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Articles

Prefiguration of the migrant and LGTBI+ subject in the Chilean regulations on migration and sexual diversity

Prefiguración del sujeto migrante y LGTBI+ en la normativa chilena sobre migración y diversidad sexual

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Abstract

Based on a corpus composed of normative texts from Chile referring, on the one hand, to international migrations (1975 and 2021) and, on the other, to sex-gender diversity (2012 and 2018), this article aims to analyze the way in which prefigurations of the migrant subject and of the subject of gender-sexual dissidence and diversities are constructed, in addition to their implications for LGTBI+ migrants. The approach is made from a critical analysis of feminist discourse. The analysis allows us to observe prefigurations that adopt a position of unidimensional identity reification, conceiving this subject, on the one hand, exclusively as a hetero-cis-normed economic migrant, and on the other, as a vulnerable gender-sexual minority, thus implying an erasure of LGTBI+ migrants and the specific inequalities that affect them.

Keywords: migration legislation, sex-gender diversity, inequalities, public policies, identity.

Resumen

A partir de un corpus compuesto por textos normativos de Chile referidos, por una parte, a las migraciones internacionales (de 1975 y 2021) y, por la otra, a la diversidad sexo-genérica (de 2012 y 2018), este artículo se propone analizar el modo en que se construyen prefiguraciones del sujeto migrante y del sujeto de las disidencias y diversidades genérico-sexuales, además de sus implicaciones para las personas migrantes LGTBI+. El abordaje se realiza desde el análisis crítico del discurso feminista, y permite observar prefiguraciones que adoptan un posicionamiento de reificación identitaria unidimensional, que conciben a este

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sujeto, por un lado, exclusivamente como migrante económico hetero-cis-normado y, por el otro, como minoría genérico-sexual vulnerable, lo que implica un borramiento de las personas migrantes LGBTBI+ y de las desigualdades específicas que les afectan.

Palabras clave: legislación migratoria, diversidad sexo-genérica, desigualdades, políticas públicas, identidad.

Introduction

At least from 1975 onwards, migration regulations in Chile has constructed the migrant subject and migrations as objects of state intervention, based on two main approaches: one security-based, which has prefigured the migrant subject as a potential threat to the internal security of the State (Stefoni, 2011; Thayer, 2016; Stang, 2016; Quinteros, 2016), and the other economist-utilitarian based, which has prefigured it as a potential expense for the State, to be avoided, or as an eventual benefit, as an appropriately selected human resource, to be enhanced (Stang, 2012, 2016). Both approaches adopt a hetero-cis-normative view that has been little stated in this area, rather implicit, but which has been present, with variations and different levels of importance, throughout these decades, both in legal and public policy texts (Stang & Córdova Quero, 2016; Galaz et al., 2023).

On the other hand, the subject prefigured by the regulations dealing with matters related to the LGBTBI+ population (lesbians, gays, transsexuals, bisexuals, intersexuals, and others), of more recent development than those aimed to migrants, that has been constructed as a subject of minorities—in some cases agglutinated in an undifferentiated manner—and, due to this “minority” character, as especially vulnerable to situations of discrimination and violence. This identity-based approach has hindered consideration of the intersection of dimensions that overdetermine the problems it is sought to intervene in (Galaz et al., 2023). Hence, the aspects involved in foreignness are of marginal importance in this specific regulative corpus, which also avoids, or does not make visible, a necessary cross-approximation of the vectors of inequality.¹

The question guiding this paper is precisely about how these prefigurations are constructed in both regulatory corpuses, on the one hand, on the impact of these subject prefigurations on social imaginaries (Castoriadis, 1989), on the other hand, about their implications for LGBTBI+ migrants, whose access to (or denial of) rights is determined, among other elements, by both sets of regulations. Based on a critical analysis of feminist discourse, this article examines a corpus composed of regulative texts referring, on the one hand, to international migration and, on the other hand, to sexual diversity, in addition to the parliamentary debates on the preparation of these legal texts.

¹ Foreignness is understood as a category that

links in a complex manner... two dimensions: the juridical, referring to the forms and categories of access to a certain legal status (or its denial), based in turn on the basic distinction between national-citizen/foreigner-non-citizen, and the social, closely related to the former, but centered mainly on processes of racial and ethnic-national othering, which in Latin America in turn overlap with social class. (Stang Alva et al., 2022, p. 229)

The relevance of and contribution to the topic in this article lie to the intersectional questioning of the processes of construction of regulations and public policies, as disputes of power that determine mechanisms of inclusion/exclusion and included or excluded subjects, which are ultimately linked to them. This is in line with the concern for the vectors of differentiation and inequality in the lives of migrants of sexual diversity and dissidence in Chile, limited research has been done in the field of national and regional migration studies.

After a brief presentation of the background and the theoretical approaches and an explanation of the methodological decisions, the results are presented based on two inputs: the prefiguration of the migrant subject and that of the subject of sexual diversity, followed by a reflection on their implications for LGBTBI+ migrants in terms of policies.

Overview of Chilean regulations on migration and sexual diversity

At least since the creation of the migrations law during the dictatorship of General Pinochet (from 1975 onwards), the idea of security has prevailed in Chile's main migration legislation. However, this idea has been transformed in a transition from the paradigm of the national security doctrine to that of migration governance (Stang, 2016): in the first period—between the 1970s and 1990s—the migrant was associated with the figure of the external enemy, but since the mid-2000s the idea of the arrival of the “criminal migrant” has been seen as a threat to internal security, while a “Gordian knot” has been built between the notions of security and rights that has allowed the implementation of forms of migration control that seek legitimacy in the humanitarian and rights discourse (Stang, 2020).

Since the beginning of the 2000s, human rights have gone from a total absence (in the dictatorship-era Decree Law 1.094 of 1975) to partial, fragmented and administrative recognition. Examples are the sectoral initiatives of the Ministry of Education (Ministerio de Educación, 2005) and the Ministry of Health (Ministerio de Salud, 2009), which granted foreigners access to certain services. Nonetheless, the most significant instrument in this area in the phase prior to the approval of the new migration law was the Presidential Instructions on Migration Policy of 2008 (Presidencia de la República, 2008), which recognizes certain rights—residence, movement, and social protection, among the main ones—. The last few years have been marked by the transformation of regulations in this area (Thayer Correa, 2019), following the entry into force, in February 2022, of a new migration law approved in April of the previous year (No. 21.325). Although the recognition of rights for migrants appears for the first time in an important legal text like this, it is done conditionally, as will be seen. The organizations of and for migrants had little influence on the final form of the regulation, and the direction of the changes was mainly driven by the State's interest in increasing restrictions on migrants.

