

# **Confronting the Norm: Gender and the International Regulation of Precarious Work**

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# Table of Contents

Acknowledgements.....	iii
List of Figures .....	vii
Introduction .....	1
<b>PART ONE: Conceptual and Philosophical Foundations of International Labour Regulation.....</b>	<b>6</b>
I. The Normative Model of Employment: Delineating the Baseline .....	6
II. The Gender Contract: Upholding the Baseline .....	11
III. Equal Treatment.....	15
<b>PART TWO: Regulating Precarious Work in the ILC .....</b>	<b>20</b>
I. New International Labour Standards on Precarious Work.....	21
A. Time .....	21
B. Place .....	26
C. Status .....	30
II. Normalizing Deviation? Limits of an Equal Treatment Approach.....	38
<b>PART THREE: A Portrait of Precarious Work in Australia, Canada, and the United States.....</b>	<b>40</b>
I. Measuring the Standard Employment Relationship.....	41
II. Time- and Status-Based Deviation from the Employment Norm .....	48
A. Part-Time Work in Australia .....	49
1. The Shorter-Hours Employment Norm in Context.....	61
B. Self-Employment in Canada .....	65
1. The Status-Modified Employment Norm in Context .....	78
III. Erosion of the Standard Employment Relationship.....	83
A. Full-Time Permanent Employment in the United States .....	84
1. Erosion of the Standard Employment Relationship in Context.....	99

<b>PART FOUR: Limiting Precarious Work? Alternative Approaches</b> .....	104
I. A Typology of Approaches.....	105
A. Locating Australia, Canada, and the United States .....	109
B. Two Competing Prototypes.....	111
C. The ILC Model: Between Containing Erosion and ‘Beyond Employment’.....	118
Conclusion .....	119
Bibliography .....	123

# List of Figures

Figure 1:	Decline of Full-time Employment, Australia, Canada, and the United States, 1968-2002.....	42
Table 1:	Composition of Total Employment, Australia, Canada, and the United States, 2000.....	45
Figure 2a:	Composition of Workforce: Australia, 2000.....	46
Figure 2b:	Composition of Workforce: Canada, 2000.....	46
Figure 2c:	Composition of Workforce: The United States, 2001.....	47
Table 2:	The Indicators: Australia, Canada, and the United States.....	48
Figure 3:	Part-time Employment as a Percentage of Total Employment by Sex, Australia, Canada, and the United States, 2000.....	50
Figure 4:	Composition of Part-time Employment, Australia, Canada, and the United States, 2000.....	50
Figure 5:	Composition of Part-time Employment, Self-employed Included, Australia, 2000.....	51
Figure 6:	Composition of Part-time Employment, Self-employed Excluded, Australia, 2000.....	52
Figure 7:	Part-time Ongoing Casuals as a Percentage of Total Part-time Employees, Australia, 2000.....	55
Figure 8:	Shares of Men and Women in Part-time Ongoing Casual Employment, Australia, 2000.....	55
Figure 9:	Part-time Ongoing Casual Jobs Among Employees in Top Three Part-time Industries, Australia, 2000.....	57
Figure 10:	Part-time Permanent Casual Jobs Among Employees in Top Three Part-time Occupations, Australia, 2000.....	58
Figure 11:	Part-time Employees out of All Employees by Marital Status, Australia, 2000.....	59
Figure 12:	Part-time Employees out of All Employees by Age of Youngest Child, Australia, 2000.....	59
Figure 13:	Part-time Ongoing Casual Employees out of all Employees by Age of Youngest Child, Australia, 2000.....	60
Figure 14:	Women's Income Relative to Men's, Part-time Employees, Australia, 2000.....	61
Figure 15:	Self-employment out of Total Employment by Sex, Canada, Australia, and the United States, 2000.....	66

Figure 16:	Self-employment as a Share of Total Employment by Type of Self-employment, Canada 1976-2000.....	67
Figure 17a:	Composition of Self-employment, Both Sexes, Canada, 2000.....	68
Figure 17b:	Composition of Self-employment, Men, Canada, 2000.....	68
Figure 17c:	Composition of Self-employment, Women, Canada, 2000.....	69
Figure 18a:	Reasons for Self-employment Among Full-time Solo Self-employed, Men, Canada, 2000.....	71
Figure 18b:	Reasons for Self-employment Among Full-time Solo Self-employed, Women, Canada, 2000.....	71
Figure 19:	Health Coverage Among the Full-time Solo Self-employed, Both Sexes, Canada, 2000.....	72
Figure 20:	Source of Health Plan Coverage Among the Full-time Solo Self-employed, Canada, 2000.....	73
Figure 21:	Income Group Among the Full-time Solo Self-employed, Canada, 2000.....	74
Figure 22:	Income Group and Benefits Coverage Among the Full-time Solo Self-employed, Canada, 2000.....	76
Figure 23a:	Income Group and Access to Benefits Among the Full-time Solo Self-employed, Both Sexes, Canada, 2000.....	76
Figure 23b:	Income Group and Access to Benefits Among the Full-time Solo Self-employed, Women, Canada, 2000.....	77
Figure 23c:	Income Group and Access to Benefits Among the Full-time Solo Self-employed, Men, Canada, 2000.....	77
Figure 24:	Full-time Permanent Employment, the United States, Australia, and Canada, 2000.....	85
Figure 25:	Medical Care Coverage for Full-time Permanent Employees, the United States, 1989/90-1998/99.....	91
Figure 26:	Percentage of Full-time Permanent Employees in Private Industry Lacking Health Benefit Coverage, the United States, March 2003.....	92
Figure 27:	Union Membership Among Wage and Salary Employees, the United States, 1983-2002.....	93
Figure 28:	Union Membership, Full-time Permanent Employees, the United States, April 2004.....	93
Figure 29:	Average Hourly Earnings, the United States, 1947-1998 (in 1998 dollars).....	96
Figure 30:	Average Weekly Wages for Full-time Permanent Employees, the United States, April 2004.....	97



Figure 31:	Average Weekly Wages With Own Child Under 6 by Marital Status, Full-time Permanent Employees, the United States, April 2004.....	97
Figure 32a:	Percentage of Full-time Hourly Permanent Employees By Union and Low Wage Status, Both Sexes, the United States, April 2004 .....	98
Figure 32b:	Percentage of Full-time Hourly Permanent Employees By Union and Low Wage Status, Men, the United States, April 2004.....	99
Figure 32c:	Percentage of Full-time Hourly Permanent Employees By Union and Low Wage Status, Women, the United States, April 2004 .....	99
Figure 33:	Typology of Alternative Approaches.....	108



# Introduction

Precarious work is the subject of growing attention at the sub-national, national, and supranational levels and it has become a central object of international labour regulation in the last few decades. The character and incidence of precarious work varies considerably from country to country, as do approaches to mitigating it, yet there is widespread agreement that something needs to be done about the problem.

This study examines efforts to regulate precarious work through the International Labour Code (ILC) – the compendium of international labour standards adopted by the International Labour Organization.<sup>1</sup> In the ILC, as elsewhere, precarious work is defined with reference to the norm of the standard employment relationship and it is regulated accordingly. What follows is an investigation of the implications – especially the gender implications – of adopting the standard employment relationship as a baseline from which to understand and regulate precarious work. Is it possible that the adoption of the standard employment relationship as a comparator obscures our understanding of precarious work and, furthermore, might the reinforcement of this norm actually be undermining attempts to deal with the problem?

Part One considers the role of employment norms, by examining the development and deployment of the standard employment relationship and analyzing the gender contract upon which it is based. It describes how early instruments of the ILC contributed to establishing the central elements of the standard employment relationship, and considers the consequences of putting so much weight on a relative definition of precarious work. The standard employment relationship receives considerable scholarly attention yet its use as a reference point is often taken for granted, to the peril of understanding the dynamics of precarious work.

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<sup>1</sup> The ILC is a product of cumulative interactions between national and supranational regulatory schemes. It derives its influence from constructing normative principles and frameworks that individual countries may translate into substantive laws and policies (Murray 2001; Vosko 2004).

In the last quarter of the twentieth century, the ILC expanded to include a new constellation of international labour standards aimed at limiting precarious work. Each new standard addresses deviations from the standard employment relationship. Part Two explores the manner in which deviations from the standard employment relationship have become a focus of attention in international labour regulation. It organizes new and emerging international labour standards into three categories – time, place, and status – addressing the issues of ‘normal’ working hours, site of work, and the scope of the employment relationship respectively. Where time is concerned, the earliest standard on Part-Time Work (1994) represents an effort to redraw the temporal boundaries of the employment norm, by stretching the standard employment relationship so that it might encompass shorter normal hours of work. In the category of place, the standard on Home Work (1996) fosters a worksite-modified employment norm. Finally, the vexed question of status is addressed in the new Convention on Private Employment Agencies (1997), along with a series of failed attempts to negotiate a standard on Contract Labour (1998), and ongoing discussions on the scope of the employment relationship focusing increasingly on extending labour protections to dependent workers whose employment relationships are either disguised or objectively ambiguous.

Part Two also considers how international labour standards designed to bolster the standard employment relationship – be they centered on time, place or status – intersect with changing and continuous gender relations. Consider that the standard employment relationship is a male norm long associated with a particular gender contract. This contract assumed a ‘male breadwinner,’ typically a wage-earner, pursuing employment in the public sphere in receipt of a family wage and a ‘female caregiver’ confined to the private sphere, subject to protective measures, and only gaining access to the social wage indirectly. The terms of this contract were explicit in the early ILC and measures adopted at a mid-point in the 20<sup>th</sup> century, and sustained to the present, only modified its basic tenets slightly. In 1952, the Convention on Discrimination (Employment and Occupation) banned explicitly discriminatory measures yet it

maintained the male norm as a benchmark for women's admission into, and participation in, the labour force and upheld 'special measures' reproducing conceptions of women as primarily reproductive and responsible for the private sphere. Furthermore, in 1998, the *ILO Declaration on Fundamental Principles and Rights at Work*, otherwise known as the *Social Declaration*, named the Convention on Discrimination a core convention without alteration.

Given that the standard employment relationship is associated with a male breadwinner/female caregiver contract, is there a link between international labour standards aimed at limiting precarious work and shifts in the gender contract? Several international labour standards aimed at fostering labour force participation among women recognize the gendered rise of part-time work, the persistence of home work, and the spread of 'new' forms of dependent work. The Recommendation on Workers with Family Responsibilities (1981) calls for the regulation of part-time work, temporary work, and home work and the Convention on Maternity (2000a) extends coverage to employed women in "atypical forms of dependent work." Yet the modern ILC is still oriented to an equal treatment approach where women must either seek equality by conforming to a male norm or through problematic forms of difference where 'women' are viewed as a homogeneous group characterized by stereotypical biologicistic and/or culturalist assumptions (Fraser 1997; Fredman 1997; Scott 1988). The gender contract rests increasingly on dual earning and marginalized female care-giving. Equal treatment means women and men may both be breadwinners, eligible for the statutory benefits and entitlements that remain attached to wage-earning but that do not necessarily provide for minimum standards. It also entails minimizing protective measures tied to motherhood, promoting part-time work, and regulating home work, as well as extending maternity benefits to a larger group of employed women to take account of expanding deviations from the standard employment relationship. At the same time, the equal treatment approach applied in measures aimed at limiting precarious work casts the employment norm and its deviations as de-gendered.

The approach to regulating precarious work in the ILC represents an effort to stretch the standard employment relationship by expanding its conception of ‘normal’ working hours, adapting traditional assumptions surrounding place of work, and reestablishing the centrality of the employment relationship. Are these efforts in sync with the realities of precarious work in liberal industrialized economies? To answer this question, Part Three provides a statistical portrait of precarious work in three countries with similar political, economic, and legal institutions and traditions – Australia, Canada, and the United States.

Manifestations of precarious work are similar across these countries: they include job insecurity, low wages, limited social benefits and statutory entitlements, and a lack of control over the labour process. In each case, precarious work is also gendered. At the same time, there are important differences. In Australia, precarious work takes sharpest expression within the category of part-time ongoing casual employment, where there are disproportionate numbers of women, especially married women and women with young children. In Canada, self-employment grew dramatically in the 1980s and 1990s. And although self-employment is not as sizeable as in Australia, a large segment of full-time solo self-employment – a highly dominant form – is precarious. Furthermore, a significant proportion of women in this group – more of whom pursue self-employment to fulfill care-giving responsibilities than their male counterparts – have low-incomes and lack benefits and/or independent access to benefits. In contrast to the Australian and Canadian cases, it is the erosion of the standard employment relationship that is most pronounced in the United States. Among full-time permanent employees, conditions of work have deteriorated since the early 1970s and many women, especially single women with young children, experience precariousness on multiple dimensions.

A statistical portrait of precarious work in these three countries illustrates the shortcomings of an approach to regulating precarious work that uses the standard employment relationship as a baseline. Efforts to limit precarious work on the basis of time, place, and

status deviations from the standard employment relationship fail to account for precarious forms of part-time work that do not neatly conform to a shorter-hours employment norm (as with the Australia case). Nor do they address precarious forms of self-employment, where the employment relationship is neither technically disguised nor objectively ambiguous (as with the Canadian case). Equally, they fail to respond to mounting insecurity in full-time permanent employment (as with the American case). Yet country-level responses to precarious work are also inadequate. In Australia, there is a movement towards a shorter-hours employment norm directed at curbing precarious work among women with family responsibilities akin to that proposed under the Convention on Part-time Work – and the pitfalls are analogous. In Canada, the main priority is to curb disguised and objectively ambiguous situations while simultaneously promoting entrepreneurship, mimicking the delicate balance emerging in the ILC between preserving ‘genuine commercial contracting’ and eliminating employment relationships that are falsely given the appearance of a different legal nature. Finally, in the United States, because of the continued significance of full-time permanent employment, there is scant attention to precarious work *per se*, although analysts increasingly recognize the growth of poor quality full-time jobs and the social consequences of excessively long hours of work are gaining attention at the policy table.

After synthesizing regulatory responses in Australia, Canada, and the United States, Part Four maps the terrain of ‘new’ employment norms by developing a typology of approaches to regulating labour and social protection and the gender contracts upon which they rest. Using this typology, it classifies regulatory approaches prevailing in the three liberal industrialized countries, as well as two competing prototypes for re-regulation, before situating the ILC model. In 2000, a Committee of Experts on Workers in Situations Needing Protection made a correlation between instability in the “conditions governing the method, time and place of the performance of services” and gender inequality; similarly, Conclusions to a General Discussion on the Scope of the Employment Relationship (2003) make an unprecedented link between the

rise of precarious work and women's high representation in certain forms of employment (ILO 2000b, 3.19; see also ILO 2003b). Still, there is a disjuncture between, on the one hand, the growing recognition that precarious work is gendered and mounting efforts to regulate it through the ILC and, on the other hand, the sustained emphasis on equal treatment. The study concludes by exposing this disjuncture.

## **PART ONE: Conceptual and Philosophical Foundations of International Labour Regulation**

Three linked concepts are central to understanding the international regulation of precarious work: the normative model of employment, the gender contract, and equal treatment.

### **I. The Normative Model of Employment: Delineating the Baseline**

The normative model of employment is a relational concept capturing the interplay between social norms and governance mechanisms linking work organization and the labour supply (Deakin 2002, 179; Supiot 2002; Vosko 2000, 15 and 288). Throughout most of the 20th century, in liberal industrial democracies, the standard employment relationship epitomized this norm. First emerging in the 1920s and 1930s, and gaining ascendancy after World War II, it is characterized by a full-time continuous employment relationship where the worker has one employer, works on the employer's premises under his or her direct supervision, normally in a unionized sector, and has access to social benefits and entitlements that complete the social wage (Buchetmann and Quack 1990, 315; Muckenberger 1989, 267; Fudge 1997; Tilly 158-9;



Vosko 1997, 43 and 2000, 15). In the postwar era, most liberal industrialized countries organized labour and social policies around this employment norm and it remains the fulcrum of labour and social policy in countries such as Canada (Vosko 2000; Fudge and Vosko 2001a), Australia (Owens 2002; Paterson 2003), and the United States (Hyde 2000; Piore 2002).

The standard employment relationship was, at first, primarily limited to male blue-collar workers and, subsequently, extended to white-collar workers, also primarily men. As a baseline, it pivoted on a particular employment status, form of employment, and set of work arrangements. It engendered and sustained social norms and regulatory mechanisms organized around employee status, full-time permanent work, and the performance of work at the employer's worksite under his or her supervision. Workers in situations characterized by these features could expect "a degree of durability and regularity in employment relationships" (Rodgers 1989, 1), protection from the ills of unemployment, and a social wage or a bundle of social benefits and entitlements beyond earnings enabling them to reproduce themselves and support their households.

At its apogee mid-century, the standard employment relationship constituted an ideal-type around which policy-makers under considerable pressure from workers and employers in large firms, organized labour and social policies. As a norm, it existed independently of individuals and encompassed prescriptive and descriptive elements (Vosko 2000, 288). The social wage model integral to the standard employment relationship assumed that statutory benefits and entitlements, and employer-sponsored extended benefits, are best distributed to workers and their dependants via a single earner. In this way, the standard employment relationship shaped labour force patterns as well as familial obligations and household forms.

Manifestations of the standard employment relationship vary considerably by region, country, and continent, reflecting social, political and legal traditions and institutions, but the broad features of this norm are also a product of international labour regulation. From its inception in 1919, the ILC contributed to establishing the standard employment relationship.

The first international labour convention on Hours of Work (Industry) advanced the 8-hours day or the 48-hours week. Hours of paid work were its focus, but the terms of the convention also cemented the central feature of the standard employment relationship – wage-earning – since its application was limited to “persons *employed* in any public or private industrial undertaking” (ILO 1919a, Art. 2). This meant the exclusion of “certain classes of workers whose work is essentially intermittent” as well as workers in undertakings “in which only members of the same family are employed” (ILO 1919a Arts. 2, 6). The convention also aimed to extend normal hours to “all industrial workers.” Hence, initially workers in “commerce, agriculture, and the sea service and other non-industrial employments” and “special classes of workers such as women and young persons” fell outside its scope (League of Nations 1919, 1, 2). In 1930, the Convention on Hours of Work (Commerce and Offices) extended the same basic provisions on hours of work to salaried workers on similar terms (ILO 1930).

Subsequent additions to the ILC centered on leisure time. The aim of the Recommendation on the Utilization of Spare Time (1924) was to secure relaxation from the strain of ‘ordinary work’ among male wage-earners; the notion of ‘ordinary work’ represented the early analogue to a full-time continuous employment relationship (ILO 1924, Preamble and par 1). The recommendation aimed to improve ‘social hygiene’ through promoting sports, gardening, and intellectual pursuits among men engaged in early precursors to the standard employment relationship. It distinguished leisure time from unpaid domestic work while cultivating the “full and harmonious development of the individual and the family and contribute to the general progress of the community” (ILO 1924, Part 3). As Jill Murray (2001, 27) observes, the notion of leisure time for men engaged in ordinary work “reflected a complete sexual division of labour, as the archetypal male was not conceived as the person who engaged in unpaid domestic labour of the private sphere of the home.” Adopted mid-century, the Recommendation on Holidays with Pay (1954) preserved and extended this division of labour

by calling for holidays with pay for all employed persons, with analogous gender exclusions. It also advanced a model of leave entitlement premised on ordinary work (ILO 1954, par 4.1).

Shortly thereafter, Conventions on Minimum Wage-Fixing Machinery (1928) and Unemployment Provision (1934) contributed to institutionalizing the bilateral employment relationship. The Convention on Unemployment Provision prescribed that unemployment insurance be available to “persons *habitually employed for wages or salary*” (ILO 1934c, Art. 2.1, italics added). The exclusions it permitted cast the employment norm even more narrowly: domestic workers, home workers, seasonal workers, young people, persons engaged only occasionally, and persons employed in a family-run business were not considered to be habitually employed (ILO 1934c, Art. 2.2).<sup>2</sup> Countries ratifying the convention could exclude categories of workers in the private sphere or workplaces off the employer’s premises from unemployment provision; performing work on the employer’s premises under his or her direct supervision was also pivotal to the evolving employment norm. Even for those workers deemed to be habitually employed, the Convention on Unemployment Provision also made the receipt of benefits “conditional on the need of the claimant,” conveying the message that social wage entitlements should properly flow through a single male wage-earner (ILO 1934c, Art. 12.2).

