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A New Province for Women and Work

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Introduction

The plenary papers provide rich reflections on Australian industrial relations. Drawing on a wealth of experience, Gardner, Hancock, McCallum and Niland comprehensively cover the field of traditional industrial relations by examining those aspects that have engaged considerable scholarly attention since the 1950s: labour law; Commonwealth-State jurisdictions; wage policy; the role of tribunals; unions and industrial action. In so doing, the plenary authors recognise that industrial relations regimes generally aim to balance employer-employee power, provide conditions that enable workers to support themselves and their families, and set a reasonable safety net to protect the weakest.

Gardner's reference to the 'martingale' and Niland's to the 'light on the horizon' remind us that, yet again, in 2008 we are at another turning point. To make the most of the opportunity we need not only to adopt but move beyond the thinking that underpins the policy suggestions made by the plenary authors. Now should be the time to change the boundaries of traditional industrial relations by taking much greater account of gender and speculating on what a renewed industrial relations system might look like. Indeed, I and others have argued that such a re-conceptualisation is necessary if industrial relations is to remain a relevant field of study, practice and regulation (Forrest 1993; Pocock 1997; Baird 2003).

To do this we need to understand the new context, problems and challenges we face, recognising, as do the plenary authors, that the historical conditions which set Australia on the arbitral path have altered considerably. We should also move beyond thinking that 'globalisation' is the only aspect of the new environment to which industrial relations systems and institutions need to respond. In fact, the more pressing concerns for the daily working lives of most Australians are at the domestic level — in their home lives and workplaces.

My focus is labour market discrimination and the gendered nature of work. I argue that women's different participation in the labour market — both historically and relative to men — requires us to resolutely cast off the thought shackles of the male breadwinner model. This gives rise to identifying the new problem which, is not the problem of strikes and the need to create 'a new province for law and order'. The challenge is creating a new and agreeable province

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for women and work, and for more equitable gender relations. We urgently need to address the barbarous tensions women face in combining their roles of reproduction and production. Having identified this as the 'problem', my analysis turns to three areas that are symbolic of and central to industrial relations scholarship. These are pay, hours and leave. Each calls for new scrutiny through a gender lens.

The New Gender Context — Change and Inertia

Labour force participation rates have steadily increased for women and steadily declined for men[1]. Women now constitute 45 per cent of the Australian workforce and the main contribution to the overall increase in Australia's workforce participation in the last 15 to 20 years has come from women. Furthermore, more mothers are now in the paid workforce than ever before. Fifty per cent of women with children less than six years old are at work, as are nearly 70 per cent of women with children 6–14 years old.[2] True, many are not full-time employees, but by way of contrast, in 1954**,** fewer than one in three women in Australia (29 per cent) was employed and just 7 per cent of married women were in the paid workforce. Statistics for part-time work, now the significant feature of women's work, were not even gathered in 1954.[3]

These are profound changes, impacting not only in the workplace but also in the home, in communities and on gender relations. However, occurring at the same time as this rise in female labour market participation, and inseparable from it, are increasing domestic pressures. These pressures are reflected in debates about the domestic division of labour, the findings that men's time spent on household duties has moved only slightly and that women continue to carry the burden of care. Furthermore, while there is dramatic change in participation patterns, the labour market continues to be highly differentiated, and the patterns and conditions of work for men and women are very different.

Amid these changes, some aspects of the gender divide remain largely unchanged. Women are more likely than men to rely on awards to set their pay and conditions. In 2004, a quarter of all women had their wages and conditions determined by awards only, compared with 15.7 per cent of men. Women were still much more likely than men to be concentrated in low paid, low skilled sectors of the labour market, under part-time and casual working arrangements. Women comprised more than half the workforce in a range of mainly award-based and often low-paid industries: health and community services, accommodation, cafes and restaurants, retailing, cultural and recreational services, and education.[4] Men's and women's experiences of work over the life course differs significantly too — with women's work being far more regulated by the needs of the home and children than men's. Compared to men, women feel less secure in the labour market. Women in full-time jobs and high-skilled jobs are more likely to feel overloaded than men (van Wanrooy 2008). WorkChoices exacerbated these tensions in many ways.

An explicit gendered analysis of the impact of WorkChoices highlighted the specific and significant problems for low paid women as job insecurity, pay insecurity and unpredictability of working hours (Elton et al 2007). Further

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analysis showed that each of the above three deleterious changes in working conditions spread beyond the industrial relationship to undermine the women's self-confidence, family relations and community involvement (Baird et al 2007). The boundaries between work and home were both broken and complex; an important reminder that the system of industrial relations interfaces with many other aspects of working lives and can therefore produce both positive and negative consequences for society. As McCallum notes, the move 'to enlarge the capacity of employees to seek remedies if they have been dismissed' is therefore a welcome change, but more needs to be done to remedy the low and irregular pay and the uncertainty of working hours for part-time and casual employees in vulnerable employment.

