

Symposium

# Securing Everyday Fairness? Rights, Knowledge and Regulatory Responsibility

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*The Economic and Labour Relations Review* has always had a social justice orientation. It is appropriate that the symposium in this 20<sup>th</sup> anniversary issue reflect that orientation. This article and the four that follow address aspects of the state's responsibility for securing and monitoring citizens' rights to equitable resource use and outcomes. From the time of the Federation of the Colonies in 1901, argues Gregory Melliush (1998: 20), the new Commonwealth of Australia became a 'social laboratory' in which the state was deployed to encourage citizens to develop their potential. The citizen at the heart of this 'positive doctrine of social progress' was tellingly named by Melliush, 'John Citizen'. The policies associated with this version of a commonwealth focused not only on state intervention and initiatives, but also on the maintenance of 'the family as the fundamental institution in which future Australians would be raised' (Melliush 1998: 20). The positive aspects of the social laboratory encompassed protective legislation designed to secure equal rights for women and men, state pensions for the aged and invalids, and rights for mothers (Lake 2009). As well, the state would provide public education for children and prevent the exploitation of their labour, and ensure worker safety and minimum pay. However, the social laboratory was underpinned by inequitable principles and a variety of exclusions. These were enshrined in the White Australia policy and the 1907 Harvester wage decision which established needs as the dominant paradigm for wage determination in Australia and which formalised the male breadwinner norm. Inclusions and exclusions from the benefits of citizenship were fundamental to the maintenance of the country's relatively high standard of living. Yet as Gail Reekie (1992: 151) points out, this standard was made possible by women's paid and unpaid labour. Indeed, in her view, 'the image of the social laboratory failed to encompass' some important aspects of social existence because it maintained the dominance of masculine culture, denied women's economic contribution and failed to address issues of relevance for women's domestic circumstances. Spectacularly, it is also built on dispossession of the rights of the members of Indigenous nations.

Although the depiction of Australia as a social laboratory has long since passed into the annals of history, and many of the achievements associated with the social laboratory era have been eroded (Jamrozik 2004: 62), the vision of

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the nation as an egalitarian democracy has continued to inform the espoused national culture, and a variety of government initiatives have focused on the promotion of equity as a means of overcoming disadvantage. The notion of the 'fair go' that once underpinned expectations of the state's duty to protect the rights of workers, of women and of children still echoes in the country's political and related institutions, even though most would agree that the echo has had a hollow ring for some time, as notions of fairness, of human rights and of social justice were tempered by the demands for economic efficiency. Nevertheless, the advent of Fair Work Australia not only harks back to the aims of the social laboratory, it also provides mechanisms for addressing social exclusions based on pay equity, migration, discrimination and so on.

Most recently, the recommendations of the House of Representatives report *Making it Fair* (Parliament of the Commonwealth of Australia 2009), if implemented, could certainly contribute to closing the economic gap between women and men, and enhance employment rights for women with disabilities, and migrant and Indigenous women.

The very title of the *Making it Fair* report acknowledges the role of the state in both contributing to and overcoming the inequities embedded in, and reproduced by, existing regulatory frameworks. *Making it Fair* recommends over twenty amendments to the *Fair Work Act 2009* and the *Anti Discrimination Act 1984*, which provide mechanisms for closing the 17 per cent gender gap in average weekly full time earnings. This gap rises to 33 per cent when we include part time work, while the gender gap in superannuation balances is 48.6 per cent (Australian Human Rights Commission 2009: 6). On average, a woman will earn almost one million dollars less than a man for a lifetime of work, and women are 2.5 times as likely as men to live in poverty in their old age (Castells et al 2009). Even so, the recommendations on superannuation in *Making it Fair* do not go far beyond a proposal that the Superannuation Guarantee be extended to very low earners (Parliament of the Commonwealth of Australia 2009: Recommendation 37).

By default, poor maternity leave and child care arrangements, and workers' loss of control over full time hours during the neoliberal decades in Australian have resulted, as Trish Hill's article in this symposium forcefully documents, in the emergence of a system of production and reproduction based on one and a half breadwinners and a female carer, both working very long hours. Where Australia's particular modification of the standard male breadwinner-based employment relationship sits within international comparisons, and its relationship to gendered forms of precarious employment, are questions addressed in an important new book by Vosko, MacDonald and Campbell (2009), reviewed on pages 133–138 of this *ELRR* issue.