By mid-century, the structural planks of the employment norm were established: essentially, this meant full-time continuous wage or salaried employment performed on the employer’s premises under his or her direct supervision. The emphasis then shifted to codifying rights to freedom of association and collective bargaining – the primary governance mechanisms linking work organization and the labour supply under the standard employment relationship. Due to the magnitude of contestation between workers, employers, and their governments, however, international labour standards on these subjects emerged only

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<sup>2</sup> So, too, did the provision under the Convention on Minimum Wage-Fixing Machinery that nation states be “free to decide... in which trades or parts of trades, and in particular in which home working trades,...” minimum-wage fixing machinery be applied (ILO 1928, Arts. 1, 2).

gradually. The ILO Constitution affirmed the principle of freedom of association in 1919 and the Declaration of Philadelphia reaffirmed this principle and recognized the right to collective bargaining in 1944. But early efforts to craft a single international labour standard on these subjects failed.<sup>3</sup> Consequently, two separate conventions were adopted shortly after World War II. In 1948, the Convention on Freedom of Association and the Right to Organize extended to ‘workers without distinction.’ That year, delegates to the International Labour Conference chose between enumerating typical grounds of discrimination and accepting the wording ‘without distinction.’ They selected the latter option since it offered a “more comprehensive formula than a formula enumerating different kinds of discrimination, which always entails the risk of certain types being omitted” (ILO 1948a, 86-7).<sup>4</sup> Still, despite the inclusive emphasis of this option, freedom of association came to be enjoyed most fully by workers in standard employment relationships. As the Committee on Freedom of Association reports, many countries exclude certain categories of workers and occupations from freedom of association, including agricultural workers, domestic workers, seafarers, home workers, and staff of charitable organizations (ILO 1985a, 29).

Complementing the Convention on Freedom of Association, the Convention on the Right to Organize and Collective Bargaining (1949) provided a framework for regulating conditions of employment via collective agreement. Its focus was narrower than the Convention on Freedom of Association as it sought to govern “the relations between employers and *wage earners*” (ILO 1948b, 182-183, italics added). It also contributed to a particular worksite norm; as the record of

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<sup>3</sup> The myriad of reasons for this failure ranged from splits over whether freedom of association should be extended for “lawful purposes” only and tensions over which body – the ILO or the UN Economic and Social Council – should be responsible for overseeing these rights to the divisive issue of whether the right of association under the ILO constitution should extend to workers only. The compromise reached mid-century, therefore, was to adopt two conventions, one covering all workers and all employers and another setting parameters for collective bargaining.

<sup>4</sup> Several commentators highlight the potential utility of this notion in transcending the outmoded dichotomy between employees and self-employed workers influencing labour law and policy in the 20<sup>th</sup> century (Benjamin 2002; see also Fudge, Tucker and Vosko 2002).

the discussion leading to its adoption indicates, the wage earners of principal concern were “working people in an undertaking” (ILO 1947, 64-65, see also 66).<sup>5</sup>

The final early convention contributing to establishing the standard employment relationship was the Convention on Social Security (Minimum Standards) (1952b). This convention advanced minimum standards for social security in areas such as medical care, sickness, and unemployment. Taking its cue from the Convention on Unemployment Provision, it advanced guidelines for extending social benefits and entitlements on the basis of employee status, the presence of a bilateral employment relationship, and continuity of service.

Through such international labour standards, as well as others crafted over its first four decades, the ILC moulded the standard employment relationship.

## II. The Gender Contract: Upholding the Baseline

The standard employment relationship owes its normative power partly to its associated gender contract. Distinct from broader concepts such as ‘gender system’ (Pfau-Effinger 1999) and ‘gender order’ (Connell 1987), the gender contract is the normative and material basis around which sex/gender divisions of paid and unpaid labour operate in a given society (Rubery 1998, 23; see also Fudge and Vosko 2001b, 331). A male breadwinner/ female caregiver gender contract emerged alongside the standard employment relationship (Fraser 1997). On the one hand, this contract assumed a male breadwinner pursuing his occupation and employment freely in the public sphere, with access to a standard employment relationship and in receipt of a family wage. On the other hand, it assumed a female caregiver performing unpaid work, and possibly earning a “secondary wage,” and receiving supports such as social

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<sup>5</sup> The convention recognized various forms of collective bargaining, including industry- or sector-wide and enterprise-level bargaining, tempering the inherent bias towards workplace based collective bargaining but not eliminating it altogether.

insurance via her spouse. It fostered policies and practices encouraging women to assume responsibilities attached to biological and social reproduction, which often amounted to protective legislation, especially in the early part of the 20th century (see for example, Wilkander, Kessler-Harris and Lewis, 1995).

In the early years of the ILC, member countries, along with organized labour and employers, normalized the male breadwinner/female caregiver gender contract. They did so through the creation of procedural and substantive conventions and recommendations underpinned by rigid conceptions of who was to be defined as a 'standard' worker and who was to be defined as a caregiver. Many of the international labour standards establishing the employment relationship were also central to establishing this gender contract. The Convention on Hours of Work set maximum hours for wage-earners, effectively excluding casual workers, as well as workers in family enterprises, thereby preserving the authority of those (men) assumed to operate family-run businesses. The Convention on Minimum Wage Fixing made similar provision for excluding home workers. Similarly, the Convention on the Utilization of Spare Time called for national legislation permitting men adequate leisure time to allow them to recover from wage work, with no mention of increasing their share of unpaid care-giving. The Convention on Social Security, in turn, cast the standard beneficiary of social insurance as a man, with a wife and children, engaged in continuous waged or salaried work.

Measures contributing to a male breadwinner/female caregiver norm also included conventions and recommendations defining exclusions from the standard employment relationship. Two of the conventions adopted at the inaugural international labour conference centred on regulating 'women's work' – Conventions on Night Work (1919c) and Maternity (1919b). As Alcock (1971, 12) observed, the creation of the ILC was relatively smooth partly because these conventions were so uncontroversial: "The success achieved [at the conference] was undoubtedly due to the wise choice of subjects proposed for consideration. They were questions which a large measure of agreement, as to the necessity of regulation already existed

and on which big controversial issues were not likely to arise.” The objective of early Conventions on Maternity and Night Work was to protect women and their infants through limiting their labour force participation and encouraging their confinement to the private sphere. The first Convention on Maternity aimed to protect women from terms and conditions of work interfering with their domestic responsibility. It made exclusion from the labour force compulsory for women for six weeks following childbirth whether they were employed in public or private industrial or commercial undertakings, with the exception of family-run businesses. While she was absent from the labour force, the new mother was to “be paid benefits sufficient for the full and healthy maintenance of herself and her child” (ILO 1919b, Art. 3). These terms contrasted sharply with the social wage entitlements growing up around the standard employment relationship, where both the wage and social wage were to be sufficient to cover a “man and his family.” As envisioned in the ILC and elsewhere, maternity benefits were not designed to reflect women’s role as workers (Fredman 1997; see also Owens 1995), and yet women’s access to these benefits was premised on labour force participation. Exemplifying its protective emphasis, the convention also failed to address a woman’s return to the labour force after pregnancy. Absent were provisions preserving the job a woman held prior to compulsory confinement; the only gesture towards labour force reintegration was the provision for nursing mothers to have “half an hour twice a day during her working hours for this purpose” (ILO 1919b, Art. 3d).

Adopted the same year, the Convention on Night Work took a parallel approach, although it focused largely on women in industry, especially those engaged in manual labour. The aim of this convention was to prevent women from being employed during the night. The familiar exception was for those women employed in undertakings where only members of the same family are employed. The presence of family members was presumed to accord women equivalent protection to confinement to the private sphere during the night.

The Convention on Night Work was revised in 1934, at which point it became permissible for women holding managerial positions and women not normally engaged in manual work to be employed at night (ILO 1934b, Arts. 3, 8). As the record of proceedings noted, “we consider that the distinction between the ordinary woman worker and the woman who occupies a post of management involving responsibilities is a just one” (ILO 1934a, 194). The movement towards allowing more women to engage in night work continued when the convention was revised, once again, in 1948.

In 1952, the same year that the Convention on Social Security was adopted, the approach to maternity protection in the ILC changed as well. At this juncture, a revised Convention on Maternity strengthened and affirmed women’s role as caregivers of children,<sup>6</sup> maintaining an orientation to protection. However, the new convention also brought several improvements for women remaining in the labour force after childbirth – it barred employers from dismissing women on maternity leave and counted nursing periods as part of the working day. It also modified provisions related to cash benefits in an attempt to provide a woman and her child “a suitable standard of living”; however, this formula was inferior to that suggested for paid holidays under the Recommendation on Holiday Pay crafted just two years later since it pegged cash benefits at “a rate no less than two-thirds of the women’s previous earnings” (ILO 1952c, Art. 4). The revised convention made some attempts to recognize women’s often dual roles. As a delegate from the United States noted during the period preceding its revision, “the Convention is of more than ordinary significance because, in addition to safeguarding the health of women who carry the double burden of paid employment and motherhood, it directly affects the right of children to be well born and promotes the welfare of the race” (ILO 1952a, 13-14). Even with growing recognition of women’s labour force participation, the female caregiver norm prevailed. Collectively, these conventions cast women as dependent. They worked in tandem

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<sup>6</sup> For an incisive analysis of the evolution of maternity protection in the ILC, see Murray 2001.



with conventions positioning the standard employment relationship as a male employment norm, each shaping women's and men's familial obligations and labour force patterns as well as dominant household forms.

### III. Equal Treatment

Protective measures around maternity and other measures preserving women's primary role in care-giving persisted in the ILC throughout the 20th century. But developments in the 1950s prompted adjustments in the male breadwinner/female caregiver contract. Responding, in part, to economic pressures to increase women's labour force participation and women's collective struggle for political, economic, and social equality, the ILC adopted an equal treatment approach. This approach aimed to remove social, political, and especially legal barriers to equality between men and women through the "effective harnessing of liberal concepts to the cause of women's emancipation" and the elimination of explicitly exclusionary policies and practices (Fredman 1997, 15-16).<sup>7</sup>

The Convention on Discrimination (Employment and Occupation) (1958) was a key moment in the adoption of an equal treatment approach. Its stated aim was to contribute to the elimination of discrimination in the field of employment and occupation so that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity" (ILO 1958, Preamble; see also Article 2). It defined discrimination as any distinction, exclusion, or preference made on these and other bases that "has the effect of nullifying or impairing equal opportunity or treatment in employment or occupation" (ILO 1958,

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For in-depth discussions of approaches to equal treatment in liberal democracies, specifically, the United Kingdom, Canada, Australia, and the United States, and their effects, see also: Conaghan 2002; Fudge 2002; Owens 1995; Kessler-Harris 2002.

Article 1.1). Among other measures, the convention called on member countries to promote educational programs fostering the elimination of discrimination and to repeal legislation permitting discrimination. However, its patchwork orientation to equal treatment is evident in both the assertion that “any distinction, exclusion or preference in respect of a particular job based on *inherent requirements*” is not discrimination (Article 1.2, italics added) as well as in the exceptions it allowed, as the convention permitted “*special measures of protection* or assistance provided for in other ILO instruments” (ILO 1958 Article 5, italics added).<sup>8</sup> Specifically, the Convention on Discrimination upheld the terms of the Maternity Convention and other ‘special measures.’ In this familiar way, it allowed policies promoting both formal equality *and* protective measures, which often reinforce women’s subordination rather than securing equality of substance,<sup>9</sup> to coexist.

Adopted in 1965, the Recommendation on Employment (Women with Family Responsibilities) also illustrates this tension. This recommendation was addressed specifically to women, aiming to help remedy the “special problems faced by women” with family responsibilities that are also an “integral and essential part of the labour force” (ILO 1965, Preamble, par 2, 4). At the same time, the recommendation recognized some of the escalating contradictions in the gender contract. The recommendation stated, on the one hand, that

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<sup>8</sup> The Convention on Discrimination also deemed “any distinction, exclusion or preference in respect of a particular job based on *inherent requirements*” not to be discrimination (Article 1.2, italics added).

<sup>9</sup> Broadly speaking, substantive equality “looks to a rule’s *results* or *effects*” in contrast to formal equality, which “judges the form of the rule, requiring that it treat women and men on the same terms without special barriers or favours on account of their sex” (Bartlett et al 2002, 265). Advocates of substantive equality thus argue that it is crucial to take differences into consideration to avoid differential effects that are deemed to be unfair.

The approach to equal treatment embraced under the Convention on Discrimination, which dominates across the ILC, thus reflects a mix of measures fostering formal equality – these measures are particularly prominent – and measures encouraging protection. Granted, a select group of international labour standards are oriented to substantive equality; for example, the Convention on Night Work (1990) applies to men and women and recognizes that the question of night-work is pertinent to all workers regarding their own health and their family obligations. However, standards with this type of orientation are rare. Fredman (1997, 306) makes an analogous observation about the contemporary Convention on Night Work. However, she suggests that the ILO is moving more towards a paradigm of substantive equality than the ensuing case study of international labour standards on precarious work suggests, possibly because she is comparing the ILC and EU legislation.

women “need to reconcile their family responsibilities” with paid work and, on the other hand, that “many of the special problems faced by women are not problems peculiar to women workers but are problems of the family and society as a whole” that could be remedied through the reduction of daily and weekly hours of work (ILO 1965, Preamble, par 3, 4, 5). Substantively, it also sustained the fragile balance between special measures of protection and formal equality set out in the Convention on Discrimination (ILO 1965, Part I. 1a). It promoted dual breadwinning, while casting only women as suited to holding two roles. In its pursuit of equal treatment for women, this recommendation used a male yardstick. For example, in 1965, the issue was that “women’s care duties were a drag on their ability to work, as it were, like men” (Murray 2001, 32). Women were to be integrated into the labour force on the basis of equal opportunity but, at the same time, certain measures were deemed necessary to enable women to continue their care-giving work, such as childcare support and reduced hours of work (ILO 1965, Part II, 2 and Part III 2, 4).<sup>10</sup>

It should be noted that the preamble of this recommendation indicated clearly that adopting policies aimed at eliminating discrimination against women with family responsibilities requires modifying systems of labour and social protection for all. However, such suggestions were neither developed in the body of the recommendation nor in the Convention on Workers with Family Responsibilities (1981) succeeding it. And standards on Part-Time Work and Home Work departed sharply from this notion.

The equal treatment approach codified under the Convention on Discrimination, and applied in standards such as the Recommendation on Employment (Women with Family Responsibilities), orients the international labour standards on precarious work. And it is especially germane to emergent standards since it was renewed under the *Social Declaration*

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<sup>10</sup> For example, a report issued prior to the adoption of the recommendation acknowledged the extreme fatigue experienced by women workers with family responsibilities and stated that, “the two day weekend is of course of particular importance to women workers, facilitating the accomplishment of household tasks and the enjoyment of rest” (ILO 1963, 44).

(1998c), successor to the *Philadelphia Declaration (1944)*. The *Philadelphia Declaration* represents a key constitutional moment (Langille 2002) in ILO history as it renewed the organization's founding mandate and enlarged it to include social security issues pivotal to the postwar welfare state (Vosko 2000, 105-106). So, too, does the *Social Declaration*, which was designed to break the impasse in standard-setting by reviving a rights-based approach to international labour regulation. The *Social Declaration* articulates a set of fundamental international labour rights, casts the promotion of these rights as a constitutional obligation, and establishes a mechanism for monitoring adherence among member countries. It aims to promote freedom of association and the recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation. In its renewed emphasis on "equality at work," the *Social Declaration* names the Convention on Discrimination as one of a select group of core conventions – that is, conventions that are binding under the ILO Constitution regardless of whether they have been ratified.

The *Social Declaration* is one of two major initiatives framing new and emerging standards on precarious work. The other is *Decent Work*, a platform initiated through a major organizational review in 1999, where the ILO examined its role and determined how it could best respond to its chief constituents in the face of globalization. *Decent Work* epitomizes the new strategic emphasis of the ILC in the face of the unravelling social pact around which international labour regulation operated in the latter half of the 20th century. Through *Decent Work*, the ILO is attempting to reassert its influence by rehabilitating old standards, while also adopting new ones. The purpose of 'Decent Work' is to improve the conditions of all people, waged and unwaged, working in the formal and informal economy, through the expansion of labour and social protections (Vosko 2002, 26). *Decent Work* identifies people on the periphery of formal systems of labour and social protection as requiring greater attention. It also recognizes that while "the ILO has paid most attention to the needs of waged workers – the

majority of them men.... not everyone is employed” (ILO 1999, 3-4). This assertion represents, for the ILO, an unprecedented acknowledgement of unpaid work, performed by women, and its link to precarious work, and thus provides a vital opening for improvements in standard-setting in these areas.

The *Social Declaration* and *Decent Work* are two very different types of initiatives. While the *Social Declaration* aims to reassert longstanding principles in the ILC through constitutional means, *Decent Work* seeks to rearticulate and, in some instances, expand and reinterpret procedural and substantive components of the ILC through other broader means. Where the international regulation of precarious work is concerned, the almost simultaneous appearance of the *Social Declaration* and *Decent Work* is paradoxical. On the one hand, *Decent Work* attempts to dislodge the standard employment relationship as the normative model of employment in the ILC, partly by acknowledging the significance of unwaged work. On the other hand, the mandate of the *Social Declaration* is to establish meta-rights, a move that bows to mounting pressure to limit the creation and expansion of substantive international labour standards (Cooney 1999; Murray 2001). Furthermore, while equality at work is cast as a fundamental right in the *Social Declaration*, it maintains a male norm, addressing inequalities only between individuals that are “similarly situated” (Bartlett et al 2002; Scott 1988), promoting “consistent” treatment rather than minimum standards (Fudge and Vosko 2001b), and neglecting the question of who should bear the cost of care-giving (Fredman 1997; Fudge and Vosko 2003; Picchio 1998). The *Social Declaration* symbolizes a commitment to equality of treatment of different forms of work (Sen 2000). Yet in failing to employ the broader conception of work embraced in *Decent Work*, it bolsters, rather than confronts or displaces, the standard employment relationship as a norm and thereby perpetuates a relative definition of precarious work.

## PART TWO: Regulating Precarious Work in the ILC

During the second and third-quarters of the 20<sup>th</sup> century, international labour standards aimed to establish the standard employment relationship and limit divergences from its core pillars. In the mid-1970s, with the global economic crisis and the adoption of the *Declaration on Equality of Opportunity and Treatment of Women Workers (1975)*, the emphasis of international labour regulation shifted. There was greater recognition of the spread of precarious work and there were efforts to compensate for deviations from standard employment relationship through the application of an equal treatment approach. In response, the ILO created the International Programme for the Improvement of Working Conditions and Environment (PIACT). Launched in 1975, PIACT's role was to re-direct attention to the ILO's core mandate to identify and support economic and social policies, as well as labour legislation, necessary for attaining social objectives and to review working conditions and environments worldwide. After conducting extensive research, PIACT directed the ILO to make the improvement of working conditions for categories of workers falling outside the scope of traditional protection measures a priority, that is, workers who find themselves in "particularly disadvantaged or *precarious* situations" (ILO 1984a, 91). The result: PIACT altered the course of international labour regulation. "Certain types of economic activity in which *normal measures* for social protection are particularly difficult to apply...temporary or casual work, seasonal work, subcontracted work, home work, and clandestine or undeclared work" became priorities for standard-setting (ILO 1984b, 20, italics added). Precarious work became a central issue in the ILC by the mid-1980s, and it was defined in relation to the standard employment relationship and the system of labour and social protection upholding this norm.