On the other hand, and in contrast to the legal changes in migratory matters, the regulations on sexual diversity have been pushed by LGBTBI+ activism, focused on the achievement of rights such as same-sex marriage and guarantees against violence and discrimination (Movimiento de Integración y Liberación Homosexual [Movilh], 2022), which in Chile have been achieved later than in other countries of the region. The first significant achievement of the sexual diversity movement in the country was accomplished at the beginning of the 21st century, with the decriminalization of sodomy in 1999. The reasons for this late achievement are related to the persistence in Chilean society of a hard core of resistance to its recognition, mainly in certain sectors of the Catholic and Evangelical churches, and in the political right (Valdés E. & Guajardo S., 2007).

Over a decade later, in 2012, another significant step was taken: the enactment of Law 20.609, which “Establishes measures against discrimination”, which came into force in July of the same year, and which, among other categories, condemns arbitrary discrimination based on a person’s sex, sexual orientation and gender identity (Article 2). Although several shortcomings of this regulation have been pointed out that hinder its effective implementation, there is an agreement in considering its approval as progress since, for the first time in the country, a legal text that recognized sexual orientation and gender identity, thereby setting a legal precedent. This is significant if one considers that Chile was also the first country to be condemned by the Inter-American Court of Human Rights (I/A Court H. R.) for violating the rights of a person because of their sexual orientation (Centro de Derechos Humanos, 2013), specifically, with the case of Judge Karen Atala, a lesbian losing custody of her daughters, which happened in 2012.

In 2018, another important regulatory milestone occurred: the approval of Law 21.120 on gender identity and more recently the approval in 2021 of Law 21.400, which “Amends various legal bodies to regulate, on equal terms, marriage between persons of the same sex” (Biblioteca del Congreso Nacional de Chile, 2021b). Nevertheless, there is still a long way to go in the struggle to recognize and respect the rights of people of sexual diversity, both in terms of regulations and public policies (Centro de Derechos Humanos, 2017). Among these pending issues is the recognition of specific problems, such as those experienced by LGBTBI+ migrants.²

Theoretical tools

Identity prefiguration of the policy subject

Public regulations and policies are generally analyzed from their axiological character, that is, if they attempt to respond to a problem that a certain collective or group has at a certain historical moment in a social context (Galaz Valderrama & Montenegro Martínez, 2015). Nevertheless, little attention has been paid to the effects that the policies themselves generate, in their creation and implementation, concerning the reification of certain imaginaries of the social subject.

² Another important gap in this area is statistical data on population movements of people of sexual diversity. This is a pending issue not only in Chile (Movilh, 2021), but also in the region (Stang Alva, 2019).

This logic of production of regulations and public policies is linked to a consideration of the law that requires a specific prior identity of the “subject” to whom the regulation corresponds in order to make it recognizable and lead it to appear in the political field to satisfy the problem that is constructed in the process of generation of that policy (Galaz V. & Sepúlveda G., 2020), which has also been previously constructed. This operation constitutes what this article calls identity prefiguration of the subject in public regulations and policies: the prior establishment of a defined identity and a specific problem associated with that identity to which the regulation or policy claims to respond.

Both policies aimed at migrants and those referring to people of sexual diversity and dissidence can be framed within so-called “identity politics” (Hobsbawm, 2000) since they place at the center, a priori, a specific subject of the social group. As Ema López (2004) emphasizes, this way of naming in the social area not only creates an aseptic subject, free of judgments, who simply appears, but constructs it in the same policy, based on defined social valuations and imaginaries, social constructions imposed from outside the subject to legitimize the very cession or denial of rights established in said policy.³

In the creation of these policies, as well as in much social struggle, this logic of identity prevails; that is, in identity politics (Wiarda, 2014), a position is prioritized, be it of race, class, national origin, or sex-gender, among others, but closure in certain socio-cultural characteristics does not always allow interaction with other vectors, but leaves opaque the experiences occurring in the intersections of these identity closures. The complexity of social relations is lost sight of if a particular vector is prioritized over others. Nonetheless, from a more critical perspective, it is argued that the strategic use of some categories is necessary precisely to make visible the inequalities experienced by certain groups in the face of the homogeneous idea of citizenship, but without falling into a closure that is not possible to open to dialogue and articulation (Butler, 2007; Coll-Planas & Missé, 2015).

It is this process of the social construction of the subject in the regulations, policies, and discourses associated with its construction that is referred to in this text as the “prefiguration” of the subject, a process in which it is important to consider the influence of social imaginaries, understood in this framework as defined by Castoriadis (1989):

Imaginary: unmotivated creation, which is only in and thanks to the act of placing images. Social: inconceivable as the work or product of an individual or a multitude of individuals, not derivable from the psyche as such and in itself. (1989, p. 137)

³ In this context, regulations, in their various manifestations such as laws, decrees, resolutions, memorandums, instructions, etc., are understood as a significant part of public policies.

The social imaginary then supposes the creation of meanings while simultaneously creating images and figures that operate as their support. On this magma of imaginary social meanings, the operation of identity prefiguration carried out by regulations and policies inscribes and solidifies some images and meanings.

The social subject of the regulations—in this case, of migratory regulations and those referring to sexual diversity—must be recognizable for politics to legitimize the production of a regulation. Paradoxically, this governmental process can grant social legitimacy to certain collective demands that have not always been considered at the political level (Galaz V. & Sepúlveda G., 2020). The identity subject becomes the source and antecedent of the action, prefigured before its action. Butler will say about this pre-existence of a subject prior to politics that this process assumes that “agency can only be established through recourse to a pre-discursive ‘I’, even if that ‘I’ is found in the midst of a discursive convergence” (Butler, 2001, p. 174). In other words, this pre-discursive subject constitutes a reification of an aspect of this identity construction presented as the whole. Thus, policies and laws become instances of power that not only reflect external relations at the social level but in the way in which these regulations are constituted—through diverse public and political discussions and the dialogue of expert voices—designate “who will be, for example, discriminated against or protected by the law” (Butler, 2001, p. 174).

Considering the regulations and public policies not only in their axiological zeal but also in the effects they produce when developing from a pre-existing, easily identifiable subject can help reveal what Sabsay calls “the socio-political models and exclusionary imaginaries within which the hegemonic notions of diversity, recognition and autonomy have been configured” (2011, p. 70).

Identity in a performative key

The recourse to the notion of identity prefiguration of regulations and policies makes it unavoidable to make explicit the concept of identity assumed in this analysis, especially the notion of gender identity, in terms of the questions from which this paper starts. Judith Butler wonders:

What can be meant by ‘identity’, then, and what grounds the assumption that identities are self-identical, persisting through time as the same, unified and internally coherent? More importantly, how do these assumptions inform the discourses on ‘gender identity’? (2007, p. 70)

The author maintains gender identity has a normative character in terms of “cultural laws that establish and regulate the shape and meaning of sexuality” (Butler, 2007, p. 72), which operate as a “matrix of intelligibility” (2007, p. 73) of sex/gender productions. Legal regulations and public policies are also an element that is part of this matrix.

