WOMEN AND THE ARBITRATION SYSTEM

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In 1974 the Australian Conciliation and Arbitration Commission granted men and women the same minimum wage. In theory, then, women in Australia have finally achieved the right to equal pay. In practice, the principle of 'equal pay for equal work' is still 'abstract justice' rather than 'practical politics'. Many factors, such as the segregation of women into female-only professions, the application of the principle only to the minimum wage and not to over-award payments, and discrimination in education and job training, have contributed to the fact that for many women equal pay is just not a reality.

The roots of unequal treatment in employment for women certainly precede the establishment of organs of wage-fixing in Australia, but many of the problems now facing women were brought into existence and codified under the auspices of the Australian system of conciliation and arbitration. The period prior to the Second World War saw the establishment and institutionalisation of principles of wage determination which still hamper the development of women as productive members of the work force. The assumption that the wages of men and women should be differentiated became increasingly harder to displace when it became more and more firmly entrenched with each award that covered women workers.

As early as 1921 the Australian Labor Party had the right to equal pay for equal work as one of its political planks. For Labor to take up this demand it must have had some following amongst the party's supporters, yet it was not until 1974 that the principle was finally adopted by wage-fixing bodies. This treatment of women workers was not substantially disputed by either the personnel who sat on these wage-fixing bodies or by the officials of the trade union movement. We could simply say that Australia was and still is an inherently sexist society and look no further, but to do so would be to overlook the sort of reasons that are still important today in maintaining inequality in the work place — arguments which are increasingly being used to shift the responsibility for unemployment on to the female work force.

The system of industrial arbitration established in Australia was designed to facilitate the settlement of industrial disputes, but from the inception of the Commonwealth Arbitration system it appears to have operated under the assumption that it was the responsibility of the Court to protect the worker, rather than simply function as an independent arbitrator. In theory, the system of conciliation and arbitration has been seen by both unions and commentators as existing for the benefit and protection of the employee. Yet the position of female employees (probably the least powerful and least organised section of the work force) only exemplifies the fact that the primary function of the system is to implement and enforce an economic policy which will be least disruptive to industrial production.[1] The belief of trade unions, however, that the arbitration system existed for their benefit continued to exist long after the infant workers' movement had outgrown the need for any body to intervene with employers on its behalf.

Because of this attitude by the unions the historical situation was allowed to develop where in order to 'protect' one section of the work force the Courts and Commissions were able to ignore the needs to another. The practice of designating jobs as being 'men's work' or 'women's work', a characterisation which tended to denegrate the value of work done by women, was therefore allowed to pass without protest.

But the fundamental reason why the policy of the Court towards women was not challenged by the organised labour movement was the existence of what was known as the 'family' or 'living' wage — a concept of wage adjustment which dominated wage fixing from the time of its inception in 1907 and continued to exist, at least in principle, for the first half of this century as the foundation of wage justice.

One of the earliest basic wage decisions, often called the Harvester Case,[2] established the principle that the only 'fair and reasonable' wage for a worker was one which was capable of supporting not only the worker but the wife and children of the worker. In reality it was based on a mythical 'average; worker who had a wife and three children,[3] and, in fact, it could never have supported a family of five anyway.[4] It provided, however, sufficient reason to deny women the basic wage, on the grounds that, unlike the 'average' worker, they had no families to support. The family wage thus became a continuing barrier to prevent women from being paid equal wages to their male counterparts, even when they were both engaged in exactly the same work.

It was correct that most women workers at the time were young and single, the influx of large numbers of married women into the work force being a fairly recent phenomenon. But at the same time, 45% of the male work force was unmarried,[5] and yet with rare exceptions[6] all men received the same rate of pay.