## I. New International Labour Standards on Precarious Work

A tendency which appears to be a common denominator in recent changes in employment relationships, irrespective of the specific factors at their origin, is a general increase in the precarious nature of employment and the decline of workers' protection (ILO 2000b, par 104).

A Committee of Experts convened to investigate workers in situations needing protection in 1998 made the preceding observation in synthesizing country-level investigations into disguised, ambiguous, and triangular employment relationships. While efforts to regulate part-time work, home work, and private employment agencies were already well underway, this observation had the effect of bringing these efforts – and the growing misfit between the normative model of employment and the realities of contemporary labour markets – into full view. At the end of the 20th century, the ILC expanded to include Conventions and Recommendations on Part-Time Work (1994), Home Work (1996), and Private Employment Agencies (1997). There were also several initiatives to extend labour protections to so-called dependent workers, including failed attempts to negotiate a standard on contract labour, and discussions on the scope of the employment relationship. Predictably, the procedural orientation of this evolving constellation of standards is one of equal treatment. As the following discussion shall illustrate, new and emerging standards aimed at limiting precarious work seek to stretch the standard employment relationship by normalizing deviations from it based on time, place, and status.

### A. Time

Until a few decades ago, it used to be assumed that the vast majority, if not all workers, would automatically conform to the standard full-time working pattern, particularly in terms of their hours worked (ILO, 1993a, 1).

When examining the rights, protections and terms and conditions of employment of part-time workers, the yardstick generally used, in the same way as for defining part-time work, is the treatment enjoyed by comparable full-time workers. In effect, this amounts to asking whether part-time workers are discriminated against in terms of their shorter hours of work (ILO, 1993a, 31).

The earliest international labour standard dealing explicitly with precarious work centres on part-time work. The product of intense debate, the Convention on Part-Time Work, was adopted finally in 1994, although it is rooted in the *Declaration on Equality of Opportunity and Treatment of Women Workers*, which called for measures “to ensure equality of treatment for workers employed regularly on a part-time basis” (1975, Article 7.4). The Convention responds to time-based deviations from the conception of “normal hours” integral to the standard employment relationship by seeking to extend protections to two groups: those who cannot find full-time work, including the unemployed, people with disabilities and older workers, and those who “prefer” part-time work due to family responsibilities (ILO 1994a, Article 9). The rationale was set out in a report that preceded the Convention: “although part-time work responds to the aspirations of many workers, there are those for whom it spells low wages, little protection and few prospects for improving their employment situation...This is partly because labour legislation and welfare systems...were designed largely for the full-time workforce” (ILO 1993a, 3).

The Convention on Part-Time Work is built on the acknowledgement that a growing segment of workers engage in part-time work because of a shortage of full-time work even as it characterizes specific groups, such as workers with family responsibilities, as freely choosing part-time work. This framing reinforces gendered patterns. As numerous scholars illustrate, “for many workers, the fundamental issue of part-time work is not their willingness to be flexible, but the price they have to pay for flexible work” (Murray 1999, 14).<sup>11</sup> This framing, using the

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<sup>11</sup> For similar arguments based on the Canadian, Australian, and American cases respectively, see: Armstrong and Armstrong 1992; Duffy and Pupo 1994; Buchanan and Thornwaite 2001; Applebaum 2002a; Rosenfeld 2001.



language of “choice,” advanced in the justificatory parts of the Convention (e.g. Article 9), is the backdrop of the instrument as a whole; as such, it perpetuates the male breadwinner/female caregiver gender contract.

The Convention on Part-Time Work includes within its purview “employed person[s] whose normal hours of work are less than those of comparable full-time workers” (ILO 1994a, Article 1a). In its very first article, the Convention limits its coverage to those part-time workers where a comparable full-time worker may be found. The term “comparable full-time worker” is then defined as a full-time worker with the same type of employment relationship that is engaged in the same or similar type of work or occupation and employed in the same establishment or, “where there is no comparable full-time worker in that establishment, in the same enterprise” or, “when there is no comparable full-time worker in that enterprise, in the same branch of activity” (ILO 1994a, Article 1c). These definitions circumscribe the scope of the Convention, limiting it to those part-time workers working normal hours for whom comparable full-time workers exist.

In addition to these definitional limitations, the Convention allows ratifying countries to “exclude wholly or partly from its scope particular categories of workers or of establishments” (ILO 1994a, Article 3.1). Countries may limit the group of workers covered to permanent part-time wage-earners employed in establishments, enterprises, or branches of economic activity where permanent full-time wage-earners exist. The convention extends equal treatment to workers whose employment situation deviates only marginally from the standard employment relationship – on the basis of “normal hours” alone – and that lack access to certain labour and social protections as a consequence. In other words, it permits the exclusion of many, if not most, part-time workers engaged on temporary, seasonal, and casual bases as well as those in certain establishments, enterprises, or branches of activity, marking the limited terrain of a shorter-hours employment norm.

Before the Convention on Part-Time Work was adopted, a Resolution on Equal Opportunities (1985, LXXX) recognized “the need for national legislation to ensure that part-time, temporary, seasonal, and casual workers, as well as home-based workers, contractual workers and domestic workers suffer no discrimination as regards to their terms and conditions of employment.” This resolution characterized the growth of part-time work as part of a larger set of trends. Early in the negotiations, employers and some member countries, including Australia and the United Kingdom, objected to creating a convention covering all part-time workers. Referring to part-time workers with irregular hours, a government delegate from the United Kingdom stated “what may be considered reasonable in the case of part-time workers employed for a large number of hours in relation to normal working time, may be unnecessary in cases where hours worked are minimal” (ILO 1993b, 24). An employer representative also called for excluding the self-employed, family members, persons working a very small number of hours over a given period, and seasonal workers (ILO 1993b, 24). In the end, these opponents were so successful in limiting the new standard to part-time permanent workers working regular hours that the record of proceedings notes that “part-time workers should not be grouped with other ‘non-standard’ or ‘atypical’ workers... the Governing Body did not intend the conference to include, under the item on part-time work, such questions as temporary, casual or seasonal work” (ILO 1993a, 9). The consequence is that part-time workers who are also employed on causal, seasonal, and/or temporary bases may be compelled to have their rights enforced through other (largely procedural) international labour standards (e.g., conventions on freedom of association and discrimination) that lie outside the Convention on Part-Time Work, paradoxically given the Convention’s focal emphasis on promoting part-time work partly through extending social and labour protections to workers designed to foster its growth. The Convention on Part-Time work asserts that its provisions do not “affect more favourable provisions applicable to part-time workers under other international labour Conventions” (ILO 1994a, Article 2). This clause, which is known as a “savings clause”, is designed to set limits on

the exclusions permitted under the Convention. However, in practice, together with these exclusions, it extends negative rights to the temporary, casual, and seasonal part-time workers since, as Murray notes (1999, 10), “those who rely on the savings clause to enforce their fundamental rights are at a disadvantage compared with those granted ... positive right[s] ... in light of their part-time status;” in other words, they are left ultimately in a defensive posture.<sup>12</sup>

The part-time workers that the Convention on Part-Time Work *does* cover are to be treated in terms equivalent to comparable full-time workers. This means the same level of protection with respect to the right to organize and collective bargaining, basic wages, occupational health and safety, and discrimination in employment and occupation (ILO 1994a, Articles 4 and 5). In its provision for equal treatment in the area of wages, the Convention on Part-Time Work sets a far lower standard than the Convention on Discrimination which includes “any additional emoluments whatsoever payable directly or indirectly whether in case or in kind” (ILO 1994a, Article 2.1). It prohibits the payment of differential wages, but it allows differential non-pecuniary benefits. The Recommendation on Part-Time provides for equitable formal compensation beyond the basic wage, although, once again, it is non-binding (ILO 1994b, par 10).

In other areas, part-time workers are to “enjoy conditions equivalent to those of comparable full-time workers.” Equivalency, here, is defined on a proportional basis: protections related to social security, certain types of paid leave, and maternity are determined in relation to hours of work, contributions, earnings, or by other means (ILO 1994a, Article 6). Consistent with the equal treatment approach espoused in the Convention on Discrimination, there is no provision for minimum standards. Instead, benefits are to be extended to part-time workers on an “equitable basis”; prorated entitlements are put forward as equivalent conditions (ILO 1994a,

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<sup>12</sup> Granted, the Recommendation qualifies the exclusion of particular categories of workers or establishments permitted under the Convention (ILO 1994b, par 21). It aims to limit exclusions that relate to establishment size and the resort to part-time workers solely as a means of escaping employment-related obligations. However, it is incapable of redressing the practical effects of the savings clause.

Articles 6 and 7). Furthermore, ratifying countries may also disqualify part-time workers falling below a certain hours-threshold from prorated social security schemes altogether; maternity and employment injury are the only exceptions to this permissible exclusion (ILO 1994a, Article 8). This approach adopts a single baseline for all categories of workers. As a consequence, only those workers in employment relationships closely resembling the standard employment relationship are assured of benefits. In contrast to the Convention, the Recommendation on Part-Time Work attempts to limit the exclusions permitted in this article by calling for a reduction of hours-thresholds generally and especially in the areas of old-age, sickness, invalidity and maternity (ILO 1994b, par 6 and 8). Yet this measure, because it is only a recommendation, even for those countries ratifying the convention, has virtually no legal force.

As a model for addressing time-based deviations from the notion of normal working hours integral to the standard employment relationship, the Convention on Part-Time Work has the capacity to improve the situation of some part-time workers while neglecting many others. It represents a modest attempt to regulate precarious work by advancing a shorter-hours employment norm.

## B. Place

...home work implies an employment relationship between the home worker and the employer, subcontractor, agent or middleman (ILO 1990a, 3).

...the sometimes invisible link between employer and employee is a source of vulnerability...repugnant work conditions, low pay (ILO 1990a, 15).

Shortly after the adoption of a Convention on Part-Time Work aiming to redraw the temporal boundaries of the employment norm, attention shifted to place of work. Adopted in 1996, the Convention Concerning Home Work, and its associated recommendation, addresses the persistence of work arrangements in liberal industrialized countries, and their proliferation in industrializing countries, where the worker performs a service or produces a product outside the

employer's premises.<sup>13</sup> Negotiations over home work preceded the emergence of *Decent Work*, although the promotion of the Convention Concerning Home Work is central to the platform. The new international labour standard on home work is the product of collective struggles dating back to the early 1970s on the part of insiders in the ILO Division on Women (FEMME) and the ILO Program on Rural Women, UNIFEM, and trade unions and emerging labour organizations to expand the ILC to cover home workers in a meaningful way (Vosko 2002, 33). Together, the Convention and Recommendation Concerning Home Work modify what constitutes a worksite and is thus subject to international labour regulation.

The main change to the employment norm in the Convention Concerning Home Work is achieved by its characterization of home workers as wage-earners. In contrast to early international labour standards such as those on hours of work and minimum wage-fixing, applicable first to industrial workers and, subsequently, salaried workers, this Convention casts the relationship between a home worker and an employer and/or an intermediary as an employment relationship so long as the home worker does not have "the degree of autonomy and of economic independence necessary to be considered an independent worker" (ILO 1996a, Article 1). The Convention therefore moves beyond the assumption dominant in the ILC, as elsewhere, that wage-earners work on their employers' premises, under their direct supervision, and eliminates exclusions integral to instruments establishing the standard employment relationship. Instead, it adopts a broader notion of the worksite that extends into the home and ascribes a wage relationship to what has historically been characterized as

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<sup>13</sup> The discussion that follows examines the approach to regulating home work in the ILC taking labour laws, legislation, and policies (or their absence) in liberal industrialized countries as a point of departure.

The approach to regulating home work varies dramatically between countries, especially between industrialized and industrializing countries. Factors shaping the increase or revival of homework are also often distinct in industrialized and industrializing countries. Hence, in considering the persistence of home work in industrializing countries, the *Meeting of Experts on The Social Protection of Home Workers* (1990a, 7) emphasized the "growing pressure to maintain trade competitiveness and reduce labour costs is prompting enterprises to make structural changes that may involve reallocating work to regions of the world with limited social and physical infrastructure." These pressures have implications for the reallocation of production within liberal industrialized countries but their global dimension is also important to emphasize.

piecework. A home or another premise of the worker's own choosing is equivalent to an employer's premises and piece work is cast as "work carried out by a person...for remuneration...irrespective of who provides the equipment, materials or other inputs uses" (ILO 1996a, Article 1a).

These modifications have significant implications for the gender contract. By labelling the home a potential site of work, the Convention encourages registration and labour inspection in this location of paid work. The Recommendation goes further, asserting that home workers should receive compensation for costs related to the use of "energy and water, communications and maintenance of machinery and equipment as well as time spent maintaining equipment and packing and unpacking goods" (ILO 1996b, par 8, 16). However, little attention is given to hours of paid work even though in discussions leading up to the instruments overwork was noted as a common problem associated with piecework – and one with gendered effects (ILO 1990a; ILO 1996b, par 23). As delegates to a regional meeting in Asia concluded, the tendency towards overwork blurs "the line between working life and family life. Because work is remunerated on a piece rate basis, the pressure to earn adequate income and the need to meet quantity and quality targets tend to require the allocation of a significant amount of time to work. Interwoven with other family tasks, the workday may therefore stretch to excessively long hours..." (ILO 1988, 42). Furthermore, "the intrusion of work into the domain of family life is not confined to the 'plane of time,' it also involves the intrusion of work-related equipment into family space" (ILO 1988, 42). Home work also intrudes into physical spaces otherwise cast as private under the male breadwinner/female caregiver gender contract.

The Convention on Home Work also characterizes as an employer a person that "either directly or through an intermediary gives out home work in pursuance of his or her business activity" (ILO 1996a, Article 1c). It encourages the allocation of employment-related responsibilities by labelling those who purchase products or services as employers and by drawing a linkage between employers and intermediaries, as well as recognizing two or more

employer-like entities (ILO 1996a, Article 8). Although its terms are not binding, the Recommendation also asserts that where an intermediary is involved, it “should be made joint and severally liable for payment of remuneration due to home workers” (ILO 1996b, par 18). Effectively, these interventions characterize home work as “an employment relationship between the home worker and the employer, subcontractor, agent, or middleman” based on an “agreement that may be implicit or explicit, verbal or written” (ILO 1990a, 3). Contemporary approaches to the international regulation of home work thus retain the bilateral employment relationship, and expand its terms, at the core of the employment norm while promoting accountability up the subcontracting chain.

No exclusions are permitted under the Convention Concerning Home Work (ILO 1996a, Article 2). Furthermore, the approach to equal treatment advanced in it takes “into account the special characteristics of home work,” and it does not assume a rigid comparator. It simply requires that country-level policies on home work promote, “where appropriate, conditions applicable to the same or similar types of work carried out in an enterprise” (ILO 1996a, Article 4.1). This measure departs dramatically from the Convention on Part-Time Work, whose terms are weakened significantly by the requirement for a comparator.<sup>14</sup> The absence of a comparator at the enterprise level is by design: it aims to encourage improvements for home workers’ right to establish or join organizations of their own choosing, protections against discrimination in employment and occupation, occupational health and safety protection, remuneration, social security protection, access to training, minimum age requirements, and maternity protection. The Recommendation also calls for encouraging collective bargaining (ILO 1996b, pars 8 and 16).

The Convention Concerning Home Work has considerable promise in advancing more inclusive employment norms. It achieves a delicate balance, meaningfully addressing the

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<sup>14</sup> Prior to the adoption of the Convention, there were numerous attempts to take wording from the Convention on Part-Time Work yet these attempts failed (see for example: ILO 1995).

question posed by trade unionists at the outset of the negotiations: namely, “what is it that can be done to preserve the social protection and gains achieved by organized labour and extend these gains and protection to home workers while at the same time providing for the economic needs of enterprises and workers that resort to home work?” (ILO 1988, 44) However, the risk is that legitimizing the home as a site of wage-earning could contribute to the maintenance of a care-giving norm that encourages women’s confinement to the private sphere and reinforces longstanding patterns of occupational and industrial segregation. In assessing the new standard on home work, it is important to recall that “women are involved in home work not only because of their family responsibilities but also because of their generally weaker position in the labour market” (ILO 1990a, 10). Extending labour protection to home workers and moving towards legitimization without prescribing minimum standards and without addressing unpaid care-giving, which often takes place in households, could thwart the fundamental changes in the gender contract necessary to secure genuine equality.

### C. Status

The situation of workers who are unprotected because of a lack of clarity about their employment status undermines the impact of national and international labour standards whose application depends mainly on the existence of an employment relationship (ILO 2004, par 57).

Efforts to address the vexed question of status are longstanding in the ILC, not surprisingly since questions of status rest at the very foundation of the labour law platform (Davies and Freedland 2001; Engblom 2001; European Commission 1998; Fudge, Tucker, and Vosko 2002 and 2003b; Langille 2002). There is a growing movement to recast the boundaries of the employment relationship throughout the ILC, to extend labour protections to workers “who are in fact employees but find themselves without the protection of an employment relationship” (ILO 2004, par 56). This movement dates to 1990, when the promotion of self-employment was



a central item of discussion at the international labour conference. While the emphasis of discussion was promotion, a report prepared for the conference both recognized the diverse nature of self-employment and drew attention to the growing problem of what it labelled “nominal self-employment,” especially among OECD countries. In response, talks centring on the report concluded that:

Employment relationships are complex and do not fit into neat conceptual categories. While the polar cases of pure wage and self-employment are simple to categorize, there are *hybrid and intermediate cases* which need to be recognised. Among these an important category is the *nominal self-employed – those who are sometimes classified as self-employed in national statistics and who may consider themselves to be such, but who are in reality engaged in dependent employment relationships more akin to wage employment than to genuine autonomous self-employment* (ILO 1990b, par 4, italics added).

These conclusions are highly significant. Reflecting greater concern with questions of status in the ILC, they introduced notions of dependent and nominal self-employment in the ILO lexicon while simultaneously promoting veritable self-employment. The result was a resolution calling for “freely chosen and productive forms of self-employment” and, at the same time, guarding against “the growth of precarious and dependent forms of nominal self-employment stemming from attempts to bypass protective social legislation and to erode the employment security and earnings of affected workers” (ILO 1990b, par 6e, 12). Significantly, the resolution noted further that the self-employed should ultimately enjoy similar social protection, including labour rights, to other protected groups. In the area of labour standards and social protection, it also called on countries to institute measures to raise the levels of social protection of the self-employed to “levels comparable to those enjoyed by wage employees” (ILO 1990b, par 17c; see also par 6d). However, discussion on self-employment ended with this resolution after 1990, since there was strong resistance, on the part of employers, to setting limits on commercial activities.

Although it was not focused as narrowly on employment status, the Convention on Private Employment Agencies was the next standard to touch on this issue. Adopted in 1997, it is also the weakest convention relevant to status since it legitimizes triangular employment

relationships without putting in place proper safeguards (Vosko 1997). Unlike its counterpart on home work, the convention fails to address squarely the importance of regulating employment relationships where responsibility does not rest solely with one entity. It focuses narrowly on a single labour market institution – the private employment agency – and it extends only “adequate” protection rather than equal treatment to workers employed by private employment agencies. However, the convention is relevant here since it defines workers in triangular employment relationships as employees of agencies whose services consist of “employing workers with a view to making them available to a third party... which assigns their tasks and supervises the execution of these tasks” (ILO 1997b, Article 1.1b). It constructs an employment relationship between a worker and an intermediary, a strategy with pluses and minuses,<sup>15</sup> and calls on ratifying countries to allocate responsibility between the agency and the user in various areas (ILO 1997b, Article 12).