In this respect, the author argues that gender identities are not constituted stably: “identifications are never fully and definitively constructed; they are incessantly reconstituted and, therefore, are subject to the volatile logic of iterability” (Butler, 2005, p. 159). This repeated and incessant production gives gender its performative character, meaning

there is no being behind the doing (...), constituting the identity that it is purported to be. As such, gender is always a doing, although not a doing by a subject who might be said to pre-exist the deed. (Butler, 2005, p. 84)

In this way, identities “act through exclusion, through the discursive construction of a constitutive outside and the production of abject and marginalized subjects, (...) [it is] the production of an ‘outside’” (Butler, 2005, p. 26). These have subjection effects; that is, they not only act on the subject but upon the subject (Butler, 2001). From this perspective, gender identity is a product of the intelligibility generated by the discursive practices of sex/gender/heterosexual desire in a “process of regularized and forced repetition of norms (...) a ritualized production, a ritual reiterated under pressure and through constraint, through the force of prohibition and taboo” (Butler, 2005, p. 145). Nevertheless, as the author points out, subjugation is not only about the constriction or limitation that power exerts on the individual but also forms the individual.

This notion of identity, considered in Butlerian terms, allows a return to the idea of identity prefiguration of the subject of regulations in order to understand its analytical (and, above all, political) implications: to the extent that the operation of prefiguration solidifies a unique and invariable identity, the resulting regulation cannot respond to the problems of subjects whose identities are constructed at the intersection of multiple vectors of identification (and differentiation), and in a situational manner, in a permanent iteration. The regulatory character of identities, in which laws play a relevant role, is subject to the relative volatility of the iteration of identity performance, which tends to repeat the framework that constitutes it but can also modify it. Therefore, and beyond the crystallizations required by the implementation of a legal or policy text, a design capable of visualizing these intersections of vectors would allow for (a) broader prefiguration(s) of the subject(s) and, consequently, a legal and policy response to a broader and more complex field of problematic situations to be addressed.

The identity reification of the economic migrant

As pointed out in the introduction, the subject prefigured by the regulations relating to immigration and migration in Chile, at least from 1975 onwards, has been constructed on two elements: one security-based, with the migrant constructed as a threat to “public

order”—whether ideological or criminal—, and the other economic-utilitarian, based on a cost/benefit logic that has taken different forms: as an expense to the State that must be avoided, or eventually assisted—the migrant as a “social problem” (Stefoni, 2011)—, or as a human resource to be selected and exploited.⁴

This second aspect, that is, the economic-utilitarian element of the prefiguration of the migrant subject, has been less addressed in the analyses on the subject, partly because the security-based approach seemed to have more palpable effects, but also, and above all, because this one-dimensional construction of the migrant subject in economic terms—as a worker or member of the workforce (Sayad, 1998)—is solidified in the social imaginary of migration and migrants and, therefore, naturalized, which gives it symbolic efficacy and inoculates it against possible questioning of its arbitrariness.

This construction of the migrant as labor has a long history; as Castles (2013) points out: “The development of the capitalist world market has always been linked to the differentiation of workers and the use of migration to generate forms of ‘unfree labor’”. Of course, like any historical construction, it has experienced variations in time and space: from slave labor to guest worker or from settler to irregular precarious migrant, for example. Nevertheless, in all cases, the justification for this altered presence is work (Sayad, 1998).

This identity reification from the economic dimension of the migrant subject, prefigured in the national regulations,⁵ has important ramifications from a sex-gender perspective or a feminist approach, insofar as this prefiguration as a working man—the masculine is neither casual nor innocuous—is based on a questionable conventional separation between productive and reproductive work, and its correlation in terms of binary separation between man and woman, which is an essential aspect for the objective of this article.

Methodological tools and decisions

For the analysis presented in this article, a qualitative methodological approach was used, based on the critical analysis of feminist discourse, which implies, in addition to an analysis of the discourse from a critical view of power relations, a feminist view of unequal relations based on gender issues (Azpiazu Carballo, 2014). This analytical approach implies, according to the author, an extension and a displacement of critical discourse analysis:

⁴ This prefiguration is related to regulatory texts of an administrative and public policy nature of that period that were not the object of analysis for this article, which focuses only on a corpus of legal documents with the force of law, and their respective parliamentary debates.

⁵ Also international: at this level, the only legal document relating to migrants is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

From an initial interest in “women and speech”—more focused on the analysis of differential language use than on the causes behind it—to more functional approaches—focused on thinking about the differential roles of men and women in speech, often leading to very essentialist interpretations with little focus on power—to approaches that emphasize the circumstances and environments in which language is produced and that language itself produces. (Azpiazu Carballo, 2014, p. 119)

The feminist analysis sought to shift the view on various social dimensions that emerge in the corpus, and concentrate more intensely on what type of social subject is constructed in the regulations and the parliamentary discussion about its creation—a historical feminist concern—and on the factors of gender and sexuality concerning the construction of that subalternized subject, which are not necessarily addressed without a feminist approach.

Although the research on which this article is based analyzed a more extensive corpus, considering different regulations and laws in force for both migration and sexualities, this text presents the result of the analysis of the four that have had the greatest social and political impact on the respective groups. Another criterion for selecting these four regulatory texts is that they allow the visualization of the formation of the “subject” it is sought to place at the center of the discussion.

Thus, this analysis was applied to a corpus made up of the two main laws that have governed migration in Chile from 1975 to the present: Decree Law 1.094 of 1975, together with its regulations (Decree No. 597 of 1984) and Law 21.325 of 2021, with their respective parliamentary discussions, and to two fundamental laws linked to the field of sexual diversity: Law 20.609 that “Establishes measures against discrimination”, of 2012, and Law 21.120 “That recognizes and gives protection to the right to gender identity”, of 2018, and the parliamentary discussions of both.

Some of the questions posed by the WPR approach (What is the problem represented to be?) (Bacchi, 2021) were addressed for the systematic approach to the corpus, consistent with the idea of identity prefiguration of the subject of the regulations and policies, which is central to this article. This approach is based on the premise that

what one sets out to do about something reveals what one thinks is problematic (and needs to change). Following this line of thought, the policies and policy proposals contain implicit representations of what is considered to be the “problem” (representations of the problem). (Bacchi, 2021, p. 168)

From this starting point, four of the questions posed by this model are considered (Table 1). This decision was taken since the information-gathering process did not consider a link with those who drafted the regulations themselves but rather with the public discourses generated at the time of the construction of these regulations (in the case of the laws that dealt with sexual diversity, which are gathered in the documents called *Historias de la Ley*, and in the transcripts of the parliamentary sessions in which

the new migration law was discussed) and the final emerging regulations of that process.⁶ These texts were examined based on four questions, making it possible to visualize the problematic construction and the pre-existing subject, which is ultimately the aim of the analysis.