The family wage was indicative of the way that the legal system is used to implement social policy. When it was argued, for example, that if the basic wage was supposed to be sufficient to support a family of five then single men should receive less, the Court responded by saying that such a principle would discourage the employment of married men and as such was unacceptable.[7] It was also stated that a wage which did not allow for a man to make provision for marriage was not 'fair and reasonable'.[8]

Mr. Justice Brown, of the South Australian Industrial Court, pointed out what he saw to be the dangers in awarding women wages which encouraged them to enter and stay in the industrial work force, going so far as to forecast the demise of the white race in Australia if women were offered too attractive an alternative to marriage and childbearing.[9]

The family wage was seen as offering an encouragement to male workers to marry and produce children. Particularly in the period immediately after World War I, the issue of the need to populate Australia was raised both as a reason for raising male wages and as justification for keeping female wages low.

This sort of philosophy was aimed directly at seeing women solely as child-bearers and not as wage-earners. If they were not completely ignored by the Court, their place in the work force was seen only as a transitory one and their wages as insignificant. To grant women equal pay was seen not only as a threat to the 'family wage' but as an encouragement to them to seek other futures than marriage and to engage in 'frivolous spending'.[10] It was only when a greater threat emerged, the threat that cheap female labour would undercut men in the competition for jobs, that women were granted equal pay, on the presumption that, given the choice, employers would rather use male labour.[11] Women could then return to their primary occupation of raising a new generation of workers.

The belief that male workers needed higher wages because of their matrimonial responsibilities was not the only reason which prevented women from obtaining the right to equal pay. Some women, in very limited areas, were, of course, granted equal pay, on the basis that they were in competition with men for the available

work. The problem of deciding when and if women were, in fact, in competition with men for jobs resulted in the Court creating classifications which designated work as either 'men's work' or 'women's work', to be paid at men's rates or women's rates.

This system was not based on any legitimate assessment of the value of the work (men's rates were always higher) or of the necessary ability to do the work but, initially, at least, by segregating those jobs which had 'traditionally' been done by women and classifying them as 'women's jobs'. At first, this meant that all other jobs were 'men's jobs', but with increasing industrialisation and the developments of technology new jobs were created. The result was often a long and bitter battle between unions and employers over which section of the work force should be given the right to do the new work.

The classification of a job as 'men's work' did not necessarily exclude women workers. Women could do that type of work but only on the condition that they were paid the male rate. This often meant that employers tried to have the jobs reclassified so that they could exploit the cheaper labour of women (for example, male 'clerks' and female 'clerk-typists' doing the same work, under two different classifications, and two rates of pay). The Courts appear to have been incapable of applying a consistent policy on this question and continually vacillated between opening up new areas of 'women's work' and imposing restrictions on the employment of women workers.

For the most part, both the unions and the Court saw the granting of equal pay as a way of guaranteeing that men were given the available work. This allowed the Court to see its role as the protector of the working people. When it granted equal pay in a particular area it was 'saving men's jobs'. Alternatively, when it refused to grant equal pay, usually in an area where male workers were not under threat, it was 'saving women's jobs'. The net result was that few women workers obtained equal pay.

The relationship that the female wage bore to the male wage was a reflection not only of the policy of the Court with respect to the maintenance of families but also of the value it ascribed to the work done by women (the female wage ranging from 54% to 60% of the male rate). The idea that the Court was protecting women was exhibited not only in the relative wage rates but also in the hours of women employees, the defining of 'suitable work' for women, and the attention paid to the health of women workers. A natural corollary of this was the assumption that the work done by women was of inferior value to that done by men, because of their innate disabilities, and therefore did not require the same remuneration. The theory of sexual suitability for jobs was complemented by the belief that female workers were 'girls' whose time in the work force was brief and whose ability to manage money was doubtful. Their relationship to the male work force was always equated with that of juveniles, junior males often receiving the same rate of pay as adult females. This was obviously aided by the type of factory legislation which placed physical limitations on the employment of 'women and children'. It cannot be denied that a large proportion of female workers (in 1934 it was 43%[12]) were juniors, but the assumption that all women workers were 'girls' who had little or no training and were not really interested in remaining in employment was often made without reference to fact.

