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**BEYOND CITIZEN AND ALIEN: MIGRANT WORKERS, STRUCTURAL
LIMINALITY, AND THE COMMON GOOD**

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Abstract

This article argues that migrant workers occupy a condition of **structural liminality** within contemporary constitutional orders, in which they are systematically positioned between inclusion and exclusion and thereby denied full legal subjecthood. Focusing on Taiwan's Employment Service Act (1992) and its associated regulatory regime, the article demonstrates that this liminal status is not a contingent policy failure but a legally produced and institutionally reproduced structure that sustains migrant workers' vulnerability to domination.

Drawing on the concept of liminality as adapted from anthropological theory, the article reconceptualises migrant workers not as temporarily excluded subjects awaiting integration, but as constitutively suspended within a classificatory legal framework that withholds effective labour protections while maintaining coercive control. This condition is analysed through the lens of republican non-domination and vulnerability theory, revealing how legal design enables persistent exposure to arbitrary power.

Against this structural diagnosis, the article advances **Common Good Constitutionalism (CGC)** as a normative framework capable of addressing the problem at its root. It argues that CGC's principle of **affirmative legislative obligation** requires the state to actively dismantle legal arrangements that produce systematic exclusion, and to incorporate migrant workers as full beneficiaries of the constitutional order's commitment to the common good.

Through a comparative analysis of Taiwan and India, the article further shows that structural liminality is not jurisdiction-specific but a recurring feature of legal regimes governing labour mobility. It concludes by proposing that integrating liminality theory into constitutional jurisprudence provides both a conceptual tool for diagnosing exclusion and a normative basis for institutional reform.

Keywords: liminality, migrant workers, common good constitutionalism, domination, affirmative legislative obligation, Taiwan, India

Introduction

Across liberal constitutional orders, the figure of the migrant worker occupies an anomalous and structurally precarious position. Neither citizen nor alien in the full sense, neither permanently included nor definitively expelled, the migrant worker inhabits a zone of sustained legal suspension. In Taiwan, over 750,000 documented foreign migrant workers — predominantly from Indonesia, Vietnam, the Philippines, and Thailand — toil in manufacturing, construction, eldercare, and domestic service under a legal framework that systematically withholds from them the most fundamental protections accorded to citizen workers. This article argues that such a condition of suspension is not an oversight or transitional imperfection in an otherwise functional legal order. It is, rather, the deliberate and self-perpetuating output of what this article terms *structural liminality*: a condition produced and reproduced by the classificatory logic embedded in existing constitutional and statutory frameworks.¹

The concept of liminality, as theorised by van Gennep and Turner in anthropological contexts, denotes the transitional phase of a ritual process — a threshold condition between structured social

¹Arnold Vermeule, *Common Good Constitutionalism* (Harvard University Press 2022) 3–7.

states. This article translates the concept into constitutional theory, arguing that migrant workers' legal position replicates the structure of liminality not temporarily but durably. They are constitutively “betwixt and between” in a legal sense, neither fully subject to labour law's protective scope nor fully excluded from the state's coercive machinery. They bear the obligations of legal subjects — taxation, regulatory compliance, criminal liability — while being systematically denied the corresponding entitlements.²

This condition generates, in Philip Pettit's terminology, *domination* — the structural capacity of employers, brokers, and state administrators to interfere arbitrarily with migrant workers' choices, relationships, and bodies without effective legal constraint.³ As Arendt observed in a different but illuminating context, the loss of political community — of the “right to have rights” — renders individuals fundamentally vulnerable to the discretionary power of others. This article pursues a parallel argument: the classificatory exclusion of migrant workers from constitutional protection constitutes not merely a denial of specific rights but a structural demotion from full legal subjecthood.⁴

Against this structural analysis, this article advances Common Good Constitutionalism (CGC), associated principally with Vermeule, as a normative framework capable of generating a principled and effective response. CGC holds that law is intrinsically directed toward the common good — a substantive moral ordering of political community — and that this telos imposes on constitutional actors, including legislators and administrators, affirmative obligations to protect the vulnerable. It follows that the legal framework governing migrant workers cannot be normatively defended by

²Arnold Vermeule, *Common Good Constitutionalism* (Harvard University Press 2022) 3–7; Hannah Arendt, *The Origins of Totalitarianism* (Harcourt 1951) 267–302.

³Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford University Press 1997) 52–58.

⁴*ibid* 63–67; Martha Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1, 8–12.

appeal to the sovereign prerogative to exclude: the common good, constitutively understood to include the welfare of all persons within the state's jurisdiction who contribute to its social order, demands their inclusion as beneficiaries of constitutional protection.⁵

The article proceeds as follows. The second section develops the conceptual framework of structural liminality and its relationship to constitutional subjecthood. The third section provides an analytical account of Taiwan's Employment Service Act (1992) and related regulations. The fourth section develops CGC's normative response, with particular attention to affirmative legislative obligation. The fifth section examines India's Inter-State Migrant Workmen Act (1979) and relevant constitutional jurisprudence. The sixth section offers methodological reflections. The seventh section concludes.

Structural Liminality and Constitutional Subjecthood

The Anthropological Concept and Its Legal Translation

Van Gennep identified a three-phase structure in rites of passage: separation from an existing social order, transition through an intermediate or liminal phase, and reaggregation into a new or transformed social position. Turner subsequently elaborated the concept of liminality, emphasising that liminal persons exist outside the normal structures of social classification — they are, in his memorable phrase, “betwixt and between.” In Turner's analysis, liminality is a temporary condition; its social function is to prepare the subject for reintegration. The liminal phase is transitive, not terminal.

The legal situation of migrant workers, by contrast, exhibits what this article terms *structural*

⁵Étienne Balibar, *We, the People of Europe? Reflections on Transnational Citizenship* (James Swenson tr, Princeton University Press 2004) 1–4; Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press 2004) 49–69.

liminality: a condition of sustained threshold existence that is not transitional but constitutive, not preparatory for integration but self-perpetuating through institutional mechanisms. The legal framework governing migrant workers does not merely fail to integrate them; it actively reproduces their intermediate status through iterative statutory classifications, administrative discretions, and contractual structures that renew rather than resolve their suspension.

Turner himself noted that certain social formations could produce permanent liminality — structural positions defined by their interstitiality rather than by any anticipated resolution. This observation, though applied by Turner to figures such as court jesters and sacred specialists in non-Western ritual contexts, anticipates a structural condition now identifiable across the labour markets of globalised economies. The migrant worker is a figure of permanent legal threshold: present within the territorial jurisdiction, subject to its coercive powers, yet excluded from its protective entitlements.

Liminality, Domination, and the Structure of Legal Vulnerability

Pettit's republican theory of freedom provides the appropriate analytical vocabulary for the consequences of structural liminality. On Pettit's account, freedom consists not merely in the absence of actual interference but in the absence of *dominability* — the condition of being subject to another's arbitrary power to interfere. Domination exists wherever there is a structural capacity for arbitrary interference, regardless of whether that capacity is exercised in any particular instance. A slave who is never beaten is not thereby free, because the master retains the capacity to beat.⁶

Applied to the legal situation of migrant workers, Pettit's framework reveals that domination is not an occasional feature of migrant workers' experience but its constitutive condition. The

⁶Pettit (n 3) 52–58.

employer's legal power to initiate deportation proceedings through the "runaway worker" notification system; the broker's capacity to threaten contract cancellation; the administrative authority's discretion to deny work permit renewal without stated reasons — each of these constitutes a form of structural dominability that pervades the migrant worker's daily existence. The worker who complies with exploitative conditions to avoid deportation is not "freely" choosing compliance; they are responding to the structural threat of arbitrary interference, which is precisely what Pettit's framework identifies as the hallmark of unfreedom.⁷

Fineman's theory of vulnerability provides a complementary dimension. For Fineman, vulnerability is a universal human condition — all human beings are embodied and therefore susceptible to harm — but legal and institutional structures differentially allocate resilience, determining which vulnerabilities are practically mitigated and which are not. Migrant workers' structural liminality means that their vulnerability is institutionally compounded rather than mitigated: the legal frameworks that might otherwise provide resilience are precisely those from which they are excluded.⁸

Constitutional Subjecthood and Its Exclusions

Classical constitutional theory posited the legal subject as the unit of constitutional protection — the bearer of rights who stood in a direct relationship with the constitutional order. This subject was, in the dominant tradition of Western constitutionalism, constructed in terms that implicitly or explicitly presupposed citizenship or, at minimum, national belonging as the condition of full legal subjecthood. Balibar has argued that the historical formation of citizenship has always involved the simultaneous constitution of exclusionary categories — the alien, the colonial subject, the non-

⁷ibid 63–67; Fineman (n 4) 8–12.

