but are not limited to: “International and national NGOs, grass-roots organizations, public servants, scholars, politicians, and inter-American judges and commissioners” (Céspedes-Báez et al., 2025, p. 473).

Historically, ICCAL have been a significant pathway for the improvement of human rights protections for historically marginalized populations such as women and Indigenous (Céspedes-Báez et al., 2025, pp. 474-477). In particular, ICCAL has made possible the introduction of plural legal sources and interpretations that did not originate in a Western legal perspective. For instance, in *Awás Tingni vs. Nicaragua*, the Inter-American Court considered “collective dimensions of ‘communal property regimes of indigenous peoples as defined by their own customs and traditions.’” (Céspedes-Báez et al., 2025, p. 473, citing Grossman & Anaya, 2020, p. 12). Squeff and Santana (2024, p. 183) highlighted that the Inter-American Court has recognized legal rules of communal property in a bottom-up perspective. Building from that experience,

it appears institutionally possible to integrate plural norms. Grassroot organizations and concerned individuals and communities can play an active and substantive role in the introduction of plural perspectives and knowledge about the law. While ICCAL has empowered citizens and “subcitizens” (Medici, 2016, p. 94), the agency of non-citizens seems to remain peripheral in ICCAL due to their limited means of participating in and impacting on formal processes of constitutional transformation from within national states.

However, the Inter-American Court of Human Rights did recognize minimum human rights standards applicable to non-citizens, notably in the consultative opinions *Juridical Condition and Rights of Undocumented Migrants* (OC-18/03) and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (OC-21/14), and contentious cases such as *Nadège Dorzema et al v. Dominican Republic* and *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Migrants—irrespective of their administrative status—are to enjoy the due process and procedural guarantees in cases of detention and expulsion, as well as non-discrimination and equality, among other human rights standards. Although such recognition is important, fully integrating migrants as a community of practice would require that they not only bear rights, but that they also contribute to the transformation of legal meanings and contents. One way of doing so is their refusal to be confined to immobility due to the lack of documents, which is, claiming a right to resist, a right to migrate, or at least the prohibition of discrimination based on nationality in accessing international mobility. Indeed, from an Inter-American perspective of non-discrimination and equality, the irregularization—and, as a result, the increased detainability and a cascading effect of human rights violations (see Yrizar et al., 2022)—of a certain portion of the world’s population based on national origin could arguably be considered historical or structural discrimination (see on this concept, Pelletier Quiñones, 2013, p. 398).

Inspired by the learning theory, communities of practice have learning processes at their core (Wenger, 2011, p. 4). I argue that a critical reflection on knowledge production (and producers) in communities of practice opens the way for a decolonial approach to transformative constitutionalism. Which actors are involved in knowledge production

about migration and the law? How can practitioners and persons on the move work together strategically to address complementary aspects of knowledge on migration law, in order to transform ICCAL? Could a non- or less elitist perspective be adopted to consider legal practice and knowledge? (How) could migrants be considered as practitioners of migration law?

From a political reading regarding knowledge production in the Global Compact, one can argue that the document—in particular Objective 3 on information—rests on the premise according to which migrants are uninformed, misinformed, naïvely abused, and lack agency (see De Vries & Weatherhead, 2021). However, I argue, when it comes to migration law, persons on the move possess hands-on, first-level knowledge. They experience the possibilities and limitations of legal frameworks, and develop strategies to navigate them, often independent from the “practitioners” or “experts” of migration law. In other words, they are direct producers of legal knowledge on migration. They also develop an Other way of engaging with migration law, by challenging the current legal structures—for instance, by insisting on migrating without the requested authorizations—and categories—through refusing to engage in asylum claim procedures, for example. That is, by claiming a right to migrate, they are claiming decolonial justice (see Achiume, 2019) against colonial legacies and the racialization of migration. While some might object a right to migrate, I posit that such a standard already exists *de facto*—although asymmetrically—for the world’s privileged populations, for instance within the European Union and for citizens of the wealthiest countries. As a result, White and wealthy citizens tend to enjoy a right to circulate internationally, while Other citizens are subject to border and immigration restrictions and controls.

Referring back to Wenger’s three characteristics of communities of practice, one can argue that people on the move share a *domain of interest*, which is navigating mobility restrictions. They also share a *practice* by “develop[ing] a shared repertoire of resources: experiences, stories, tools, ways of addressing recurring problems” (Wenger, 2011, pp. 1-2). People on the move also share information about navigating mobility restrictions through digital technologies and through their day-to-day interactions in transit spaces, allowing them to “learn from each other”

(Wenger, 2011, pp. 1-2) and thus build and maintain a *community*. They also interact with other actors who help socialize their experiences, stories and tools, such as practitioners, NGOs and scholars. However, their interactions as a community and their role in ICCAL could be fostered and systematized. To do so, there is a need to decolonize our methods—for instance, through engaged research and ethnography (see Coutin, 2025)—in order to build better relationships between ‘practitioners’ and people in the move, pluraliversalize (see Mignolo & Walsh, 2018, p. 3) the common knowledge on migration law, push Other legal subjectivities into the field of practice, as well as facilitate their access to Inter-American System of Human Rights’ formal mechanisms. Such a proposal might as well be primarily one of “de-expertizing” ICCAL’s communities of practice. When considering the legal practice of migration law, one may ask: whose perspective and experience are at the core of legal practice and transformation?