These questions served as the horizon of analysis, taking into account that the objectives of the WPR methodology include, among others, observing how the mission and the subject of the law itself are prefigured in the process of the constitution of the regulation. For this purpose, an analytical matrix was created that considered these questions in relation to an intensive characterization of the discussions in the parliament and the texts of the regulations themselves, and the specific textual quotations where these subject prefigurations emerged (Table 1).

Table 1. Analysis matrix

Law/Regulation/Public Policy		
Questions WPR	Intensive characterization	Most representative quotes
What is the 'problem'... represented in a specific policy [regulation or legal text in our case] or policy proposal?		
What presuppositions or assumptions underpin this representation of the 'problem'?		
What is not called into question in this representation of the 'problem'? Where are the silences?		
What effects does this representation of the 'problem' produce?		

Source: created by the authors based on Bacchi, 2021, p. 169

The analytical procedure, then, consisted of: *a)* reading the entire corpus; *b)* construction of the matrix from a systematization of the factors that emerge in the texts on the constitution of the subject and the problem addressed; *c)* a search for quotations showing factors regarding gender/sexuality and migration in relation to the constitution of the problem; *d)* comparison of selected texts and selection of representative quotations; and, *e)* analytical description of the idea of the subject.

Prefigurations of the subject in the immigration law

The following sections analyze the legal corpus of international migration, and the two variants of the economic prefiguration alluded to in previous sections are reviewed: the migrant as an economic burden and as a potential human resource, pausing in each case to review the effects of these prefigurations in sex-gender terms.

⁶ In the case of Decree Law 1.094, of 1975, drafted during the dictatorship, a period of closure of the functioning of the parliament, a corpus of reports that circulated among the ministries involved during the period of drafting of this legal text was considered.

The migrant as an economic burden

The regulations of the corpus analyzed relating to foreigners and migration created during the period of the dictatorship (1973-1990) prefigure the migrant subject as a potential economic problem to be avoided, through a filter made up of a series of requirements aimed at investigating the economic solvency of the person who would be allowed to enter, a determining criterion of their value or lack thereof for the society that may eventually receive them. To this end, it is necessary to consider the context of the gestation of this regulation (Decree Law 1.094 and its regulations)—and of this prefiguration of the migrant subject—: Chile was at the beginning of a dictatorship, it was not a receiving country of migrant population, but rather the opposite, and its production sector did not have a strong demand for foreign labor.

Decree-Law 1.094 established that entry into the country could be prohibited, among other categories, to: “Those who do not have or cannot exercise a profession or trade, or lack resources that would allow them to live in Chile without constituting a social burden” (Ministerio del Interior, 1975, article 15, clause 4), and that:

The powers that pertain to the Ministry of the Interior for the granting of visas, their extension and the granting of permanent residence shall be exercised at its discretion, *considering in particular the convenience or usefulness for the country* of their granting and international reciprocity, subject to a report from the General Directorate of Investigations. (Ministerio del Interior, 1975, article 13, emphasis added)

The regulations of Decree 597, drawn up under the Pinochet dictatorship (Ministerio del Interior, 1984), also embodied this concern that foreigners should demonstrate their economic capacity, especially in one sense: rather than producing or “contributing”, that of not being an expense for the State. This means that the problem that these regulations construct as a situation to intervene in, or prevent in this case, is the economic burden that the migrant, as a non-citizen, could represent for the State, which, according to the citizen-foreigner opposition, should not be responsible for this subject who does not belong to its jurisdiction. At the same time, from a feminist point of view, it is possible to see how this declared subject is presented without sex-gendered corporeality as an abstract category, which does not distinguish gender positions, and puts the focus on the importance of economic practice within this national context. This is even though the Chilean market was structured by sex-gender matrices that produced specific distinctions of sexual incorporation into the labor market.

According to these regulations, in order to apply for a visa, solvency had to be proven. As seen in the previous quote, one of the possibilities for prohibiting entry resided in whether the foreigner had a profession, trade or resources that would allow them not to represent a “social burden” for the State. In order to extend the student visa, the foreigner had to “show, in case of not being granted a scholarship, the periodic and regular receipt of economic means of support” (Ministerio del Interior, 1984, article 45). Something similar occurred concerning tourists, who had to prove,

when the border police authority deemed it necessary, “that they have sufficient economic means to subsist during their stay in the country” (Ministerio del Interior, 1984, article 87), a loophole arbitrarily used by border authorities for decades when applying discretionary entry filters.

This state concern for the burden or contribution that the immigrant’s presence in the national territory could entail was also manifested in the importance in the regulations of the documents required to prove solvency for requests for residence visas, changes, extensions, and definitive residence: “Last two income tax returns; receipts or invoices for the last three months, when applicable” (Ministerio del Interior, 1984, article 127, clause 2).

Work contract; (...) assistance or economic support; bank deposit certificates; affidavit of capital; certificates of family ties and expenses; notarized deeds, authorizations to operate in free trade zones; investment certificates; (...) certifications of companies, entities or institutions sponsoring entry, and/or responsible for their activities in the country, etc. (Ministerio del Interior, 1984, article 127, clause 5)

This economic prefiguration was also evident in several of the cases considered “useful and advantageous” for the granting of temporary resident visas “Entrepreneurs, investors, merchants, traders, rentiers and in general businesspersons (...)” (Ministerio del Interior, 1984, article 50, clause a); and “Scientists, researchers, academics, lecturers, professors, professionals, technicians, experts, whose admission is required by national juridical persons or sponsored by International Organizations recognized by the Government of the Republic or who travel for more than 90 days (...)” (Ministerio del Interior, 1984, article 50, clause b).

It should be noted that the text constantly constructs a highly androcentric discourse that does not establish gender distinctions, which may be due to the cultural context of the emergence of this regulation during the civil-military dictatorship, a social process that implied a cultural promotion of traditional roles—where masculinity was predominant—and the primacy of discourses that reinforced gender stereotypes.