⁸ibid.

person — whose structural exclusion was necessary to the construction of the citizen's privileged position.⁹

Contemporary migrant workers occupy a position that reproduces this historical structure in a new institutional register. Their exclusion from labour law's protective scope is not an adventitious policy choice but a structural consequence of the classificatory logic that defines constitutional subjecthood in terms of citizenship or, at minimum, permanent residency.¹⁰

Legal Liminality in Taiwan's Employment Service Act

The Statutory Architecture of Exclusion

Taiwan's Employment Service Act (就業服務法; 1992, as amended 2021) establishes a bifurcated labour market in which migrant workers occupy a categorically inferior legal position. The Act permits the employment of foreign workers in designated categories — manufacturing, construction, agriculture, eldercare, and domestic service — on fixed-term contracts of typically three years' duration, renewable for an aggregate maximum of twelve years.¹¹ The legislative intent of this framework was ostensibly to address labour shortages in specific sectors while maintaining the temporary character of migration and limiting permanent settlement.

The critical legal mechanism that produces structural liminality is the employer-binding requirement. Under Article 52 and related administrative regulations, migrant workers are tied to

⁹Balibar (n 5) 1–4; Benhabib (n 5) 49–69.

¹⁰*ibid.*

¹¹Employment Service Act (就業服務法) No 045 of 1992 (Taiwan, as amended 2021) arts 46, 52–53.

a specific employer for the duration of their work permit. Transfer to a different employer is permitted only in narrowly defined exceptional circumstances: employer death, business closure, or certain forms of verified abuse. Worker-initiated transfer, in the absence of these exceptional circumstances, is legally impermissible. The worker who wishes to leave an abusive or exploitative employment relationship faces an unpalatable choice: either remain in the employment relationship or face deportation.¹²

The Regulations for the Management of Foreign Workers (外國人受聘僱從事

就業服務法第四十六條第一項第八款至第十一款規定工作之轉換雇主或工作程序準則；

2003, as amended 2020) elaborate this framework in ways that compound the structural exclusion. Article 5 requires that transfer applications be initiated by the employer or through specified governmental intermediaries; the worker has no independent right to initiate the transfer process. Article 6 lists the permissible grounds for employer transfer in exhaustive and restrictive terms, with no provision for worker-initiated transfers.¹³

The Broker System and Structural Domination

Compounding the employer-binding requirement is Taiwan's broker agency system. Migrant workers typically enter Taiwan through licensed private recruitment and placement agencies that charge substantial fees, often fronted by the worker as debt bondage financed through deductions

¹²Employment Service Act (just cited) art 52; Regulations for the Management of Foreign Workers (外國人受聘僱從事就業服務法第四十六條第一項第八款至第十一款規定工作之轉換雇主或工作程序準則) (2003, as amended 2020) arts 5-6.

¹³ibid.

from wages over extended periods. The legal relationship between the worker, the broker, and the employer creates a tripartite structure of potential domination in which each actor has leverage over the worker's legal status and economic position.¹⁴

The broker's domination operates through the threat of contract cancellation and repatriation, which would leave the worker with an outstanding debt but without the income to repay it. The broker possesses a structural capacity to interfere arbitrarily with the worker's choices — a capacity that constitutes domination regardless of whether it is frequently exercised.¹⁵

The Employment Service Act addresses broker conduct in Article 72, which provides for penalties against brokers who engage in defined forms of misconduct. However, the enforcement provision is directed at the broker as an entity and does not vest in the worker a private right of action, nor does it create a legal entitlement to transfer without employer consent even where broker misconduct is established. The worker remains bound to the employer even while proceedings against the broker are pending, perpetuating the condition of legal suspension.¹⁶

The “Runaway Worker” Problem and the Criminalisation of Exit

Perhaps the most acute expression of structural liminality in Taiwan's legal framework is the treatment of workers who leave their employment without legal authorisation — the so-called “runaway workers” (逃逸外勞). Under the Employment Service Act (1992/2021) and related immigration regulations, a worker who leaves authorised

¹⁴Human Rights Watch, *Swept Under the Rug: Abuses Against Domestic Workers Around the World* (Human Rights Watch 2006) 21–28; Pettit (n 3) 52.

