convention must have knowledge of it, and whether literal, semantic and pragmatic aspects of meaning are conventional. Considering that the bulk of Slocum's book is dedicated to these linguistic phenomena, one feels that his argument would have been greatly enriched by drawing on Marmor's work.

Despite these shortcomings, Slocum's book is a useful addition to the literature on interpretation. His knowledge of linguistics provides the reader with a comprehensive – if, at some points, rather dense – account of meaning and conventionality in a neighbouring field of study. One can only hope that legal scholars will heed his advice that legal interpretation "should be viewed as intrinsically linguistic phenomena subject to linguistic insights, operations, and advances" (p. 284).

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A Purposive Approach to Labour Law. By Guy Davidov [Oxford: Oxford University Press, 2016. xi + 289 pp. Hardback £60. ISBN 978-0-198-75903-4.]

Most labour lawyers would agree that labour law is in crisis. Nonetheless, there is still no consensus as to the nature or causes of this crisis and no reasonable prospect of a solution. In *A Purposive Approach to Labour Law*, Guy Davidov attempts to bring a new perspective to bear on the issue. In 10 extremely engaging chapters, he analyses in depth what he believes to be the main problems facing labour law today. Even more importantly, he suggests how those problems might be addressed in practice.

Davidov's basic argument is that labour law's crisis is the product of a mismatch between labour law's goals and its means (p. 2). He argues that labour law exists for a purpose and has, over time, developed methods appropriate for achieving it. The problem is that these mechanisms have become misaligned in recent years as a result of changes in the labour market. According to Davidov, the solution is that courts and practitioners should adopt a purposive approach when formulating and applying the law, for this is the first step towards realigning labour law's goals with its means (p. 4).

It has long been recognised that labour law responds to the vulnerabilities inherent in employment relationships, such as subordination and dependency (pp. 34, 251). Davidov advocates a context-sensitive application of the law in order to address these vulnerabilities in all the different forms they take in a modern capitalist society. He suggests that subordination should be understood to refer to the democratic deficits (pp. 38–43) and inability to spread risk (p. 47) that result from the employee's subordination to the employer's control. Davidov also suggests that the employee's dependency should be understood as extending beyond economic dependence to the social and psychological dependence peculiar to employment relationships. Labour law is primarily concerned with addressing these basic vulnerabilities.

In many respects, Davidov's arguments reiterate Kahn-Freund's insight that subordination is inherent and unavoidable in all employment relationships. Davidov's arguments reinforce the view that labour law's main rationale is to counter subordination by adjusting relationships of subordination and control so that they resemble relationships of co-ordination (O. Kahn-Freund, *Labour and the Law* (London 1972), 7). Davidov goes further than Kahn-Freund, however, and stresses the importance of expanding our understanding of dependency (p. 43) and the

important role of employment in the formation of social identity. The distinguishing feature of this work is that, while Davidov reiterates some traditional justifications of labour law, he expands on these arguments so as to provide a structured *practical* guide to courts and practitioners struggling to apply labour law today (p. 255).

The book is split into two parts, the first part discussing labour law's purpose and the second its means. Davidov adopts a Dworkinian method in seeking to provide a normative justification of labour law that also offers a convincing explanation of how it has developed (p. 26). This means that he rarely challenges some of the deeply embedded assumptions of the courts' practices, implicitly endorsing the contract-based reasoning that dominates their approach. He misses a crucial opportunity to explore how non-contractual mechanisms might contribute to realising labour law's purposes (p. 169). For example, he could have developed his discussion of the proportionality standard (chapter seven) in order to explore, as Hugh Collins has done ("Market power, bureaucratic power, and the contract of employment" (1986) 16 I.L.J. 1), how public-law-style controls might more rigorously check the discretionary powers of the employer, further realising labour law's purpose.

