

RESENHAS/REVIEWS

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Human Rights and Immigration

Ruth Rubio-Marín, Ed., *Human Rights and Immigration* (Oxford: Oxford University Press, 2014), Kindle edition.

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Published early in 2014, this anthology brings a collection of insightful essays on the frontier that ties the question of human rights to immigration in the contemporary world. The authors are distinguished scholars from all over the world who were invited by the Academy of European Law, in Florence, Italy, to teach courses on the themes of Human Rights Law and European Union Law. In fact, each year the Academy invites experts to teach at its summer courses with the intention of producing advanced knowledge on the themes aforementioned. The book covers a variety of topics, such as the problematic distinction between the notions of citizens and non-citizens, the situation of refugees and immigrants in foreign countries and in European Law, gender issues and their implications to immigration, the state of affairs of migrants in foreign labor markets, the status of migration laws in the US and Canada, among others. The discussions presented in this anthology not only overlap and complement each other, but also defy the limits of human rights and immigration laws and the multitude of concepts that the two may generate.

Ruth Rubio-Marín, who is also the editor of the anthology, begins the discussion in the introduction by exploring the distinction between the notions of citizen and non-citizen, and the challenge and consequent impediment that this

distinction might pose to the full practice of human rights law. According to Rubio-Marín, the fear of terrorism produced by the last decade events, including September 11, brought to the front a growing xenophobia that resulted in a negative approach to questions of immigration. In other words, fear of terrorism was responsible for the consequent enforcement of immigration laws. On top of that, neoliberal policies favor abuse that is perpetrated on immigrants who take part in foreign job markets, as well as in other sections of society as a whole.

As the author states, an additional negative consequence of this picture is that the current European Union immigration approach is tied to economic concerns and to a harsh desire to stop illegal immigration, sometimes at all costs. In fact, those policies should aim first to favor human rights considerations. She reminds us that the universal vocation of human rights and its documents are closely connected to the full legal equality between the two groups, citizens and non-citizens. Therefore, Rubio-Marín poses a disquieting question: “can states deny or limit human rights as a way to achieve their immigration/asylum policy objectives?” (4). The other essays in this anthology strive to answer this and other questions connected with human rights, states’ sovereignty and security, and their impact on the application of immigration laws. As Rubio-Marín explains, equality and inclusion in immigration are continuously measured by the concept of citizenship. However, in spite of the alleged threats to national security, there is a pressing need to concede core human rights to undocumented migrants (13). If not, the notion of “personhood” will be in jeopardy and states will privilege their sovereignty and security in detriment of human lives.

Vincent Chetail analyzes the main documents dealing with refugee law and human rights law as a way to establish connections and priorities between the two. According to him, the picture is aggravated by the effects of the current global economic crisis. Such crisis helped to produce a wave of anti-foreign sentiment that is frequently disseminated through a discourse that calls for the sovereignty and security of states. It is precisely because of this seemingly nationalist discourse that time and again human rights are violated in the name of states’ protection – Greek nationalist party Golden Dawn is a clear example of the situation examined by Chetail. Hence, the author reminds us, the connections between refugee law and human rights law have to be made clear. Once these connections are highlighted, the people involved in human

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rights and refugee matters, especially lawyers defending refugee and asylum seekers, will be able to recognize the true and legal extent of states' obligations in relation to the different circumstances faced by migrants (19).

Chetail meticulously examines important international documents and covenants such as the Geneva Convention, the Refugee Convention and human rights law as a way to emphasize the prevalence of human rights law over the others. As the author claims, although the Geneva Convention is not a human rights treaty *per se*, its individual tenets have been radically altered by the governing principles of human rights law. Consequently, the question of forced migration today is tackled from the perspective of human rights law, and not from the perspective of refugee law as in the past. As he argues, human rights law "is the primary source of refugee protection, while the Geneva Convention is bound to play a complementary and secondary role" (22).

Ruth Rubio-Marín returns to discuss the present situation of the integration of immigrants in Europe. According to the author, because of the need of "securitization of immigration" (73), the current economic crisis and the resulting wave of unemployment, there is growing ill feeling in European countries about the surplus of immigrants. It is precisely because of this panorama that the integration of immigrants has become a pressing topic. Nowadays, European states have created a large number of tests that immigrants must apply for if they wish to be integrated. In order to succeed, immigrants need to present a certain level of language proficiency, familiarity with the countries' political and legal system, and evidence that they can provide their economic self-sufficiency. As Rubio-Marín states, the proliferation of tests for the integration of immigrants indicates that European countries have recognized that "immigrants 'come to stay', that is, that European countries have become immigrant societies" (73). The tests could also indicate that political citizenship has to be a prerogative to social membership.

