The Use and Abuse of Undeclared and Unprotected Labour: Migration, Europeanisation and the Role of Trade Unions

Nicos Trimikliniotis

Available at: https://works.bepress.com/nicos_trimikliniotis/1/
This paper considers the processes, the mechanisms and the social agency involved in what is a widespread phenomenon in Europe and the globe. The paper draws on experiences and knowledge from across Europe and beyond, to illustrate the use and abuse of undeclared labour, particularly undocumented migrant labour within the process of European integration in order to consider ways to tackle it. The basic argument is as follows: Firstly, undeclared labour is a socio-economic phenomenon that is not only somehow externally related to capitalist accumulation as a kind of collateral by-product, as it is often presented, but undeclared work in fact is a product of an innate contradiction of the state system in the capitalist economy. The attempt to regulate/control migration and labour by nation-states (and increasingly trans-national organisations such as the EU) when there are simultaneous forces pulling and pushing, often in different directions, such as employers in an effort to avoid, escape and evade both regulation and taxation, which generates contradictions. These contradictions are manifested as a ‘gap’, which expands the scope and space for the so-called ‘informal sector’ or ‘secondary sector’ to exploit undeclared work, particularly undocumented migrant labour for profit maximisation in a sector characterised by the absence of regulation, ‘where free markets reign.’ Secondly, European integration is not an ‘outside’ force or ‘exogenous factor’ but represents very much a manifestation of significant shifts in the labour-capital relation in Europe. It very much exacerbates the contradictions and above all it politicises and criminalises...
illegal migration, which is likely to further degrade, undervalue and push underground and may well obscure and mystify certain types of labour. The neo-liberal logic follows a dual-pronged path: (a) strengthening the ‘policing’ function of the state; and (b) deregulating, ‘trade liberalisation’ and ‘rolling back the state’ when it comes to intervening in the economy, which is inscribed in what one analyst referred to as ‘embedded neoliberalism’, which goes to the heart of the European constitutionalism. Then again, the issue is not confined to Europe; in fact, it is very much a global phenomenon, be it in America, Africa or Asia. The third crucial factor is migration in an increasingly ‘globalised’ world, without abolishing but certainly transforming the nation-state form, which completes the equation. This factor in turn produces the so-called ‘informal sector’ or ‘undeclared economy’ – a sector that encompasses undeclared labour and commerce, as well as other economic activities, some of which are on the fringes of the law, whilst others are well beyond any notion of legality. The mobility of capital, the restructuring of production and the deregulation of labour markets is pushing more and more workers in the informal employment.

Based on the above, this paper first attempts to look at the extent and type of undeclared work across Europe and the response by the authorities and trade unions so far. It aims to sketch out a trade union and labour movement strategy to properly respond to the challenges of informal/undeclared work and undocumented migration, taking into account the processes of European integration; these processes can be varied, as they refer to the goal of ‘social cohesion’ and ‘European employment strategy’ and ‘competitiveness’, with ‘flexible labour markets’ moving further and further away from the policy goal of full employment towards the trendy concept of ‘employability’, surrendering all to the market. This is the broader context within which the failed EU constitutional treaty spoke of ‘the development of a common immigration policy’ and ‘combating illegal immigration and trafficking’. The paper finally draws on international experience, particularly those of southern Europe (which are a prime example of undeclared work and undocumented migration), and attempts to adapt these to the various national specificities.

Terms of Use (and Abuse): Disguising Labour?

Before we speak about undeclared labour, it is worth reminding ourselves that we are referring to labour, which is as wide a topic as life itself, almost, because everything that humans do involves some ‘labour’, past or present. It therefore makes little sense here to refer to labour in general; rather I prefer to concentrate on the kind of labour that we are dealing with: undeclared or clandestine, unprotected, informal, black, moonlighting, to name some of the adjectives used to denote the process of labour. However, there is good reason for insisting on starting with labour: trade unionists naturally stress the primacy of the noun vis-à-vis the surrogate adjective, which is labour. The particular shape and form must not act as a smoke screen or a veil that hides the primary function of this activity, which is labour. This may well be stating the obvious; at least this should have been the case – that undeclared, casual and clandestine migrant labour is but a form of labour, which is being denied for what it is, which is occurring and being discussed as unlawful, illegal and irregular. It is all about disguising, denying and/or super-exploiting of a category of labour in society, as there are other types of denied labour, such as domestic labour. The regime of exploitation of undocumented migrant labour in the EU is brilliantly captured by the formulation of Carl-Ulrik Schierup: ‘bloody subcontracting’ (Schierup, 2007; Schierup, Hansen, and Castles, 2006). He illustrates how this regime operates in different countries across the EU by analyzing processes of ‘corporate networking and globalised modes of exclusion’ in different contexts such as the 1980s garment industry in London and East Midlands, or the Turkish sweatshop economy in Amsterdam, or the 1990s construction industries in Spain and Portugal. He shows that the formation of racialised divisions of labour is intimately connected to strategies of subcontracting in the industrial sectors.