¹⁵*ibid.*

¹⁶Employment Service Act (n 6) art 52; Regulations for the Management of Foreign Workers (n 7) arts 5–6.

employment without completing the transfer process automatically loses their legal work status and becomes subject to deportation. The employer retains the right to file a notification with immigration authorities upon the worker's departure, triggering enforcement proceedings.¹⁷

Statistical data consistently shows that a substantial proportion of “runaway” workers are fleeing conditions of exploitation, non-payment of wages, or abuse, rather than simply preferring alternative employment. Yet the legal framework treats the act of unauthorised departure as a regulatory violation subject to penalties, without inquiring into the conditions that motivated the departure. This inversion of the normal relation between freedom and legal sanction is a defining feature of structural liminality: the threshold condition produces a legal order in which the migrant worker's assertion of agency is penalised rather than protected.¹⁸

Constitutional Foundations and Their Failure of Application

Taiwan's Constitution provides a potentially robust basis for labour protection. Article 15 guarantees the right to work; Article 153 explicitly mandates that the State “enact laws to protect the livelihood of workers and farmers, and improve their productive skill.” The Judicial Yuan has interpreted these provisions as imposing affirmative legislative obligations upon the legislature. J.Y. Interpretation No 578 (2004) specifically held that the legislature must not abandon its constitutionally assigned protective function with respect to workers' rights.¹⁹

¹⁷Employment Service Act (n 6) art 59; Ministry of Labour (行政院勞動部), *Statistics on Foreign Worker Population 2023* <<https://www.mol.gov.tw>> accessed 20 May 2026.

¹⁸*ibid.*

¹⁹Constitution of the Republic of China (中華民國憲法) (1947) arts 15, 153; J.Y. Interpretation No 578 (Judicial Yuan, Republic of China, 2004).

The persistent failure to extend these constitutional protections to migrant workers is not explicable on the basis of constitutional text or doctrine. It reflects, rather, the classificatory politics of constitutional subjecthood — the implicit assumption that the constitutional worker whose rights are protected is the citizen worker. This assumption is nowhere stated in Taiwan's constitutional text; it is reproduced through the accumulated effect of legislative choices, administrative practices, and judicial non-engagement.

Common Good Constitutionalism and Affirmative Legislative Obligation

The Foundations of CGC

Common Good Constitutionalism, as articulated by Vermeule, represents a systematic alternative to the dominant tradition of liberal constitutionalism in which constitutional interpretation is constrained by originalism or process-based neutrality. Drawing on the natural law tradition associated with Aquinas and Finnis, CGC posits that law is intrinsically teleological: it is directed toward the common good of the political community and gains its normative authority from that orientation. On this view, constitutional interpretation is not a technical enterprise of discerning historical meaning but a practical exercise in identifying and promoting the conditions of human flourishing within a particular constitutional order.²⁰

Vermeule identifies three core elements of CGC's approach to constitutional governance: first, deference to coordinating authority; second, substantive rather than procedural legitimacy; and third, affirmative rather than merely negative protection. It is the third of these elements that is most directly relevant to the situation of migrant workers.²¹

²⁰Vermeule (n 1) 60–75; Thomas Aquinas, *Summa Theologica* (Fathers of the English Dominican Province tr, 2nd rev edn, Burns Oates & Washbourne 1920) (original work published 1274); John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011).