In unionisation rates and representation we also see significant change. Thirty years ago, men were 50 per cent more likely to be union members and almost 100 per cent more likely to be union leaders, than women. While union density has declined overall in the last 30 years, female density has declined at a much lesser rate than male density. Today, the female unionisation rate is approximately 18 per cent compared with male unionisation at 21 per cent, and four of the five largest unions affiliated with the ACTU have more female members than males (Cooper 2008). A more feminised workforce and a more feminised union membership characterise the current context. The union men of the past often had 'ambivalent, contradictory and complex' relations with female unionists (Ellem 2008), and they also pursued bargaining agendas that met their particular needs and interests as *male* breadwinners. This was understandable given the industrial relations climate and social conditions of the day (Frances 1993), but social and demographic conditions have changed, necessitating better labour market outcomes for women.

Unfortunately, at the same time that females are building the capacity of the workforce and union movement, lower unionisation levels overall, coupled with reduced bargaining rights, have led to reduced union power and representation in the workplace. The opportunity for all workers to express their voice and bargain for improved terms and conditions through the traditional channel has thus been diminished. There is no doubt that union recognition and representation rights need enhancing as the plenary authors argue, but given the reality of reduced union presence and power in many individual workplaces, and their complete absence in others, perhaps a new industrial relations system should also consider additional 'voice' mechanisms — especially for those segments of the labour force completely disenfranchised industrially. Many of these are women.

Addressing Women's Issues: Pay, Hours and Leave

The new province for women, work and gender relations must address the double burden women carry of family and paid work. The gendered nature of the old system needs to be acknowledged by observers, and not replicated in a new system. We need to pay specific attention to fundamental industrial relations matters of direct and clear relevance to women. In particular, these should include pay equity, working hours and maternity leave.

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Pay Equity

There were some advances in pay equity for women, it is true to say, in the arbitral model. These came through Test Cases in the federal sphere and some state jurisdictions. But this progress was then undermined by the rise of individual bargaining and the exclusion by WorkChoices of the new and innovative equal remuneration principles of New South Wales and Queensland. After starting to close the gap in the early 1990s, by 2006, female hourly earnings for private sector, non-managerial employees were again 15 per cent lower than men's. The gender pay gap had widened in the neo-liberal and individualised period of the *Workplace Relations Act* 1996. Individualised bargaining is regarded as particularly disadvantageous for women, so it is pleasing to see that the plenary pieces censure WorkChoices. Nevertheless, much more could be said about how to ensure that a new system not only prevents current inequities from persisting, but also provides for avenues of redress. As Smith (2008) says, the New South Wales and Queensland state principles ensured that undervaluation, rather than discrimination, was to be the basis of claims for equal remuneration. This is a concept capable of disrupting the sameness/difference dilemma. There was also no requirement for comparators. Those state decisions not only point to the importance of thinking differently about industrial relations problems, but also remind us of the potential value of other systems that can provide a different orientation and perspective on issues.

We therefore need not only a uniform national system, as the plenary authors argue, but more importantly to my mind, a system that can meet the needs of the segmented and divided labour market. Regardless of any arrangements that are made to unify state and federal systems, any new set of rules must include a method to continually close the pay equity gap and the undervaluation of women's work. For instance, Smith (2008) argues, an Equal Remuneration Principle should include 'a test of undervaluation as opposed to discrimination; flexibility in comparative benchmarks and a contemporary assessment of work value not prejudiced by previous assessments.'

Mechanisms to ensure the integration of equal remuneration principles should be established as a norm within the new institutions and procedures for pay setting. Until true pay equity is achieved and women's worth is recognised, inequities in gender relations in the home and in the workplace cannot be remedied.

Hours of Work and Flexibility

Hours of work are another matter that has traditionally attracted attention of the industrial relations community. Regulation of the length of the working day and week, and the intensification of work are relevant to both men and women. Arguably, of additional importance for women are the issues of flexibility and regularity of hours, especially for those who have care duties for the young, the aged and the disabled.

With the inclusion of a standard on the right to request flexible working arrangements, the new National Employment Standards (NES) do at least signal

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a government more sympathetic to the plight of working families, if not explicitly working women. And although there is an inherent inertia once standards are legislated, it must be said that the ten proposed Standards are a genuine advance on the five absolute minima introduced by the previous government. One of the problems with legislated standards is their propensity to atrophy. As Hancock notes in a related argument, it is preferable therefore to have adjustments in the safety net delegated to a separate and apolitical authority. The remit of Fair Work Australia to conduct enquiries and recommend adjustments to the NES is a necessary and welcome inclusion in the proposed legislation and must not be forgotten.