Systems of production, consumption and reproduction must be considered together as determinants of everyday fairness. Trish Hill's contribution to this symposium addresses the interaction of these three systems in disadvantaging women through a combination of income poverty and time poverty. The great value of her article lies in its painstaking development of a methodology for measuring fairness of living standards in terms of a 'full income' concept

of wellbeing, which includes leisure. By working at the level of the individual rather than the household, she proposes a new composite measure of wellbeing that includes the value of time spent in leisure and unpaid work along with individual income, the benefits accruing from the 'social wage' and the welfare gains from the ownership and use of assets. She is thus able to show that gender inequalities in living standards tend to be underestimated by conventional income measures. Inequalities in personal income and time use are the two greatest contributors to gender inequality in full income. Hill's reliance on historical data results from the need to bring together sporadically collected household time use and expenditure data, and from the intricacy of the work required to derive the results. The issue of whether Australian statistical data collections provide for ease, continuity and timeliness of gender analysis was a major theme addressed by the *Making it Fair* Report, and indeed Recommendations 48 to 54 of that report suggest changes to existing Australian Bureau of Statistics and Household Income and Labour Dynamics Australia surveys, series, alongside a new National Pay Equity Workplace Survey.

The second article in the symposium addresses another aspect of social reproduction — education. It contributes two significant innovations — one conceptual, the other operational. Redmond uses a rigorous application of three philosophical concepts of 'rights' (difference, complex equality and capability) to operationalise the concept of the child's right to development to 'fullest potential'. He then uses readily available data on the educational outcomes of 15 year olds, to show how governments can be held to account through international and intertemporal benchmarking. Most importantly, using the capability approach, Redmond goes beyond outcomes to include inputs. This allows him to develop a rights-oriented framework, linking each child's educational outcomes to the 'obligations of duty bearers who control the resources invested in her'. Redmond argues that major deficiencies in data collection and publication in Australia currently make it impossible accurately to estimate the relationship between resource inputs and the outcomes that Australian children achieve. In particular, in the context of debates over education privatisation, Redmond argues that failure to match input data to the output data reflected in national testing results is a major failure in accountability.

The final two articles in the symposium grew out of papers presented at the international conference on the *ARs — Rights, Reconciliation, Respect and Responsibility* held at the University of Technology Sydney on 1 October 2008. They were part of a panel session designed to explore whether government acceptance of responsibility for addressing inequalities and disadvantage through the enactment of various laws, policies and initiatives necessarily involved respect for those who have historically experienced inequitable treatment and/or disadvantage. These papers both analyse the nature of the reporting arising out of national equal opportunity legislation, and are timely in the light of the 2009 review of the Equal Opportunity for Women in the Workplace Agency (EOWA). In the light of the very severe concentration of women in low-paid, low-status positions in Australian workplaces, Andrea North-Samardzic goes back to the original 1984 legislation and its 1999 amendment, to pinpoint the origins of

the weak links between reporting and workplace change. Like Hill and Redmond, she identifies the importance of quantifiable benchmarking, but using qualitative interview data from organisations certified as ‘Employers of Choice’, she demonstrates the lack of correlation among reported outcomes, espoused policy and everyday workplace practice. Burgess, French and Strachan explore the conundrum that, while compliance with statistical reporting may not result in workplace cultural change, the approach increasingly favoured since 1999, based on ‘managing diversity’ (MD) has greatly weakened any capacity for rights-based claims. Disadvantage is individualised through a loss of focus on social groups whose systemic disadvantage can be established by statistical indicators. Through textual analysis of Employer of Choice and best practice reports, Burgess et al indicate both the diffusion and the conceptual diffuseness of the MD approach, and its departure from any basis for claiming rights.

Thus all four papers in the symposium argue the importance of evidence-based rights claims, using analyses of patterns that serve as indicators of systemically discriminatory social norms. It is interesting in this regard that *Making it Fair* advocates the abolition of EOWA and its replacement with a more narrowly-defined Pay Equity Unit, overseeing a ‘close to home’ workplace-based audit process.