In the above quote, the State arrogated to itself the right to decide who was useful to it, according to their occupation or lack thereof, and therefore could “legally” cross its borders. If, as has been said, every regulation constructs a specific prior subject identity which it supposedly addresses or to which it claims to respond and thus produces its appearance in the political (and policy) field, it is more or less evident what that subject is in this case: one that does not alter the political order, imposed at that time by State terrorism, nor the economic order (or balance) and without a sex-gender distinction. The condensation of meaning around the idea of the migrant as a potential burden for the State runs through all this discourse. It is thus implanted in the Chilean social imaginary, and emerges even today in comments such as those arguing that barriers should be placed to migration in the country because migrants “have collapsed the health system” or schools or kindergartens.

Moreover, interrogating this corpus from the question of the consideration of the sex-gender dimension reveals that the migrant prefigured by these regulations is also a subject without gender or sex, which ultimately implies, as is known, a

heterosexual cisgender male subject, which is the particularity legitimized as universal in patriarchal and hetero-cis-normative social structures such as that of Chile. The only explicit allusion regarding gender in this corpus (Decree Law 1.094 and its regulations) appears in article 32, under the heading “Temporary Residents”. There it is specified that:

The foreign woman, married to a Chilean, who is granted a Chilean passport or is included in the passport of her spouse to enter Chile following the provisions of the Consular regulations, shall be considered a temporary resident for this decree law. (Ministerio del Interior, 1975)

The reverse situation does not appear: that of a foreign man married to a Chilean woman, nor is the possibility of couples united by a non-marital bond contemplated. Thus, when there is a hint of gender consideration, it does so in binary terms and in addition places women in a dependent role, what prevailed at the time in the migration imaginary, in which women supposedly played a passive role, as companions of men in migration projects (Ariza, 2000).

This total absence of gender considerations in the legal prefiguration of the migrant subject is consistent with its unidimensional identity reification in an economic key. As Magliano (2009) explains, the State has historically contributed significantly to the construction of a discourse on women that has legitimized the unequal division of labor between productive and reproductive, and its arbitrary relationship with gender binarism:

The model of social life based on the separation of the reproductive sphere—associated with the domestic sphere—from the productive sphere—associated with the public sphere—legitimized the inequality of rights between men and women, and excluded women as subjects of rights by placing them in the naturalized sphere of domesticity. (Magliano, 2009, p. 76)

To the extent that the subject constructed by the State based on the regulations, the migrant subject in this case, is only valued in economic terms, and insofar that economic value is only considered possible in the productive sphere, fundamentally linked to the masculine, the migrant woman, and even more so those migrants with sexual orientations and gender identities constructed outside the binary matrix, are excluded from the horizon of visibility of the regulations, but not from the implications of this absence, that we look up that the specific features of their migratory trajectories and situations are not contemplated. This binary and heteronormative prefiguration has no room for other possible gender and sexual identities. Therefore, the migratory regulations contributed to the invisibilization that affected this population—both passive and active invisibilization in the form of persecution and violence—. It is important and necessary to remember that this regulation was in force in Chile until the recent approval of a new immigration law in 2021, which is analyzed in the next section; that is to say, the past tense in this analysis refers to a very recent past.

The migrant as a human resource

The “informing power” of society in neoliberal logic, says Foucault (2008), is that of the market, competition, and the company. The epochal subject, *homo aeconomicus*, maintains the author, “is not the man of exchange, he is not consumer man, he is the man of the company and production” (Foucault, 2008, p. 182). Depicted in this slapdash manner, it is this neoliberal governmentality that serves as an interpretative framework to understand the premises of migratory governance (Domenech, 2018), a perspective that increases understanding of the South American migration regulations and policies of the last decades, including the Migration and Foreigners Law approved in Chile in 2021.

It is from this prism that the central prefiguration of the subject in the drafting of this legal text can be explained: that of the migrant as a human resource, whose contribution must be enhanced in this logic of competition, in this case in terms of wealth and competitiveness as a State, and mainly centered on a male imaginary. On the other hand, this means preventing the entry of migrants who could undermine this competitiveness. The analysis of the parliamentary debate on this regulation highlights the saturation of this discursive nodal point and, closely related to this, the strength of this image and significance in the social imaginary of the time—which continues to have significant power in the reification of gender roles—. Those legislators with arguments in favor of the reception of migrants support them with data provided by reports of organizations and institutions that would demonstrate the positive impact of the arrival of migrants on the national economy, which in turn are confronted with the information provided by representatives of the ruling party at the time of the debate on the law, who also argue from the cost/benefit logic, but to support their purposes of increasing restrictions on the entry of migrants.⁷ Also appearing as saturated ideas in the debate, in this economic-utilitarian logic, is the contribution made by migrants through the payment of taxes or through the qualifications they bring, which is a benefit in terms of human capital:

The Finance Committee was attended by the Minister of Finance and the Budget Director. The only figure they gave on migration was the millions of dollars spent on education, health and housing for migrants. It escaped the Finance Minister’s attention that seven days before—not ten, seven days before!—the Central Bank came to this Congress to report on the contribution of migrants to improve Chile’s potential GDP by several tenths of a percentage point. In other words, their contribution helps the national economy. (Senator of the Party for Democracy, Congress of the Republic, discussion of the Immigration and Foreigners Law, Bulletin No. 8970-06, session of 13/8/2019)

As for the benefits that stand out for the country, migrants with intermediate and high levels of qualification can supply skills in which the local market is deficient that would take years to resolve through training mechanisms. (Senator of the Socialist Party, discussion of the Migration and Foreigners Law, Bulletin No. 8970-06, session of 13/8/2019)

⁷ Chile Vamos, a government coalition composed of three right-wing and center-right parties: Unión Demócrata Independiente (UDI), Renovación Nacional (RN) and Evolución Política (Evópoli).

This migrant subject, with a reified identity in the economic dimension—that is, a unidimensional identity reification—can also be read as a prediscursive identity in the text of the law itself (also conceived as masculine). As mentioned above, the recognition of rights in this text is conditioned, and this conditioning is explicitly or implicitly based on an economic argument. In the article relating to the right to social security, for example, a time limit is placed on access that could involve expenditures for the State:

Concerning those non-contributory social security benefits and benefits financed entirely with fiscal resources, involving direct monetary transfers, for which no access requirements are established, directly or indirectly, that involve a certain minimum stay in the country, it will be understood that only those residents, either in their capacity as holders or dependents, who have remained in Chile, in such capacity, for a minimum period of twenty-four months, will be entitled to them. (Biblioteca del Congreso Nacional de Chile, 2021a, p. 2256, article 16)

This part of the legal corpus on international migration, observed in sex-gender terms, still shows the preeminence of a hetero-cis-normative view, with some disruption, especially in the legislative debate, and with a variation in the corpus created during the dictatorship: the figure of the migrant woman acquires a significant presence in this case but associated with the idea of vulnerability. The processes of social differentiation obey institutional practices and discourses (Brah, 2011), such as the regulations and parliamentary debates under analysis. This construction of vulnerable migrant women is mobilized in discourses and practices that, as Anthias (2002) states, are based on practices of hierarchy among social groups (nationals/migrants, women/men). In the article of the law dedicated to equality of rights and obligations, it is stated that:

The State shall promote respect for and protection of foreign women, regardless of their immigration status, so that at all stages of the migration process, *they are not discriminated against or abused because of their gender*. Migrant women shall have access to all institutions and mechanisms that safeguard their welfare. *Pregnant women, victims of human trafficking, victims of gender or domestic violence, or victims of migrant smuggling* shall be given special treatment by the State. In accordance with the above, the National Migration Service may issue a visa to regulate their stay. (Biblioteca del Congreso Nacional de Chile, 2021a, p. 2255, article 13, emphasis added)

As can be seen, gender appears as a reason for discrimination or violence; indeed, the emblematic figure of vulnerability is the “migrant woman” as a passive subject and victim of various forms of violence. This representation, while attempting to highlight the inequality that affects women, materialized in the vulnerabilities which migrant women suffer, at the same time contributes to the institutionalization of stigmatizing views about them. As Mohanty (2008) points out, it places them in the antithesis of the “normal” (Chilean) woman.

On the other hand, maternity also appears, as a circumstance associated with biology (pregnancy), as another element that makes the migrant woman a subject of special protection, as stated in one of the sessions of the parliamentary debate on the regulations:

Regulations related to gender treatment are also lacking. Immigrant women must be protected from at least three perspectives: first, concerning the applicability of criminal legislation; second, concerning the protection of pregnancy and maternity; and third, concerning gender-based violence. (Deputy of the Communist Party, discussion of the Migration and Alien Law, Bulletin No. 8970-06, session of 8/10/2020)

The phenomenon of human trafficking and its relation to migrant women deserve a separate paragraph. As some works have shown (Magliano & Clavijo, 2011; Pacecca, 2018, among others), this association has long been part of the state and media discourse on migrations and of the social imaginary, from a systematic installation carried out by international organizations (such as the International Organization for Migration). From the logic of migratory control, this has enabled new forms of control and restriction of certain forms of migration; the consular visa required for Dominican citizens some years ago in Chile and Argentina, for example, was proclaimed as a measure that supposedly was in response to the trafficking of Dominican women, but in practice operated as an obstacle to entry, and as a way to push migrations of this origin toward irregularity (Galaz V. et al., 2017).

As Pacecca points out, a moral and singularizing discourse has been installed around this issue, making “historical and structural aspects invisible, disassociating the process from the economic conditioning factors that accounted for its logic” (Pacecca, 2018, p. 106). The author says this approach has been solidifying the idea of a “constitutive vulnerability” of certain social subjects, among them women. This construction of the idea of vulnerability, used in recent decades as an argument for targeted policies, appears in the social imaginary of migrant women,

(re)presented from the view of weakness, as fragile subjects, prone to social exclusion and marginalization. These images are a social construct that feed the romantic myth of feminine fragility and weakness as a way of legitimizing and reproducing gender roles and relations and, therefore, gender inequalities (Magliano, 2009, p. 78)

Something similar occurs with migrants with non-binary sexual orientations or gender identities, who in the law only emerge linked to the legal category of complementary protection when sexual orientation and gender identity are indicated as reasons of risk of the violation of their rights and integrity:⁸

No foreigner entitled to complementary protection may be expelled or returned to the country where their right to life, physical integrity or personal freedom is at risk of being violated due to their race or ethnicity, nationality, religion or belief, social status, political ideology or opinion, *sexual orientation or gender identity*. (Biblioteca del Congreso Nacional de Chile, 2021a, p. 2254, article 10, emphasis added)

As can be seen, these reasons are listed together with several others in a summative logic that equates potential forms of violence in this undifferentiated aggregation. This generalist use makes invisible the particularities of the processes that certain migrant corporealities undergo and, therefore, has the effect that the rights available do not

⁸ It is granted for humanitarian reasons to refugee applicants who have not yet been granted this category.

take into account these particular situations. A sort of “constitutive outside” (Galaz Valderrama et al., 2018) is established through a difference based on a hierarchy that is heteronormative and national. From an intersectional point of view (Magliano, 2015), in considering diversity as a large generalist and summative umbrella, the homogenization of certain categories (woman, migrant, gender orientation/identity) is enabled, and the experiences of subjects located at the crossroads of these identification vectors are made invisible. On the other hand, the consideration of sex-gender diversity appears only in relation to its possible implications in the country of origin, based on an eventual return, but not in relation to the country of residence covered by the law.

Prefigurations of the subject in the legal corpus on sexual and gender diversity

Just as sexual and gender diversity and dissidence are invisible in the legal and policy corpus and in the parliamentary discourse on international migration, in the selected corpus on sexual diversity, something similar occurs to the migrant subject, who appears fundamentally linked to two aspects, nationality and “race”, which prefigure them as a subject vulnerable to discrimination.

In the anti-discrimination law (Biblioteca del Congreso Nacional de Chile, 2012), for example, LGBTBI+ migrants as such do not figure in the parliamentary rhetoric framed in this political discussion, but separately those foreigners—who are linked to nationality, race, and xenophobic discrimination—and non-heterosexual people—who appear connected to sexual discrimination—. Nonetheless, in both cases, in the discourse of the law there emerges a certain identitarian use of some groups that are made visible as groups more exposed to discrimination than others: on the one hand, racialized people, who in various discussions are raised as the object of daily and State racist practices, and on the other, trans people, by exposing cases of transphobic violence. This exercise allows greater visualization of the attacks against these groups and the position of “extreme otherness” in which they are placed, however at the same time it makes invisible the negative experiences of other migrant groups (those not racialized) and other groups of sexual dissidence that are not made visible in political discourses (such as bisexual, lesbian, intersex and non-binary people). The following quotes visualize this identity specification at the discursive level and, in the first one in particular, a racialized otherness is constructed from a supposedly benevolent prism:

Every day more and more people of color arrive in Chile and are discriminated against simply because of their dark skin. Why are these people blamed for having been genetically born in a cradle of dark skin? A recent survey by the Universidad del Desarrollo showed that our country has a high level of discrimination. (Senator of the Radical Party, Biblioteca del Congreso Nacional de Chile, 2012, p. 585)

We have suffered seeing in the media aggressions against transsexual and transgender people who, unfortunately, experience the irrational, passionate violence of neo-Nazi groups that do not restrain themselves and attack them.