However, Rubio-Marín draws attention to the negative side of these tests. By closely examining human rights law, she claims that states might be imposing duties and obligations when in fact they had to be providing conditions for the achievement of rights. Moreover, states might be obtaining financial gains from the immigration process, once the people applying for those tests need to pay for all expenses. The tests, as she examines them, might also be delaying rights and the means to obtain and

exercise them. In the end, the author argues, the whole process may contribute to "othering" (104) immigrants; that is, although they might become permanent members of society, they will continue to be conceived through pessimistic and stereotypical views. In fact, European states frequently conceive immigrants in ways that disavow their personhood. Some immigrants are allowed to be integrated (provided that they succeed in the given tests), but in reality states integrate them by undervaluing them.

Integration, more specifically the right to long-term residence for migrants, is also the subject of Daniel Thym's essay. The author demonstrates that the protection of human rights of foreigners has the support of the European Court of Human Rights (ECtHR), in Strasbourg, France, since the early 1990s. More presently, the Grand Chamber has extended the protection granted by article 8 of the European Convention of Human Rights (ECHR), which provides a right to respect for one's "private and family life, his home and his correspondence" (107) to cover the protection of long-term residence to migrants, a protection that has the potential to assist illegal migrants as well. As Thym states, so far immigration laws have always favored public interests in detriment of human rights concerns. With the extension of article 8 of the ECHR, recognized and put in practice by the ECtHR, states will have to review their immigration policies, as the power to control the entry, stay and departure of immigrants, illegal ones included, has been recurrently challenged in court. Presently, migrants seeking the help of the ECtHR as a way to obtain a regular residence status can, in certain cases, invoke article 8 of the ECHR to change their illegal condition.

The issue of gender and immigration, another facet of the discussion, is explored by Siobhán Mullally in her essay. The author refers to a phenomenon that is now called the "feminization of migration" (145), as a result of the growing numbers of women who are immigrating nowadays. Currently, in an attempt to tackle the issue, international human rights law is being modified and revised. Yet, as Mullally and other critics remind us, the inclusion of migrant women in human rights discourse has its price to be paid. Not all kinds of women who migrate can benefit from the pre-established norms of human rights. By trying to fit all categories of migrant women in the already preexisting categories of human rights law, stereotypes involving gender and race can enter into play, and even conservative agendas may surface. As the author argues, gender is a key topic to be addressed.

Not only it makes visible the often harsh conditions experienced by women as they migrate, but also it surely does influence “the migration routes to be taken” (145) and the conditions that are imposed by states for the ones attempting a permanent stay. As more and more women migrate, international human rights law is being confronted on the grounds of its ability to be transformed and become more inclusive.

In her study, Mullally inspects the question of gender in three issues of law that deal explicitly with migration: human trafficking, migrant domestic workers, and gender-related asylum law. According to the author, human rights law, if read correctly, is able to respond to all the actual bias surrounding the migration of women. Abuse, exploitation, and exclusion can be all confronted with the correct application of human rights law. Nonetheless, the author claims that human rights law has its limits. As long as sovereignty continues to be the main prerogative of states, human rights issues, including migration, will be underrated. Human rights law, then, might not be sufficient to respond to such a challenge. As Mullally notes, states can even transform migrant women’s rights claims into an excuse “to legitimize the expansion of criminal laws (in the context of human trafficking and irregular migration) and to restrict pathways to safe and secure migration” (146).

Following a provocative approach, Mullally asserts that the vulnerability attributed to migrant women is, in fact, frequently created by the law. It is precisely because of this “constructed vulnerability” (p 146) that states are able to enforce their laws and interventions. Besides, the situation of migrant women is not improved by these protective categories; quite the contrary, they continue to be pushed to the margins of the law. As the author notes, recognizing women’s autonomy is seen as a threat that undermines the constructed certainties that govern neoliberal models of migrant management, and makes clear that the use of law enforcement is preventable, if not unnecessary. The consequence of these tensions will be apparent in the way the law responds to the growing number of women who migrate. In the end, these dichotomies result in further impediments to the revision and improvement of human rights norms and projects of law.