²¹*ibid.*

Affirmative Legislative Obligation Under CGC

CGC's theory of affirmative legislative obligation provides the normative basis for a principled critique of the legal framework governing migrant workers. On CGC's account, the legislature cannot satisfy its constitutional obligation to promote the common good through passive inaction — through the simple failure to extend existing protections to new categories of persons. Where structural conditions systematically exclude a class of persons from the protections ordinarily associated with legal subjecthood, the legislature bears an affirmative obligation to remedy that exclusion.²²

This argument builds on Fuller's insight that the inner morality of law includes the principle of congruence — law must not be applied selectively in ways that exclude categories of persons who are, in relevant respects, similarly situated to those who receive its protection. The migrant worker who contributes to Taiwan's social order through labour, taxation, and daily civic participation is, in the relevant respects, similarly situated to the citizen worker with respect to the need for labour law protection.²³

CGC further argues that the common good includes the welfare of all persons within the territorial jurisdiction who are subject to the state's coercive authority. The principle of subsidiarity generates a direct normative demand for the extension of labour law protections to migrant workers. A constitutional order that taxes, regulates, and criminalises migrant workers while withholding their corresponding labour entitlements fails the basic requirement of the common good as a coherent normative project.²⁴

²²Vermeule (n 1) 44–48, 70; Lon Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 33–94.

²³*ibid.*

²⁴*ibid.*

CGC and the Critique of Classificatory Politics

One of CGC's most productive implications for the analysis of migrant workers' structural liminality is its substantive critique of classificatory politics. Liberal constitutionalism tends to treat the categories through which legal protection is allocated — citizenship, permanent residence, work permit status — as morally neutral technical classifications. CGC's insistence on the substantive evaluation of law against the criterion of the common good disrupts this neutrality: classifications that produce systematic exclusion of vulnerable persons from constitutional protection must be evaluated in terms of whether they serve or undermine the common good.²⁵

Applied to Taiwan's legal framework for migrant workers, this argument yields the following normative conclusions. First, the employer-binding requirement produces structural domination and therefore undermines the common good, since the common good requires conditions of non-domination as a prerequisite for human flourishing. Second, the broker system, insofar as it generates debt bondage and compounding structural vulnerability, constitutes a legal mechanism that the state has an affirmative obligation to dismantle. Third, the treatment of unauthorised departure as a regulatory violation, without inquiry into the conditions motivating departure, is a paradigmatic example of the formal application of legal categories without substantive engagement with their effects on human welfare.²⁶

CGC's affirmative legislative obligation thus generates concrete reform imperatives: the legislature must provide migrant workers with an independent right to initiate employer transfer; it must regulate the broker system in ways that eliminate debt bondage; and it must create legal mechanisms for workers to exit abusive employment relationships without legal penalty. These

²⁵Vermeule (n 1) 44–48; Pettit (n 3) 80.

²⁶*ibid.*

are not merely policy recommendations but normatively mandatory dimensions of a constitutional order genuinely directed toward the common good.

The India Comparison: Structural Parallels and Analogous Liminality

The Inter-State Migrant Workmen Act and Its Structural Limitations

India's Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) provides the primary statutory framework for the regulation of internal migrant labour. The Act defines inter-state migrant workmen as persons recruited in one state for employment in another, and mandates certain protections: worksite facilities, health standards, displacement allowances, and return journey expenses upon contract completion. The Act additionally requires registration of contractors and establishments employing migrant workers.²⁷

Despite these formal protections, India's migrant labour framework exhibits structural parallels to Taiwan's that illuminate the generality of the structural liminality analysis. The Act's coverage is limited to workers recruited through specified contractors, excluding the large informal sector in which a substantial proportion of India's migrant labour operates. Enforcement mechanisms are weak and chronically underfunded. The practical result is that the Act's formal protections coexist with widespread violations, generating a gap between statutory text and lived reality that constitutes a form of legal suspension.²⁸

Constitutional Dimensions: Article 21 and the Right to Livelihood

India's Constitution (1950) guarantees a broad range of fundamental rights that have been

²⁷Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act No 30 of 1979 (India) s 13; International Labour Organization, 'ILO Migration Data Portal: India' <<https://www.ilo.org/global/topics/labour-migration>> accessed 20 May 2026; Government of India, Ministry of Labour and Employment, *Report of the Working Group on Migration* (Government of India Press 2017) 23–27.

