

Book Review

Costello, C. and Freedland, M. (eds.) (2014)
Migrants at Work: Immigration and Vulnerability in Labour Law
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This edited volume draws on the work of established and emerging legal and migration scholars to examine the interaction between migration law and labour law, and the impact that these sets of law have on one another and on the process of migration. This collection is unique in its attempt to put into conversation these two sets of law in order to stimulate new debate on the need to reconcile migration and labour scholars. In doing so, the volume makes an important theoretical and empirical contribution to migration and labour studies.

Central to this volume is the argument that there is a theoretical disjuncture between immigration law and labour law. This theoretical rift has led to weak intersection and interaction between these two sets of law, which often results in conflicting laws and policies. According to Costello and Freedland (2014: 11), 'The laws and regulations of labour migration are viewed as divisive as they superimpose upon labour law their own special, and often restricted, personal work statuses'.

Using thematic analysis, the chapters in the book demonstrate the disjuncture between migration and labour laws with case studies drawn from various countries including Australia, Ireland, Israel, Germany, Sweden, the United States and the United Kingdom. The authors draw on the experiences of countries that have historically attracted migrants, and those that were formerly primarily labour-sending countries but that are now also labour-receiving countries (such as Italy, Poland and Mexico). To a lesser extent, the volume investigates particular practices in Brazil, France, Greece, New Zealand and South Africa. All of these countries are contemporary hosts to migrants and have systems designed to deal with various aspects of migration. Nonetheless, certain common features in their immigration law impact on labour law, such as their shared contemporary shift to using temporary labour migration statuses.

Many of the studies demonstrate that migration law exists at both the international and national level to facilitate the smooth and safe movement of people across borders. However, the majority of these laws are viewed through the lens of national security and sovereignty (Engblom, chapter 18, and Davies, chapter 5, on the trend of criminalising migrants). According to Costello and Freedland, part of the primary goal of migration law is to include or exclude migrants from the labour market, ultimately subjecting migration law to national law and policy. Migration law is also closely linked to an increase in triangular labour relations because of the shift towards labour broking within labour supply chains. In this way, there is contestation between the purpose of

labour law, which is to protect workers' labour rights, and migration law, which operates on the principle of demand and supply, with receiving states exercising the privilege of regulating the migration process.

Further, to better understand how migration law affects labour law, the book analyses how the regulation of migration increasingly affects the employment and labour relations of migrants in their host countries. In this way, the authors 'identify the many ways that migration law, as currently designed, tends to alter the work relations', thereby privileging concerns about the labour supply and demand over worker-protective concerns (Costello and Freedland, 2014: 8). Paradoxically, migration law creates particular forms of status that affect employment relations, thereby disenfranchising the subjects of labour law (Mantouvalou, chapter 20).

Davies (chapter 5) argues that there is an imbalance of power between migration law and labour law. Emphasis is often more on the criminalisation of certain migration practices, such as the trafficking of migrants, forced labour and universal sectoral labour, which benefits all workers irrespective of nationality, than it is on the labour rights of migrant workers. For example, it is easier to prosecute an immigrant who is caught breaking the law than it would be to seek recourse for violation of the labour rights of a migrant worker. In many instances, migration laws are designed to regulate labour absorption in host countries. As Anderson (chapter 2: 7) argues, 'the precariousness of migration status creates a precarious, "ultra-flexible" workforce. Migration law, in this account, combines with less formalized migratory processes to help produce "precarious workers that cluster in particular jobs and segments in the labour market"'.

Most of the contributors to this volume arrive at similar conclusions. Although migration law facilitates the smooth movement of individuals across borders and safe-guards migrants against unscrupulous practices such as human trafficking, it creates deeply entrenched personal statuses that are conditional and often precarious. This migrant status has a negative impact on migrant workers in relation to labour law. For instance, migration laws that label migrants as temporary or irregular tend to have consequences for the subjects' employment contracts (Anderson, chapter 2).