Consequently, we cannot suppress the gender identity aspect and limit ourselves only to sexual orientation since we must also point out the cultural and social construction that strongly identifies the person. (Senator of the Socialist Party, Biblioteca del Congreso Nacional de Chile, 2012, p. 551)

These explanations based on extreme otherness, constitute a warning discourse in the face of a certain persistence of cultural practices of animosity toward some people. The discourse becomes extreme as a way to raise awareness of discrimination. Nonetheless, in so doing, certain migrant and dissident bodies are placed on the opposite side of normality, with these subjects prefigured as exceptions to be protected by crystallized identity characteristics. On the one hand, as will be shown in the quotations, it is black people, and on the other, homosexual people, who in the rhetoric appear to suffer violence when they are shown to the public in that specific condition:

There is a culture of animosity against migrants from neighboring countries. Nevertheless, this is not true for those from Europe, who are welcomed with open arms. Is it because some are brown, and others are blue-eyed and blond?... There is xenophobia in that aspect. (Deputy of the Party for Democracy, Biblioteca del Congreso Nacional de Chile, 2012, p. 102)

A bill of this type helps not only to react to the specific phenomena of discrimination that recur in Chilean society but also to protect the rights of the young Congolese who were beaten simply for being black or of the young homosexuals whose discotheques were burned down. (Deputy of the Party for Democracy, Biblioteca del Congreso Nacional de Chile, 2012, p. 60)

The parliamentary discourse relies on the visibility of the vulnerability that these corporealities encounter in everyday life, as an argument to approve the regulation; this problem is prefigured concerning the pre-discursive subject of this law under construction. The “vulnerable subject” is conceived as someone exposed to violence in a diffuse relationship between the vectors of origin and sex-gender. Lesbians, transgender, and gay people are preferentially placed in this pattern of vulnerability in anti-discrimination law, but at the same time, they are separated from migrants who are discriminated against based on nationality and racialization. Nevertheless, both figures emerge together in the discursive apparatus as persuasive arguments for voting in favor of the regulation. By doing so, a one-dimensional prefiguration of the subject in the parliamentary discourse is clear since the relationship of categories (sex/gender-national origin) is unthinkable, and, therefore, the experiences of people located at this crossroads are made invisible.

Despite this agglutinating use (Galaz Valderrama et al., 2018) of both migration and certain collectives of sexual dissidence as explanatory rhetoric, in the final text of the regulation, the legal right of “dignity of the person” is proposed as a code without specific corporeality; protected bodies, but without the social mark of origin, age, sexuality, race, etcetera. Such protection indicates a need to control daily interpersonal violence, as shown in the following quotes, rather than demonstrate or influence how structural matrices of racism, xenophobia, sexism, and hetero-cis-normativity are formed, affecting the lives of certain groups. Thus, it is established that all forms of discrimination are similar, as are their effects, even if they derive from

different motives, since the law invokes an individual sanction for an interpersonal crime of discrimination.

These changes are difficult but necessary. A culture of respect for the dignity of the human person is imperative. Moreover, today special action is necessary. Because the recourse for protection in these matters... against discriminatory acts is not very effective. (Deputy of the Christian Democratic Party, Biblioteca del Congreso Nacional de Chile, 2012, p. 513)

Human rights, stemming from the intrinsic dignity of the human person, have, among other characteristics, universality, indivisibility, and interdependence. Simply put, human rights apply to all people because they are human beings. (Jurist and academic of the Center for Religious Freedom of the Law School of the Pontifical Catholic University, Biblioteca del Congreso Nacional de Chile, 2012, p. 615)

The fact that the law does not establish specific sections for each type of possible discrimination but rather employs general anti-discrimination rhetoric prevents the subsequent visibility of violence encountered in the place in the social structure of people who are located at the intersection of power matrices (for example, nationalism and hetero-cis-normativity), which hinders the subsequent promotion of direct action by the State. Likewise, the fact that these situations are not considered hate crimes by placing them only in the framework of discrimination detracts from the social effects of these acts. The following quote shows how the problem is individualized as a habit of some sectors only or how these actions are circumscribed to interpersonal acts and are not perceived as structural variables:

We have some bad habits... some of us have three significant problems: some radio stations systematically undermine some foreign communities, particularly the Peruvian one; a television channel repeatedly mocks sexual minorities in one of its nightly programs, and some written media are pro-Nazi. (Deputy of the Regionalist Green Social Federation party, Biblioteca del Congreso Nacional de Chile, 2012, p. 99)

In the Gender Identity Law 21.120, in force since December 2018, the rhetoric of “dignity” is again used as a form of argumentation to defend this right. The problem that the regulation tries to face is centered on the democratic backwardness of the country, because it has no laws recognizing trans adults. Nevertheless, it is repeatedly argued as a public health problem due to the suicide attempts and suicidal ideation present in this group and the effects on mental health they suffer (often without these problems being linked to the effects of structural dynamics and violence they live through).

Social stressors such as discrimination and stigma increase the risk of poor mental health outcomes for non-heterosexual and transgender populations. More high-quality longitudinal studies are needed to make the ‘social stress model’ a

useful tool for understanding public health concerns. (Director of Fundación Somos Padres, Biblioteca del Congreso Nacional de Chile, 2018, p. 948)

This is a discussion about human rights; this is a discussion about non-discrimination, this is a discussion about the dignity of every human person. (Deputy of the Christian Democratic Party, Biblioteca del Congreso Nacional de Chile, 2018, p. 1443)

This law, during most of its drafting process, was intended for Chilean citizens and adults. But only later in the discussion, the emphasis began to be placed on the inclusion of children and foreigners. The following quotations summarize how discourse is conveyed that is, on the one hand, adult-centric on the subject, which considers children as objects but not as participating subjects and, on the other hand, nationalist, where the inclusion of foreigners is belatedly recognized as long as they have a permanent visa for the country, thereby demonstrating roots and a long period of residence in the country—which implicitly, due to Chilean administrative conditions, implies access to and permanence in the labor market—. Access is contingent on social status and gender identity, which is ultimately almost impossible for part of the resident transgender population since it implies having birth documentation apostilled at origin and ratified in the Chilean Civil Registry Service, in addition to having permanent residency:

Foreigners may only rectify their sex and name for the issuance of Chilean documents, complying with the requirements established in this law. To do so, they must first register their birth at the Santiago office of the Civil Registry and Identification Service. Likewise, in the corresponding rectification procedure, foreigners must always prove their definitive residence in Chile. (Biblioteca del Congreso Nacional de Chile, 2018, p. 1523, article 5)

Neither the non-binary population nor migrant children are mentioned in the parliamentary discussion, nor is the right to the social name recognition of newly arrived migrants. This demonstrates several preconceptions that operate based on this law: as seen in the quote, a binary vision of the transition process that people go through with their identity; adult-centric, because it exclusively considers adults; and nationalistic, as seen below, because it ends up being a right that is difficult to apply in the case of the migrant population.

