



BOOK REVIEW

The Price of Rights: Regulating International Labor Migration

By Martin Ruhs. Princeton, NJ: Princeton University Press, 2013. 272 pages.

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International human rights are “inalienable, indivisible, and universal.” One cannot bargain away one’s rights (“inalienable”); human rights are a whole with economic rights and civil rights being inter-dependent (“indivisible”); and human rights do not depend on citizenship or membership in a nation-state (“universal”). A human being does not lose his or her human rights by crossing a border. However in state regulation of the entrance and stay of temporary migrant workers, the ideal of universal human rights clashes with the prerogatives of sovereignty and power.

Migrant workers (particularly those classified as “low-skilled”) find that the surrender of their rights is the “price of admission” to labor immigration programs which allow them to provide their families back home with the means of survival. This is the global phenomenon described and analyzed by Martin Ruhs, university lecturer in political economy and senior researcher at the Centre on Migration, Policy, and Society at the University of Oxford (United Kingdom) in his new book. In *The Price of Rights: Regulating*

International Labor Migration (Princeton University Press, 2013), Ruhs provides a comprehensive overview of legal and policy regimes and current literature, an impressive amount of empirical research, and asks many substantial questions. He reaches thoughtful conclusions in his analysis of “what is” and his proposals of “what should be.” However, migrants and their advocates in the United States may respond with questions regarding the practicality of, for example, a call for increased enforcement of labor rights when most receiving states lack the political will to dedicate resources necessary for such enforcement.

As Ruhs notes, the campaign for ratification of the International Convention on the Protection of the Rights of All Migratory Workers and Members of their Families (CMW) has stalled if not stopped entirely, with almost no migrant-receiving states among the States Parties. Migrant-receiving states, Ruhs notes, have relatively high levels of ratification of other human rights treaties. However, as Ruhs observes, “While accepting the idea of human rights,

the world's high-income countries—where migrants are most heavily concentrated—clearly do not accept that these rights should apply to migrants living on their territories” (Ruhs 2013, 17).

With no effective mechanisms of global governance, nation-states are free to act towards migrant workers in their own “national interest” which, as Ruhs demonstrates, means the restriction of access to certain rights or social benefits only to their own citizens. Factors that influence national policymakers are: economic efficiency, national identity and social cohesion, and national security. The relative weight ascribed to each factor depends on historical and social conditions—political systems, the power of the private sector and/or labor unions, public opinion, and general economic conditions—thus yielding a variety of labor immigration schemes. This reviewer suggests the terms “national identity” and “social cohesion” may be used by policymakers as code words to mask racist and xenophobic attitudes. Ruhs’ explanation of the weight given certain factors by policymakers might be supplemented by an analysis of the influence of former colonial relationships between some of today’s migrant-receiving states and migrant-sending states.

Ruhs finds that nation-states are willing to grant more rights to more highly-compensated migrants in order to “attract talent,” but are reluctant to grant access to social rights to “low-skilled” workers. He states that policymakers often believe that certain policies will have a particular impact on migrants when, in fact, results may not have been tested or proven. Ruhs does not argue or assume that it is “normatively desirable” to restrict migrant

rights as the “price” of admission, but that is the reality he observes (Ruhs 2013, 50).

Ruhs supports his analysis with a quantitative, comparative overview of over 100 labor immigration visa regimes in 43 countries, using the CMW as the benchmark while admitting that quantifying human rights presents challenges and limitations. Rights measured include access to health care, family reunion, unemployment benefits, general labor rights and equality with national workers. Not surprisingly, he finds considerable variation between countries across all possible rights granted to foreign workers with restriction on choice of employer the most common. Ruhs finds some correlation between skills level and rights, but cautions that correlation is not necessarily causation (89). He notes that the data presented concerns only migrants in authorized work visa programs and does not cover other possible categories of migrants who may be working, such as refugees, unauthorized persons, students, or trainees. One factor noted by Ruhs is that access to certain rights may be formally the same between two countries, but yield different experiences for migrants in practice. For example, where migrants have a right of access to public health systems, they may find a real difference in quality of services between different countries.