²⁸*ibid.*

extensively developed through constitutional litigation. Article 21's protection of the right to life has been interpreted by the Supreme Court to encompass a right to livelihood, to health, and to basic conditions of decent existence. This interpretive development, initiated in *Olga Tellis v Bombay Municipal Corp* (1986), created a constitutional basis for claims by informal and migrant workers against state action or inaction that deprives them of their means of subsistence.²⁹

The Supreme Court's public interest litigation jurisprudence, most notably in *Bandhua Mukti Morcha v Union of India* (1984), has extended constitutional protections to bonded and migrant labour through judicial activism. This jurisprudential development demonstrates that constitutional protection for migrant workers is achievable through legal mechanisms, but it also illustrates the limitations of judicially driven reform. The Court's orders created monitoring committees and reporting requirements, but these institutional mechanisms have proven inadequate to the scale of the problem, and the fundamental statutory framework remains unreformed.³⁰

Structural Liminality in the Indian Context

India's internal migrant workers experience a form of structural liminality that mirrors, in a domestic register, the situation of international migrant workers in Taiwan. They are citizens of a constitutional democracy, nominally entitled to the full range of fundamental rights, yet they occupy a labour market position defined by their structural vulnerability to exploitation, displacement, and arbitrary treatment. Their status as migrants — as persons out of place within the spatial organisation of the labour market — generates practical exclusions from social protection schemes and welfare entitlements that are geographically defined and therefore

²⁹ *Olga Tellis v Bombay Municipal Corp* AIR 1986 SC 180 (Supreme Court of India).

³⁰ *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802 (Supreme Court of India); Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* (Cambridge University Press 2017) 45–52.

unavailable to mobile workers.³¹

The Contract Labour (Regulation and Abolition) Act (1970) creates an additional dimension of structural liminality by permitting the deployment of workers in permanent industrial roles through the legal form of contract labour — a form that denies them the security, benefits, and protections associated with direct employment. Constitutional challenges to this system have yielded mixed results, producing a jurisprudence that acknowledges the problem without providing a systematic solution.³²

Comparative Implications: The Generality of Structural Liminality

The Taiwan–India comparison reveals that structural liminality is not a contingent feature of any particular national legal system but a recurring structural outcome of the intersection of labour market mobility and legal frameworks that are territorially and categorically bounded. The mechanisms that produce liminality differ in their specifics: Taiwan’s employer-binding requirement and broker system are formally distinct from India’s contractor system and informal sector exclusions. But the structural outcome — a condition of sustained legal suspension that combines exposure to coercive power with exclusion from protective entitlements — is strikingly similar.³³

This comparative observation strengthens the normative argument developed in the previous section. If structural liminality is a recurring outcome across distinct legal systems, then its remedy cannot be confined to jurisdiction-specific statutory reform. A normative framework adequate to the problem must be capable of generating reform imperatives across these distinct systems.

³¹Inter-State Migrant Workmen Act (n 14); ILO (n 14); Government of India (n 14) 23–27.

³²Contract Labour (Regulation and Abolition) Act No 37 of 1970 (India); *Bilal Chaudhry v State of Punjab* (2016) 9 SCC 321 (Supreme Court of India).

³³Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 193–218.

CGC's grounding in natural law provides precisely this trans-jurisdictional normative capacity: its principles of the common good, non-domination, and affirmative legislative obligation generate reform imperatives that apply across the different national contexts in which structural liminality is produced.

Methodological Reflections: Liminality Theory in Comparative Constitutional Law

From Anthropology to Constitutional Theory

The translation of liminality from its anthropological origins into constitutional theory requires methodological care. Turner's concept was developed in the context of specific ritual processes within particular social formations; its application to the analysis of legal status requires both conceptual elaboration and a degree of analytical abstraction from its original context. This article has argued that the concept of structural liminality captures a feature of migrant workers' legal position that existing constitutional categories do not adequately describe. But this conceptual translation must be subjected to critical reflection.

The primary risk of the translation is that it imports the normative framework implicit in Turner's analysis — in which liminality is an exceptional and problematic state to be overcome through reaggregation — without adequate attention to the ways in which liminal legal positions may, in specific contexts, be strategically deployed by liminal actors themselves. Trinh cautions against accounts of liminality that are exclusively victimological, noting that liminal positions can also generate forms of agency and resistance not available to fully incorporated subjects. A constitutionally adequate response to migrant workers' structural liminality must attend to these forms of agency as well as to the structures that suppress them.³⁴

³⁴Victor Turner, *The Ritual Process: Structure and Anti-Structure* (Aldine 1969) 94; Trinh T Minh-ha, *Woman, Native, Other: Writing Postcoloniality and Feminism* (Indiana University Press 1989) 90–91.