Shortly after the adoption of the Convention on Private Employment Agencies, attention shifted to contract labour. Although it failed in 1998, the draft version of the Convention on Contract Labour provides more clues as to the direction of change, especially to the broader movement to address the scope of the employment relationship and thereby nominal self-employment and triangular employment relationships. This draft convention defined contract labour broadly as “all situations in which work is performed for a person who is not the workers’ employer under labour law but in conditions of subordination and dependency that are close to an employment relationship under that law” (ILO 1998b, 2). It sought to cover workers engaged directly by the user enterprise as well as those that are employees of enterprises making them available to the user enterprise but “whose subordination or dependency is in relation to the user enterprise,” excluding workers employed by private employment agencies (ILO 1998b, 2;

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In some instances, temporary agency workers benefit from having the agency treated as employer, specifically, for the purpose of rights based on length-of-employment with a single employer. In others, these workers may have better access to rights if the user is treated as the employer; this can be the case with collective bargaining, where the ability to participate in a bargaining unit with permanent employees of the client of the agency often yields important improvements (NACLA 2003; Trudeau 1998; Vosko 2000).

see also ILO 1998a, Article 1). One of its primary aims was to eliminate disguised employment relationships, the narrower and less contested notion replacing ‘nominal self-employment’ in the 1990s, by ensuring “that rights or obligations under labour or social security laws or regulations are not denied or avoided when contract labour is used” (ILO 1998a, Article 7).

This draft convention on contract labour sought to bring labour protections to workers engaged in contract labour by promoting “adequate” protection in areas similar to those covered under Conventions on Part-Time Work and Home Work: the right to organize, the right to bargain collectively, freedom from discrimination, minimum wage, payment of wages, occupational safety and health, compensation in case of injury or disease, and payment of social insurance contributions (ILO 1998a, Article 6). Unlike in the Convention on Private Employment agencies, the term “adequate” was defined as affording protection to contract workers “to correspond to the degree of the worker’s subordination to and/or dependency on the user enterprise” (ILO 1997a, 65). This draft convention situated the standard employment relationship as a reference point in advancing a model of graduated protection. A draft Recommendation on Contract Labour also delineated principles and the framework for a process for allocating “the respective responsibilities of the user enterprise and the other enterprises in relation to employees” in triangular relationships (ILO 1998b, Article 9). Rather than making workers in triangular employment relationships employees of the user-enterprise, the convention also attempted to improve protections accorded to them regardless of the nature of the contract labour arrangement. And its associated recommendation offered a hybrid test for establishing subordination and dependency covering the various forms of contract labour.

The main outcome of failed deliberations over contract labour was the creation of a Committee of Experts to inquire into and report on “workers in situations needing protection” – a measure designed to foster continued discussion on employee status without addressing standard-setting explicitly. Between 1998 and 2003, this committee commissioned thirty-nine country studies to explore four types of situations: subordinate work” defined with reference to

notions of control and subordination associated with the employment relationship, “triangular employment relationships,” self-employment, and self-employment under conditions of dependence. Researchers preparing these country studies were asked to pay particular attention to truck drivers in transport enterprises, construction workers, and salespeople and to the situation of women workers. The Committee of Experts encouraged researchers to approach the issue of status in relation to occupational and/or industrial context. Sales staff in department stores, for example, were of interest because “in many countries, department stores have been internally fragmented into autonomous shops and the sales personnel, mainly women, work for these shops but with varying legal status, sometimes as their employees and sometimes supplied by agencies as either employees or independent workers” (ILO 2003a, 44).

The report growing out of its work, titled *The scope of the employment relationship* (2003a), advanced a threefold typology of dependent work organized around disguised, ambiguous, and triangular relationships (ILO 2003a, 37). In it, dependent workers were defined as workers who lack labour protection because of one or a combination of the following factors: the scope of the law is too narrow or too narrowly interpreted; the law is poorly or ambiguously formulated; the employment relationship is disguised; the relationship is objectively ambiguous; and, the law is not enforced (ILO 2003a, 2). To fill out this typology, the report surveyed criteria for defining the employment relationship, explored the consequences of the absence of labour and social protections for workers in the situations concerned, and canvassed several models for re-regulation. It maintained that the employment relationship is a universal concept and remains an appropriate basis for extending labour protection. However, the report acknowledged the need to adapt the scope of the regulation of the employment relationship, calling for the creation and adoption of international labour standards “designed to encourage the formulation and implementation of policies to protect dependent workers, taking account of recent developments in employment relationships” (ILO 2003a, 53). It also proposed

internationally-sanctioned mechanisms and procedures to determine who is an employee to serve as guidelines at the national level (ILO 2003a, 77).

Predictably, workers and employers were polarized over the issue of expanding the scope of the employment relationship in negotiations following up on this report in 2003. Countries, too, and even communities of countries, such as the industrialized market economies, lacked a common overarching position.<sup>16</sup> Nevertheless the parties reached consensus on two noteworthy issues: namely, that “the concept of the employment relationship” is “common to all legal systems and traditions” and that “in many countries common notions such as dependency and subordination are found” (ILO 2003b, pt 2). They also concurred on the need for clear rules where laws are “too narrow in scope,” where the employment relationship is disguised or ambiguous, and “where the worker is in fact an employee but it is not clear who the employer is” (ILO 2003b, pt 5).<sup>17</sup>

The decision to devise an international labour standard clarifying the scope of the employment relationship grew out of these negotiations. The form of the standard is to be a recommendation and it is to focus on disguised employment relationships and “the need for mechanisms to ensure that persons within an employment relationship have access to the protection that they are due” (ILO 2004, par 5; see also: ILO 2003b, pt 25). From the outset of negotiations, the parties agreed on the need to regulate “disguised employment” in order to “prevent sham arrangements, fraud or illegal practices adopted to avoid legal obligations and disadvantage workers” (ILO 2003a, 7; see also: ILO 2003b, pts 9-24).<sup>18</sup> The conception of disguised employment relationships orienting this consensus was vague. According to the

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<sup>16</sup> The author was an observer in these discussions, which took place in June of that year.

<sup>17</sup> Both Canada and the United States declared their support for the preparation of ILO guidelines aiming at clarifying employment status. In particular, the “government member of Canada underscored the importance of having accessible and transparent processes for the determination of workers’ employment status” (ILO 2003b, par 37).

<sup>18</sup> Indeed, early in the negotiations, the employer representative stated that “employers did not support deliberate attempts at evading legal obligations, as this created a situation of unfair competition” (ILO 2003b, par 35).

report prepared for discussion, “a disguised employment relationship is one which is lent an appearance that is different from the underlying reality, with the intention of nullifying or attenuating the protection afforded by law” (ILO 2003a, 24). The 2003 negotiations narrowed the emphasis to focus on two dominant means of disguising the employment relationship: giving it “the appearance of a relationship of a different *legal nature*, whether civil, commercial, cooperative, family-related or other” in order to “deny certain rights and benefits to dependent workers” or simply not delegating employees as such (ILO 2003a, 25, italics added). In the former case, employees are presented as independent or self-employed while in the latter, exclusion takes more subtle forms (ILO 2003a, 31). Regardless, “the most visible effect of this type of contract manipulation is that the worker does not obtain the benefits provided to employees by labour legislation or collective bargaining” (ILO 2003a, 26).

In the negotiations, the workers’ representative and representatives of several member countries also raised the potential overlap between disguised and triangular employment relationships in response to the preparatory report, which observed that:

a ‘triangular’ employment relationship normally presupposes a civil or commercial contract between a user and a provider. It is possible, however, that no such contract exists and that the provider is not a proper enterprise but an intermediary of the supposed user, intended to conceal the user’s identity as the real employer (ILO 2003a, 37).

The issue of triangular relationships was unresolved in the negotiations, however. In the near future, the ILC is poised to expand, but only to a limited degree, to include a promotional instrument providing guidance to “ensure that persons with an employment relationship have access to the protections they are due at a national level” (ILO 2003b, par 135). In essence, this means addressing disguised employment relationships and providing some scope for action in ambiguous situations, where there is “genuine doubt about the existence of an employment relationship” – to the objections of employers who rejected the idea that a lack of clarity could be

the cause of a lack of protection and stated that “a person either was an employee or was not” (ILO 2004, par 16, 12).

Discussions on the scope of the employment relationship remain ongoing. The next phase will involve crafting a new international labour standard in the form of a recommendation aimed at bringing more workers under the umbrella of the employment relationship, beginning with those with employment relationships that are otherwise disguised. There is a profound tension here: on the one hand, there is some recognition that countries need to clarify the distinction between dependent work and self-employed persons and to combat disguised employment relationships, although the definition of disguised remains vague and the notion of ambiguity is contentious (ILO 2004, par 64). On the other hand, the recommendation is not to “interfere with genuine commercial and independent contracting arrangements” (ILO 2004, par 5). The effect is that the line between “genuine commercial and independent contracting arrangements” and “dependent work,” both rather vague notions, remains unclear.

Gender scarcely surfaced as an issue of concern during the 2003 negotiations on the scope of the employment relationship due primarily to employers’ successful attempts to avoid the topic through repeated claims that “the gender aspect of the issues under discussion... was not fully understood” and that there had been “insufficient analysis of the scope of gender issues” by the International Labour Office (ILO 2003c, Par 53).<sup>19</sup> Indeed, towards the conclusions of talks, the employer representative went so far as to suggest that “there was no evidence or data available demonstrating that lack of labour protection exacerbated gender inequalities” (ILO 2003c, Par 123). However, in the final analysis, in opposition to employers’ claims that “the adverse impact on women of disguised employment, or of the economic, social and gender implications arising from the lack of clarity in employment laws, was not clear,” a number of member countries and worker delegates marshalled evidence of women’s high

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<sup>19</sup> Throughout the negotiations, the workers’ representative rejected these claims vehemently.

representation in various forms of dependent work (ILO 2003b, par 53). One outcome was the affirmation that “the lack of labour protection of dependent workers exacerbates gender inequalities in the labour market” (ILO 2003b, pt 15). Another was a directive for clearer policies on gender equality and better enforcement of relevant laws and agreements based on the notion that the Convention on Discrimination applies to all workers. Still another was the assertion, pointing to gender difference, that the Convention on Maternity Protection “specifies that it ‘applies to all employed women, including those in atypical forms of dependent work’” (ILO 2003b, pt 16). Hence, much like the conclusions to the 2003 discussion, the recommendation is simply to “address the gender dimension” (ILO 2003b, pt 25; see also: ILO 2004, 14). Against the backdrop of a broad recognition that a lack of protection reinforces inequalities between the sexes and plans for a general discussion on gender equality in the world of work in 2006, the juxtaposition of a call for adhering to the now core Convention on Discrimination and a solemn reminder that maternity protection is applicable to *all* employed women is paradoxical. Silences still remain over the female care-giving norm assumed and its links to the gender of dependent work – a profound consequence of the continuing endorsement of a narrow vision of equal treatment in the ILC.

## II. Normalizing Deviation? Limits of an Equal Treatment Approach

Taken together, the new constellation of measures aimed at curbing precarious work, along with discussions on the scope of the employment relationship, aim to revive a standard employment relationship. They seek to stretch the employment norm to incorporate more (otherwise “regular”) part-time workers, home workers, and dependent workers whose employment relationships are disguised. Yet they espouse relatively low levels of labour



protection for workers falling in these groups, largely because of their strategy of minimizing the effects of their difference from workers in standard employment relationships, specifically differences based on hours and place of work and employment status. For part-time workers, accommodation within the employment norm requires the identification of a comparable full-time worker (i.e., a full-time permanent employee) to set a baseline for prorated social and labour protection schemes; it does not require the adoption of minimum standards. For home work, it entails constructing the home as if it is a regular worksite subject to inspection and other forms of regulation, establishing as the employer the person that parcels out work directly or through an intermediary, and reconfiguring piecework to fit the mould of wage-earning. And, for dependent workers, it entails adapting mechanisms and procedures for establishing an employment relationship where it has previously gone unrecognized in order to bring workers in disguised employment relationships under the scope of labour protection.

In each instance, the process of normalizing deviation is gendered. Women's family responsibilities are a central justification for both new Conventions and Recommendations on part-time work and home work, while men's role in wage-earning is tacitly affirmed. Reconciling work and family also forms the rationale for promoting these types of work (Murray 1999; ILO 1990a). In turn, women's predominance in certain occupations and sectors, such as domestic work, nursing and care professions, and home work, is linked to their high prevalence in disguised employment relationships (ILO 2003b, par 15). Processes of stretching the employment norm also have a gendered cast – they uphold male norms surrounding wage-earning and set the baseline for extending labour protection accordingly (i.e., without attention to minimum standards). They also uphold the female care-giving side of the gender contract by failing to advance strategies for equalizing these responsibilities among men and women. In this way, they follow the path of equal treatment advanced in the *Social Declaration* but place the goals of *Decent Work* out of reach by failing to acknowledge how gender structures time, place, and status deviations from the standard employment relationship. The notion of “equality

at work” – or what Sen (2000), in an inspired interpretation of the *Social Declaration*, envisages as equality of treatment of different forms of work – is undermined by the adoption of a conception of equivalency assuming a singular baseline.

## PART THREE: A Portrait of Precarious Work in Australia, Canada, and the United States

To assess the viability of new and emerging international labour standards on part-time work, home work, and the scope of the employment relationship, it is necessary to examine labour force trends at the country-level. To this end, this section develops a portrait of precarious work in Australia, Canada, and the United States.<sup>20</sup> In each of these countries, precarious work is characterized by job insecurity, low wages, limited social benefits and statutory entitlements, and a lack of control over the labour process. In each instance, it is also gendered. Yet there are significant differences.

In Australia, precarious work pivots mainly on time-based deviation from the standard employment relationship. It takes sharp expression within a subcategory of part-time employment that falls outside the shorter-hours employment norm envisioned under the

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<sup>20</sup> The data sources for the figures and tables in this section are as follows: Figure 1 -- OECD Labour Force Statistics: Indicators; Table 1; Figure 2a, Figure 2b, Figure 2c, Figure 3, Figure 4, Figure 15, Figure 24 – Australia – 2000 Survey of Employment Arrangements and Superannuation, Special Request, Australian Bureau of Statistics; Canada – 2000 Labour Force Survey, Public Use Microdata File Custom Tabulation, Statistics Canada; United States – February 2000 Current Population Survey and Contingent Worker Supplement, Public Use File Custom Tabulation, United States Bureau of Labor Statistics; Figure 5-14 - Australia – 2000 Survey of Employment Arrangements and Superannuation, Special Request, Australian Bureau of Statistics; Figure 16-23 – Canada 2000 Survey of Self-employed, Public Use Microdata File Custom Tabulation, Statistics Canada; Figure 25 -26 – William J. Wiatrowski, May 26, 2004, “Documenting Benefits Coverage for all Workers”, Compensation and Working Conditions Online, USDOL; Figure 27 – “Women in the Labor Force: A Databook” USDOL, Feb 2004 p. 70-71; Figure 28, Figure 30-32 – April 2001 Current Population Survey, Public Use File Custom Tabulation, United States Bureau of Labor Statistics; Figure 29 – *futurework*: Trends and Challenges for Work in the 21st Century, 1999, USDOL.

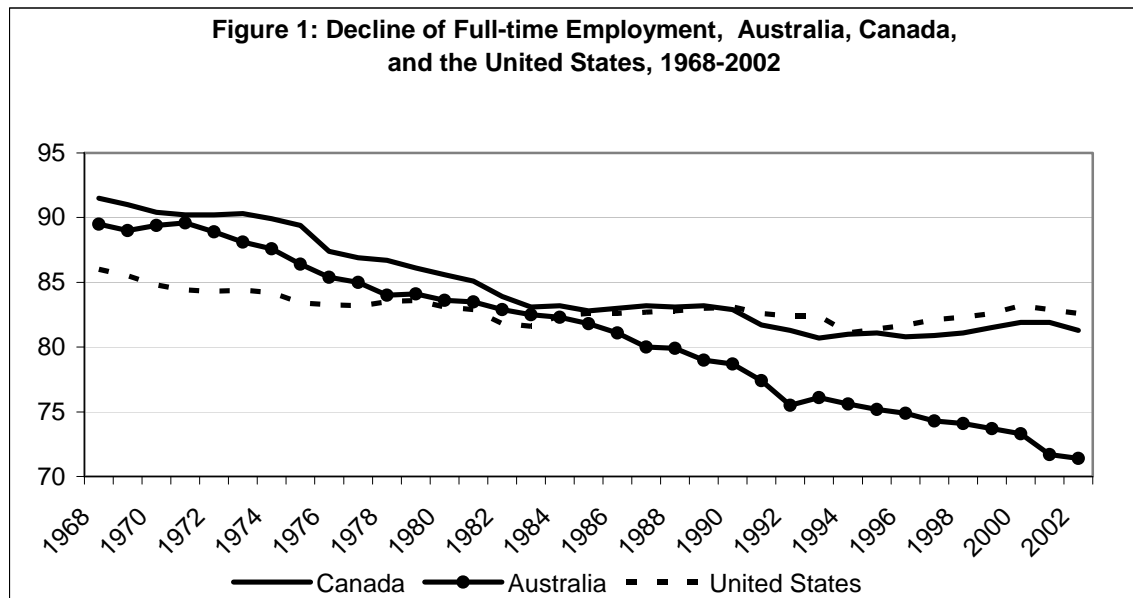
Data referring to 2000 for the United States refer to data retrieved from the Current Population Survey and the Contingent Work Supplement of February 2001.

Convention on Part-Time Work – part-time ongoing casual. A disproportionate number of Australian women, many of whom have young children, fall into this category. In Canada, deviation from the standard employment relationship on the basis of status grew in significance in the 1980s and 1990s. In this context, a sizeable proportion of full-time solo self-employment not only lacks qualities associated with entrepreneurship, a reasonable measure of genuine commercial activity, but is precarious regardless of whether it is disguised. A large segment of Canadian women in full-time solo self-employment, many of whom engage in self-employment to fulfill care-giving responsibilities, also have very low-incomes and lack benefits and/or independent access to benefits. By its very definition, an international labour standard on the scope of the employment relationship focused on disguised employment and objectively ambiguous situations could never offer a model for extending protections to this group. In comparison to Australia and Canada, full-time permanent employment still dominates overwhelmingly in the United States. Here, while there is certainly some deviation from the standard employment relationship, which also tends to involve precarious work, it is the erosion of the employment norm itself that is profound. Among full-time permanent employees, conditions of work are deteriorating. The effects of this process of erosion are highly gendered as many American women, especially single women with young children, hold full-time permanent jobs that are highly precarious.

## I. Measuring the Standard Employment Relationship

Full-time permanent employment is the best statistical indicator for the standard employment relationship. But data available for Australia, Canada, and the United States over time allow only for the consideration of two facets of this norm – employee status and full-time work. Time series data are not available on a third central facet (i.e., permanency).

Figure 1 depicts full-time employment in these countries in the late 20<sup>th</sup> century. Instability in full-time employment dates to the early 1970s in each of these countries. Yet patterns of instability differed markedly in Australia, Canada, and the United States between 1968 and 2002. Full-time employment slipped from 90 to 71 percent of total employment in Australia in this period. Trends were similar, although less dramatic, in Canada, where it declined from 90 to 81 percent of total employment. The United States, in turn, experienced a modest decline in the 1970s. However, full-time employment stabilized at a relatively high level in the early 1980s – and it stood at approximately 83 percent of total employment in 2002.



Permanency is an important feature of the standard employment relationship. Table 1 provides a snapshot of the standard employment relationship and its deviations that includes this central feature. It breaks down total employment in Australia, Canada, and the United States for 2000, using a new approach for statistical conceptualization and measurement.<sup>21</sup> To

<sup>21</sup> This approach was first developed by the author, along with Zukewich and Cranford, as a critique of traditional approaches to conceptualizing and measuring 'non-standard work' and 'contingent work' in Canada (Vosko, Zukewich and Cranford 2003). The discussion that follows applies this approach to Australia and the United States and develops it further (see especially Table 1).

capture the diversity in the forms of employment differing from the standard employment relationship, Table 1 first elevates employment status by differentiating between paid employees and the self-employed. It then divides the self-employed into those without employees (solo self-employed) and those who employ others (employers). In parallel, it separates permanent and temporary employees. Finally, it splits each subgroup of employees and self-employed people by full-time and part-time status.