Bernard Ryan and Virginia Mantouvalou examine the prevalent interest in the labour markets and social rights of migrants in international law. According to the authors, international documents today cover the issues in accordance with the International Labour

Organization (ILO), United Nations, Council of Europe and European Union. Moreover, a number of supervisory bodies, such as the Committee of Migrants Workers, the ILO Committee on Freedom of Association, among others, protect and watch migrants in foreign labour markets. Ryan and Mantouvalou attribute this interest to many sources, including the growth of international migration and the consequent rise of political controversy (209), for instance. Regular migrants are entitled to equal treatment in European law, but as the writers state “the main controversies in the contemporary context concern the position of irregular migrants” (210). As the authors show, the trend in international law and in the work of supervisory bodies is to extend basic social rights (including those of schooling) to irregular migrants as well.

Unlike the optimistic tone of the previous essay, Tullio Scovazzi’s essay points a finger at the hardships faced by migrants who try to cross borders at sea. The author is highly critical of states which deny humanitarian treatment to people trying to evade places where they are persecuted, victimized by poverty, conflicts, and natural disasters. As he states, frequently those people are treated as criminals and become the victims “not only of smugglers, but also of a number of states which try to evade their legal and moral duties by resorting to shows of strength against the weakest human beings, or to barely credible legal technicalities” (259). Scovazzi appeals for an immediate improvement in international law so as to provide humane treatment to all kinds of migrants, and strongly disapproves of states which rescue refugees at sea, only to send them back to places where they would be persecuted and tortured.

The question of immigration in the United States and Canada is the focus of Michael J. Churgin’s discussion in his essay. As argued by the author, both countries have admitted significant numbers of refugees in the last decades. It is known that both countries are among the recurrently chosen routes of immigration. Both countries have their immigration policies, and are, as Churgin states, able to “pick and choose among the refugees from various locations overseas” (261). Individuals intending to migrate to one of these countries need to “qualify” to their respective policies, also known as immigration Acts. In the United States, migrants who qualify for entering the country receive an “asylum” status, whereas in Canada, the ones who are allowed to enter are given a “convention refugee” status (261).

When Churgin began his research, he believed there would be a sharp contrast between Canada and the US concerning law projects attempting to reform the status of refugee and asylum applicants. His previous belief proved to be wrong and the outcome of the research was surprising. The author revised the countries' specific laws as a way to understand to which extent they are part of a larger process of legislative and juridical decisions. Something he explains is that both countries have signed an agreement in which applicants intending to immigrate have to apply to one country at a time, that is, candidates cannot apply to both countries concomitantly, except in particular cases. In the United States, in the last decades, there has been no reform concerning immigration laws, and as the author affirms, since the severe 1996 legislation, nothing has changed. Conversely, Canada has tried to approve in Parliament a considerably significant reform named C-11. Yet, in 2012, this reform was replaced by C-31, which not only supplanted the previous one, but also introduced a rigorous legislation, a clear draw back from the promise of reform (276). Presently, the widespread notions that Canada is a progressive nation that "accepts" migrants are put in check by the country's immigrant policy. As Churgin says, Canada at present is no different from other Western nations that refuse entrance to many individuals seeking asylum and refugee status (277).

Alessia Di Pascale closes the anthology by exploring the predicament of illegal migrants in Italy. As with other cases examined before in this anthology, the questions of security and national sovereignty have been used to restrain at maximum level the entrance of undocumented migrants. She denounces the ruthless treatment of Italian authorities which focus on its criminal apparatus as a way to discourage illegal immigration (308), which means an intense disregard for human well-being as a way to meet national prerogatives. Yet, Di Pascale argues that the "idea that state sovereignty should be exercised in accordance with international law, including international human rights law, backed up with increasing frequency by many international authorities, seems to have had an impact on national courts" (309). At a slow pace, then, the approach to immigration focused on national security is being modified in Italy.

For all its critical, forward-looking examinations, this anthology is a valuable source for those researching on the themes of human rights law and immigration on a global scale. The urgency of its contents sheds light on present notions about the contemporary world—a

world where economic crisis, the so-called *threat* of terrorism, the obsession with security (often an excuse to enforce the legislation on immigration, as seen in the book), and neoliberal policies affect directly the flow of human subjects in transit, as well as their stay in, often, unreceptive host countries. However, this volume should not be seen as restricted to the field of law, as it offers significant information for other areas of study, such as sociology, cultural and media studies, among others. A particular feature of present-day human rights is precisely its universal character. The discussions presented here will also intersect with diverse areas of human knowledge and international law.

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