In areas where men and women were both employed, as in the clerical and white collar fields of employment, the tendency was to classify jobs in such a way that women could only be employed in female-only occupations,[13] while in factory jobs the method was used of excluding women from the more skilled occupations by denying them access to apprenticeships.[14]

The fact that it was possible to obtain female labour cheaply was often identified in the minds of the judiciary with the assumption that if wages for such labour were raised it would be impossible for women to obtain employment.[15] They tended to ignore the factors that made it possible for employers to get women to

work for such low wages during the early part of the century and which were to set the trend for several decades of female employment.

Until the development of widely distributed and large-scale industry in the late part of the nineteenth century and early twentieth century, the only work for females was in private domestic employment or in the making of piece-work in the home. Both of these areas were notorious for their low wages rates and poor conditions. Obviously, then, as new areas of employment opened up, women were prepared to accept much lower wages than men for whom even the unskilled work has been much better paid than the sort of wages women could command.[16]

Particularly during the depression years employers often applied to the Courts to be allowed to employ women at lower wages on certain jobs. In granting one such application in the Wood and Basil Industry Award of 1932, Beeby J commented that his action might 'establish an avenue of employment which cannot be open if male wages are insisted upon'.[17] By allowing equal pay to be used as a method of excluding women from areas of work and therefore allow the Court to use the excuse of saving women's jobs when they permitted women to be employed at lower wages, the unions left themselves open to the very thing which they had tried to avoid — being edged out of employment by cheap female labour.

The practice of using subjective assessments of women's skills and disabilities both in classifying jobs and setting rates of pay for women workers pervaded the logic of the wage-fixing bodies. A job being classified as women's work because 'the work is essentially adapted for women with their superior deftness and suppleness of fingers'.[18] There appeared to be no contradiction between classifying a job as 'women's work' because it was done traditionally by women and setting lower wages for women to protect them from male competition in employment 'for which they are admirably, if not pre-eminently suited'.[19]

Just as their assessment of women's skills influenced the decisions of the Courts in classifying jobs as 'women's jobs', their assessment of women's disabilities also influenced the way in which they allocated women's work and assessed the value of work. Women were regarded as being less efficient than men. The Victorian Railway Commission, for example, in 1927 stated that they considered 'two male car cleaners are equal in capacity to three female care cleaners'[20]; a statement accepted by the Court without question.

Women's biology was accepted by the Courts as justification for restricting their wages and their range of available jobs. '...the comparative inefficiency of women in a large number of occupations may be attributed to a physiological constitution which involves periods of relative inefficiency.'[21] It was difficult however for women to complain. Although their 'disabilities' were used to deny them access to certain work and to justify giving them less pay, on the other hand they gained such things as the provision of seating facilities and rest rooms and provision for lost time due to 'indisposition peculiar to females'.[22]

A corollary to the image of the female worker as being weak and inefficient was the belief that women, or 'girls', as they were generally referred to, like children, should not be given too much money as they did not know how to spend it wisely. The implication was that if women received wages that were 'too high' they engaged in frivolous spending, which ultimately was at the expense of the standard of living of the average worker with his average wife and average three children.

Concern for the moral and physical well-being of 'girls' led also to restrictions in the employment of women in the manufacture of contraceptives[23] and in the metal trades.[24] It also led to a reduction in the hours of work for women employees. In general the hours were dropped from forty-eight to forty-four per week and in some cases this reduction for women was followed by a similar fall in the maximum hours for men in the industry, particularly in areas where both men and women were employed.

Quite apart from the doctrine of the 'family wage', the judiciary could find good reasons for excluding the possibility that women could be as productive as men. Mr. Justice Cussen, in the Clerks Case of 1913, set a precedent when he commented that not only were women 'speaking generally, in physical strength and endurance, and in the capacity for sustained work'[25] inferior, but that the fact that women left work to marry meant that they were an employment risk to the employer who therefore could not be expected to pay them the same amount as men.

The attitude of the judiciary, however, was not the only reason preventing women from achieving equality within the work force. Women were still a minority of workers and as such they suffered from a lack of power. Because of their industrial weakness there was no way that the principle of equal pay could be forced on the Court unless they had the backing of the organised trade union movement, which had the only power workers could use in the wage-fixing process.

