

## BOOK REVIEW

# DEATH OF LABOUR LAW? COMPARATIVE PERSPECTIVES BY MARTIN VRANKEN

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*'[N]o (lasting) social paradise was ever built on top of an economic graveyard.'*<sup>1</sup>

Martin Vranken revisits a debate in labour law scholarship that has been raging for the past 15–20 years in Australia and internationally. Is traditional labour law, which focuses primarily on employee protection, under threat of becoming extinct because of the imperatives of a globalised economy? Vranken is a true believer, a traditionalist, and a labour law tragic in the most admirable sense. He discusses the divide between the purists or traditionalists such as himself and the pragmatists or 'the new generation labour lawyers'<sup>2</sup> who argue that labour law should be a tool for regulating the labour market. Vranken prefers the purists' or traditionalists' view, but has his eyes wide open. He acknowledges the pressure imposed on policy-makers by the globalised economy, as he repeats throughout the book, 'a social paradise cannot be built on an economic graveyard'. However his argument is that this pressure is all the more reason why labour law should not lose its '*raison d'être*' of protecting employees, and become a mere facilitator of economic flexibility and subordinate to economic interests. Instead, policy-makers should strive to find the right balance between social and economic priorities without allowing one social interest in particular to be subordinate to the other. Employee and economic interests are both of equal importance. As

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<sup>1</sup> Martin Vranken, *Death of Labour Law? Comparative Perspectives* (2009) 40.

<sup>2</sup> *Ibid* 37.

Vranken observes, to pursue economic interests for their own sake would be meaningless.<sup>3</sup> He rightly concludes that governments in Europe and in Australia are seeking to strike this balance, albeit in different ways.

Vranken approaches this debate by using the comparative method. He invites the reader to come on a whirlwind tour around the globe, beginning in France, then moving on to Germany and Belgium. He crosses over to the United Kingdom, then moves on to the United States, New Zealand and Australia. The book is perhaps unique among comparative labour law texts in that it provides a valuable insight into Australian labour laws, placed in the context of the rest of the world. The discussion of Australian labour laws is substantial. The book was written prior to the introduction of the *Fair Work Act 2009* (Cth), but it includes commentary on the 'Forward with Fairness' policy and the Fair Work Bill.

Vranken, like other comparative law scholars before him, acknowledges the shortcomings of the comparative method in the context of labour laws. Labour laws and institutions throughout the world are intimately intertwined with the political, cultural, social and economic fabric of each country to which they belong. Vranken aptly compares the transplanting of labour laws with the transplanting of a human organ from one body to another. The risk of rejection of the transplanted law by the receiving country is real. However the admission of these risks does not mean that the comparative method in the context of labour law is without merit. Certainly, the comparative method enables us to compare and contrast our own system with others and gain a deeper understanding of our laws. The readers' understanding of their own domestic laws is enriched by comparing them to those of other countries. Australia lawyers and academics can learn much from the European experience.

The book commences by providing a brief history of the origin of labour laws in select European countries and the common law countries. It sets the scene for the rest of the book and provides an important backdrop to the development of the other chapters. For lovers of labour history and legal history this chapter is a delight to read.

The rest of the book follows a familiar structure found in many labour law texts. Chapter 3 discusses employee status and the dichotomy between employees and independent contractors. Vranken identifies the crucial issue that is shared by most jurisdictions, namely 'how to ensure economic

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<sup>3</sup> Ibid 230.

dependence and legal subordination match one another'. This chapter also includes discussion on the international approaches to employee status and the *Australian Independent Contractors Act 2006* (Cth). In the next chapter Vranken examines the laws that regulate employee representation. The chapter provides a concise summary of the major features of the European civil system and the common law systems. To a common lawyer who is not familiar with the European system the discussion on the European Works Councils is particularly valuable. Some of the features of the European Works Councils may be relevant to Australia, given the employee representation gap due to the decline of trade union membership. Vranken touches on this issue briefly, but does not examine it in any detail.

Chapter 5 examines the labour courts and how labour disputes are adjudicated throughout the world. Chapter 6 examines the international dimension of labour law by looking at the International Labour Organisation and the European Union. Chapter 7 is a key chapter. It examines the themes of collectivism and individualism and how various legal systems have combined the two. This is an important chapter for Australian lawyers, considering the move from collectivism to individualism in recent years. The final chapter is about the European reforms relating to 'flexicurity'. This is an attempt by policy-makers to strike a balance between social or employee protection and economic flexibility. The chapter gives a concise and informative explanation of the background to the reforms. An Australian lawyer reading this chapter will be familiar with some of the themes from their experience with the Rudd Government reforms. There was also important discussion of the European Green paper linking employment transitions with access to training and education.

This book provides a concise and informative study of the major themes of labour law and regulation. It should be an essential book for scholars and students of comparative labour law. This book will also ignite ideas for students considering PhD studies in labour law. Although Vranken confesses to being nostalgic and a traditionalist, the themes he examines are current and thoroughly modern. The book will enrich Australians' understanding of our system and perhaps, in the light of the European experiences, give us clues as to where we are headed in the future.