 Undeclared work and migration are issues that go well beyond the boundaries of Europe: out of 6.5 billion humans, some are comfortable, 5.5 billion are poor and 200 million get by on less than $1 per day. According to ILO figures, there are 175 million migrants, out of whom 56 million live in Europe; among them 275 million are economically active, representing 4 percent of the region’s workforce. In some countries, such as Luxembourg and Switzerland, it reaches up to 25 percent (ILO press release 1/10/2004 – ILO/04/44). According to the IOM there are an estimated 191 million migrants worldwide in 2005, up from 176 million in 2000; migrants comprise 3.0 percent of the global population and the number of the migrants worldwide would constitute the fifth most populous country in the world. Women accounted for 49.6 percent of global migrants in 2005. In 2006, remittance flows were estimated to have exceeded USD 276 billion worldwide, USD 206 billion of which went to developing countries. There are roughly 30 to 40 million unauthorised migrants worldwide, comprising around 15 to 20 percent of the world’s immigrant stock. In 2006, there were 24.5 million internally displaced persons (IDPs) in at least 52 countries as a result of conflicts, compared
Undeclared Work in the EU
Having set the context – that we are essentially dealing with labour of different shapes and forms – it is necessary to agree on the terms to be used in this discussion. These terms are often abused, but they are necessary for any scientific and disciplined study of the real world and above all, to determine what is to be done about it from the viewpoint of trade unions and the labour movement. The main characteristic of undeclared work is that it is not protected (i.e. without social insurance contributions, proper inspection and regulation, no trade union representation or collective agreements, and so on). Recently, the ILO and EU have become more interested in the area and this is connected with an increased interest in what is called the informal or black economy. The definition of ‘undeclared work’ is ‘any paid activities that are lawful as regards their nature but not declared to the public authorities’.

We are dealing with a category of labour larger than undeclared migrant labour. The EU Study on Undeclared Work, which aimed at examining the extent to which there is a segmented labour market, suggested there are three main types of undeclared work, broadly speaking:

- Type A: as part of a regular job (e.g. Saturday work on own account using the firm’s equipment, contacts or networks; the firm only declares part of the work).
- Type B: ‘secondary job holder’ – worker has one or several additional jobs, which are not declared.
- Type C: the main job held by a worker, which is undeclared, including work with a low number of hours per week/month.

Among the most important factors that have contributed to the increasing trend in undeclared work, the Commission study cites globalisation and immigration, and refers to the intention of the EU Commission via its communication on immigration integration and employment of 3 June 2003:

To combat undeclared work and reduce the informal economy with a view to developing a broad policy mix of and developing measures to transform undeclared work into regular employment.

The wide scale of the problem of undeclared work in EU member states is illustrative of the inadequacy of the policies to combat it. In fact, the problem of undeclared work has been an EU issue since 1998 when the EU Commission issued a communication dealing with undeclared work, launching a debate on the causes and the policy options for combating it. It was proposed to clarify the causes and extent, and concluded that combating undeclared work should be part of an overall European employment strategy. The communication on undeclared work suggested that the main motivation for employers, employees and self-employed people to participate in the undeclared economy is economic: opportunity to increase earnings and to evade taxation on income and social contributions. For employers, the incentive is to reduce costs:

- demand for ‘personalised services’ to households;
- reorganisation/restructuring of industry and firms; and
- the impact of new technologies.

Undeclared work effects the social security systems, public finances, competition and industrial relations.

Studies estimated the average size of the informal economy at between 7 percent and 16 percent of the GDP of the then 15 EU Member States. The Commission has launched a number of studies on the topic, covering issues such as ‘Measuring undeclared work’ (the latter in collaboration with Eurostat). In July 2004, the Commission issued a new report on Undeclared work in an enlarged Union, which examines the incidence in each Member State, including the 10 new Member States that joined in 2004, and examines the reasons behind the growth in undeclared work. Now, in 2009, the shift towards a tougher stance on combating illegal migration is apparent; furthermore, the looming economic crisis with rising unemployment is likely to create more demands for tougher immigration for the borders of the EU (see Trimikliniotis, 2008b).

The Paradox of Immigration Regulation: The Production and Reproduction of Labour and ‘Illegality’
Trade unions by their very nature are primarily for protected and secured labour to be achieved by labour market regulation. Employers on the other hand would generally oppose regulation that tends to erode and eat in ‘management discretion’ and any measures that make labour less flexible and subject to managerial control; it is therefore not surprising seeing employers’ representatives wholeheartedly embracing of the ‘new’ economic orthodoxy. This doctrine aims to eradicate the so-called
undocumented migrant labour' working underground or in the 'informal
rigidities' and replace them with 'flexible labour' and general policies of
'liberalisation' and 'flexibilisation', which impose a new regime of lean and
docile labour (Moody, 1997). This economic doctrine is little more
than the economic manifestation of the neoliberal agenda. The net result
is a kind of migrant labour that Moody (2008) refers to as the 'harvest of
empire' caused by wars, famine, inequality and free trade.

This paper argues that the current regimes of regulation of the most
vulnerable groups, the 'weakest link' of labour and the backbone of un-
declared labour and clandestine migrant labour is in fact produced and
reproduced by the way migrant regulation is organised, somewhere in
between immigration regulation and labour regulation. It is the process
of legislating and what one scholar called 'institutional precariousness'
(Watts, 1999, pp. 129–148) caught inside the contradiction between severe
and repressive immigration control on the one hand, and tax and ineffective
labour market regulation on the other. It is in this inconsistent regime
that the systematic reproduction of a whole range of migrant labour oc-
curs from short-term contract migrant labour (which is itself a 'softer'
version of undeclared labour of the Type 'A' and 'B') to the full-blown
undocumented migrant labour working underground or in the 'informal
economy'. The dual process of capitalist accumulation and controlled
immigration, as Castles (2002) points out, produces the so-called 'illegal
migrant workers', who are considered in the populist discourse to be the
main 'perpetrators' of undeclared work – even if it is the employer who
is really the guilty party and not the undeclared worker. I would like, ho-
ever, to push the argument further by suggesting that there is a deeper
contradiction within the system of regulating migrant labour – and this
is in fact a very 'European', or shall we say, a 'Europeanised' version. As
Balibar (2004, p. 44) points out:

European unification far from counteracting tendencies towards recolo-
nisation of labour power resulting from the globalisation of competition
seems rather to be the instrument of their intensification.