Throughout Part I of the book, Davidov refers to academic commentaries and case law from Israel, Canada, the UK and the US in order to combine analysis of labour law's general purpose with analysis of the particular goals of minimum wage legislation, protection against unfair dismissal and freedom of association. Davidov seeks to prove that his suggestions are capable of applying generally, not only to particular areas of labour law. He draws on these four jurisdictions to argue that a general analysis of labour law's purpose is possible, and not limited to a specific period or jurisdiction (p. 27).

In Part II, Davidov suggests how these purposes might be realised in practice. He envisages his purposive approach being adopted by policy-makers when formulating the law, and by courts when "filling gaps" in the law and interpreting statutes and when responding to constitutional challenges (pp. 14–20). He suggests, for example, that purposive interpretation requires more than a focus on the intentions of the drafters of the legislation. It requires looking at the legal, social and historical context of the statute with a view to understanding the broader purpose behind it (p. 18). Davidov uses examples from the case law and offers suggestions as to how present-day attempts at purposive interpretation might be improved (chapter eight).

The most engaging chapter in Part II of the book is chapter six, which discusses labour law's scope. Here, Davidov explains the importance, when applying the law, of identifying the specific vulnerabilities associated with employment. The degree to which these vulnerabilities are present varies according to the specifics of the contract. Davidov therefore suggests that, *whenever* there is some element of *both* subordination and dependency, labour law should intervene (p. 134). This is broadly in line with a suggestion made by Hugh Collins ("Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws" (1990) 10 O.J.L.S. 353) who, like Davidov, favours a strong presumption that a person who contracts to provide services is an employee, absent convincing evidence to the contrary.

In chapter seven, Davidov presents his argument that open-ended standards, such as good faith and proportionality, can advance labour law's goals (p. 157). The premise of the argument is that employment relationships present a sufficiently high risk that an employer will abuse its power that society may fairly expect the employer to conform to higher standards of behaviour than might be expected of parties in other private relationships. He suggests that the relational nature of the contract, combined with the particularly acute problem of employer evasion, makes the case strong for implying an obligation of good faith into employment

contracts (p. 172). Davidov argues that open-ended standards are more difficult than hard-and-fast rules to evade, such that employers are likely to formulate procedures to facilitate good practice rather than risk contravening an indeterminate law. The problem is that this indeterminacy cuts both ways; it may discourage employees from challenging the actions of employers, and thereby *encourage* non-compliance. If employees cannot predict the outcome of their case because the standards applied are too uncertain, then there is more at stake in bringing a claim. There is a risk that an excessive use of such standards might discourage employees from relying upon contractual mechanisms of enforcement.

Davidov devotes chapter nine to a discussion of the "enforcement crisis" and suggests how compliance with labour laws might be increased. He aims to explore how compliance with labour law might be encouraged without the need for substantial resources to be devoted to expensive mechanisms of enforcement (p. 229). He thereby envisages a new approach to labour law that does not rely on *ex post* enforcement mechanisms at all. He makes three suggestions to this effect: creating economic incentives to comply (such as through taxation or direct subsidies), inducing compliance by putting pressure on "lead companies" (those companies employing labour indirectly, often by means of sham outsourcing arrangements) and promoting union membership (p. 230). This chapter would benefit from a more detailed discussion of the practical steps these measures would involve. But Davidov certainly provides an interesting menu of measures that have the benefit of being relatively low in cost (pp. 238, 247). The idea of using "lead company" liability to improve compliance among contractors is particularly attractive, and may help to address the enforcement problems associated with complex supply chains and elaborate corporate structures. Such arrangements are increasingly common. Attributing liability and holding employers to account have proven particularly difficult.

It is interesting that such a book should be published at a time when instrumental approaches to law are increasingly criticised. The growing popularity of post-structuralist accounts of law and society, such as sociological systems theory in particular, has thrown such purposive approaches into question. Post-structuralist accounts emerged in response to the apparent "failure" of the purposive forms of regulation characteristic of the welfare state. The autopoietic approach to law, for example, associated with scholars such as Niklaas Luhmann and Gunther Teubner, suggests that the legal system's self-referential mode of operation places inherent limits on the extent to which legal regulation can be used as a policy instrument. There may be limits to what a "purposive approach" can achieve in practice (see G. Teubner, *Juridication of Social Spheres* (Berlin 1987)). It is a shame that Davidov fails to engage with these arguments (pp. 6, 254–55). He seems unwilling to entertain the possibility that the sheer complexity of the social domains that labour law seeks to regulate is a barrier to what an instrumental approach can achieve (see G. Teubner (ed.), *Dilemmas of Law in the Welfare State* (Berlin 1986)).