In addition to papers from which the articles by North-Samardzic and Burgess et al are derived, the ‘4Rs’ panel session included a further paper on migrant women train cleaners (Taksa and Groutsis 2007) which challenged the assumption that respect either preceded or resulted from responsibility. While the exposure of inequitable treatment, harassment, discrimination and inter-cultural conflict certainly resulted in the adoption of Equal Employment Opportunity and Affirmative Action initiatives by the women’s employer, the NSW State Rail Authority, the implementation itself had little regard for the women’s rights and definitely showed no respect for their views or the sensitivities that resulted from their identities and experiences as women or as members of one of sixteen different cultural groups in their workplace (Taksa and Groutsis 2010). In short, neither the anti-discrimination laws nor multi-cultural or EEO policies — which ostensibly took responsibility for correcting the long-term impact of White Australia and the even longer term impact of its assimilationist underpinnings — have guaranteed the rights of these women to work with dignity and respect.

The connections among equity, rights and responsibility were well expressed in 1958 by Eleanor Roosevelt when she asked:

‘Where, after all, do human rights begin? In small places, close to home — so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighbourhood [s]he lives in; the school or college [s]he attends; the factory, farm or office where [s]he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity, without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger

world. Thus we believe that the destiny of human rights is in the hands of all ...'. (cited in Offord 2006: 21)

As Offord points out in this regard, 'the underpinning value and usefulness of human rights' in Roosevelt's conceptualisation 'is in their contextualisation; in their application, connection to, and realisation in, everyday life'. This is directly pertinent to the papers collected in this symposium. All the papers in this symposium are linked by efforts to provide 'insights into normative references that are unquestioned and systematically legitimated through governmentality'. Such insights, as Offord correctly concludes in my opinion, provide the means for activating human rights (Offord 2006: 21).

While the test of effective policy change is its impact on everyday lives, the authors of all four articles in this symposium argue that the responsibility for change does not rest solely with individuals. The norms which shape everyday practice are institutionally determined. The neoliberal reliance on individualised solutions has now been shown to have consolidated unequal power. Thus, it is not in the household alone that the gender distribution of unpaid care household work can be renegotiated; it is not through the use of league tables that under-resourced schools can be driven to stellar performance; and women's career paths have not been restructured through 'light touch' reporting of approaches to workplace 'cultural change' or 'diversity-valuing'. Necessarily-local change initiatives will succeed in changing the underlying norms that explain everyday experiences only when state institutions accept responsibility for careful comparative and inter-temporal monitoring and strategic support.

As the Director General of the Norwegian Ministry of Children and Equality noted in a recent speech in Australia, 'The road from well-meant rhetoric and dinner speeches to material results, is hard and demand devoted and systematic work. It takes time. You need governments and boards with distinct political will'. Since 1966, equal pay has been included in Norway's tripartite social partnership Main Agreement, and in 1966 a new National Insurance Scheme was funded by the social partners to cover almost all welfare issues. In 1975 the first Kindergarten Act provided the means to expand the Early Child Care sector. The Gender Equality Act of 1979, amended in 1981 and 1988, requires a gender representation of no less than 40 per cent on publicly appointed councils, boards, groups and committees. From 1993, the Parental Leave Scheme, which forms part of the National Insurance Act, was enlarged to 42 weeks, of which 4 weeks (raised to 10 in 2009) is obligatory leave for fathers (Hole 2009).

Clearly, Norway's pursuit of everyday fairness has relied on institutional and legislative support of the sort that once may have led it to be called a social laboratory. Unlike early 20<sup>th</sup> century Australia, however, Norway's model has focused on equity and inclusion. Strategies implemented across different sectors have recognised the inherent links between work and home, childcare, pay equity and occupational equity. Legislation securing formal rights has been supplemented by quotas, as a result of which 'attitudes have changed, old stereotypes have died' (Hole 2009). As this case shows, and as the contributors to this symposium have argued in different ways, ensuring that safeguarding fairness

of both opportunities and outcomes in this country requires more active commitment to auditing, data-monitoring and target- (or even quota-) setting.

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