After describing the variation between various temporary worker regimes, Ruhs asks, “Why are labor immigration programs that target higher-skilled workers characterized by greater openness and more rights for migrants than programs that admit lower-skilled workers?” While failing to find a satisfactory answer, his descriptions of labor migration policy in Western Europe, Southeast Asia, the Gulf States, Canada, Australia, and the United States

are quite informative and should be read by anyone seeking a global understanding of policy options. Ruhs concludes that one cannot determine whether policy decisions in high-income countries are based on actual evidence or subjective notions about national interest (120).

Migrant-sending countries are faced with a conundrum of advocating for greater rights (and presumably higher wages and remittances) for their nationals but risking rejection by receiving states and employers. Sending states encourage emigration for work based on an understanding that migrant remittances will improve their national economies and resolve the problems that send migrants abroad in the first instance. Ruhs, however, concludes that the social sciences literature fails to support any conclusion that remittances will have large-scale positive impact beyond the scale of the individual migrant's family or immediate community. The reader may find here evidence to question the long-term wisdom of policymakers in sending countries who have promoted migrant remittances as their primary national development strategy.

Of particular interest to policy advocates is Ruhs' discussion about the seesaw efforts of some Asian governments to threaten or implement bans against migrants' temporary work in certain Middle Eastern states. According to Ruhs, none of these threats or bans have improved conditions for Asian migrants and, in at least one instance, have resulted in a destination country (Saudi Arabia) explicitly barring workers whose countries of origin (Indonesia and the Philippines) made demands for better labor conditions.

Ruhs' work raises unanswered questions

which call for more research on the actual enforcement of migrants' rights. Migrants face substantial difficulties enforcing those few rights granted in their contracts or by national legislation in receiving countries. Where abuses do occur, recruiters and "middlemen" enjoy substantial impunity due to the transnational nature of their work, the threat of harassment of migrants' families left behind, the jurisdictional limits of national courts, and the lack of any effective regional or global governance mechanisms beyond limited successes in the European Court of Human Rights. A comprehensive global study on the enforceability of existing labor contract rights for lawful temporary workers is needed.

Unfortunately, Ruhs' overview of the situation in North America fails to fully account for the largest and longest-running bilateral labor migration in the world, between Mexico and the United States. He describes Mexico's 20th Century "policy of non-intervention" as an acceptance of relatively open access for millions of unauthorized Mexicans to work in the United States in return for remittance flows and an "escape valve" for excess population. However, new policies (largely on the US side) have made the old model obsolete. The past decade has seen vastly increased US border enforcement, unprecedented criminalization of migrant smuggling, and a dramatic increase in deportations. Additionally, tens of thousands of Mexican workers enter the United States each year as part of growing guest-worker programs in agricultural (H-2A) and non-agricultural (H-2B) jobs. A study of the challenges faced by migrants and their advocates seeking to enforce even the limited rights in these programs would enhance the global overview of those issues. A report

on the efforts of the government of Mexico to advocate for the rights of Mexican nationals through its network of over 50 consulates in the United States would be a useful addition to the discussion as well.

Ruhs gives more attention to the relatively small Canadian program of legal seasonal agricultural workers, El Programa de Trabajadores Agrícolas Temporales (PTAT). While similar to Asia-Middle Eastern programs, it is highly regulated and subject to competition among sending countries, which include Mexico, Guatemala, and some Caribbean countries. In the PTAT, the sending governments face conflicts between insistence on rights protection and desirability of their workers to Canadian employers.