This approach to breaking down total employment at a country level links forms of employment deviating from the standard employment relationship to dimensions of precarious employment. According to Rodgers (1989, 3-5), four dimensions are central to establishing whether a job is precarious: control over the labour process; degree of certainty of continuing employment; degree of regulatory protection or whether the worker has access to social and labour protections; and, income level. These dimensions are the point of departure for a growing body of scholarship on precarious work among employees in both Canada and Australia (Armstrong and Laxer forthcoming; Campbell and Burgess 1998; Vosko, Zukewich and Cranford 2003) and also among the solo self-employed (Vosko and Zukewich forthcoming).

The first order of distinction in Table 1 (i.e., between employees and the self-employed) is central to workers' capacity to exercise control over the labour process and their degree of regulatory protection. The compendium of standards comprising the ILC extends labour and social protections most fully to workers with an identifiable employment relationship. Correspondingly, in Australia, Canada, and the United States, few self-employed workers have access to collective representation through a union (Cranford, Fudge, Tucker and Vosko forthcoming; Cobble and Vosko 2000; Clayton and Mitchell 1999; Piore 2002).

The second order of distinction addresses degree of certainty of continuing employment by grouping employees according to job permanency and by distinguishing between the solo self-employed and employers. In each of the three countries, the solo self-employed are more vulnerable to uncertainty than employers (Fudge, Tucker and Vosko 2002; Hyde 2000;

O'Donnell 2004). Amongst employees, the category "permanent" signifies durability in the employment relationship, indicated normally by an indefinite contract of employment, while the category "temporary" approximates uncertainty. In Canada and the United States, all forms of temporary employment fall, as one would expect, within the category "temporary."<sup>22</sup> The terminology is employed somewhat differently in Australia, however, where this category includes all casual employment<sup>23</sup> as well as employment on a fixed-term contract or paid by an agency. As Anthony O'Donnell (2004, 18) argues, there is a strong case to be made for "aggregating those jobs which, regardless of their extended tenure (or prospect for extended tenure), grant relatively unfettered power to the employer to terminate by virtue of their regulatory designation."<sup>24</sup> Grouping together all casual employment, employment on a fixed-term contract, and employment paid by an agency makes it possible to compare Australia with Canada and the United States.<sup>25</sup>

The third and final order of distinction in Table 1 also addresses access to social and regulatory protection in these countries since eligibility for and/or level of certain social benefits is pegged to hours of work.

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<sup>22</sup> In Canada, temporary work includes seasonal, contract, casual and 'other temporary' work, including work through a temporary agency. In the United States, it includes all employees that describe their employment situation as temporary.

<sup>23</sup> Casual employment is defined by the Australia Bureau of Statistics (ABS) as all paid employment lacking leave entitlements (both sick leave and paid annual leave). Following the justification used originally by the ABS, I use the lack of leave entitlements to define casual employment to reflect the long tradition in Australia's industrial relations system where casual employees are to receive "loadings" or precarity pay in lieu of entitlements for paid holiday leave and sick leave under federal awards (ABS 2001, par 4.38; see also Tham 2003, 3).

There is a growing movement to redefine the category casual in ABS surveys to conform to what O'Donnell (2004) labels its "vernacular" meaning – that is, intermittent, irregular, or on-call. This tendency is evident in recent surveys that permit analysts to adopt the concept "self-identify casual," such as the Forms of Employment Survey and the Survey of Employment Arrangements and Superannuation, to capture the so-called 'true casual.' However, this approach is questionable because the vernacular conception of 'true casual' has very little meaning at either a contractual or regulatory level.

The significance of the category casual and its legal meaning are discussed at length below.

<sup>24</sup> See also Campbell (1998, 108), who highlights the similarities between casual employment in Australia and temporary employment in the EU.

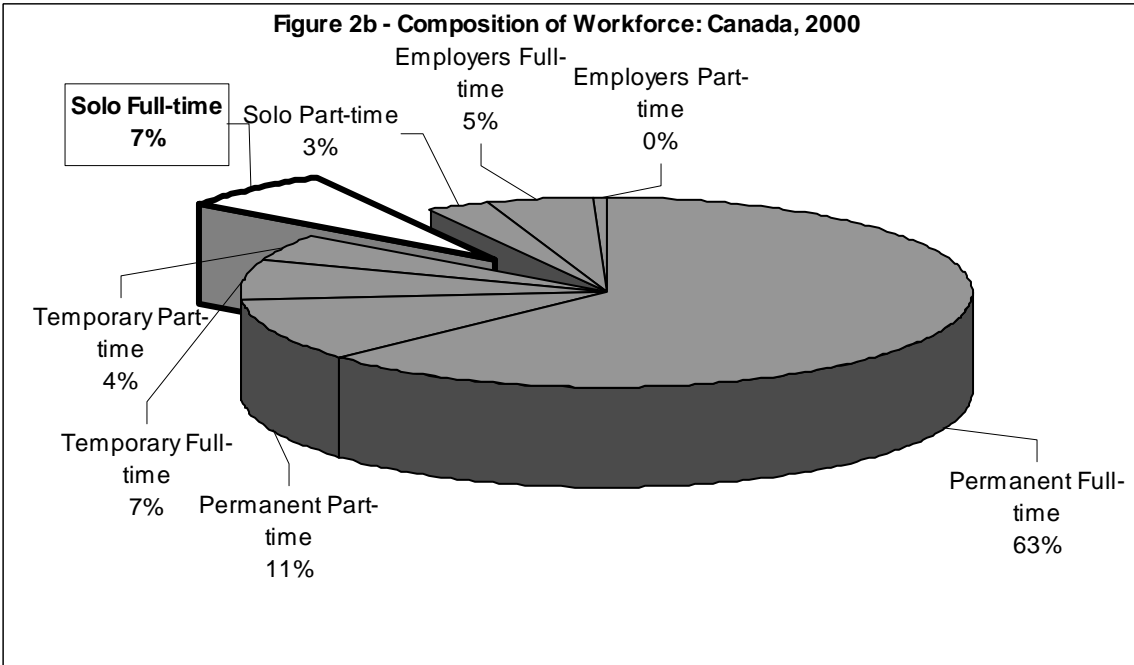
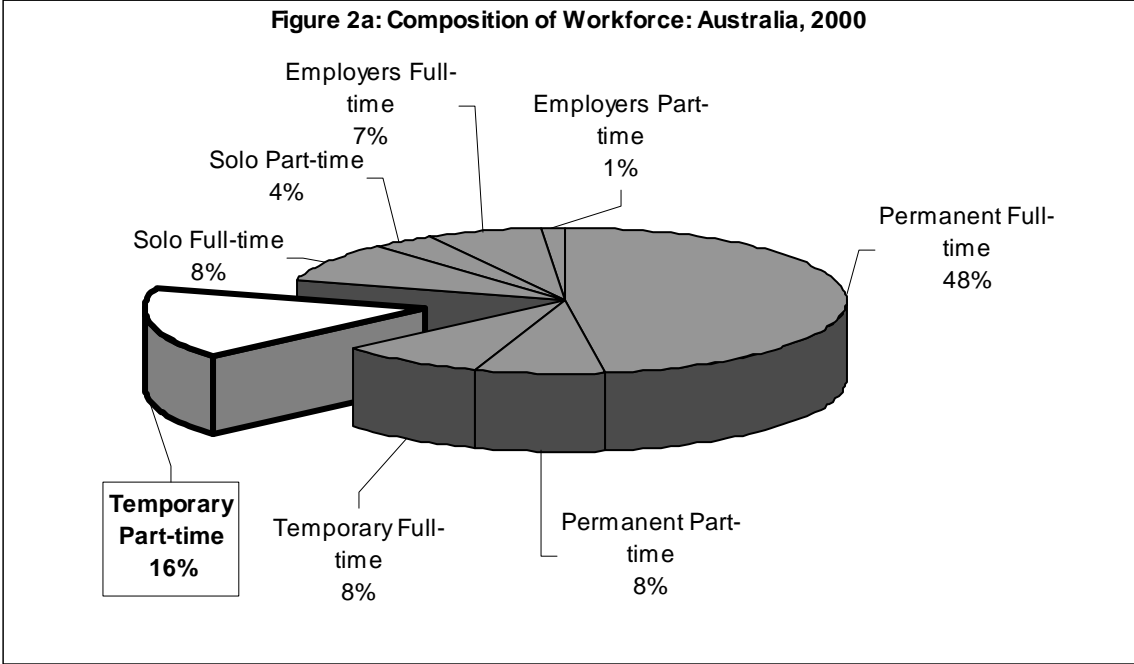
<sup>25</sup> This grouping is also consistent with that used by the OECD in defining temporary employment in Australia for the purpose of comparison.

**Table 1: Composition of Total Employment, Australia, Canada, and the United States**

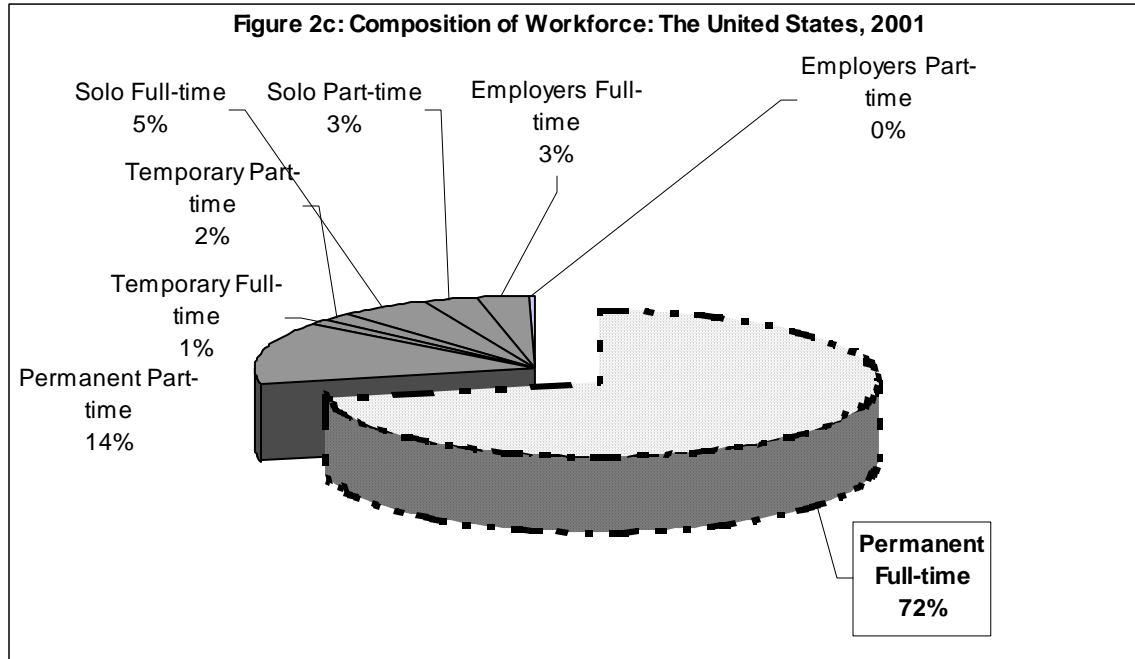
	Australia			Canada			United States		
	Men	Women	Both Sexes	Men	Women	Both Sexes	Men	Women	Both Sexes
<b>Total Employed</b>	100	100	100	100	100	100	100	100	100
<b>Paid Employees</b>	73	85	78	82	89	85	87	92	89
<b>Permanent</b>	55	55	55	72	77	74	84	88	86
Full-time	53	40	47	66	59	63	76	68	72
Part-time	2	15	8	5	17	11	8	20	14
<b>Temporary</b>	18	30	24	10	12	11	3	4	3
Full-time	9	7	8	7	6	7	2	2	1
Part-time	9	23	16	3	6	4	1	2	2
<b>Self-employed</b>	27	15	22	18	11	15	13	8	11
<b>Solo</b>	15	8	12	11	8	10	8	7	8
Full-time	13	3	8	9	5	7	7	4	5
Part-time	2	5	4	2	4	3	1	3	3
<b>Employers</b>	10	5	8	7	3	5	5	1	3
Full-time	9	3	7	7	2	5	5	1	3
Part-time	1	2	1	0	1	0	0	0	0

In numeric terms, the standard employment relationship is quite fragile – especially in Australia and Canada (Table 1). Only 48 and 63 percent of people in the labour force in Australia and Canada respectively held full-time permanent jobs in 2000 – significantly lower than in the United States, where 72 percent held full-time permanent jobs that year.

More than half of total employment in Australia and over one-third in Canada differs from the employment norm. Yet deviation takes distinct forms in Australia and Canada: in Australia, temporary part-time employment is dominant (Figure 2a). In Canada, solo self employment grew markedly in the 1980s and 1990s and full-time solo self-employment represents the largest subset of self-employment (Figure 2b). Conversely, in the United States, almost three-quarters of total employment is both full-time and permanent (Figure 2c).







Given these differences, it is worth exploring the character and quality of part-time work in Australia, solo self-employment in Canada, and full-time permanent employment in the United States. As a backdrop for this discussion, Table 2 sets out statistical indicators used to depict dominant forms of *deviation* in Australia and Canada and *erosion* in the United States as well as *dimensions of precarious employment* and *gender relations* for each context.

Table 2: The Indicators - Australia, Canada and the United States

<b>Australia</b>	<b>Indicator</b>
<i>Deviation from Standard Employment Relationship</i>	
Time - Testing the viability of the shorter hours employment norm	Part-time Ongoing Casual
<i>Dimensions of Precarious Employment</i>	
Certainty	Permanent/Temporary
Income Level	Average Weekly Wages
<i>Gender Relations</i>	Marital Status
	Age of Youngest Child
	Industrial and Occupational Segregation
<b>Canada</b>	<b>Indicator</b>
<i>Deviation from Standard Employment Relationship</i>	
Status - Exploring the efforts to expand the scope of the employment relationship	Full-time Solo Self-employment
<i>Dimensions of Precarious Employment</i>	
Regulatory Protection	Benefit Coverage (Health, Dental and Disability)
Income Level	Average Annual Income (Four Income Groups)
<i>Gender Relations</i>	Reason for Self-employment
	Source of Benefit Coverage
<b>United States</b>	<b>Indicator</b>
<i>Erosion of Standard Employment Relationship</i>	
Employment Norm - Examining the substance of the "standard employment relationship"	Full-time Permanent Employment
<i>Dimensions of Precarious Employment</i>	
Control	Union Membership
Certainty	Permanent/Temporary
Regulatory Protection	Benefit Coverage (Medical, Dental and Vision)
Income Level	Average Weekly and Hourly Wages
<i>Gender Relations</i>	Marital Status
	Presence of Young Child

## II. Time- and Status-Based Deviation from the Employment Norm

The international regulation of precarious work seeks to stretch the standard employment relationship; it aims to normalize deviations based on time, place, and status through the adoption of an equal treatment approach. To curb precarious work, new and emerging international labour standards attempt to expand traditional conceptions of normal

working hours and place of work and to restore the employment relationship as the fulcrum of labour law and policy. Does the tenor of this approach offer potential in Australia and Canada? Specifically, does the Convention on Part-Time Work provide a model capable of limiting precarious part-time work in the Australia? How might a recommendation on the scope of the employment relationship focused on limiting disguised employment relationships and addressing ambiguous situations affect self-employed workers in precarious situations in Canada?

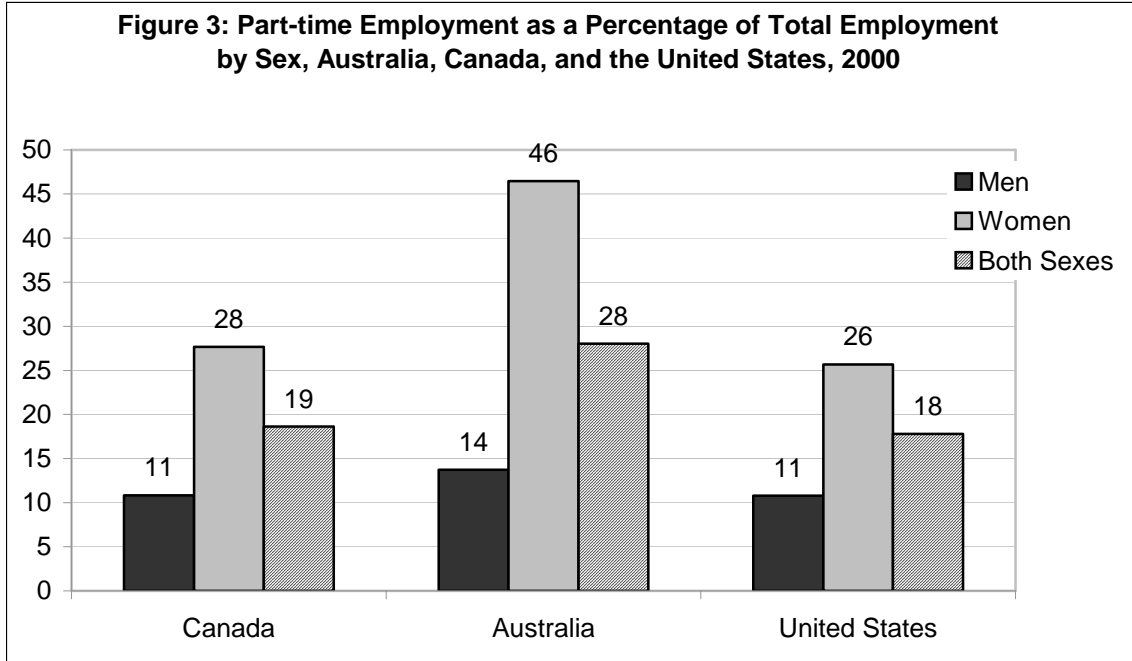
## A. Part-Time Work in Australia

Australia is a good test-case for the Convention on Part-Time Work, specifically its strategy of fostering equal treatment by redrawing the temporal boundaries of the employment norm.