With rare exceptions, the trade unions did not take up the campaign for equal pay. The influx of women into the work force during World War I did cause the unions to seriously consider the problems of their female members. For example, in 1927 the Amalgamated Clothing and Allied Trades Union commissioned Muriel Heagney to prepare an investigation into the cost of living for women.[26] The result of such actions, however, was that unions made independent claims for a 'basic female wage' rather than incorporating women into the general log of claims for male workers.[27]

The effect of the depressed economic conditions of the 1930's was, in general, a reversion to the attitude that what was good for the men was best for the union. Protection of men's jobs became the main motivating factor in arbitration applications. This led to an increase in applications for the prohibition of the use of female labour in some areas[28] and to a greater reluctance on the part of unions to push women's demands to the fore. Prior to the 1937 Basic Wage Case, considerable discussion had occurred about the issue of equal pay for women. Most of the unions had agreed, as a compromise, to ask for the female wage to be gradually raised, initially from 54% to 60% of the male wage. The Clothing Trades Union, one of the largest female-dominated unions, had a policy of equal pay, but after discussions within the leadership it was decided to set aside the claim for equal pay so that the claims of their male members would not be prejudiced by being heard separately from the other unions.[29]

The unions also shared with the Courts and arbitrators many of the backward attitudes towards women which marked their decisions. The concept of the 'family wage' was supported by the unions and this, in itself, was a barrier to developing a campaign for equal pay. For many male unionists, also, women were only a transitory feature of the work force and as such were not good unionists. Imelda Cashman a driving force behind the women's section of the Printing Trades Union in the 1920's and 1930's, often railed against the attitude of male members of the union who saw women 'not as colleagues, but as extraneous elements in economic life, sinc they have not yet rid themselves of the opinion that the proper sphere of women's work is in the home'.[30]

Often, also, the unions regarded the use of female labour as an encroachment on male jobs and conditions and as a bar to establishing occupations as skilled. Muriel Heagney took this up in a pamphlet entitled 'Are Women Taking Men's Jobs?', written in 1935. She pointed out that the general segregation of women into women' jobs had meant that they had not been as deeply affected by the depression as areas of male occupation such as mining and building, as most women worked in industries producing perishable consumer items. She also noted that the position adopted by the unions of exclusion rather than fighting for equal pay helped to create the situation where women could provide a cheap labour alternative.

The principles espoused by the Court did, of course, affect the way that the unions framed their claims and if the Court itself had been sympathetic to equal pay women may have gained it much sooner. In the Basic Wage Inquiry of 1937, for

example, Dethridge C.J. expressed the Court's attitude in a way which was sure to scare off any such application:

> If all wage earners are to be put upon the same level as to amount, that amount is limited and must be limited by, as I have said before, the capacity of industry to pay, and so that common amount, would have to be reduced.
>
> That is to say, the male wage may have to come down, in order that the female wage may be brought up to the level of the male wage.[31]

As it was, it was only the force of exceptional circumstances that prompted the trade unions to take a stand on the question and make it a real industrial issue. It was in 1941, in the midst of war-time production, with women occupying jobs men had never dreamed they could hold, that the Australian Council of Trade Unions finally passed a resolution demanding the right to equal occupational rates based on the nature of the job and not the sex of the worker.

The area of industrial law provides a good example of how law makers and law enforcers can use paternalism to the disadvantage of women. In the name of protecting Australian womanhood, restrictions were placed on a woman's right to work in the job of her choice. At the same time she was expected to work for little more than half of a man's wage, in jobs where her skills were denegrated and her potential allowed to remain undeveloped.

Then, as now, it was considered to be good social policy to discourage women from seeking economic independence and fulfilment outside of the assigned role of wife and mother. Then, as now, the fact that most women worked out of economic necessity was ignored. Then, as now, at a time of economic crisis women were blamed for taking men's jobs. The language may have changed and the sentiments may not appear to be so crude, but underneath the sophistication they are still the same.