Also of interest is Ruhs' description of the complex, changing European models of worker mobility since the 2004 accession of eight Eastern European countries with substantially lower labor standards and wages. While individual Eastern European workers can travel to work independently in Western European countries, firms from Eastern Europe also contract for labor projects in the West, using workers from their own countries often at inferior wages compared to the country of destination. In one important case in 2008, the European Court of Human Rights ruled that it was illegal for Swedish unions to boycott a Latvian construction firm working on projects in Sweden using Latvian workers who were paid less than the Swedish union-negotiated prevailing wage. The Court ruled that since the Latvian workers were being paid the legal Swedish minimum wage, the Swedish unions were barred from trying to pressure the Latvian employer to pay the higher union-negotiated wage.

Ruhs explores whether temporary migrant labor programs are inherently in violation of human rights due to the almost universal restrictions on family unity and choice of employer, and by their restrictions on electoral rights and/or transition to citizenship, resulting in the perpetuation of an excluded class. Ruhs is willing to accept these restrictions, he says, because he believes that temporary migrant programs are only possible with them, and that there are no existing, feasible policy alternatives besides total exclusion. He believes that temporary migrant labor programs are second-best to the most idealistic and unattainable alternatives of open borders or lawful permanent residence for all workers.

Ruhs concedes that vulnerability to exploitation is inherent in programs that limit choice of employer. However, states allow admission because of sectoral shortages and employers pay for transportation costs because they need a set number of workers. Ruhs suggests that temporary workers be required to spend an initial period with the recruiting employer, but later be permitted to work for any employer within the particular sector.

Ruhs advocates that temporary workers have access to state-administered social welfare programs that are based on employer or employee contributions, but he would allow exclusion of temporary workers from means-tested benefits. He states that access to health care for migrants is a necessary cost to the state, because denial of access is not in the long-term public health interest of receiving-states. Ruhs would accept restrictions on family unity (which he recognizes as a human right) unless workers demonstrate that they can support their families without a burden on the receiving-state (and counting public

education costs of migrant children in the calculation of “burden”). Thus, all but highly-paid temporary workers would be restricted from family unity rights (not to mention the violation of the rights of the migrants’ children to family unity, a topic beyond the scope of the book).

With respect to eventual transition to permanent residence and citizenship, Ruhs concedes that any guarantee of future citizenship “would significantly lower receiving countries’ incentives to admit some migrant workers—especially low- and medium-skilled workers—in the first place.” He therefore advocates for a time limit (somewhat arbitrarily set at four years) beyond which temporary migrant workers would be admitted to permanent residency or have to return to their home country.

Ruhs’ discussion of mandatory return should be supplemented by studies on the assumption of such programs, e.g., will temporary workers stay home after a limited period abroad? This reviewer remembers a Mexican colleague’s enthusiasm about a proposed new Mexico-US temporary worker program which would require return after four years. “What,” this reviewer asked, “will a 24-year-old former migrant do when he returns to his home community where there were no opportunities for him when he was 20? Given the options of joining local organized crime or suffering with his family on their barely-arable land, what would keep him from returning without authorization to the United States? What will have changed in his community of origin that would keep him there?”

Ruhs’ extensive research and global perspective, if read through the critical lens of advocates with experience in actual

cases, may help shape programs that can provide for the rights and dignity of workers. Ruhs asks a key question, “Is it possible to design and implement new and/or expanded temporary labor migration programs for low- and medium-skilled migrant workers in a way that delivers the intended benefits for the migrant-receiving country yet avoids the adverse consequences that such programs have often generated in the past?” (178).

However, Ruhs argues in his final chapter that insisting on the enforcement of the human rights of *present* migrants may increase state reluctance to admit more *future* migrants. In his attempt to persuade the reader that the rights-access trade-off is not contrary to human rights principles, he correctly notes that not all human rights are considered fundamental rights (197-98). However, the situations in which *some* non-fundamental human rights may be abrogated are restricted to serious temporary emergencies of national security (see, e.g., the International Covenant on Civil and Political Rights, Article 6). Otherwise, migrant advocates will continue to insist that all human rights be respected.