In this regard, respect for the dignity of all people is an essential basis for all social coexistence. Each adult is free and responsible for the exercise of their sexuality. In binary sexuality, there are male and female, which are mutual complements for new life and the family, and inclusion should include everyone, both heterosexual and biparental couples. (Legislative Coordinator of the Community and Justice Corporation, Biblioteca del Congreso Nacional de Chile, 2018, p. 1545)

Throughout the discussion, it is taken for granted that migrants who can access this right must live in the country for a long time, proving it with a definitive visa. This temporal factor is not discussed at any time, even when it implies access to the labor market, which is complicated for the trans population in general due to the prevailing transphobia. Only on one occasion was a report presented to advocate that this right

be extended to other administrative conditions, but it failed to be discussed in the houses of parliament. The following quote from a parliamentarian who advocates its extension to the foreign population clearly demonstrates the limits of accessibility that were intended in the discussion:

Any person of Chilean nationality and foreigners (WHO OBTAIN CHILEAN NATIONALITY) with permanent residence in Chile and of legal age may request from the Civil Registry and Identification Service, for one time only, the rectification of the mention of sex in the birth certificate. For foreigners with permanent residence in Chile, only the sex and/or name on the Chilean identity card will be rectified. (Biblioteca del Congreso Nacional de Chile, 2018, p. 68, article 5)

In all the discussions about this regulation, only on one occasion is the situation of trans migrants explicitly referred to, in the case of a trans-hate crime against an Ecuadorian trans woman, by the Amanda Jofré Union (of sex workers). Nevertheless, despite the sensitivity of the case and the allegations of explicit discrimination against migrants, the extension of the regulation to foreigners who do not have permanent residence is not considered, which makes life more difficult for those involved in street sex work.⁹

Conclusions and reflections: the unfinished intersection

As the analysis in this article shows, the prefigurations of the migrant subject that have prevailed in the migratory regulations and parliamentary discourses related to them in Chile over the last half century, have established in the national social imaginary a subject that represents a threat to security and an eventual burden for the State or, more recently, a potential human resource. It is also an implicitly hetero-cis-normative subject, which conceives of the migrant woman as a companion of the migration processes in the laws drafted during the dictatorship or as a victim of various forms of violence in recent regulation. On the other hand, the identity prefigured (and solidified) by the regulations and the parliamentary discourse regarding people of sexual diversity is a subject of vulnerable identity minorities that must be recognized for their human dignity as a universal precept that only allows marginal identity reifications (black people or trans people), which by that very reification, as the sum of vulnerability, are crystallized as alterities in the social imaginary.

These prefigurations of the migrant subject and the subject of sexual diversity imply an identity reification from an approach that unidimensionalizes it to conceive it exclusively as a hetero-cis-formed economic migrant or as a vulnerable generic-

⁹ The case of Odalis Parrales, an Ecuadorian migrant stabbed in 2016. As the homicide of a trans woman cannot be considered femicide, it was a case of simple homicide (Biblioteca del Congreso Nacional de Chile, 2018, p. 967).

sexual minority, which thus implies an erasure of LGBTBI+ migrants and of the specific inequalities that affect them. Therefore, these compartmentalized and watertight concepts of identity need to be reconsidered.

Both identity reifications have, however, different horizons: if, in the case of the subject of sexual diversity, the aim is the recognition of rights for that identity—although it is often merely rhetorical recognition—in the case of the migrant, it is a prefigured identity with a horizon of control for an implicit restrictive effect on access to rights. It is partly because of this, in other words, because of this impossibility of the regulation to prefigure the migrant as a subject of rights, because they are a subject excluded *de jure* from the State from which the mandate of this law emanates, that the State cannot think of the LGBTBI+ migrant: the intersections that constitute them are erased by foreignness. Moreover, the exclusion of dimensions that intersect in subject positions seems to be related with a need of the legislator to prefigure unidimensional subjects and static and clearly segmented identities, to which to direct the measures that in turn construct that subject, which logically leads to the question of the difficulties in incorporating intersectional views in the legal field.

This is why it is necessary and urgent to adopt an intersectional perspective (Hill-Collins, 1990) in the analysis of migration and sexual diversity and dissidence, precisely because it describes the invisibility of certain experiences in public discourse, in social imaginaries and in the implementation of regulations. In addition, this intersectional view highlights the reification of the idea of standard “citizenship” insofar as it makes possible the emergence of the more subtle ways in which different forms of social discrimination operate, and how this standard concept occludes some specificities of certain social subjects. This view could contribute precisely to breaking up these *a priori* subject categories within the production of regulations in order to look at the contextual elements of the experiences of discrimination, that is, how the connections between nationalism, racism, classism, and hetero-cis-normativity operate in everyday life in different contexts.

Another finding from this analysis is the impossibility of thinking of a sex-gendered migrant body in the regulations on migrants and in the subject formed by these regulations in the social imaginary. While the migrant matters as a body that participates in the labor market, as a body that can be considered a resource, the sex-gender dimension of this body is subjected to invisibility in this legal and political framework, except in the case that this body with its sexuality and gender is viewed as a matter of violation: the only body admitted is that of the victim. By considering them as victims, they become passive subjects for the State and therefore without the possibility of agency. This criticism does not imply denying that migrants and people of sexual diversity are often subjected to aggressions and violence by different agents, in different situations, and of a different caliber. The problem is that in the law, politics, and parliamentary discourse, they are represented solely reduced to their status as victims, as a reified identity, which results in the obliteration of practices that exceed these frameworks; that is, the fact that they are often constituted as subjects of resistance and struggle, both individual and collective, in order to confront the violence to which they are or may be subjected, is made invisible.

Finally, it is important to make explicit the limits of this analysis. Regulations and policies construct subjects and identities, but not without tensions and resistance; they

do so as part of a mobile play of forces in which diverse agents participate, with different degrees of power, and without monolithic and coherent identities. Certainly, as Shore explains, policies “objectify those they target and subject them to the anonymous gaze of experts” (2010, p. 45), prefigure them, and solidify these prefigured identities. However, they also have “social lives of their own”, which implies “reflecting on the biographies and dynamics surrounding their translation and interpretation” (Shore, 2010, p. 36) while considering how they are received and signified by the subjects to whom they are addressed, how they affect them, and how these receptions and resignifications affect the legal-political mechanisms themselves. To the extent that state agents construct these mechanisms, thus investing them with that legitimacy (with that “legitimate” power), they have an unquestionable capacity to crystallize subjects and identities in the social imaginary. Nevertheless, forces can dilute and transform these crystallizations, which were not part of this analysis.

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