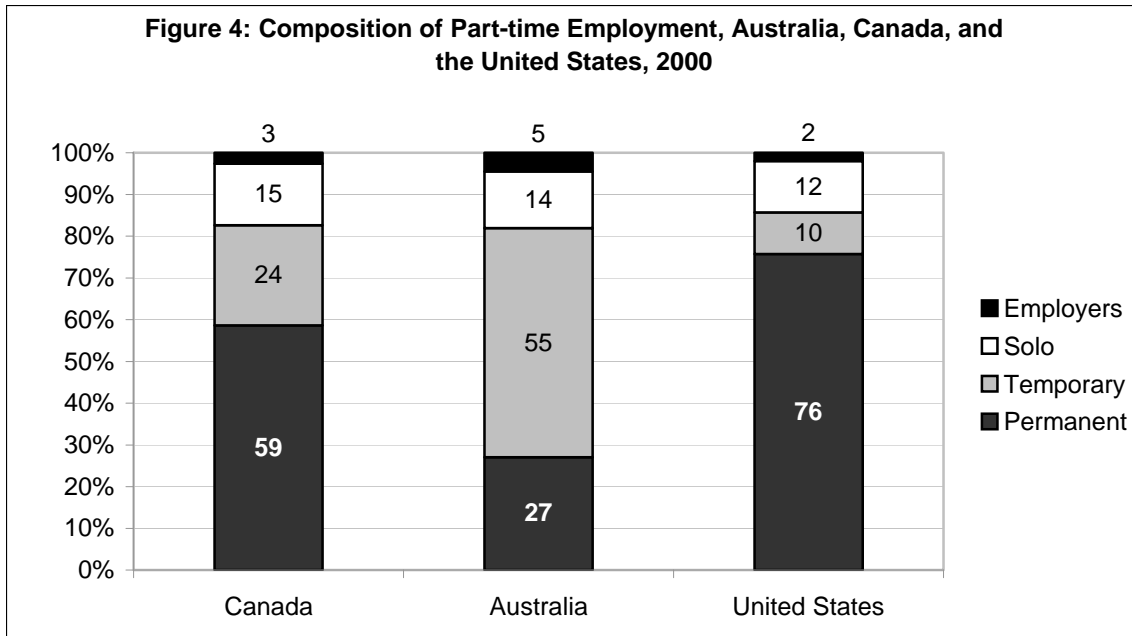
Part-time work is far more prevalent in Australia than in Canada and the United States – and it is highly gendered too: 46 percent of women work part-time in Australia as opposed to 28 and 26 percent in Canada and the United States respectively (Figure 3). The magnitude of part-time work for women reflects historical patterns in Australia, where women’s low level of participation in full-time employment has remained relatively constant since the 1930s in sharp contrast to Canada and the United States.<sup>26</sup>

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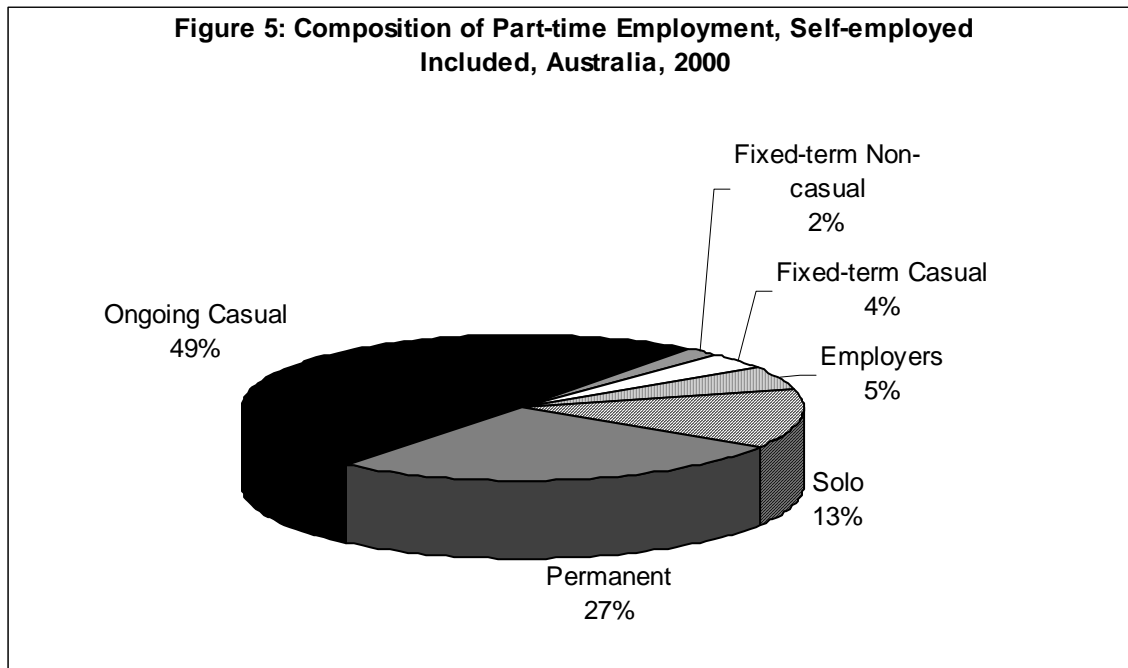
<sup>26</sup> As Belinda Probert (1997, 186) illustrates, in 1933, 25.2 percent of women were in full-time employment and, in 1994, the figure was just 27.1 percent.



The composition of part-time employment also distinguishes Australia from its Canadian and American counterparts. In Australia, part-time employment is more than twice as likely to be temporary than in Canada and over five times more likely to be temporary than in the United States (Figure 4).



Breaking part-time work down into its different forms provides greater insight into its core components and provides greater insight into time based-deviations from the standard employment relationship in Australia. Accordingly, Figure 5 divides part-time work into its six dominant forms: permanent paid employment; ongoing casual paid employment; fixed-term<sup>27</sup> casual paid employment; fixed-term non-casual paid employment; solo self-employment; and, employer self-employment. It illustrates that a relatively small proportion of part-time workers conform to the ideal type of the shorter-hours employment norm in Australia. As a percentage of total part-time employment, just 27 percent of all those who work part-time are permanent employees. The remaining 73 percent are either employed on a casual or a fixed-term basis (55 percent) or self-employed (18 percent).

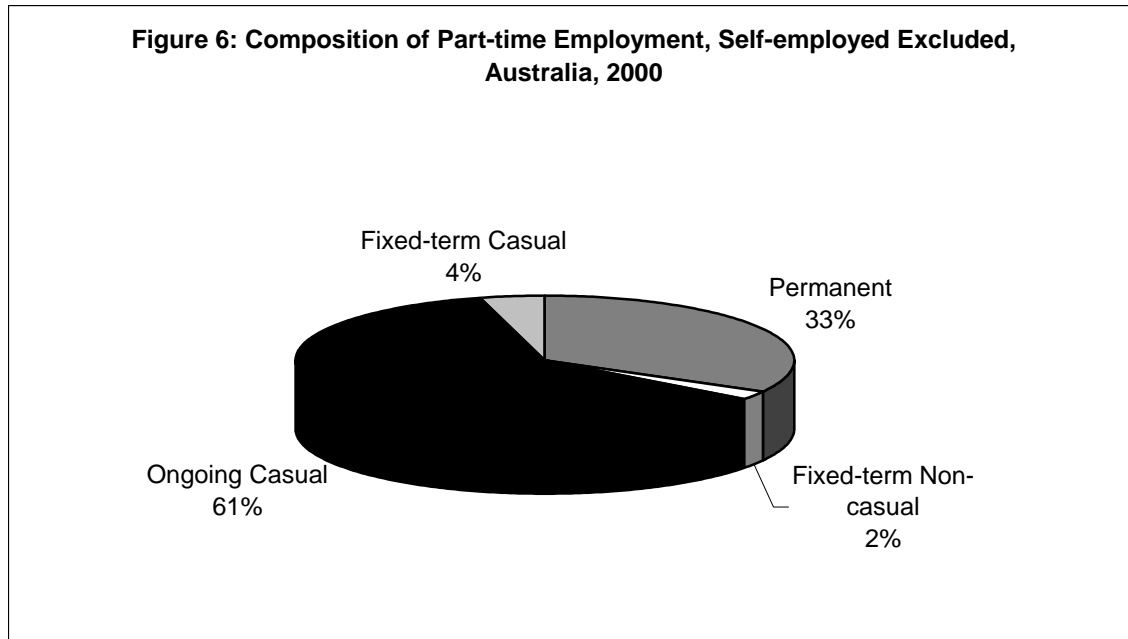


Interpreted in the broadest sense, the Convention on Part-Time Work covers all part-time wage earners, excluding the self-employed. However, it only applies fully to part-time

<sup>27</sup>

The category fixed-term is used to refer to employment on either a fixed-term basis or paid by an agency since the latter is such a small group.

permanent employees since those engaged on temporary or casual bases may be excluded (ILO 1994, Articles 1a, 3.1). These permissible exclusions are highly significant in the Australian case: even among all part-time employees, only 33 percent fall within the shorter-hours employment norm (Figure 6). Figure 6 depicts part-time employees as a group, illustrating that 61 percent are both ongoing and casual, while the remaining 6 percent are fixed-term casual (4 percent) and non-casual (2 percent). A disproportionate percentage of part-time employees fall into the ongoing casual category,<sup>28</sup> not surprisingly since casual employment accounted for two-thirds of the growth of total employment between 1990 and 2001 (Watson, Buchanan, Campbell and Briggs 2003).



Given its magnitude, the meaning of casual employment in Australia and the significance of the ongoing casual category for part-time workers merit examination. In Australia, casuals normally work under a contract of employment but they lack the full range of labour and social

<sup>28</sup>

The statistical category part-time ongoing casual includes all part-time employees who lack leave entitlements (i.e., are not entitled to paid holiday or sick leave) that are neither on a fixed-term contract or paid by an agency. Among this group, 74 percent expect to be with their current employer in 12 months time. This definition is inspired by the findings of other earlier studies which reveal the long job tenure of many casuals in Australia (see for example, Campbell 1998, 72).

protections enjoyed by permanent employees. Casuals do not commonly “accrue those entitlements that assure some level of income security: sick leave, annual leave, severance pay, maternity leave and, in the majority of cases, protection against unfair dismissal” (O’Donnell 2004, 26).<sup>29</sup> Under the awards system, casuals are also generally defined “as people that are paid as such” (Campbell and Burgess 2001, 177);<sup>30</sup> this language aims to convey that casuals are paid at the end of each engagement, although this is not always the case. Unique to this form of employment, casuals also receive a form of precarity pay or “casual loading,” normally around 20 percent, or payments in lieu of entitlements (Owens 2001). Many casuals rely on this compensatory premium because of their low wages. Casuals also have lesser protection against unfair dismissal than their permanent counterparts under the *Workplace Relations Act (1996)*; whereas the probationary period is normally three months, they must be employed for twelve months before they are protected from unfair dismissal (Regulation 30 B (1) (d)). The increase in casual employment in the 1990s is attributable partly to provisions under the Act. Under the *Workplace Relations Act*, the power of the Australian Industrial Relations Commission to make or vary industrial awards is curtailed – the Commission can no longer limit the number or proportion of employees that an employer may employ in “a particular type of employment” (s. 89 A (4)). Unpaid parental leave is also accessible to a very limited group of casuals. Only casuals covered by certain federal awards who have worked for an employer on “a regular and systematic basis” over a period of at least twelve months and who have “a reasonable expectation of ongoing employment on that basis” may have access to this statutory entitlement (s. 53 (1),(2) and s. 57).<sup>31</sup>

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<sup>29</sup> Except where noted otherwise, the ensuing discussion of the status of casual employees at the regulatory and contractual levels refers to federal examples.

<sup>30</sup> See also: Award Simplification decision (Full Bench AIRC, 23 December 1997, P7500), which uses the language “a casual employee is an employee engaged as such.”

<sup>31</sup> At the state level, the movement to grant casuals family leave has also been incremental. For example, the *Queensland Industrial Relations Act* (s. 16, 39 (2), 40) extends family leave, caregiver’s leave, and bereavement leave to ongoing casuals, defined as “a casual employee engaged by a particularly employer on a regular and systematic basis, for several periods of employment during the period of at least a year” (S.

Casuals may be employed under various types of contracts. There are those engaged on a “once-off” basis for whom a host of social and labour protections simply do not apply (Stewart 1992). For others, with fixed-term contracts, access to such protections depends on the length of the term. And there are casuals with ongoing employment relationships that should have extensive labour and social protections, such as protection against unfair dismissal. For this group, however, enforcement is a major obstacle in gaining access to protection against unfair dismissal – even after twelve months of continuous service. As Joo-Cheong Tham asserts (2003, 8): “more often than not, the employer and the casual employee would not have expressly adverted to this question [i.e., whether their relationship is ongoing]. In these circumstances, it becomes a nice question of fact where the casual employee is engaged on an ongoing contract.” These ongoing casuals do not have leave entitlements, they have lesser protections against unfair dismissal than their permanent counterparts, and they have historically lacked entitlements to parental leave. And yet they are engaged in a continuous way. As Rosemary Owens (2001, 18) contends, ongoing casual employees represent a “distinct class” in Australian society.

In distinguishing between casual and permanent part-time employees, the broad objective is to develop a deeper understanding of the socioeconomic situation of part-time employees that are precarious by definition – i.e., those that lack leave entitlements and generally have lesser protections than full-time permanent employees. The narrower aim is to isolate this “distinct class” – i.e., part-time casuals whose work is ongoing – and gain greater insight into its size and characteristics, as well as its composition.

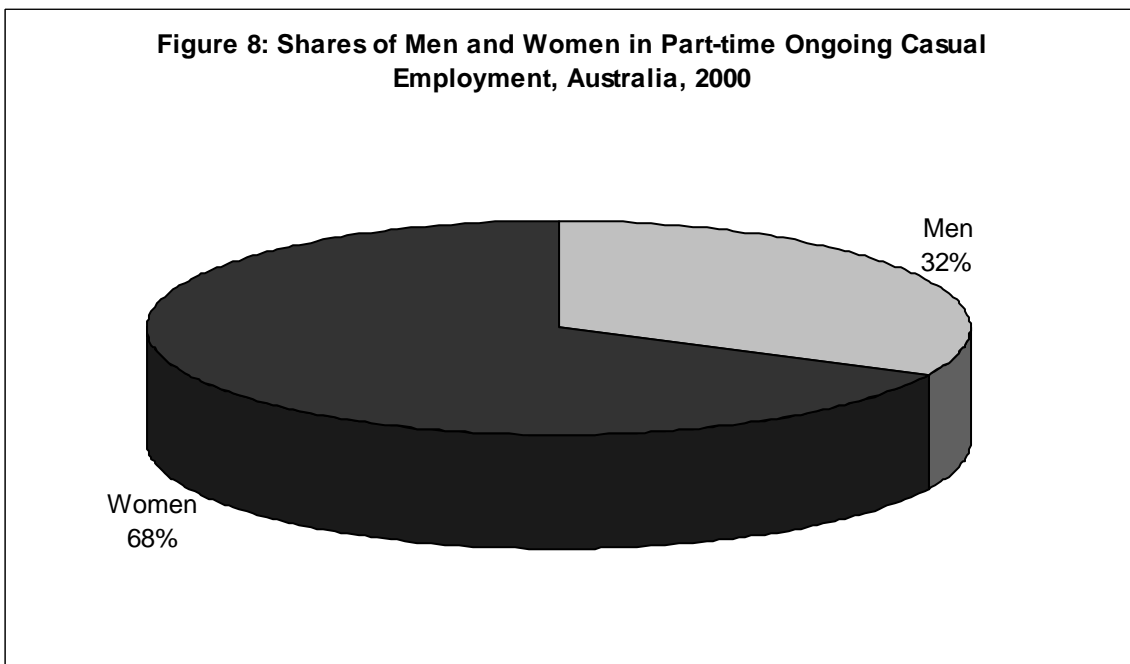
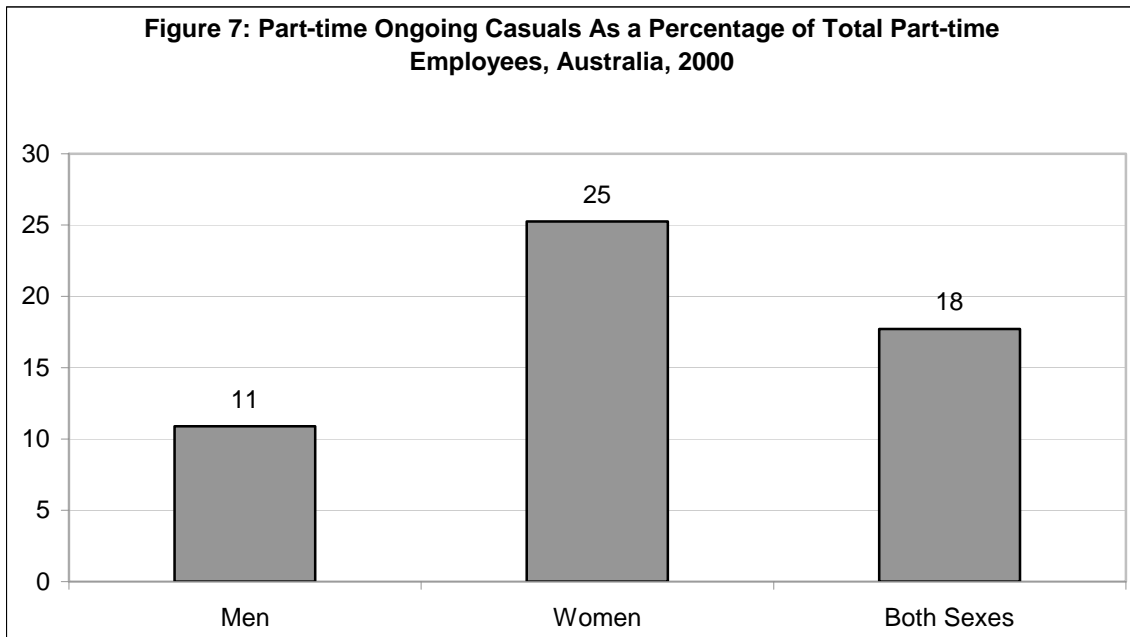
Part-time ongoing casuals are by far the largest group of part-time employees in Australia. And women are over-represented in this group. Out of all women part-time employees, 25 percent are ongoing casual in contrast to just 11 percent of all men (Figure 7).

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15 (A)). Yet most other states still exclude casuals from access to parental leave (e.g., South Australia and Western Australia).



Furthermore, 68 percent of part-time ongoing casuals are women as opposed to 32 percent of men (Figure 8). According to Pocock et al (2004, 20), this gender imbalance emerged partly because of the peculiar and longstanding “conjunction of permissive regulation of casual work with strict regulation of part-time work.”



For many workers seeking part-time jobs in Australia, the only option is to accept casual positions since permanent part-time employment is so undeveloped, except in the public sector. Trends by industry and occupation attest to this claim. They show how regulatory practices in these industries shape the gendered character of the part-time ongoing casual category. Awards in key female-dominated occupations and industries rarely provide scope for expanding the number of part-time permanent employees whereas awards in male-dominated industries and occupations routinely impose rigid restrictions on the use of casuals.<sup>32</sup> As Poccock et al (2004, 24) show, referring to a key application for a change in an award,<sup>33</sup> half of the eighty-six awards in manufacturing set maximum periods of engagements for casuals of two to four weeks and over two-thirds set eight-week maximums. Few awards in female-dominated occupations and industries set such limits.