There may be other reasons to question the "intuitive appeal" of Davidov's purposive approach (p. 255). His instrumental approach attaches the legitimacy of labour law to an *ex post facto* assessment of the relative costs and benefits of different legal rules. This risks a situation arising in which the protection of employees varies with changing market conditions, thus preventing labour law from making a broader commitment to an objective minimum standard. To an extent, Davidov's approach robs labour law of the free-standing legitimacy that might protect labour rights against criticisms in the light of what the available empirical "evidence" might suggest at a given time. This is a particular concern in a field such as labour law, where many attempts have been made to measure the effectiveness of legal rules against social and economic outcomes, with a view to using this data

as a guide for policy-making (see e.g. *OECD Employment Outlook 2013*; World Bank, *Doing Business 2006*). The data is often beset by serious methodological limitations and has historically been based on unarticulated assumptions that are liable to distort the conclusions drawn. Recent attempts to provide a broader narrative for labour law, grounding it in concepts such as dignity or capabilities, might therefore offer labour law more protection against its critics than the purposive approach advocated here (see e.g. B. Langille, "Labour Law's Theory of Justice" in Davidov and Langille (eds.), *The Idea of Labour Law* (Oxford 2010), 101).

These minor points aside, Davidov's approach is refreshing. He situates labour law within the conflict of labour and capital and provides a powerful justification for the selective scope of labour law (pp. 69–71). That is not to say that universal social policy does not have its place, as others have argued (e.g. A. Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford 2001)). But Davidov makes a convincing case that social policy should only ever be used to complement, and not replace, the s*pecific* protections provided by labour law (p. 71). Davidov is making a case for labour law to be seen as a specific and distinct discipline with a unique rationale, much as it was in the mid-twentieth century. He argues convincingly that labour law's goals cannot be adequately achieved by alternative forms of social regulation.

This book provides a welcome reappraisal of labour law as a discipline. Davidov's approach reminds labour lawyers that "laws are meant for a reason" and that only by understanding the historic role that labour law has played can we understand its place and purpose today. *A Purposive Approach to Labour Law* is a book about what labour law should *and could* be. While one may be sceptical about some of Davidov's suggestions, few will object to his aim or purpose.

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Landmark Cases in Property Law. By Simon Douglas, Robin Hickey and Emma Waring (eds.) [Oxford: Hart Publishing, 2015. xxvii + 309 pp. Hardback £70. ISBN 978-1-849-46608-0.]

Landmark Cases in Property Law is the seventh instalment in the *Landmark Cases* series by Hart Publishing. It follows books on *Restitution* (2006), *Contract* (2008), *Tort* (2010), *Family Law* (2011), *Equity* (2012) and *Land Law* (2013), and was published just before *Medical Law* (2015). As with long-running series of films or novels, later instalments occupy a difficult position. Are they worthy successors of the highly successful early instalments that made the series possible? *Landmark Cases in Property Law* suffers from comparison with earlier titles, but is still well worth the money.

Four of the first five books were edited by Professors Charles Mitchell and Paul Mitchell and followed a simple, winning formula. The landmark cases were presented in chronological order by legal historians who provided illuminating background information. Anyone interested in a case, from a student reading it for the first time to a teacher who knows it by heart, could learn from the chapter and develop a new appreciation of the case. Each chapter could be read on its own or the book could be read from front to back, thereby providing insights into the development of an area of law.

These books have the same attraction as "top 10" lists of movies or songs. We are pleased when they confirm our opinions. We may disagree with some selections, but usually understand why they deserve to be there. If we encounter an unexpected item,