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Book review

Rebecca Zahn, *New Labour Laws in Old Member States: Trade Union Responses to European Enlargement* (Cambridge Studies in European Law and Policy, CUP, 2017) xxii + 353pp

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The European Union's 2004 and 2007 enlargements – while celebrated, and rightly so – also raised many challenges. Principal among these is the ways in which the availability to capital in the 'old' Member States of cheap(er) labour from the 'new' Member States threatens hard-won labour-capital-state settlements in the 'old' Member States. This threat arises in the context of a single European market within which services and workers must, by directly enforceable law, be allowed to move unhindered across borders, unless restrictions are justified. Justifications are available in a narrow range of circumstances, and any attempts to close off free movement are seen as inherently suspect trade protectionism. The *Viking* (C-438/05) and *Laval* (C-341/05) cases were widely read as not far short of catastrophic for the power of organised labour in the context of opening markets in labour and service provision. Indeed, EU law is seen as only one example, though a particularly deeply institutionalised example, of the 'cold winds' of globalisation and their 'chill factor' on states' and governments' abilities to protect national values summarised as the 'European social model'. In short, then, this book is a timely study on a significant current subject matter.

The book examines and compares trade union responses in five 'old' Member States: Austria, Germany, Ireland, Sweden and the United Kingdom. The book explains how these manifestations of organised labour responded to the changing regulatory structures and opportunities these gave to management, or capital, following the 2004 and 2007 EU enlargements. The book does so through several complementary approaches. The author offers a thorough explanation of national trade union laws, explaining how these have developed in particular historical, constitutional and social contexts. It considers the ways in which EU law and policy influences national trades unions, both in general, and in the particular context of their responses to migrant labour. The book's analysis is based on a novel typology of trade union responses to migrant labour, drawing from the literature, developed for the purposes of the project. In pursuing its analytical agenda, the book draws on a set of case studies, showing how specific trade unions responded to the changing environment. The book demonstrates how relevant actors were able to work 'around, across and within' legal structures (p 247ff), depending on their overall strategies for responding to the arrival of migrant workers consequent upon EU enlargement.

The book's underpinning frame is that of Europeanisation – a well-established methodology for EU studies, although still relatively rare in legal scholarship. The book contrasts two EU Directives – Directive 94/45 on the establishment of a European Works Council (recast in 2009 as Directive 2009/39/EC OJ 2009 L122) and Directive 96/71 concerning the posting of workers (OJ 1997 L18) – as a successful and unsuccessful example of Europeanisation. In this context,

Europeanisation is understood as 'Rechtswirklichkeit' (p 74), that is, the law in practice, rather than the law in the books. The analysis leads to a conclusion concerning the extent to which the former Directive provides a model of transnational cooperation through which EU-wide solutions can be developed to EU-wide problems, such as a mobility of labour post-EU enlargement. Throughout, the author is able to adopt a critical perspective on broader questions, especially whether the turn to a softer 'European social model' constitutes a fundamental failure of the European legal integration project. Here the book's conclusion is a balanced and persuasive one, giving due regard to the considerable evidence suggesting that it does; but also showing how trade unions have acted across national boundaries, within the EU's structures, and can continue to do so. The book culminates in a carefully set up argument to the effect that trade unions ought to break from the past and seek legal responses to the phenomena which are set to undermine their very *raison d'être*. This persuasive argument is followed by practical suggestions of the types of legal responses that would be necessary: in short 'affirmative trade union rights along with laws which establish minimum standards for all workers' (p 295). Freedom of association needs to be constitutionally enshrined, and judicially protected, both at national and at EU level, including through the EU Charter of Fundamental Rights. Minimum labour standards must be embodied in enforceable positive law, especially in those fast-growing areas of the economy where workers are not covered by collective bargaining.

At the heart of the book sit five deep country-specific case studies. The case studies chosen show the range of different situations: larger (Germany, United Kingdom) and smaller (Austria, Ireland, Sweden) Member States; countries whose economies traditionally are of immigration (United Kingdom, Germany) and emigration (Ireland); whether the Member State opted for a transitional period post-2004; and – crucially – a full range of different constitutional, legal and practical models for unionisation. For each country, the reader is not only treated to a high accessible yet scholarly account of trade union law in its historical, political and social contexts, drawing on a wide range of secondary sources. The book also draws on original research, comprising interviews with national trade union confederations and a carefully selected exemplar trade union in each Member State, as well as at the EU level. The book thus contributes new data from the European Trade Union Confederation and the European Federation of Public Service Unions; the Österreichischer Gewerkschaftsbund and Arbeitkammer; the Deutscher Gewerkschaftsbund and Vereinte Dienstleistungsgewerkschaft; the Irish Congress of Trades Unions and Services, Industrial, Professional and Technical Union; the Swedish Landorganisationen i Sverige and Kommunalarbetareförbundet; and the United Kingdom Trades Union Congress and UNISON, the UK public service union. This is a rich dataset, which the author deploys to maximum effect in developing her overall thesis and arguments. In brief, the book shows that, despite all the differences, trade unions in all 'old' Member States find it difficult to adapt to the arrival of workers from 'new' Member States whose employment rights are not being effectively protected. Those new workers are not effectively integrated into trade union structures. There are individual consequences, in that trade unions cannot effectively protect these workers from exploitation. And there are crucial

systemic consequences, especially for the power of trade unions and their constitutional, political, social and even cultural positions. These consequences resonate with broader changes to employment patterns, such as casualization, out-sourcing, 'Uber-isation' and the 'zero-hours' economy.

This is socio-legal EU scholarship of the very best sort. It is steeped in doctrinal analysis. It does not skimp on explaining the relevant national and European Union legal texts and judicial decisions, and how they structure the new environment which emerged post-EU enlargement. But the book offers much more: a rich and theoretically informed novel account of the law in practice; and inspiration for future legal developments. Beautifully produced and exquisitely written, it is a joy to read and a model for all to emulate.