The debate about the direction of the so-called 'common migration pol-
icy' that is under development in the EU is very much dependent on
the balance of socio-political forces that are shaping the European inte-
gration: the EU project is in constant evolution as integration deepens,
widens and is being constantly renegotiated. There is a struggle over
the European order, "a struggle between transnational social forces"
which "may express itself ideologically or what Gramsci called the
universal plane of hegemony" (Apeldoorn, 2001, p. 70). This contest
takes the form of competing projects in the construction of the European
order on two levels:

- As 'rallying points' which build conditions of disparate actors in the
way Gramsci conceived the making of hegemonic leadership, and
- As a conscious articulation propagated by distinct elite groups at the
apex of 'fractions of' trans-national social forces.

In this sense, at the heart of the 'new' EU constitutionalism of industrial
relations underlie the integration processes which are premised on the
neoliberal project: European trade unions are 'obliged' to accept the 'new'
bargain by accepting 'the new competitive corporatism', which is 'a result
of an emerging European best practice capitalism' (Bieling 2001: 185).

It is therefore not surprising that scholars of the EU integration view
with scepticism the so-called 'Europeanisation' of industrial relations as a
process of 'erosion' or 'undermining' of industrial relations in the guise of
'transnationalisation' (Hyman, 2003). There is an essential but missing link
between labour regulation/industrial relations policy and immigration
policy at the EU level, which is the issue on which trade unions can act as
a unifying force of reason that manages to 'connect' what is in reality one
field, that of regulating and protecting work, employment and industrial
relations in the EU and beyond.

So far EU immigration policy has been fundamentally flawed (to put
it generously); it simply fails to take into account 'the factors that
make or unmake migration policies' (Castles, 2004). Attempts to
develop an EU-wide blanket immigration policy, primarily to keep
migrants out of the core of the EU, would have been disastrous for
southern Europe, had they worked, such immigration controls are
totally inadequate for these countries:

Such imported policies may have been counter – productive by substitu-
ting illegal immigration for legally controlled flows (Baldwin-Edwards,
1999, p. 2).

It is of vital importance to note that undeclared work is rarely properly
connected to the failure of immigration policy, which is absurd: A major
'pool' for recruitment of undeclared/informal and unprotected labour
is the so-called 'illegal migrants'. The 'disastrous policies' of strict and
repressive immigration that scholars criticise (see Baldwin-Edwards, 1999,
p. 2) are miserably failing to properly appreciate the actual economic and
social needs of Europe today. This is why trade unionists can and ought
to lead the way to change the terms of the current international 'debate' (if it can really be called this). In fact, trade unionists in the World Social Forum and the European Social Forum have already begun this process, but this has not filtered in daily and shop floor trade unionism: it appears like an 'additional extra' rather than being part of everyday struggle.

Niessen and Schibel (2001, p. 1) correctly suggest we ought to change the terms of the debate due to the demographic changes taking place:

From a debate that is almost exclusively looking at admission issues to one where these issues are only discussed in the context of an assessment of immigration needs against the backdrop of a declining and ageing population.

The proportion of those aged 65 and over is projected to rise from about 16 percent of the total population in 1998 to 22 percent by 2005. Furthermore, policy makers cannot just ignore the fact that 'without positive net migration, the population of Germany, Greece, Italy and Sweden would be in decline' (see Niessen & Schibel, 2002, p. 4). Such questions are rarely raised in public debates; neither is the fact that labour is the producer of wealth, and these workers are providing what European countries need—labour. Neither has it been a central issue for trade union and labour movement debates.

Before examining the alternative policies available, this paper examines the way in which the fragmentation of labour may create the conditions for division, but if it is properly and skilfully managed, it can be addressed and become a source of strength for labour, rather than a sign of weakness.

**Divide and Rule: Undermining by Fragmenting Labour**

If we are to appreciate the subject matter of analysis, it is required that we disaggregate and unpack the term 'migrant labour'. It has to be recognised that if we are to understand labour as a 'unitary' category, even when one subscribes to the basic trade union thesis that 'the working class must be united'. The 'unity' sought is a political and socio-economic unity and must be the manifestation of class solidarity. It cannot be some sort of notional, fictional or dogmatic perception that denies that there are sub-categories, differences, and differentiations. For that matter, even migrant labour itself has always been heterogeneous, highly contextual and divided among persons, therefore, it is doubtful if we could have ever spoken of a totally unitary category of 'migrant labour'. When we read earlier literature (such as Westergaard & Wrestler, 1970; Castles & Kosacks, 1972; Miles & Phizaklea, 1982), we may consider the references to migrant labour as being meaningful as schematic aggregates in the macro-analysis of 'labour versus capital' in a capitalist country and at an EU level. However, we ought to move beyond such schemas; most of the above authors have themselves moved on to more sophisticated models to produce some of the most important works on the subject of labour, migration and racism (see Miles, 1992; Phizaklea, 2002; Castles, 2000, 2001; Anthias & Yuval-Davis, 1992; Balibar & Wallerstein, 1991).