Such laws also tend to determine the types of economic sectors in which migrants participate. For instance, irregular migrants may be forced to confine themselves to informal jobs, such as engaging in exploitative and irregular short-term contract jobs that are subject to continuous contract renewal. While informal economic activities may be a preferred option for some migrants who wish to circumvent adherence to strict immigration laws (such as work permit renewals), the flexibility of the sector can also lead to defaults which ultimately cause some migrants to become 'illegal' – that is, to move from 'regular' to 'irregular' migrants (Sciarra and Chiaromonte, chapter 7; Dewhurst, chapter 12). This is because immigrant workers may fail to renew their permits because of the onerous bureaucratic requirements involved, and because they do not have an employer to enforce the need for legal work permits.

Fundamentally, migration and labour law determines and shapes the mobilisation of immigrant workers. The precarious nature of migration status and the (il)legality of migrants adversely impacts the ability of trade unions to organise and mobilise these workers (Bogg and Novitz, chapter 19). In terms of the skill levels of migrants, the authors note that migration law tends to benefit highly skilled migrant workers and their employers (Ryan, chapter 13). Such workers benefit from long-term contract regimes, while temporary migrants are often employed by employers who wish to cut their social security responsibilities in order to maximise profits (Menz and Ruhs; Dewhurst; Engblom; Ryan).

Indeed, many of the contributors suggest that migration law is highly employer-driven. A case study by Bernard shows that although British labour law embraces permanent migrants on paper, a lack of knowledge about their labour rights still renders migrant labourers vulnerable in practice. Temporary labour migrants and those believed to be working illegally are excluded from many forms

of labour protection (Bogg and Novitz, chapter 19; Crock, Howe and McCallum, chapter 22). Ontiveros (chapter 10) demonstrates that in the United States, the law often enables this prejudice against migrants based on workers' migration status. Other contributions to the volume focus on the informal migration process and how states have responded through regularisation processes (Sciarra and Chiaromonte, chapter 7).

Fortunately, particular sectors such as domestic work are covered by international conventions which declare the right of association as elaborated by the International Labour Organisation (ILO) Convention 143 (Albin, chapter 8; Fredman, chapter 21). In addition, Olney and Cholewinski (chapter 14) posit that Convention 143 requires that all migrant workers be treated equally, irrespective of their migration status, in relation to remuneration, social security and other benefits. While international and regional instruments may provide alternatives where gaps exist in national migration and labour law, a major shortfall is that ratification and adherence to ILO conventions by sovereign states is voluntary, which weakens enforcement.

Some authors argue for re-integrative alternatives to migration and labour law towards the use of equality laws in order to address discrimination and disparities engendered by the disjuncture between the two sets of law. Accordingly, they note that human rights are enshrined in international, regional and domestic instruments and thus conclude that migrant workers are entitled to protection of their human rights, including freedom of association, irrespective of their migration status (Mantouvalou, chapter 20; Dewhurst, chapter 12). National constitutions and the Universal Declaration of Human Rights that are based on equality and non-discrimination in the workplace serve as protective instruments for the rights of immigrant labourers (Albin, chapter 8; Ontiveros, chapter 10).

However, tensions exist between international human rights and sovereignty. Much of the focus of these instruments is centred on punitive responses towards employers and intermediaries, which can divert attention from migrants who are supposed to benefit from such conventions. Another tension exists between market forces and the free movement of labour, as is the case within the European Union (EU) (Guild, chapter 6). Although it allows for free movement of individuals from member states, the EU does not totally guarantee maximum protection of labour rights (Barnard, chapter 11).

While the case studies are mostly drawn from experiences in European countries, the book offers an important theoretical and empirical contribution to both migration and labour studies, and adds value to the theorisation of the intersection between migration law and labour law. The debates generated by the contributions to the volume provide meaningful theoretical interventions insofar as the intersection between the two kinds of laws is concerned.

Although the authors assume that the readers are knowledgeable in both migration and labour law, the book is written in an accessible way and legal concepts are defined clearly for non-legal scholars. The book is unique in its attempt to bring labour and migration scholars into conversation and will be of interest to students and scholars of migration, industrial sociology, politics and law. Besides its scholarly contribution, the book also provides insightful knowledge that would be valuable for policy makers on labour and migration legislation and policy formulation.

BIOGRAPHICAL NOTE

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