Ruhs opens a debate on whether the insistence on strict adherence to human rights principles can, in fact, influence states to limit migrant admission numbers. Ruhs criticizes the insistence of various United Nations (UN) bodies on the full enforcement of the rights of migratory workers but admits that it is their role. He recalls a personal experience in 2009, prior to the Athens Global Forum on Migration and Development (GFMD), in which the officials of the Office of the High Commissioner of Human Rights were quite uneasy about his inclusion in a talk at their sessions of the concept of a “cost”

of rights (191). Ruhs uses this anecdote to illustrate the reluctance of UN agencies to engage in an honest dialogue about trade-offs between what he refers to as “two goods:” rights protection for existing migrants or increased opportunities for legal labor migration (190). This reviewer thinks it concedes too much to depict those “goods” as oppositional, but joins in Ruhs’ call for discussion and debate about the fundamental human rights of migrant workers, with an insistence on honesty on the part of all parties.

The labor and human rights of migratory workers—both legal and unauthorized—have received increased attention from advocates, labor organizations, and international agencies in the past decade. Ruhs’ analysis is largely state-centric. He does not analyze the successful and failed efforts of advocacy organizations, trade unions, and migrant-led organizations in transnational campaigns to vindicate the rights of migrant workers. An examination of campaigns that have addressed the “access-rights trade-off” would complement and complete the discussion Ruhs seeks to generate.

Ruhs’ work employs the conventional categories of “high-skilled” and “low-skilled,” terms used by policymakers across the globe. One might debate the “high-skilled/low-skilled” labels which are the common currency of immigration policymakers. This reviewer urges that the “high-skill/low-skill” description be replaced by a “high-paid/low-paid” description. As anyone who has cared for the ill, the elderly or young children knows, those jobs require a very high degree of skill but are generally filled by low-paid immigrants. The value of the work of low-paid workers may be differently understood

if policymakers would realize that even the most “high-skill” software innovator would have fundamental problems without a wide network of support from “low-skill” workers who grow and prepare the food he or she eats and care for his or her children. In many societies, those roles are filled not by legal guest workers (the subjects of this book) but by asylum seekers and refugees, unauthorized migrants, or internal migrants. Saskia Sassen’s early work on the relations between the “high-skilled” and “low-skilled” sectors of the labor market illuminates this question (see Sassen 1998).

The work of UN and Inter-American Special Rapporteurs on migrant rights has been useful in exposing problems, but not necessarily successful in improving conditions. In 2013, labor unions, farmworker organizations, and employer associations negotiated a historic compromise on rights for temporary agricultural workers in the United States, but the US Congress did not pass the negotiated legislation. The UN High Level Dialogue on International Migration and Development in October 2013 noted that temporary foreign workers deserve respect and dignity, but failed to produce any firm recommendations to governments for stricter enforcement of migrant worker rights. The attention to rights corresponds to a trend in the last decade towards increased use of temporary worker programs as part of an overall effort by states to control unauthorized migration while satisfying employer interest in accessing dependable sources of low-cost labor. As noted by Ruhs, the tension between access to jobs and rights protection will continue as a local and global problem.

Ruhs is to be lauded for his assertion that

“respecting the agency and choices of prospective and current migrant workers is a core consideration” (177). However, he is overly optimistic about the guarantees of enforcement of “core” rights he would assure to migrants as a trade-off for those rights they would sacrifice. For migrant workers and their advocates, some rights limitations (choice of employer, employee deductions for travel costs, and family separation) are viewed as inherent in almost all existing temporary worker programs. Among the most serious abuses of rights are the extortion of high fees by recruiters and passport confiscation by employers, as well as wage theft, safety issues, sexual harassment, and other sub-standard labor conditions. Lack of visa portability and access to trade unions weakens the ability of even authorized temporary workers to protest these violations. Consular intervention can solve problems of individual workers, but rarely can address systemic issues. Ruhs’ insistence on respect for the “agency” of migrant workers themselves is welcome and he encourages more transparency in migrant labor contracting. However, structural factors in countries of origin may impede migrants’ actual choices about accepting proffered contracts.