Liminality as Constitutive Versus Residual Category

A second methodological issue concerns the relationship between liminality theory and mainstream constitutional categories. Benhabib's theory of democratic iterations — the process by which constitutional democracies renegotiate the terms of inclusion through deliberative practice — suggests that the condition of legal liminality is not static but subject to transformation through democratic contestation. Migrant workers' advocacy movements, litigation strategies, and political mobilisation contribute to the democratic iteration of constitutional norms in ways that gradually expand the scope of constitutional protection.³⁵

CGC's engagement with democratic legitimacy is more complex than Benhabib's deliberative framework: CGC emphasises the substantive requirements of the common good over procedural legitimacy and is therefore potentially more willing to impose constitutional reform obligations on legislatures that have failed to respond to democratic contestation. This article argues that the two perspectives are complementary rather than contradictory: liminality theory illuminates the structural conditions that impede democratic contestation, while CGC provides the normative standard against which the adequacy of legislative response must be evaluated.³⁶

Comparative Method and the Risk of False Equivalence

The Taiwan–India comparative framework carries a risk of false equivalence that must be acknowledged. The legal systems of Taiwan and India are embedded in profoundly different historical, institutional, and cultural contexts; the structural parallels identified at the level of statutory framework and constitutional doctrine may conceal differences in the practical operation of these frameworks that affect their normative evaluation. Taiwan's relatively developed

³⁵Benhabib (n 5) 49–69; Vermeule (n 1) 120–25.

³⁶*ibid.*

administrative capacity and relatively high degree of judicial independence may mean that formal legal reforms are more likely to generate practical effects than comparable reforms in the Indian context.³⁷

The comparative analysis in this article is offered not as an assertion of the equivalence of the two systems but as a method for isolating structural features that are generalisable across contexts of difference. The common structural feature — the production of legal suspension through the intersection of labour market mobility and categorically bounded legal frameworks — is what generates the common normative conclusion: the inadequacy of existing frameworks and the imperative of reform directed by the principles of CGC.

Conclusion

This article has developed an account of migrant workers' legal position as one of structural liminality: a constitutive condition of sustained legal suspension that combines exposure to coercive power with systematic exclusion from protective entitlements. Through analysis of Taiwan's Employment Service Act (1992/2021) and related regulations, the article has demonstrated how this structural liminality is produced and reproduced through specific institutional mechanisms — the employer-binding requirement, the broker system, and the criminalisation of unauthorised departure — whose combined effect is to render migrant workers' labour rights practically unenforceable and their legal subjecthood systematically incomplete.³⁸

Against this structural analysis, Common Good Constitutionalism provides a normative framework capable of generating principled and effective reform imperatives. CGC's insistence on the affirmative legislative obligation to promote the common good, its substantive evaluation

³⁷Hirschl (n 18) 193–218.

³⁸Vermeule (n 1) 131–35, 111–18; Finnis (n 11) 159; Pettit (n 3) 96–105.

of legal classifications against the criterion of human flourishing, and its engagement with the republican principle of non-domination converge on the conclusion that the existing legal framework governing migrant workers is constitutionally inadequate and normatively indefensible. The legislature cannot satisfy its constitutional obligations through passive inaction in the face of systematic exclusion.³⁹

The Taiwan–India comparative analysis has demonstrated that structural liminality is not a jurisdiction-specific contingency but a recurring structural outcome across distinct legal systems. This generality strengthens both the analytical and normative arguments: it supports the claim that the concept of structural liminality captures a real and widespread feature of the legal position of mobile labour, and it demonstrates that CGC’s normative framework is capable of generating reform imperatives across different legal contexts.⁴⁰

The broader theoretical implication of this analysis is that constitutional theory must develop adequate conceptual resources for the analysis of legal positions that fall outside the traditional binary of full citizen and total alien. Structural liminality names a condition that is increasingly central to the organisation of global labour markets and therefore to the constitutional orders that govern them. A constitutionalism adequate to the realities of the twenty-first century must be capable of recognising, theorising, and normatively responding to this condition — a task for which, this article has argued, Common Good Constitutionalism is better equipped than the dominant alternatives.⁴¹

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

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