In 2005, the last of the major test cases was run before the Australian Industrial Relations Commission (AIRC). It resulted in a raft of new and timely work and family provisions, but the ink was barely dry before WorkChoices annulled their effect (Williamson and Baird 2007). Two of the AIRC provisions have now made their way into the draft NES. These are the new right to request flexible working arrangements and the extension to the unpaid parental leave standard. Both of these begin to shift Australian industrial relations away from its male breadwinner footing, but neither is unproblematic.

The first new Standard to which I refer is the right to request flexible working arrangements for parents and carers of children 'under school age'. Exactly what these flexible working arrangements mean is deliberately left undefined by the government, but according to the draft, they could include 'different working hours' or 'working from home'. This right to request represents a very important addition to Australia's minimum standards, but if we consult international benchmarks (or indeed global patterns), then it is clear that Australia could go far further in extending working time flexibility for employees.

There are potential problems with the new right to request flexible working conditions. The request must be in writing and the employer can refuse on 'reasonable business grounds'. What constitutes reasonable business grounds is not defined nor is it clear what the mechanism for settling grievances will be, should there be a dispute about the request or its refusal. These issues of definition and resolution need to be clarified, especially when we know that many women are voiceless and powerless in the workplace.

Maternity Leave

The next matter I wish to cover is maternity leave. This is important because it encapsulates the direct connection between women's dual and sometimes conflicting roles as producers and reproducers. It sits right at the intersection of women's role as mothers, and women as employees. Given women's changing working patterns outlined earlier, it is not surprising therefore that the issue keeps returning to the public debate. What is surprising is that the provision of paid maternity leave has not yet been resolved in any satisfactory way! Thus, the second change introduced by the new NES and which is very relevant to working women's lives, is the new unpaid parental leave standard. McCallum refers to it as 'the most interesting new national standard'.

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This is a new standard that, in effect, appears to contain at one and the same time a new right *and* a new right to request. The provision of 52 weeks unpaid parental leave has been a feature of the Australian legislative landscape for some time, originating with the Maternity Leave Test Case of 1979. The new Standard proposes a right to an extra 12 months per couple 'to provide each parent with a separate entitlement to up to 12 months' unpaid parental leave'. As part of this, there is a right to request an additional 12 months unpaid parental leave 'where the family prefers one parent to take a longer period of leave'. Thus, this is an absolute right for fathers to also have 52 weeks unpaid parental leave, but in practice we will more than likely see an extension to two years unpaid leave for mothers, if the employer agrees. The 12 month extension to the 52 weeks can be refused by the employer on 'reasonable business grounds'. Again, the meaning of this phrase is deliberately, and dangerously, left undefined.

Unfortunately, the draft NES still only provides for *unpaid* maternity/parental leave. Why not introduce paid maternity leave? Unpaid annual leave or unpaid long service leave would never have been accepted for men. Why then do we countenance unpaid maternity leave for women? Why do we expect more unpaid labour from women, especially when women are adding labour power to the market economy and reproducing the society? This is a perfect opportunity to enshrine a new national standard for paid maternity leave. The community demand is there and all that is really needed is the government will. True, the Productivity Commission is conducting an inquiry, but this would be unnecessary if the leave was mandated. Only 37 per cent of mothers currently use paid maternity leave according to the Parental Leave in Australia Survey (Whitehouse et al 2006). Moreover, the entitlement is highly variable and contingent on factors often beyond the woman's control, such as employer profitability, size and industry norms. If at least a minimum entitlement was provided for all women through the NES, provision could still be made within the industrial relations system to allow for bargaining to top-up the proclaimed NES level.

As it is, *unpaid* parental leave is problematic for equitable gender relations. The willingness and ability to use the policy is crucial and if current patterns predict future behaviours, there will be an even more gendered outcome if unpaid parental leave periods are extended. In the survey referred to above, we found that 68 per cent of mothers took a combination of paid and unpaid maternity leave and 76 per cent took paid and unpaid maternity leave *and* other leave, such as their annual leave. This contrasts starkly to the pattern for fathers where only 7 per cent took unpaid parental leave. These statistics demonstrate a reluctance among fathers and households to use *unpaid* parental leave. As a result, the current unpaid parental leave policy, while available in principle to both men and women, in practice is used by women far more than men, producing a very gendered care regime. The most recent ABS statistics on the low numbers of stay-at-home dads tend to confirm this pattern.[5]

In addition to providing paid maternity leave, another way of beginning to address the inequities in the division of labour and distribution of care responsibilities between the sexes would be to introduce specific *paid paternity*

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leave on a 'use it or lose it' basis; making it financially possible for fathers to take time off work. Many other countries have introduced such 'daddy leaves' without undermining the whole economy or the social order. Exemplifying the strength of the male bargaining tradition I referred to earlier, paternity leave has not really made it on to the industrial relations agenda in Australia. Only approximately 17 per cent of enterprise agreements making any mention of paid paternity leave, most with a duration of one week.