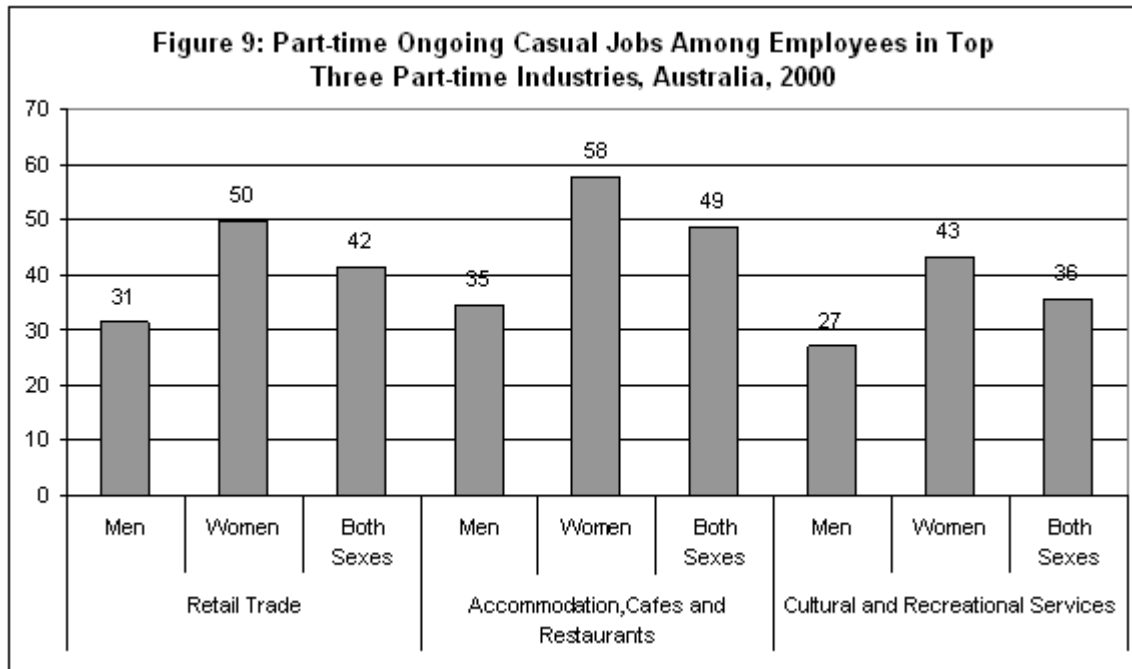
Industrial and occupational segregation shape gendered patterns of precarious part-time work in Australia. By industry, accommodation, cafes and restaurants, followed by retail trade and cultural and recreational services have the highest levels of part-time ongoing casual employees. Furthermore, in the two industries with the highest levels, a majority of women employees hold part-time ongoing casual positions (Figure 9). Patterns are similar by occupation, although women in clerical, sales and service occupations, a highly female dominated group, are particularly likely to be engaged on a part-time ongoing casual basis (Figure 10). Key awards have cultivated this situation. They have contributed to the magnitude of the part-time ongoing casual category within this occupational group by restricting access to permanent part-time employment. Under the South Australian Clerks Award, for example, it was only in 1988 that it became possible to work part-time hours other than as a casual (Pocock et al 2004, 20). In professional occupations, part-time ongoing casual jobs are also

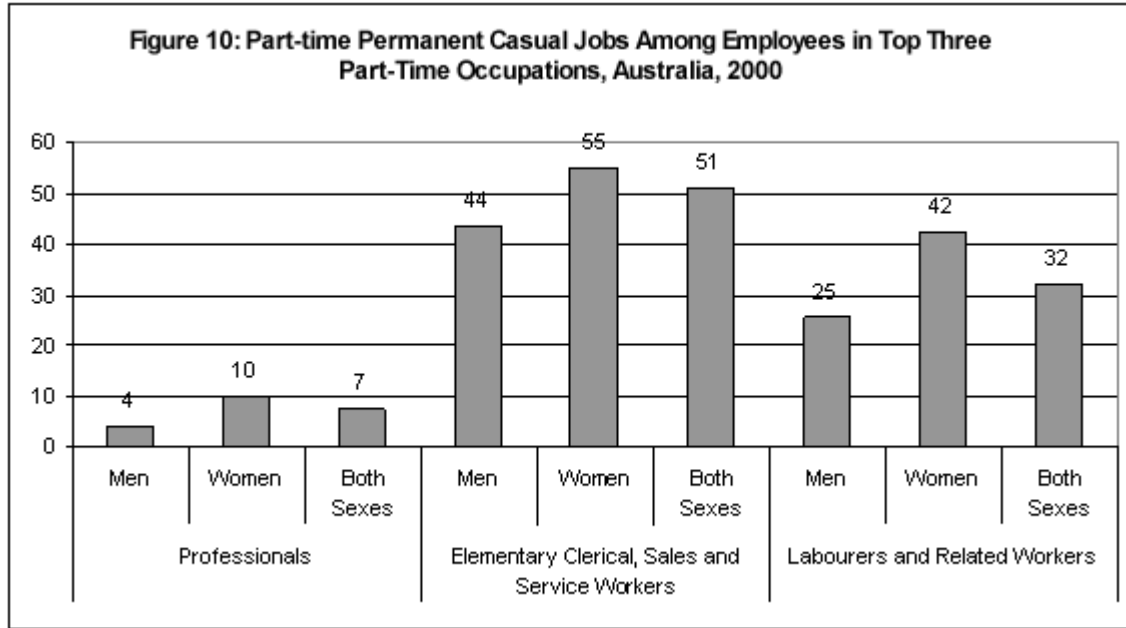
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<sup>32</sup> The South Australian Clerks Award and the Metal, Engineering and Associated Industries Award are cases point. For incisive commentaries on these awards, see Owens 2001 and Poccock et al 2004.

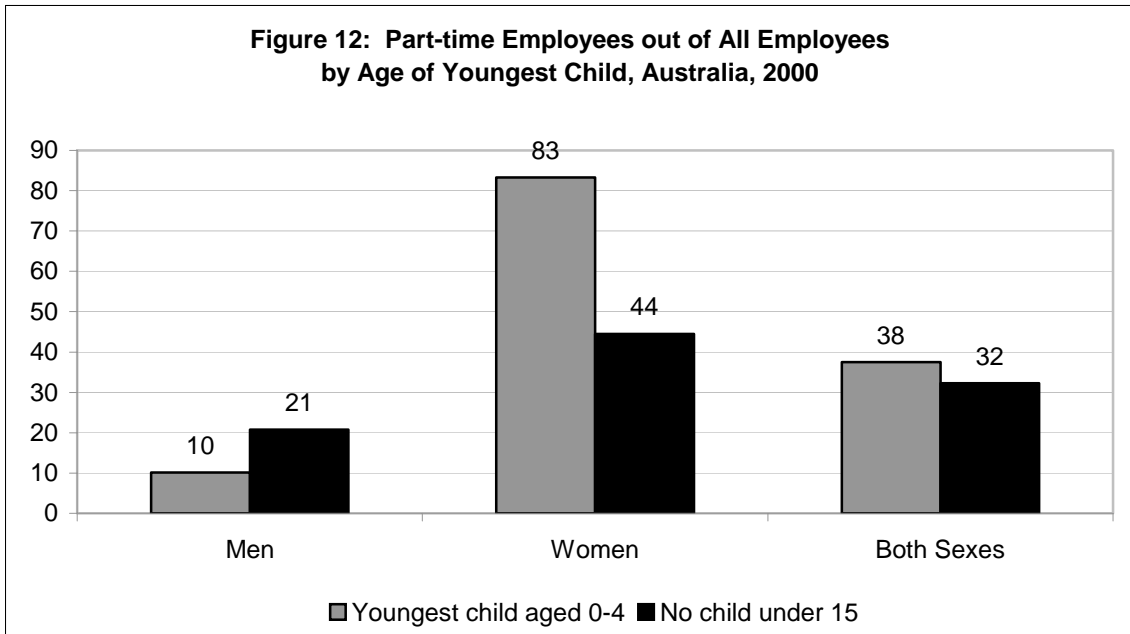
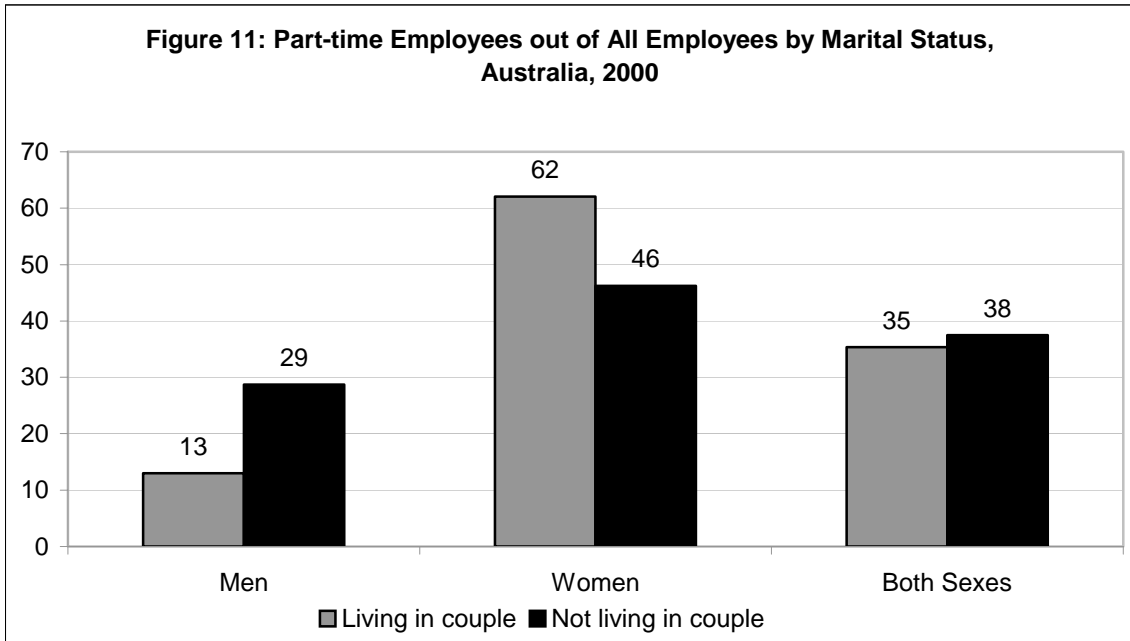
<sup>33</sup> See: Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union – re application for variation of award - casual employees - T4991 - 29 December 2000, AIRC.

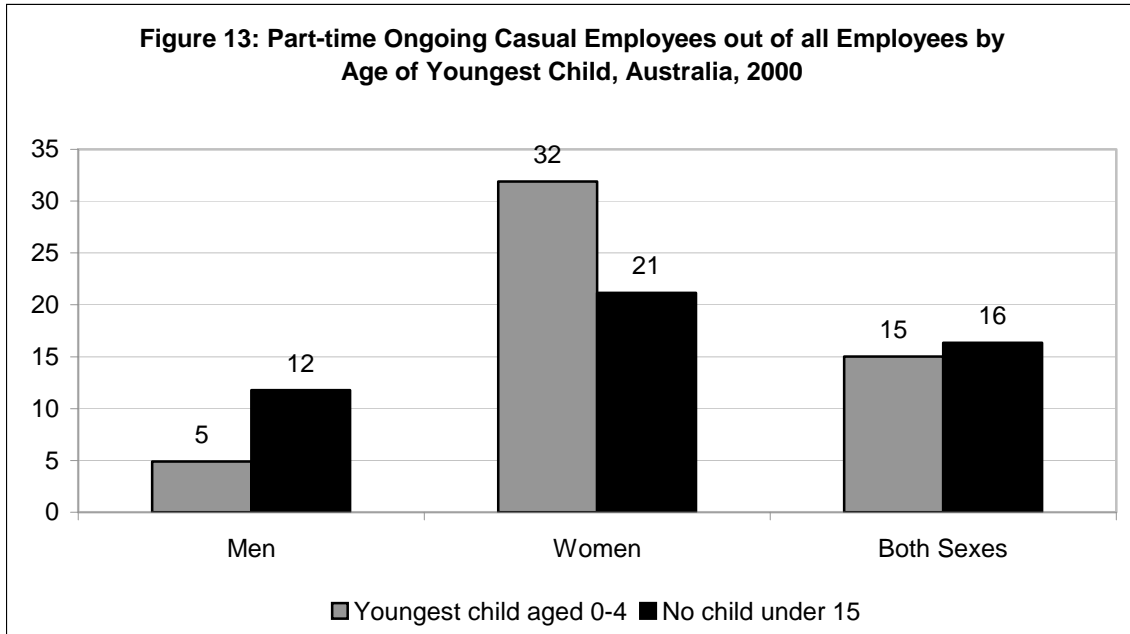
quite common, especially among women, who are three times more likely than men to hold these jobs. The prevalence of part-time ongoing casual employment among women is characterized not only by continuity (i.e., traditional practices in female-dominated occupations) but also change (i.e., the use of this category to *casualize* employment in various occupational groups).



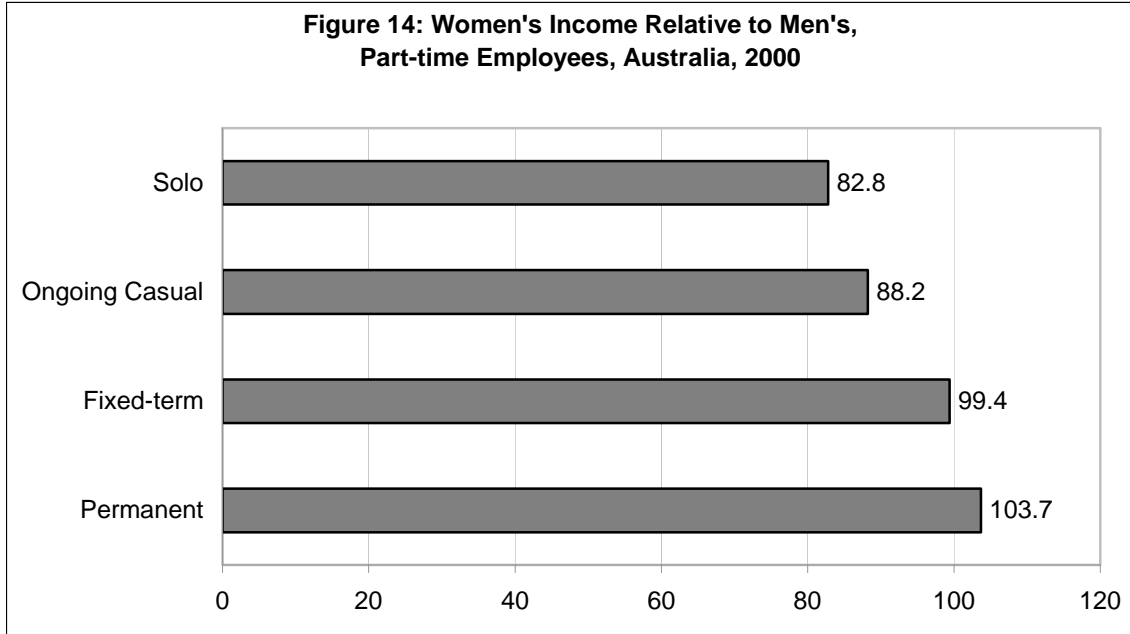


Which women are concentrated in part-time work in Australia and, more specifically, which women are ongoing casuals? A higher percentage of women living with a partner than single women and a higher percentage of women with young children than women without young children are part-time employees (Figure 11). And 83 percent of women with young children, in contrast to just 10 percent of their male counterparts, are part-time employees (Figure 12). These patterns mirror trends in Canada and the United States, where part-time work is primarily the domain of women with young children and some (primarily young) men pursuing their education (Applebaum 2002a; Armstrong and Armstrong 1994; Duffy and Pupo 1992; Rosenfeld 2001). What makes Australia unique is its large proportion of women employees with young children that are part-time ongoing casual. Out of all women employees with young children, 32 percent fall in this group in contrast to just 5 percent of men (Figure 13).





The structure of regulatory protection in Australia means that part-time ongoing casuals are precarious almost by definition; they lack leave entitlements and have limited access to labour and social protections. Data on sex-based income gaps strengthen this claim and illustrate that it is deeply gendered. Comparing women's weekly income relative to men's, part-time ongoing casuals have the largest sex-differential among all part-time employees. On a weekly basis, women part-time ongoing casuals earn 88.2 percent of their male counterparts. The income gap narrows among those that are fixed-term and it is non-existent among those that are permanent, groups historically more successful in closing the gap due to Australia's strict regulation of certain forms of employment and the accommodating approach to others (Figure 14).



## 1. The Shorter-Hours Employment Norm in Context

The Australian case highlights the limits of the ILC approach to curbing precarious work, focused as it is on limiting time-based deviations from the standard employment relationship. In its aim to incorporate more “regular” part-time workers within the employment norm, the Convention on Part-Time Work is concerned to bring those forms deviating *least* from the standard employment relationship into the norm. If the ILC model were applied in Australia, the primary group served would be part-time permanent employees. While the shorter-hours standard employment relationship has the potential to improve the situation of this group, this model neglects not only the most sizeable segment of part-time employees but those that are worst off. Among part-time employees, it is part-time ongoing casuals whose work is especially precarious along multiple dimensions. Part-time ongoing casuals are far more likely to confront low income and they have the largest sex-based income differential among part-time employees. This “distinct class,” moreover, is highly female-dominated, a feature exacerbated by industrial and occupational segregation. And it is composed not only of many married

women (and few men), but many women with young children. Set against the dominant model for re-regulation, the Australian case highlights the importance of minimum standards since their decline and/or absence in this context has cultivated an expansion of the part-time ongoing casual category, with serious consequences for women, especially those with young children. Women with young children are highly vulnerable to becoming part-time ongoing casuals because of the assumption, at a policy level, that they are responsible for unpaid care-giving: it is these workers that require minimum standards most.

Some changes are afoot in Australia – changes oriented towards remedying the situation of ongoing part-time casuals and fostering permanent part-time employment. Specifically, there have been attempts to foster conversion to permanent full- and part-time employment among ongoing casuals, principally at the state level, in female-dominated occupations. The chief example is the South Australia Clerks Award, which grants ongoing casuals with 12 months service the right to request to become permanent, a request that the employer cannot refuse on unreasonable grounds. Yet this approach has definitive limits. As Owens (2002) argues, instead of extending the safety net to casuals automatically, workers must elect to convert, a “choice” that obscures power imbalances between employees and employers. The precarious situation of part-time ongoing casuals makes them highly vulnerable to reprisal from employers; this vulnerability, combined with the fact that many part-time ongoing casuals are dependent upon the premium provided through casual loadings, contributes to the lack of test-cases to date (Pocock et al 2004, 43).

There have also been limited advances in compensating casuals for their precarious situation, although most have been industry-specific and are not entrenched in all awards or industrial law (Pocock et al 2004, 39). The backdrop to these minimal improvements, moreover, is a general retreat from what Pocock et al (2004, 37) characterize as a “limitation approach,” whereby casuals are not to be engaged beyond a specified time period or numerical limits or ratios are imposed. This retreat reflects the growth of enterprise-level bargaining, and the



general withdrawal of award restrictions, promoted under the *Workplace Relations Act* (Clayton and Mitchell 1999). In parallel, there is a growing movement to increase the scope for part-time permanent employment. For example, the *Workplace Relations Act* introduces the concept of regularity for part-time employees and more awards reflect this policy direction; casting this movement positively, some analysts argue that it should enable employees to achieve a better work-life balance (Buchanan and Thornthwaite 2001, 32).

There are two prongs to current policy proposals aimed broadly at limiting part-time ongoing casual employment: the first involves limiting casual work to genuinely irregular, intermittent or on-call work. Behind this policy emphasis is the perception that regulators have lost sight of the true meaning of casual. As the argument goes, “casual” has not been defined and interpreted properly and, consequently, there is a regulatory gap. There is, however, considerable debate over the nature and size of this gap and the magnitude of its consequences for Australian workers; there are those that acknowledge this gap and call for a commonsense understanding of the phenomenon, while minimizing the severity of the regulatory gap itself (see for example: Murtough and Waite 2000a and b), and there are those that reject the “vernacular” (O’Donnell 2004) understanding of casual and call, in contrast, for more dramatic changes in regulatory protection (see also Owens 2001; Tham 2003). For the latter group, the proposed remedy is sound. It aims to “prevent ‘casual’ employment status from being abused and to ensure that – as in other OECD countries – it is confined to its proper place as just a minor component in the range of employment forms” (Pocock et al 2004, 47).

Informed by a similar rationale, the second prong involves cultivating a shorter-hours employment norm akin to the ILC model and thereby designed to coexist with, rather than displace, the standard employment relationship. Support for this model is evident in policy areas, such as parental leave, where there are attempts to extend entitlements to ongoing casual part-time workers on the basis of equal treatment. These proposals cast part-time work positively, as enhancing social and economic objectives and, in particular, helping “people strike

a better balance between work and life as they navigate transitions to and from work and education, work and family formation, spells of unemployment and as they prepare for retirement” (Pocock et al 2004, 47). Their aim is to construct “a new deal for part-time workers, to improve the quality of their jobs and ensure access to part-time work for parents who need it” (Buchanan and Thornthwaite 2001, 2). They understand the “Australian problem” as a problem of poor quality part-time jobs. The idea is to improve part-time jobs by *decasualizing* those that are ongoing. The main criticisms of a shorter-hours employment norm targeted mainly to women with family responsibilities relate to its potential to perpetuate a low-wage segment, mainly in service industries. For example, both Ann Junor (1998) and Belinda Probert (1995, 1997) argue that part-time permanent employment can enable employers to avoid overtime because employees that are part-time may be asked to work up to full-time without supplemental pay. These authors also point to the limited prospects for vertical mobility and the potential for forms of shift work and variable hours that suit the needs of employers but not workers (Probert 1995, 40-42).

The fundamental problem with both prongs is that they are cast in gendered terms in that they are designed to enable *women* to “balance” care-giving and paid employment. Furthermore, neither takes the limits of equal treatment seriously – that is, the deficiencies of dominant definitions of equivalency (e.g., graduated protection). In Australia, even those part-time casuals that successfully convert to permanent status receive only pro rata access to the labour and social protections available to full-time permanent employees.