This leads us to ask the following question: Can we speak of migrant labour at such a level of generality, or should we approach matters in a contextual and specific manner? Following that question we should ask whether we can speak of labour generally first, and on this topic there is little hesitation that the answer must be in the affirmative: labour remains distinct and central as ever to the world under capitalism. There are vital distinctions within the general category of labour that cannot be ignored and as such, this requires further analysis. Nevertheless, labour refers to a process as well as a category of producers who produce wealth but who don't own the means of production, the product, or the surplus produced as a result of that labour. In this sense, the classic Marxian definition remains highly relevant, as the vast majority of migrants fall into this category, even when there are large numbers of migrants who are quasi-self-employed or fully self-employed.14

What can be said about the category of 'quasi-self-employed' sector is that it is certainly not a homogeneous group. It refers to very different types of organisations and producers, from employees who also do some 'self-employed' work on the side (e.g. owning a little enterprise on the side) to the 'self-employed' who sell 'junk' (and live at the brink of subsistence) to small and self-producers, and artisans and crafters who 'establish' working labour. A number of studies conducted since the 1970s have shown that there is a process of fragmentation in the labour markets, known as the dual labour hypothesis, whereby there are two segments of the market which operate in parallel, but which obey different institutional logics and operate as a primary and a secondary market (see Piore, 1971). Recent research from the Spanish construction industry illustrates the prevalence of poverty in the informal agricultural sector of Spain (Veiga, 2007). Moreover, there seems to be a pattern that reproduces itself; there is...

... a clear profile of a dualistic structure in the construction industry. This is demonstrated by the gradual disappearance of the medium-sized industries and the constitution of two opposite poles. At the one
that may have been, on certain occasions, jobs of highly specialised workers. Even the specialised workers are asked to depart from their old ways and become ‘flexible’. In addition, persons who are working as undeclared and unprotected labourers may be highly skilled workers, but they find themselves in vulnerable positions (i.e. many times the clandestine migrant workers are at the mercy of their employer, who may demand types of unskilled labour not normally demanded from skilled workers).

There are several cases illustrating that employers may well make use of a ‘strategic recruitment’ of migrant labour on some occasions as a deliberate means to undermine labour combatively. One response is of course the tightening of immigration and repression of illegal immigration. However, this often has the opposite effect as it may further marginalise undocumented workers. Moreover, there is the danger that racist ideologies will develop between ‘native’ and ‘foreigners’. Sometimes ever trade unions fall for this. As Dale points out, ‘Labour organisations themselves become wedded to the divisive logic of racism’ (Dale 1999, p. 12).

As for the issue of undocumented migrants, what many policy-makers and those who are not well acquainted with the issues may find paradoxical is that as repressive measures increase, so do the numbers of ‘illegal’ immigrants. As immigration policy becomes tighter and more regulated, the number of clandestine labourers increases. As Gubbay (1999, p. 59) points out, ‘Other things being equal, restrictions on legal migration lead to an increase in illegal migration.’

Migrants and Host Societies: Beyond Ideas about ‘Reception Regimes’

A point that is many times escaped by policy-makers and the media in the analysis of the issue of migrant labour – or ‘alien labour’ – is the fact that migration, and in particular labour flows, are a central feature of what is called ‘globalisation’. As Held et al. (1999, p. 283) states, ‘One form of globalisation is more ubiquitous than any other – human migration.’ The term ‘migrant’ is not the same as ‘foreign’ or ‘alien’ workers. Historically, many countries of Southern Europe were net exporters of migrants: Italy, Greece and Spain, for example. ‘New commonwealth’ migrants emigrated en mass and the term ‘migrant’ has connotations that refer to a more permanent nature, even though migrants many times leave their country of origin as temporary migrants with the myth of return being alive in their hearts throughout most of their stay. The fact that ‘alien’ labourers are granted strictly temporary status gives rise to another myth: that these ‘foreigners’ are all going back home soon. However, it is crucial that policy-makers and trade unionists begin to realise that a great number
of these workers are likely to be a permanent feature of host societies. In any case, reference to ‘migrant’ rather than ‘foreign’ workers is more than semantics or a pedantic adherence to a politically correct terminology to the internationally recognised definition of the term (see International Convention on the Rights of Migrant Workers and Their Families). We must realise that migrants are not a temporary phenomenon, even if some migrants are given a temporary visa. In fact, we ought to realise that, ‘migration refers to the movement of people and their temporary or permanent geographical relocation’ (Held et al., 1999, p. 283). Unless we are able to properly locate the regulation of labour and the regulation of ‘foreign’ or migrant labour within this wider (i.e. global) context, which has now become an established cross-disciplinary theoretical perspective in its own right, referred to as ‘migration theory’ (see Brettel & Hollifield, 2000), then we fail to properly appreciate the scope and complexity of such a regulatory venture.

Alternative Regulation Regimes for Migration

Studies on undeclared work and EU declarations seem to go only half way towards recognising what is at the heart of the matter: there has been much failure in properly addressing the issue of migrant labour. Balibar (2004, pp. 43–46) refers to the construction of an ‘European Apartheid’ parallel to the construction of ‘European citizenship’. In fact, we may well consider these to be twins, in the same way that the French Revolution gave birth to modern capitalism and modern democracy (see Habermas, 1994). The distinction between documented, ‘regular’ or ‘legal’ migrants and undocumented, ‘irregular’ or ‘illegal’ is arbitrary and unjust. There has been a failure of policy when it constantly produces and reproduces more and more ‘illegals’ and frequently pressures policy-makers to introduce ill-thought out, ill-managed and mal-administered schemes of regularisations and amnesties. Sometimes these are well intentioned; others are false from the start. Good examples of such measures were the so-called ‘half regularisations’ of clandestine immigrants in France from 1997–98, in which there was a 50 percent regularisation and another 50 percent expulsion. As Balibar points out:

This clever manoeuvre was precisely interpreted as a sign that the government was unwilling to proclaim in the social space of France either to the struggle against expulsion or an end to the manipulation of nationality status as a means of rendering part of the working class even more insecure (Balibar, 2004, p. 45).