The Courts and Commissions did not assist the women workers and with rare exceptions neither did the trade unions. The policies of both encompassed interests which were not those of women workers and which, in fact, were often opposed to their interests. Probably the single most important fact in bringing about a change in the attitude of both of these to the question of women's role in the work force was the influx of women into industry during World War II. But it still took three decades after that to establish the principle of equal pay and we are still fighting to establish the reality. The system which was designed to protect the worker from the exploitation of individual bargaining and wage slavery has not proved itself to be much of an asset to the struggle of women workers.

[1] See G. Sorrell, 'The Arbitration System', in Australian Capitalism, eds. J. Playford and D. Kirsner, Melbourne, 1972.

[2] Exparte McKay, vol. 2 Commonwealth Arbitration Reports (CAR), p. 1.

[3] A.B. Piddington, 'The Next Step: A Family Basic Income', Melbourne, 1921, p. 40.

[4] J.T. Sutcliffe, 'Notes on Wage Fixation in Australia', Queensland Industrial Gazette, no. 9, 1924, p. 820.

[5] Piddington, op. cit.

[6] E.g. for a limited period in the public service after such decisions as Deputy-President Starke's in the Federated Public Service Assistants' Association *v* The Commonwealth of Australia (1920 14 CAR 639.

[7] Federated Clerks Union *v* Commonwealth Public Service Commissioner (1916) 10 CAR 32.

[8] Marine Cooks, Bakers and Butchers Association of Australia *v* Commonwealth Steamship Owners Association (1908) 2 CAR 55 at 64.

[9] J. Brown, Women's Living Wage (Cardboard Box Makers) Case 3 S.A.I.R. 11 (1919-1920) at pp. 17 and 23.

[10] Telephone Officers' Case (1918) 12 CAR 714.

[11] Federated Clothing and Allied Trades' Union *v* Alley Brothers (1921) 15 CAR 435.

[12] Compiled from 1933 Census statistics.

[13] Queensland Trades and Labour Council, 'Wages of Women in Industry', Brisbane, 1945, p. 2.

[14] Federated Clothing Trades of the Commonwealth of Australia *v* J.A. Archer (1919) 13 CAR 647.

[15] Per J. Brown, The Printing Trades Case (1917-1918) 2 S.A.I.R. 31.

[16] W. Jethro Brown, 'Judicial Regulation of Industrial Conditions', in Australian Economic and Political Studies, ed. M. Atkinson, Melbourne, 1920, p. 227.

[17] Wool and Basil Industry Award (1932) 31 CAR 846.

[18] Rural Workers' Union and United Labourers' Union *v* Mildura Branch of the Australian Dried Fruit Association (1912) 6 CAR 61.

[19] W. Jethro Brown, op. cit., p. 225.

[20] Australian Railways Union *v* Victorian Railways Commissioners (1928) 26 CAR 1099.

[21] J. Brown, The Printing Trades Case (1918-1919) 2 S.A.I.R. 31.

[22] Rubber Industry Award (1932) 31 CAR 593.

[23] Australian Theatrical and Amusements Employee's Association (1924) 20 CAR 16.

[24] Wool and Basil Industry Award (1932) 31 CAR 846.

[25] In re the Commercial Clerks Board (1913) 19 A.L.R. 142.

[26] Federated Clothing and Allied Trades Union Records, box E138/18, Australian National University Archives, Canberra.

[27] E.g. Telephone Officers Case (1918) 12 CAR 712. Women's Living Wage (Cardboard Box Makers) Case (1919-1920) 3 S.A.I.R.

[28] E.g. in 1935 the Amalgamated Printing Trades Employee's Union applied for the prohibition of the employment of women on multilith machines in order to protect male workers in the lithographic trade who were being squeezed out of work by advancing technology. The Printer, official journal of the New South Wales branch of the APTEU, 6th September 1935, p. 94.

[29] Correspondence between Wallis, General Secretary of the Union, and Branch Secretaries re 1937 Basic Wage Case, FC&ATU Records, box E138/18/53, Australian National University Archives.

[30] The Printer, 5th February 1926, p. 13.

[31] Basic Wage Inquiry (1937) 37 CAR 583. Transcript of Examination of Evidence, issued by the Council of Action for Equal Pay. Heagney Papers, box 1164/69, Latrobe University Archives.