Conclusion

In this paper, I have argued that the Global Compact’s ambiguity and rooting in colonial epistemologies and institutions contribute to the reproduction of the coloniality of law.

I have shown that ‘safe, orderly and regular migration’ is construed in an auto-referential, categorial, and binary manner. Such a paradigm’s architecture encloses the possibilities of movement within impermeable and opposable categories, and prevent from moving, narrating and imagining outside of the established conceptual frontiers. The mere fact of using the terms ‘regular’ and ‘irregular’ in an antagonistic way contributes to reinforce such categories and tends to blur the scale in between (the back and forth between zones of regularity and irregularity), as well as to concentrate the burden of migrating ‘regularly’ on the individuals.

Although there is no doubt as to the virtue of ‘safe, orderly and regular migration’ in absolute terms, there is an issue at its core: it lacks the potential for universal access. The purpose of ‘safe, orderly and regular migration’ as conceived in the Global Compact, I argue, is not to allow historically otherized people to access and enjoy Global North’s wealth and privileges as a means of “distributive and corrective justice” (Achieme, 2019, p. 1517). It does not either prevent historically otherized peoples from suffering or deceasing at the borders, nor States to design new forms –and perfectionate old forms– of “*neo-refoulement*, that is, the return of asylum seekers and other migrants to transit countries or regions of origin *before* [emphasis added] they reach the sovereign territory in which they could make a claim.” (Hyndman & Mountz, 2008, p. 250).

Rather, border and immigration control are diversified and externalized. Although some externalization processes may be consistent with the Global Compact for Refugees’ first and third objectives, respectively: “ease pressures on host countries” and “expand access to third country solutions” (UN, 2018a, para. 7), as well as the Global Compact on Migration’s eleventh objective to “manage borders in an integrated, secure and coordinated manner” (UN, 2018b, para 27), regularization programs and expanded access to asylum claim systems, for instance, increasingly serve as contention tools for the Global North in the Global South.

Migration management institutions and practices in Latin America also adjust to the new “paradigm”. Regional Consultative Processes in America, for instance in North and Central America (Puebla Process)¹¹, integrate the global orientations in the region, which reflects on national migration policies and narratives (State agents and institutions, press, general population, etc.). One effect is the superficial and hypertechnical inclusion of the ‘safe, orderly and regular migration’ paradigm in the form of buzz words. For example, on August 23, 2024, Mexico’s Migration National Institute (“INM” in Spanish) published a press release affirming that the “INM will allow transit in national territory to migrants who have

¹¹ See for example: Stefanie Kron, “Gestión migratoria en Norte y Centroamérica: manifestaciones y contestaciones”, *Anuario de Estudios Centroamericanos*, vol. 37, 2011, p. 53-85; Elizabeth G. Ferris and Katharine M. Donato, *Refugees, Migration and Global Governance*, Routledge, London and New York, 2020.

an appointment in an orderly, regular and safe manner, to move to the 8 CBP One points of entry.”¹² Questions arise regarding the meaning and purpose of the expression “orderly, regular and safe manner” in this context, since it reproduces the original ambiguity in the Global Compact and materializes the risk of discourse instrumentalization for migration containment. While States use the Global Compact’s language to justify measures and policies of border enforcement and immigration control, they also refrain from facilitating regular migration and thus contribute to maintaining migrant populations in a “legal limbo” (SJR, 2025). In the Mexican context, the Servicio Jesuita a Refugiados (SJR) reported that the INM has not been issuing humanitarian visas while asylum claims are being processed (see for the Mexican context, SJR 2025), thus maintaining asylum seekers in a legal gap where they are not in an irregular situation, but do not enjoy the benefits of regularity either.

In response to the irregularization of persons, protection and assistance mechanisms are put in place, which are also susceptible of reproducing colonial structures, for instance through assistentialism, (re-)victimization, or even paternalistic, punitive practices, and other modern-law solutions.

By pluriversalizing our vision of the community of practice by including the very persons on the move, we can observe irregular migration as a way of contesting the current legal framework, nationally and internationally. The insistence and persistence in migrating, even when irregularized and besides the increasing physical and administrative walls and borders, is a means of challenging the law, and engaging in legal transformation or, at least, reimagination.

In the context of transformative constitutionalism however, the barrier of citizenship seems to remain, as does the following question: what agency is there left in transformative constitutionalism for irregularized Global South citizens in politico-legal spaces of non-citizenship?

I do not pretend to pose a whole new theoretical approach; I rather wish to suggest possible avenues of decolonizing the processes through

¹² “The INM will allow migrants with appointments to transit through national territory in an orderly, regular, and safe manner to travel to the 8 CBP One points of entry.” <https://www.gob.mx/inm/prensa/inm-y-patrulla-fronteriza-se-reunen-para-coordinar-acciones-en-materia-migratoria>

which the legal experiences and knowledge of irregularized non-citizens can be legitimized and understood *as law*. It is a modest seed for further research and discussion.

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