One recommendation illustrates Ruhs’ general lack of attention to the perspective of migrants. Ruhs recommends that receiving countries should “ensure that migrant workers do not become trapped in the host country because, for example, they were charged excessive recruitment fees that need to be repaid and prevent them from considering a return to their home countries” (178). What can a host country government do about excessive recruitment fees? Consider the case of a migrant who owes an “excessive recruitment fee” to

someone in her home country and has not worked long enough to repay it. If the migrant abandons her job or otherwise fails to pay, how can the host country government possibly protect her or her family at home from reprisals? This is a key question for some US-based advocates who understand the relative powerlessness of the US government to protect an exploited migrant (and his or her home country family members) from the predations of a criminal enterprise in Fujian, China, or Veracruz, Mexico, to cite two known cases. Regulation of recruitment abuses can only come from joint, effectively-administered programs under the direction of home and host country governments.

Some advocacy campaigns have been successful in closing the gaps between ideals and realities of migrant labor rights in certain sectors. Home-care, cleaning, and personal service workers (a largely immigrant and female workforce) persuaded the International Labor Organization (ILO) in 2011 to recognize their rights as workers. They continue to build organizing campaigns in selected countries to promote ratification of the Convention on Domestic Workers and to pass new laws. Farmworker advocates in the US secured collective bargaining rights for California farmworkers decades ago and, more recently, have been successful in litigating limits on the deduction of travel costs from wages. After a sustained campaign by workers and advocates, the US Department of Labor recently agreed to apply overtime and minimum wage regulations to home-care workers. US advocacy organizations such as Farmworker Justice, Centro de los Derechos del Migrante, Farm Labor Organizing Committee, National Day Labor Organizing Network, New Orleans Workers Center for Racial Justice, and

the National Employment Law Project have succeeded in improving conditions for guest workers in selected cases in construction, agriculture, food-processing and other sectors.

Other advocacy efforts have failed, at least in their initial stages. Migrant workers may fear retaliation in their home countries, beyond the reach of advocates or courts in their country of employment. Successful litigation of large-scale labor rights cases requires an investment of resources few nongovernmental organizations or law firms can secure. Reliance on state-initiated enforcement of labor rights is often in vain, where agencies of the state are underfunded and may lack political will.

Ruhs is correct that advocates tend to focus on the rights of present migrants as opposed to possible future migrants. Whether it would be desirable to expand regulated temporary worker programs in the US—if working conditions were improved and regulations enforced—is a long-term policy discussion involving US-based migrants and advocates. Insofar as migrant associations, particularly from Mexico and Central America, can engage their home country governments in discussions about the conditions that produce emigration, so much the better. Discussions must also include a long-term labor market analysis about issues affecting all US workers. These issues include: precarity; outsourcing; technological advances and other factors which affect labor needs; informality and independent contracting; campaigns to raise the minimum wage to a “living wage;” loss of trade union rights (and expansion of so-called “right to work” laws); and how future migrants might fit into the market.

Governments are reluctant to engage in serious discussions of migrants as “rights-bearers.” At the closing plenary session of the 2009 GFMD, the head of the Mexican government delegation declared that “human rights” would be a major theme of the 2010 GFMD meeting in Mexico: “Mexico is committed to work in an inclusive, transparent manner, building bridges and promoting international cooperation, while giving a central role to the respect for human rights, a shared responsibility” (GFMD 2009, 44). By the time of the 2010 Global Forum in Mexico, “human rights” had been dropped as a theme, replaced by “human development,” much to the disappointment of civil society and migrant observers. In successive GFMD meetings and at the 2013 UN High Level Dialogue on International Migration and Development, civil society and migrant observers have continued to insist on a frank and honest discussion of human rights—a discussion which has been repeatedly frustrated. Hopefully Ruhs’ provocative book will help begin that discussion.

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