Various regularisation schemas as well as repressive measures and expulsions were implemented in the Southern European countries, which were unable to deal with the situation and thus were caught in a ‘schizophrenic’ relationship with migrants, a kind of love-hate relationship where many thousands of migrants were at some point ‘illegal’. Different ‘Temporary Foreign Worker Programs’ (TFWP) operate with a common failure: reproducing the twin of undeclared work and undocumented labour. In fact, some scholars go so far as to suggest that ill-conceived administrative measures perpetuate rather than resolve the problem of ‘irregularity’. Based on a comparative study of Italy, Spain, Greece and France, Reyneri (2001) illustrates these failures and the need for a comprehensive strategy that is long-term, well thought out and properly administered; furthermore, Reyneri appreciates the need to regulate both the local labour market and migratory flows as a single paradigm:

- Southern European countries have to first recognise that they are immigration destinations. This involves ‘institutionalising’ the segmented labour markets, but doing so with a long-term agenda to upgrade and eliminate the segment.
- They should open their labour markets in a regularised manner, (i.e. the opposite of what the neoliberals propose).
- They should adopt a complex long-term strategy for reducing the underground economy. This requires a strategy that appreciates the operation of networks in society.17
- However, one has to study the use of the very temporariness of migrant labour, which lies at the heart of the creation of the so-called secondary sector.

Let’s to open up the debate now: the very notion of ‘controlling’ migration flows has been a subject of fierce debate during recent years, one that the labour movement ought to tackle head on. Even if one is to reject the idea of dropping immigration control altogether as being unsuitable for the specific national context or impractical and undesirable for good reasons, there is still a fundamental issue at stake: Is it actually possible to regulate immigration by attempting to ‘control’ migration flows without simply reproducing undocumented migrant labour? Is it possible to control the migratory labour flows in an international capitalistic environment, where there is free movement of capital and to a certain extent labour without producing and reproducing the ‘secondary’ or ‘informal’ market?
For Nigel Harris (2002, p. VII), the recipe is simple; he presents a strong case that governments in fact have little choice but to ‘…begin to move towards the ending of controls altogether, moving back to the situation before the twentieth century when in general the world enjoyed freedom to work as people wished.’ The case against immigration control, whether it is put forward on moral and human rights grounds, or on economic and social grounds, or merely on the ground that it is impossible to control, has advanced strongly over the last few years (see Hayter, 2000; Dummett, 2001; Sassen, 2003). Nevertheless, immigration control is unlikely to be abandoned, and there is a clear trend towards ‘transnationalisation of immigration policy’ (see Sassen, 1999, pp. 149–153). In the last twenty years in the EU, there has been a clear trend toward ‘Europeanisation of immigration policy’ (see Favell & Geddes, 1999), and this is confirmed with the processes of the failed EU Constitution, which refers to the ‘development of a common immigration policy’ (article III-168 of the rejected Constitutional Treaty for the European Union). The ‘age of migration’ (Castles & Miller, 2003) requires that we locate the EU, as well as each of the of its member-states, in a global context, and this means rethinking the concepts, theories and the policy framework of appreciating and handling the ‘turbulence of migration’ that reshapes our understanding of globalisation, localisation, deterioralisation and hybrity (Papastergiadis, 2000). However, we need to bear in mind that whenever boundaries are drawn, the mechanisms are set in motion for their racialisation (Anthias & Yuval-Davis, 1992).

Jobs and Migrant Labour: Trade Unions and Migration

Studies generally show that, particularly in the Southern European context, a significant number of immigrants do not compete directly with native workers. Migrant workers may in fact generate growth of the economy, and more jobs at the higher echelons of the economy are created for native workers as migrant workers take posts at the lower echelons of the labour market hierarchy and low-skill jobs. In the cases of Greece, Spain, Italy, Cyprus and Malta, migrant workers occupy the lower-skilled jobs and natives have moved upwards. For Greece (in the 1990s), which can be described as the informal model par excellence, the study by Sarris and Zagrafakis (1999) is indicative of the above. The same is true for most countries, Northern European and Southern European.

The island economies of Cyprus and Malta have interesting similarities in the patterns of migration over the recent years (see Mainwaring, 2008). Cypriots, for instance, have massively improved their skills through education and training, as well as qualifications and job expectations and thus as the living standards of the country as a whole improve, given the explosive economic developments since 1974, the vast majority of Cypriot workers have moved upwards in the labour hierarchy with the result that there now there is a ‘gap’ at the ‘bottom’. Hence, the agreement made by the social partners, including the trade unions in 1990, to allow migrat labour in Cyprus, but on the basis of specific criteria that regulate the terms and conditions of their employment.

A trade unionist strategy ought to consider very careful the extent and what kind of regulation to propose that is in the interests of labour as a whole, both ‘native’ and ‘migrant’ labour, taking into account an inescapable paradox: the more ‘assertive’ (i.e. coercive and repressive) they are in policing the ‘borders’ and conducting ‘internal checks’ on migrants, the greater the volume and seriousness of undeclared/undocumented work in the economy. This is because more repression will mean more marginalisation of the undocumented workers. The employers willing to risk getting caught would require a higher profit margin from their workers, which would therefore result in greater exploitation of those workers, and thus, in the long run, the pay of native workers would be undercut.

