

Ruben J. Garcia. *Marginal Workers: How Legal Fault Lines Divide Workers and Leave Them Without Protection*. New York: New York University Press, 2013. 195 pp. US\$25 (Paperback). ISBN 978-1-4798-2358-1.

On the cusp of a sociopolitical revolution and polarization in society in the United States, *Marginal Workers* taps into issues that make up present daily discourse in 2017 America. People in the US are more and more privy to the idea that everyone is deserving of protection, and slowly people are gaining the protections they constitutionally are owed, though not without some hiccups and rescissions of protections for some minority groups. It is not unusual today to be engaged in a trope about how “women’s rights are human rights,” or for groups rallying around representation to form movements such as ‘Black Lives Matter.’ The spirit of these alliances and movements underpin *Marginal Workers*, as Garcia taps into the dearth of representation for people who lie at all intersections of marginality. And in US society in 2017, wherein many are seemingly rallying around groups of people, why is such a swath left without solid ground or protection in the workplace? Garcia set out to answer this question, and did so with great breadth—offering a unique, yet commonsense, solution.

“Marginal workers” are defined by Garcia as, not just people underrepresented due to race or gender or sexual orientation, but any group of people that falls outside of the “lines of demarcation in statutes themselves,” those who are being swept to the *margins* of society. (9). Even the way he states the definition represents Garcia’s approachable tone. In a society that constantly chirps about sensitivity and people being “too politically correct,” the definition of “marginal workers” could easily tap into that territory. Garcia, however, removes political undertones, and opts for a respectful pragmatist and legalist view that showcases the examples of legislative and litigious holes left for different workers. The effect is to overcome pervasive political divides, and creates a unifying sensibility that most readers can embrace. This is absolutely ideal to keep dissent out of a human rights issue.

Garcia’s paradigmatic example, which he traces amongst different groups of marginalized peoples, is the retaliatory approach of working against union wishes when the union leaves a person unrepresented. It had never crossed my mind that just because a union is set out to protect its workers, it doesn’t necessarily follow that there is not a tyranny of the majority problem, which can still leave those workers with underrepresented minority status without protections. This scenario plays out in a case he uses throughout the book, *Emporium Capwell*, wherein racial minorities were terminated for attempting to picket their union (44–46). A union regulatory board delegated and deferred to the agency, tautologically reasoning that a union meant to represent cannot leave people unrepresented. Factions and minorities rallied together to stop issues like this, but so beget the problem: regulatory schemes and statutes often leave great deference to the institutions able to abuse them. Stories like these weave through the pages of Garcia’s book, leaving skepticism in the mind of the reader about who the legal systems actually protect, if those most susceptible to abuse are not reaping the benefits.

What I found striking, and Garcia certainly shed sufficient light on, is that Title VII provisions, meant to protect worker retaliation and unjust termination due to racial/ethnic/gender status does not protect undocumented workers, as the courts have determined that this is not in the purview of discrimination due to “national origin” (64). He posits the question that was, admittedly, on my mind: Why care about protecting people who come here through improper channels? I wholeheartedly do, but getting to this point in the book was when I believed he may have a harder hill to climb to get people of opposing positions on board. He suggests an answer

almost immediately, quelling my concerns. It is impossible to divorce race/ethnicity with undocumented status, he says, bringing up the intersectionality of multiple marginalized populations (77). And it is absolutely true: there is no way to not discriminate against people from out of the country without it, at least inadvertently, violating statutory discrimination. It was shocking for me to hear that, until 2002, undocumented workers could be awarded back-pay by the NLRA. In 2002, that progress was reversed, which obviously bodes poorly for these workers. (71).

Garcia criticizes an argument that has always irked me: the “if we don’t stop exceptions, when will it end? People marrying/protecting/regulating pets next?” (82). The biggest pushback to expanding protective legislation is that people are concerned that we will continue to legislate until it gets to ridiculous precedents. Garcia, aptly in my view, suggests that this is ludicrous. Protecting fellow human beings and *likening them* to protecting of non-human species is precisely a problem in the marginalization of people. But if adding protections for undocumented people is the next step, there is likely to be a large lag in its occurrence, because the fact is that a new category has only been added three times to Title VII protections, in nearly twenty year increments between each new group gaining protection.

A line I found particularly poignant was that solving these marginalities in the law would be pertinent for “crossing the borders between us,” which is a particularly neutral goal that should resonate within people, because it drives home the point that all this movement is requesting is equality (85). Additionally, I was stunned to discover that the initial use of manual labor by undocumented immigrants was sanctioned and aided by the US government, for the sheer brute strength of the people, with the added ‘benefit’ of inability to hold bargaining power (89–90). This system that is touted as fundamentally un-American in soundbite politics is American-sanctioned to the core. And the reasons are particularly haunting: a way to utilize people as if they were cattle, pay them a meager sum, and disallow them from requesting additional funding and security. Though hard to hear, Garcia quotes a particularly pointed statement about these workers: that they are the “slaves we rent,” doing jobs American citizens will not do. (103). It is not a far reach to see this conception. This program began as early as World War I, and different systems of what are called “guest programs” emerged from this model. (98). Some scholars actually suggest a solution to granting citizenship to undocumented workers lies in amnesty for workers in these programs. (98–100). I find that implausible in 2017 American politics, but ideal.

What astounds me is that there is still a debate on equal pay for equal work, and Garcia touches on a chapter about the Lilly Ledbetter Fair Pay Act. Garcia continuously aligns each story with a call to action, essentially positing that workers’ rights are human rights, and his reiteration of this should strike people to start considering the implications of that statement. What he does say, which is interesting to me and made me feel as if this may actually be a situation that cannot truly be fixed, is that no change to the law of a specific minority has ever followed a linear path. There is no cookie-cutter approach to solving marginalized people’s unequal protections. Civil rights, gay rights, and immigrant rights have all reached their heyday through different means, generally through some combination of patchwork litigation from state courts, lobbying, the political process, and a crucible of politics that have lined up simultaneously and over time to allow for progressive change (117). But these do not necessarily serve as models to be replicated, especially when many of the people who are affected cannot participate in the political process due to undocumented status.

Oxymoronic as it seems, Garcia seems to suggest that the deluge of piecemeal legislation and regulatory protections leave gaping holes of underrepresentation and deference from the court,

assuming that an employer's noncompliance could be upheld under a technicality. He suggests that the beginning of change will be changing classifications. In his view, more people need to qualify as "employee" under International Labor Organization standards, people need to see immigrants as human, and we need to consider workers' rights as human rights (120–29). Basically, it all comes down to re-framing issues and statutes, and ensuring that people fit into categories that have to this point left them devoid of redress. It will require unbundling the perception of "stealing jobs" and removal of freedoms from the rhetoric against workers' rights. Garcia's beliefs are definitely sensible and broad, but my only qualm with them is that change hardly occurs from a lack of focused agenda, I wonder how to prioritize these changes and goals best.

Overall, *Marginal Workers* presents issues that are of great importance, and this book allows the reader to see the factual, legal, socioeconomic, and historical frameworks of a crucial phenomenon at work in America. Though it may be tough to go in without at least a slight legal framework or some meager background knowledge, this book is essentially made for anyone who wants to do her civic duty to comprehend minority issues and figure out how to engage with legislators and political fodder to effect change. Garcia's objective, but passionate, tone does these issues justice: he sets forth facts that should shake the cores of most, and de-politicizes the issues to create solutions. And he does so succinctly, but packed with all pertinent facts. I would absolutely recommend this book.

Emily Paige Lipka
Vanderbilt University Law School