Conclusion

If the new world of industrial relations is to address the problems of today, then the solutions must go beyond our traditional understandings of resolving the 'labour problem', the 'wage problem' and the 'productivity problem'. Productivity, capacity, stability and flexibility may remain goals of the industrial relations system, but they are not necessarily mutually exclusive with the gender realignments argued for above. Indeed they can be mutually beneficial, for as we know, removing discrimination, insecurity and improving dignity at work all contribute to better employee commitment and performance.

We need to re-conceptualise the problem and the 'system' from a gender perspective. We need also to consider domestic issues as well as globalisation; and we need to continue to protect the most vulnerable by introducing mechanisms that have not to date been considered part of the Australian way, for example, alternate 'voice' mechanisms. Three other areas that should be addressed immediately, directly and more fully than is currently proposed are pay equity, hours flexibility and paid maternity leave.

Perhaps above all we need to change the normative environment that continues to implicitly reinforce an outdated male breadwinner paradigm. Legislation is an essential component of this, as are community debates and educational leadership. The possibility of instilling an explicit gender awareness in policy is in our grasp right now. Let us hope that, as we immerse in the detail of legislative debate and policy change, we do not lose sight of the vision and the potential for a new province for gender relations, women and work.

Notes

1. ABS 6202.0.55.001; Labour Force, Australia, Spreadsheets, Feb 2008.
2. ABS 4102.0 — Australian Social Trends, 2007.
3. ABS 4102.0 — Australian Social Trends, 1998.
4. WISER (2006) Women's Pay and Conditions in an Era of Changing Workplace Regulations: Towards a 'Women's Employment Status Key Indicators' (WESKI) Database pp. 11–13. Prepared by Alison Preston, Therese Jefferson, Richard Seymour for Women in Social and Economic Research (Perth, Curtin University of Technology).
5. ABS 6220.0 — Persons Not in the Labour Force, Australia, Sep 2007

https://doi.org/10.1177/103530460801800209 Published online by Cambridge University Press

References

Baird, M. (2003) 'Re-Conceiving Industrial Relations', *Labour & Industry*, 14(1), pp. 107-115.

Baird, M., Cooper, R. and Oliver, D. (2007) *Down and Out With Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment, A Report to the Office of Industrial Relations, Department of Commerce, NSW Government*. Women + Work Research Group, Sydney.

Cooper, R. (2008) 'Women Union Leaders', Presentation to *Women's Business — Current issues and future agendas,* Symposium Women and Work Research Group, 7 March, Sydney.

Ellem, B. (2008) 'Women's Union History: Revisiting a Century of Gender Struggle', Presentation to *Women's Business — Current issues and future agendas,* Symposium Women and Work Research Group, 7 March, Sydney.

Elton, J., Bailey, J., Baird, M., Charlesworth, S., Cooper, R., Ellem, B., Jefferson, T., Macdonald, F., Oliver, D., Pocock, B., Preston, A. and Whitehouse, G. (2007) *Women and WorkChoices: Impacts on the Low Pay Sector,* Centre for Work + Life, Hawke Research Institute, University of South Australia, August.

Forrest, A. (1993) 'Women and Industrial Relations Theory: No Room in the Discourse', *Relations Industrielles*, 48(3), pp. 409–38.

Frances, R. (1993) *The Politics of Work: Gender and Labour in Victoria 1880–1939*, Cambridge University Press, New York.

Pocock, B. (1997) 'Gender and Industrial Relations Theory and Research Practice', *Labour & Industry*, 8(1), pp. 1–20;

Smith, M. (2008) 'Gender Pay Equity Reform in Australia: What is the Way Forward?' Presentation to *Women's Business — Current issues and future agendas,* Symposium Women and Work Research Group, 7 March, Sydney.

van Wanrooy, B. (2008) 'Women at Work', presentation to *Women's Business — Current issues and future agendas,* Symposium Women and Work Research Group, 7 March, Sydney.

Whitehouse, G., Baird, M., Diamond, C. and Hosking, A. (2006) *The Parental Leave in Australia Survey: November 2006 Report*, available: http://www.uq.edu.au/polsis/parental-leave/level1-report.pdf [accessed 08 April 2008].

Williamson, S. and Baird, M. (2007) 'Family Provisions and Work Choices: Testing Times', *Australian Journal of Labour Law*, 20(1), pp. 53–74.