Secondly, given that the reasons from migration are primarily the socio-economic conditions in poorer countries, which are actually getting worse, the more coercive the measures, the more desperate will be the efforts to obtain access to forms of ‘illegal’ migration and trafficking to bypass the law. Hence, we have the dilemma: the stricter the immigration laws, the more undeclared work and illegal migration there is.

Types of Control and Regulation

‘Immigration control’ involves a wide range of policy instruments and policy considerations that go far beyond the control of the national borders. Brochmann (1999, p. 297) points out that there is interplay between internal and external types of immigration control. In fact, ‘more subtle or implicit forces may counteract control and undermine or support and strengthen intentional policies.’ What one has to consider is the wealth of policy instruments and policy goals, which may complement or conflict one another. Below are listed a number of different types of alternative ‘controls’ at the disposal of policy-makers.

As far as border control (i.e. visa control) is concerned, this may be easier for islands like Cyprus and Malta but not for other European Continental Countries. Border controls are difficult, and there is an increasing recognition that it may no longer be worth the effort to control the borders in ways that have always been used previously; there has been a shift to ‘internal control’ measures. Some of these are repressive measures such
as ID checks and the use of surveillance to catch ‘ overstayers ’. Aside from the human rights and state oppression dimensions, the main problem with immigration repression is that it is ineffective. In the end, there is a paradox operative here: the greater the repression the more the migrants who are without due papers are marginalised and the more desperate they are to obtain jobs and thus undermine the labour conditions. Even if tough laws are introduced against employers who hire undocumented and clandestine labour, eventually this is likely to depress even further the position of these workers, as employers willing to risk tough fines or even imprisonment are likely to demand an even greater return from the illegal immigrant labour. Thus, there is an increasing recognition that *indirect controls* are more effective. These are controls that appear intangible but are in fact very much a part of society; social closure is a term that denotes the extent to which society is ‘open’ or ‘closed’ and has to do with xenophobia, racism and social exclusion. Control through welfare and integration is another method, whilst the idea of controlling *the* efficiency of the labour market is an important tool in maintaining standards of employment. This is of particular importance for new members in the EU, as well as Southern European Countries, as it has been identified as one of the major flaws of the current criteria. As Brochmann (1999, p. 333) points out:

Efficiency of immigration policy is more a question of the ability to supervise the labour market than policing national borders: it revolves on the state’s ability to prevent employers from hiring undocumented workers and its ability to maintain generally high standards of employment conditions.

Mentioned here are a number of ideas on the mechanisms and policies to *encourage* both migrant workers and employers to reap the benefits of regularisation through incentives; to *monitor* and *enforce* contractual terms, collective agreements and labour law standards through different enforcement mechanisms (inspectors, trade unions, immigrant organisations, tribunals and courts) and to *reform* and *improve* on the institutional framework of labour relations.

Finally, the policies of regularisation and amnesty schemes have proven to be the only means available for many countries. In Southern Europe, this has been the inevitable outcome of a policy failure, a policy of closed borders, which was impossible to enforce and in practice led to mass irregular, undocumented or ‘illegal’ labour. These schemes serve as a signal to already-present ‘illegal’ immigrants to get out of the margins of illegality, super-exploitation and uncertainty by providing them with a right to stay, whilst identifying new migrants as a possible threat. For many countries, regularisation is the only way to deal with the problem. Over the last decade, the approach taken by most EU countries was to adopt certain types of regularisation regimes based on the logic of a ‘ one off amnesty’ that would bring undocumented migrants ‘out of the closet’ and would therefore alleviate immediate pressures on the immigration, the police, the incarceration and the repressive apparatuses in general. However, the nation-states have retained the general logic of the restrictive and repressive policy of combating ‘illegal migration’ as the regularisation regimes were understood as exceptional and temporary, even if they were forced to repeat the same exceptional policy. The only exception to this is the Spanish case, but that case merits own special study. The essential point is that it is paradoxical that the greater the number of illegal migrants, the stronger the arguments in favour of some form of regularisation. The question therefore or the labour movement is not whether we need an EU-wide of regularisation, as well as national regularisation schemes, but what types of such regimes are to be adopted.

**Concluding Thoughts: Toward an International Trade Unionism that Combats the Use and Abuse of Undeclared Labour**

In this closing section, this paper summarises certain key issues to ponder while striving for a theoretical as well as a political agenda that will encourage theorists and trade unionists to debate in an open manner the dilemmas of the future. The list is neither exhaustive, nor final. It is meant to be the beginning of a debate that merges into action and yet is tentative and subject to change and elaboration according to the prevailing conditions.

There is an ongoing debate over the key issues relating to both undeclared work and the question of migrant work, particularly undocumented migration in the specific national contexts, as well as the European and global contexts. Different and often conflicting views are held regarding the root causes of undeclared work and migration in general, and what can be done about it. However, there is little doubt that the neoliberal frame of analysis as well as the policy developments in the direction of ‘flexibilisation’, ‘deregulation’ as well as policies that reduced the role organised labour have enhanced the scope for super-exploitation and reduced intervention by trade unions. Undeclared work is of course much broader than undocumented migrant work. Moreover, responses in various countries vary, but there is an undeniable trend toward informalisation, flexibilisation, and the undervaluing of labour, which generates a kind
of national and international undeclared and informal reserve army of labour.  
Wider issues need to be addressed about the processes of European integration and globalization. We are dealing with the process of capitalist integration, which is reorganising labour, production and trade by rearranging the economic and political realm of decision-making and shifting and changing the boundaries of state policy-making. As such, this is adversely affecting, if not undermining labour standards, industrial relations and worker rights. Undeclared work is part of the ‘informal’ or ‘secondary’ sector.  
Migration is connected to these processes in multiple, often contradictory ways that push various socio-economic, political, ideological and cultural trends in different directions. There are inherent contradictions involved, manifested in the rejected EU Constitutional treaty and the eventual deal struck afterwards, which refers to the goal of social cohesion, an employment strategy, human rights and social citizenship. However, these goals are essentially ‘well wishes’ given that the dominant features of the ‘new deal’ in European politics is characterised by the mad drive toward competitiveness, flexible labour and mobility. Having abandoned the essential right for work, the policy goal of decent and full-time employment is a drift towards ‘supply-side’ measures – what the ‘New Right’ and Neo-liberal economists have developed in the ‘country-laboratories’, the poor and troubled countries of the South. Reference no longer is made to ‘employment’ but to ‘employability’. It is within this wider context that the EU goal is to ‘develop a common immigration policy’. There is a further twist. EU policies are driving a wedge between legal and illegal workers, which manifests itself in the recurring references to ‘combating illegal immigration’ and ‘trafficking’, with such terminology almost equating the ‘traffickers’ with the undocumented migrants who are driven to migrate primarily out of need. The measures to combat ‘undeclared work’ are ineffective, for they do not address the issues at stake, given that this is the manifestation of ‘actually existing capitalism’ at this phase. Processes of segmentation of labour markets are not ‘market failures’ but essentially are features of the system of the free market itself, which divides according to ‘differences’ between workers on the basis of ‘the five major cleavages of modern time’ (Wallerstein, 2000, p. xix): race, ethnicity, class, gender and nation. Moreover, migrant workers are located in hierarchical orders that determine their social positions according to skills, social and geographical positions, social capital, habitus and employment/immigration status. For workers the prime reason for this is the necessity to sell their labour power; for the employer, the drive is for profits – i.e. there is scope for profit-maximization through super-exploitation of undeclared workers and undocumented migrant labour.  
There are different types of undeclared workers who cannot be lumped into a single category. This is particularly visible in the case of ‘undocumented’ migrant workers who are divided from ‘legitimate’ workers due to their immigration status:  
• ‘Undocumented’ with no regulation or rights at all  
• ‘Semi-legality’  
• Legality  
It should be pointed out that in this process one must never lose sight of the basic fact that we are dealing with labour, irrespective of national status or origin, migrant status, full-time, part-time, workers ‘on call’, contract or permanent; we are dealing with people who sell their labour power in exchange for their wages to others who own the means of production. Workers in the informal economy are likely to be exploited more than in the formal sector, but some may work under the informal regime as it has short-term gains. In any case, to understand the processes it has to be appreciated that the informalisation of work must be connected to what has been happening over the last 30 years at the global level. During this period, labour struggles have faced various defeats as well as trade unions, and on a global scale, there has been a crisis for the left18: the result is the reduction of the share of wages and an increase of the share of profits in the global domestic product. With globalisation there is a process of harmonising labour markets downwards by eroding rights as in historic struggles of labour from the nineteenth century onwards.  
There is also an ongoing discussion as to how to tackle ‘illegal employers’ – the perpetrators and main beneficiaries from undeclared and undocumented work. This issue ought to be looked at in a holistic manner. The trade union and labour movement ought to examine general labour policy, which entails an immigration policy – i.e. to perceive labour and immigration as part of the same process as the ‘drive’ (so-called ‘push and pull’) factors in the international political economy. However, even within the parameters of the current system with its inherently unequal and exploitive relations, there is massive scope for policies for improving the current situation for undocumented and irregular migrant labour. Employers who benefit from super-exploitation can be deterred by using the same market system they profit from, i.e. make the cost such that it operates on a too-risky level and thus acts as a disincentive. The penalty must be sufficiently high to deter illegal profiteering from vulnerable
workers at the expense of the migrant workers, because this undermines the system of labour relations and social security as a whole. However, undocumented workers must not be punished for being essentially the victims of super-exploitation, because this victimisation and undeclared amounts do double jeopardy.

The challenge for trade unions and the labour movement is to begin to organise the workers in the ‘informal sector’. The question is how?

a) The trade union can adopt a multiple strategy to be utilised according to the specific conditions, either by incorporating the migrant and informal workers with a union or by setting up a new trade union to be affiliated later to the main body of the movement.

b) It must find ways of implementing international labour standards, collective agreements and laws across borders. The adoption and ratification of Convention no. 177 and Recommendation 184 would be a good starting point. The ILO Conference in 2002 made some interesting proposals, some of which must be taken up for further elaboration and adoption. However, such standards ought to be upgraded and continually improved. Policies and practices ought to be developed for the regulation of contractors from other countries (i.e. establish floor international labour standards/reception country standards) beyond the ineffective posting regulations, directives and so on.

c) The movement must replace discourse of repression for a longer-term class vision: the trade union and labour movement cannot advocate repressive policies that act as a dividing force between natives and migrants workers, or between legal and illegal migrants. The reproduction of racist ideologies by ‘scapegoating’ undocumented workers and the so-called ‘law and order’ politics is the guise behind which the extreme right and racist ideas are being bred. A longer-term vision ought to be adopted learning from the experiences of southern Europe: only via the regularisation of undocumented workers can we progress towards this vision. It is apparent that the effectiveness of ‘repressive’ mechanisms and practices is not only highly questionable but contains three essential drawbacks: (i) they divide workers; (ii) they have proved ineffective in actually reducing ‘illegal’ employment (on the contrary, they reproduce the problem); and (iii) they are used by racists and xenophobes to scapegoat all migrants and minorities in society.

d) There ought to be a serious rethinking of the models of ‘reception’ of migrant workers. Trade unions ought to consider the alternative reception models that exist in the world and then become involved in the debate over the future of society in an effort to promote openness, multiculturalism and tolerance.

e) Trade unions ought to move toward an international social-movement unionism which is an open trade unionism engaged in society and leading the social movements. The response to the new reality of casualisation information and other transformation in late capitalism is to take the initiative and get into position as soon as possible. Kim Moody speaks about the need to develop ‘an international social-movement unionism,’ which he defines as follows:

Social movement implies an active strategic orientation that uses the strongest of society’s oppressed and exploited generally organised workers, to mobilize those who are less able to sustain self – mobilization: the poor; the unemployed, the casualized workers, the neighbourhood organizations (Moody, 1997, p. 276).

f) In fact, this specific ‘recipe’ has already been used with success to organise Mexican workers in the agricultural sector in Texas and New Mexico. The Union le Travajadores Agricolas Franterizos (or, the Union of Border Agricultural Workers – UTAF), the membership of which consists primarily of undocumented immigrant workers (see Moody, 1997, p. 175). Such practices have also been implemented with success with urban migrant workers (see Moody, 1997, pp. 175–178). Other examples of successfully organising workers can be seen in the unemployed and precarious workers in Europe (e.g. France) and in Asia and Africa (e.g. COSATU in South Africa must be looked at). Such ‘models’ however cannot be taken for granted as ‘magic recipes’ of success; for instance the apparent failures of post-apartheid South African trade unions to organise and defend migrant workers are exemplified by the recent en masse attacks on migrants in South Africa (see Trimikliniotis, Gordon & Zondo 2008).

g) It may be argued that the development of a transnational trade unionism is a prerequisite for a transnational European citizenship. This point is powerfully argued by many critics of the European integration with a democratic and popular deficit. Balibar (2004) refers to ‘the development and reconstitution of a powerful and associative movement for the progressive emergence of a true transnational public sphere.’ Such a transnational public sphere presupposes a genuinely internationalist labour movement, a transnational trade union movement, which has well-thought out strategies for national and transnational programs and action. In this sense the challenges for the European trade unions
is to penetrate nation-state boundaries, to transform their national organisations and incorporate migrant labour, regular and irregular to adapt to the class transformations that are already taking place within and beyond the borders of the EU. Prospects for transnational solidarity of a new type and at a new level are emerging. At the same time the danger of trade union xenophobia and racism is always possible.

h) The process of mounting a struggle for the democratisation of borders across and around Europe is no longer ‘trendy wishful thinking’ but a necessity if we are to progressively dismantle the ‘fortress Europe’ and move toward the construction of an active, open social citizenship. The struggle for such a citizenship is the democratic challenge of the twenty-first century for the labour movement, and it will determine the fate of their struggles for generations to come. The radical potential for migration to transform the borders as well as the very nature of the nation-state sovereignty has been powerfully articulated, even if it is yet to be politically realised.

i) Finally, in the ongoing conflict between capital and labour over the shape of EU integration, the trade union and labour movement have no choice but to intervene more vigorously to ensure that European citizenship becomes meaningful – an open, democratic and inclusive citizenship irrespective of ethnic or national origin – so that the working class can finish its historic mission of ending exploitation. Oddly enough, the current climate of economic crisis, with the bankruptcy of the neoliberal ideology and desperate policy-makers in search for solutions that work for an increasingly globalised world, there may be an opening for a radical potential for undocumented and irregular migrant labour as agents of change in Europe, something unimaginable in dark years of neoliberal austerity.

Notes

1 This paper draws on a paper originally presented under the same title, ‘The Use and Abuse of Undeclared / Unprotected Labour: Migration, Europeanisation and the Role of Trade Unions’, at the XVI International Sociological Association ISA World Congress of Sociology, Research Committee RC05 ‘Ethnic, Race, and Minority Relations’, July 2006, Durban, South Africa.

2 Project leader at PRIO Cyprus on Migration, Discrimination and Societal Conditions for Reconciliation. He is Director of the Centre for the Study of Migration, Inter-ethnic and Labour Relations (CeMILaR) and Assist. Professor of Law & Sociology, University of Nicosia, Cyprus: nicostrim@logos.cy.net


5 See Moody, 2008 for more on this.

6 See Trimikliniotis, Gordon and Zondo (2008)

7 See Castles and Miller 2003.

8 The data and links that follow are from the IOM Website http://www.iom.int/jahia/Jahia/pid/254 (accessed on 3.3.2007).

9 Data is from ‘Global estimates’ from the United Nations’ Trends in Total Migrant Stock: The 2005 Revision, http://esa.un.org/migration; they can also be located at the IOM Website http://www.iom.int/jahia/pid/254 (accessed on 3.3.2007)


14 One must not fall in the traps of reductionism, economism and abstractionism.

15 Quoted by Veiga, 1999, p. 106

16 See Ruhs (2003) for a critical review of the various policy options of the TFWP.

17 For a paper on networks, see Vasta, 2004.

18 See Anderson 2007.

19 For a global perspective on the subject, see Bieler, Lindberg, and Pillay (2008).