## B. Self-Employment in Canada<sup>34</sup>

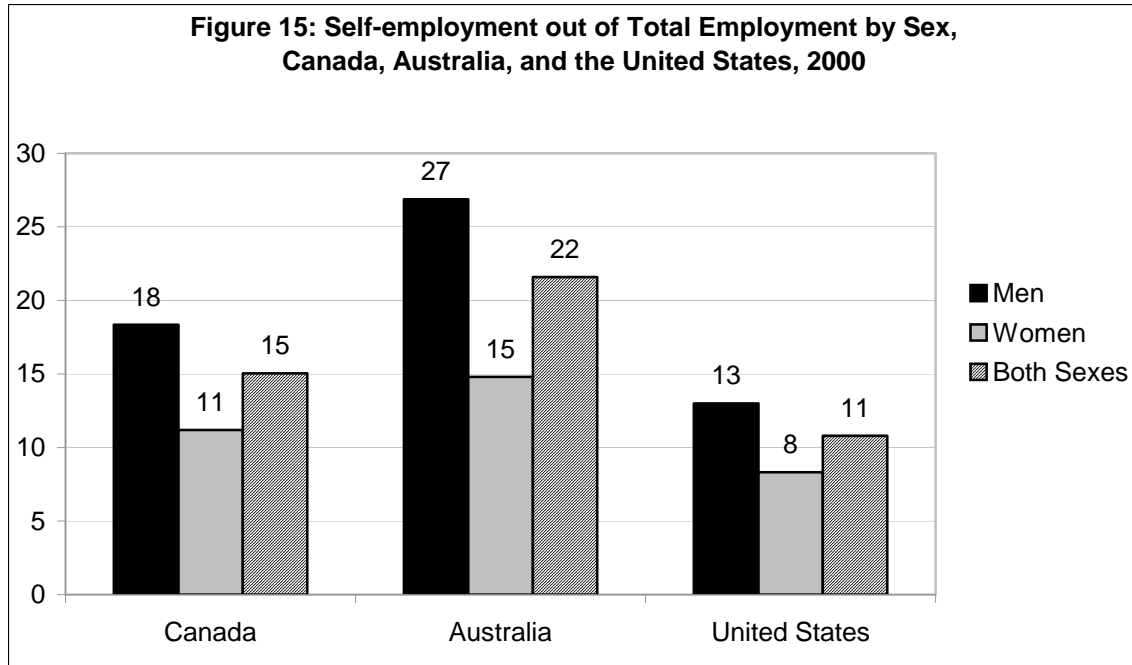
Canada is a suitable case study for evaluating the international labour standard on the scope of the employment relationship, which is poised to provide guidelines for extending labour protections to dependent workers in disguised employment relationships and clarifying situations that are ambiguous. Standing at 15 percent of total employment in 2000, Canada has a relatively high proportion of self-employment among OECD countries such that it sits at a midpoint between Australia and the United States (Figure 15; see also Figures 2a-c). From the late 1970s to 1998, self-employment<sup>35</sup> grew at a faster rate than paid employment. Still, self-employment in Canada is quite varied, cutting across industry and occupation; it may involve employing others or working solo; and, it may be full-time time or part-time. The significance of this heterogeneity is that entrepreneurship and self-employment do not necessarily coincide (Fudge, Tucker and Vosko 2002, 16; see also: Dale 1991; Rainbird 1991). Self-employment is traditionally associated with ownership, autonomy, and control over production, key features of entrepreneurship (Eardley and Cordon 1996, 13). At a regulatory level, it is cast as a form of independent contracting and thereby outside the scope of labour protection. Yet many self-employed people resemble employees more than entrepreneurs (Fudge, Tucker and Vosko 2003b). This is especially true for those that do not employ others – especially women. Thus, the foremost feature differentiating the self-employed is employer status, best measured by the distinction between the solo self-employed and self-employed employers (Fudge Tucker and Vosko 2002, 99). Self-employed employers are more likely than their solo counterparts to possess the skills necessary to engage in longer-term business planning associated with

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<sup>34</sup> This section draws from, and builds on, research conducted with Judy Fudge and Eric Tucker on the legal concept of employment and with Nancy Zukewich on gender and precarious self-employment (see Fudge, Tucker and Vosko 2002, 2003a, 2003b; Vosko and Zukewich, forthcoming).

<sup>35</sup> Statistically, self-employment is normally distinguished from paid employment by the mode of remuneration (i.e., the self-employed receive profits or income from self-employment and employees earn wages) (Elias 2000; Loufti 1991). This distinction is the point of departure for this discussion.

entrepreneurship (Fudge, Tucker and Vosko 2002, 21).<sup>36</sup> The solo self-employed, in contrast, are more likely to receive some kind of support from their clients than their employer counterparts<sup>37</sup> and many have very few clients.<sup>38</sup>



Solo self-employment drove the growth in self-employment in the 1990s and has since stabilized at relatively high levels (Figure 16). Legal and statistical categories are somewhat incongruent (Fudge, Tucker and Vosko 2002). The statistical measure of solo self-employment is very broad. It covers self-employed contractors that are not dependent on a single employer, independent contractors that may work directly for a contractor, and disguised employees who, in the narrow definition adopted by the OECD, may “work for just one company, and whose status may be little more than a device to reduce total taxes paid by the firms and the workers

<sup>36</sup> Operating an incorporated business is also a good indicator of entrepreneurship, although it is not taken up here for reasons of sample size (For greater detail on this indicator, see: Fudge, Tucker and Vosko 2002 and Vosko and Zukewich forthcoming).

<sup>37</sup> 40 percent of the solo self-employed reported receiving support from their clients in 2000 (Delage 2002, Table B.7).

<sup>38</sup> According to a study conducted by the Canadian Policy Research Networks, 51 percent of the solo self-employed had five or fewer clients in 2000 (Lowe and Schellenberg 2001, Table 4.2).

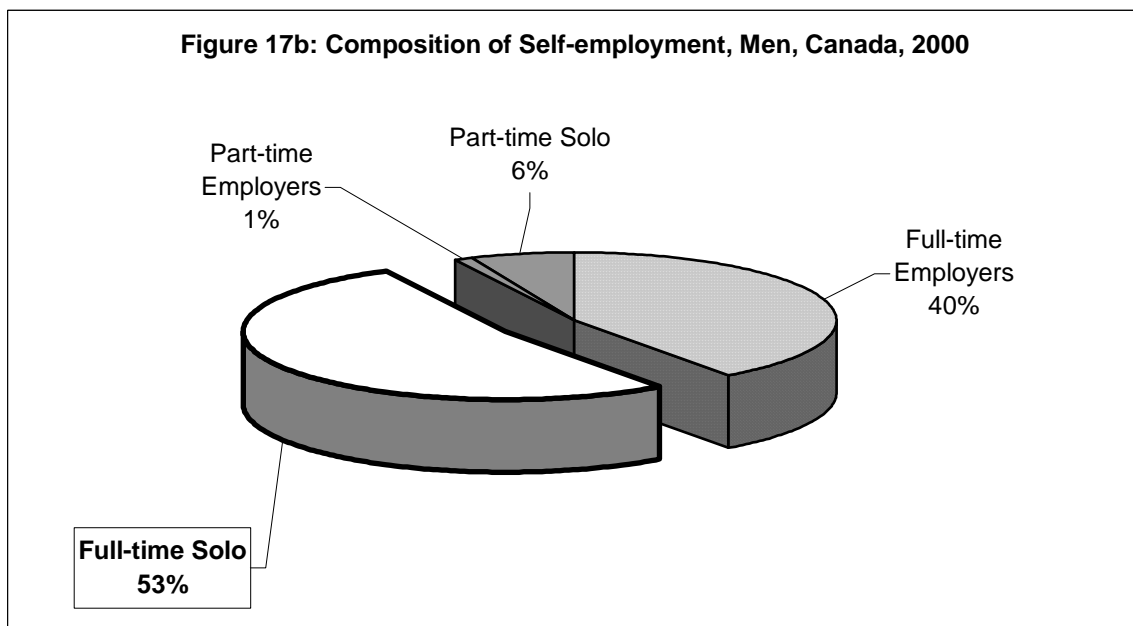
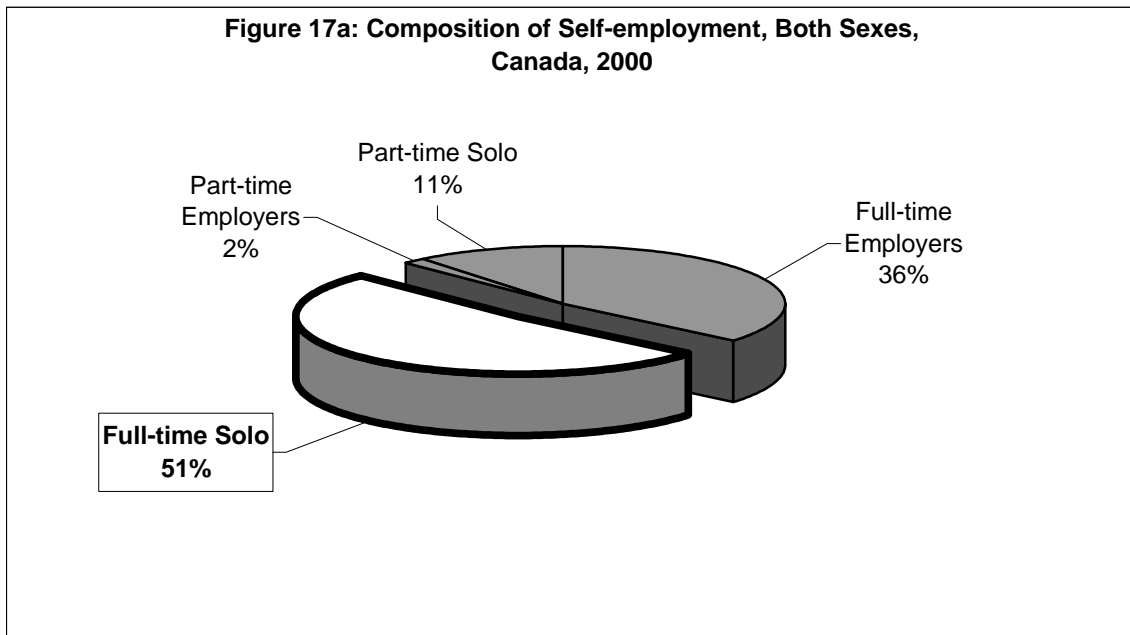
involved” (OECD 2000, Chapter 5, 187). Under the terms of the evolving recommendation on the scope of the employment relationship, workers belonging to the latter two groupings would, at best, fall into the categories of ambiguous and disguised but workers in the first group are likely viewed to be engaged in “genuinely commercial arrangements.” Still, regardless of the form of engagement, workers in each group may resemble paid employees.



While there are four dominant forms of self-employment in Canada (Figure 17a), full-time solo self-employment<sup>39</sup> is the best test-case for assessing ongoing international efforts to stretch the employment norm to accommodate dependent workers lacking labour protection on account of a lack of employee status. Full-time solo self-employment constitutes half of total self-employment in Canada. This is true among men and among women (Figures 17b and

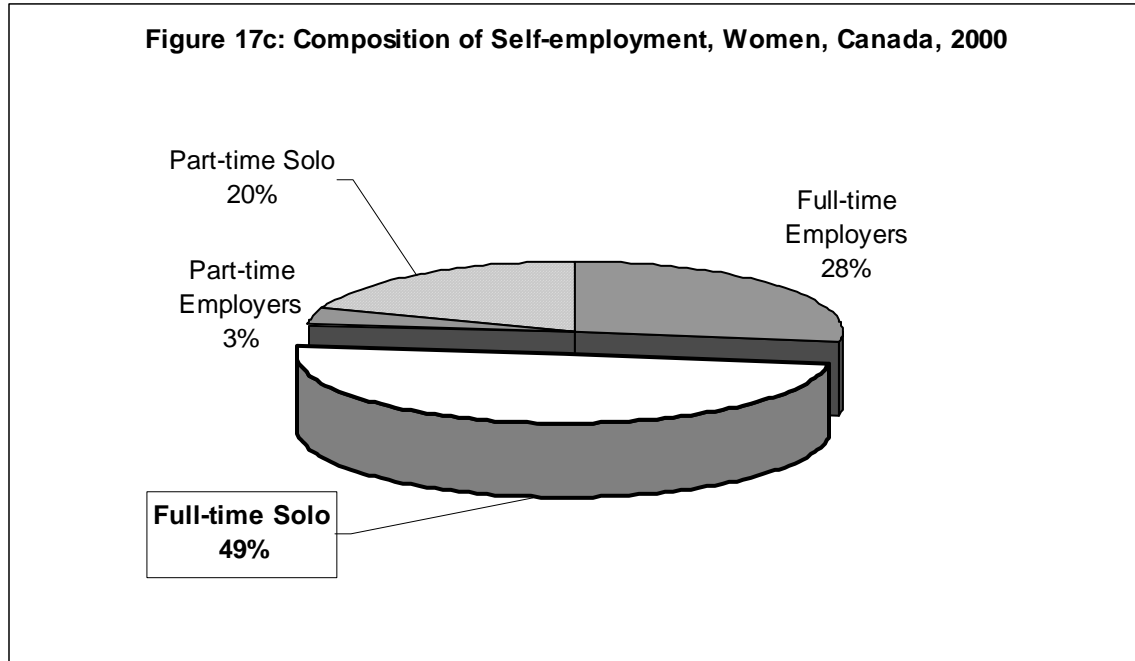
<sup>39</sup> The full-time group is selected as the case study for consideration as it is an indirect way to control for hours.

17c), which is notable since self-employment has historically been the preserve of men, especially those forms exhibiting genuine qualities of entrepreneurship.<sup>40</sup>



<sup>40</sup>

In Canada, the four forms of self-employment fall on a gendered continuum of precariousness. This continuum moves from full-time employer self-employment to full-time solo self-employment to part-time employer self-employment to part-time solo self-employment. Along several dimensions of precarious employment, full-time employers are least precarious, while part-time solo self-employed people are the most precarious on the majority of indicators. This continuum is gendered since men are concentrated in the full-time employer category and women are concentrated in the part-time solo category.



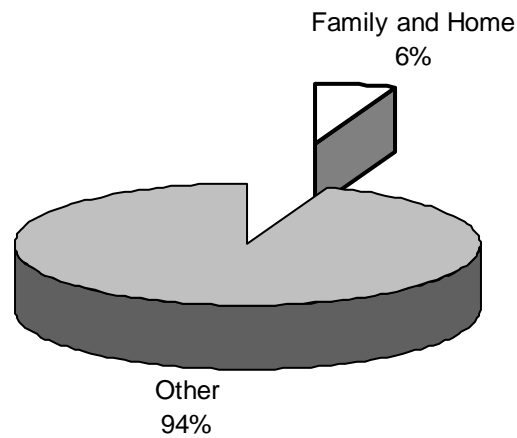
One of the chief objectives of the evolving international labour standard on the scope of the employment relationship, now under discussion, is to limit contractual manipulation designed to “deny certain rights and benefits to dependent workers” and another is *not* to interfere with “genuine commercial and independent contracting arrangements,” in other words, arrangements that reflect entrepreneurship (ILO 2004, par 5). Negotiations are proceeding on the basis of a tenuous balance characterized by employers’ refusal to extend the scope of labour protection and workers’ collective desire to ensure that self-employed *workers* – as distinct from entrepreneurs (Fudge, Tucker and Vosko 2002) – receive the protection that they are due. The compromise reached thus far attempts to balance these competing aims by devising guidelines for eliminating disguised employment or employment relationships that are falsely given the appearance of a different legal nature normally commercial but also often civil, cooperative, or family-related. Statistically, reasons for pursuing self-employment are the best measure available for discerning the degree to which full-time solo self-employment reflects entrepreneurial values. The self-employed are often depicted as choosing independence,

freedom, and autonomy over security (Lin, Yates and Picot 1999, 6). However, many pursue self-employment for other reasons.

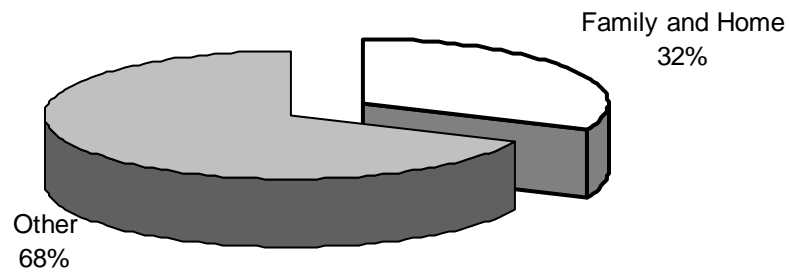
While 44 percent of men and 28 percent of women in this form of self-employment cite “independence and freedom” as their chief reasons for self-employment, a greater percentage – 56 percent of men and 72 percent of women – cite other reasons. Despite the widespread assumption that the self-employed are driven by entrepreneurial values, almost equal percentages of men (26 percent) and women (23 percent) pursue full-time solo self-employment because they cannot find suitable paid work. For others, care-giving responsibility is another common reason. Among women in full-time solo self-employment, 32 percent cite “balancing work and family” and “work from home” as their main reason for self-employment – five times the number of men (Figures 18a and 18b). More women pursue full-time solo self-employment for care-giving reasons while more men pursue it for entrepreneurial reasons. These patterns highlight the importance of examining the extent to which full-time solo self-employment not only resembles paid employment, but is precarious. They also underscore the importance of probing how various aspects of precariousness experienced by men and women in this group relate to the gender contract.



**Figure 18a: Reasons for Self-employment Among Full-time Solo Self-employed, Men, Canada, 2000**

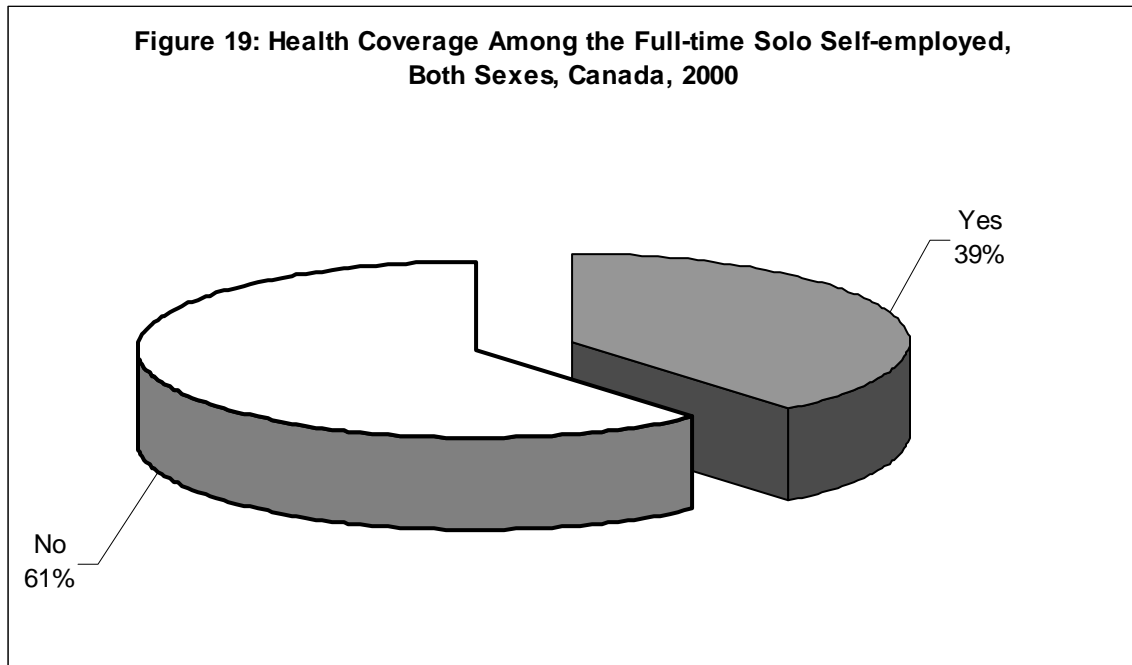


**Figure 18b: Reasons for Self-employment Among Full-time Solo Self-employed, Women, Canada, 2000**

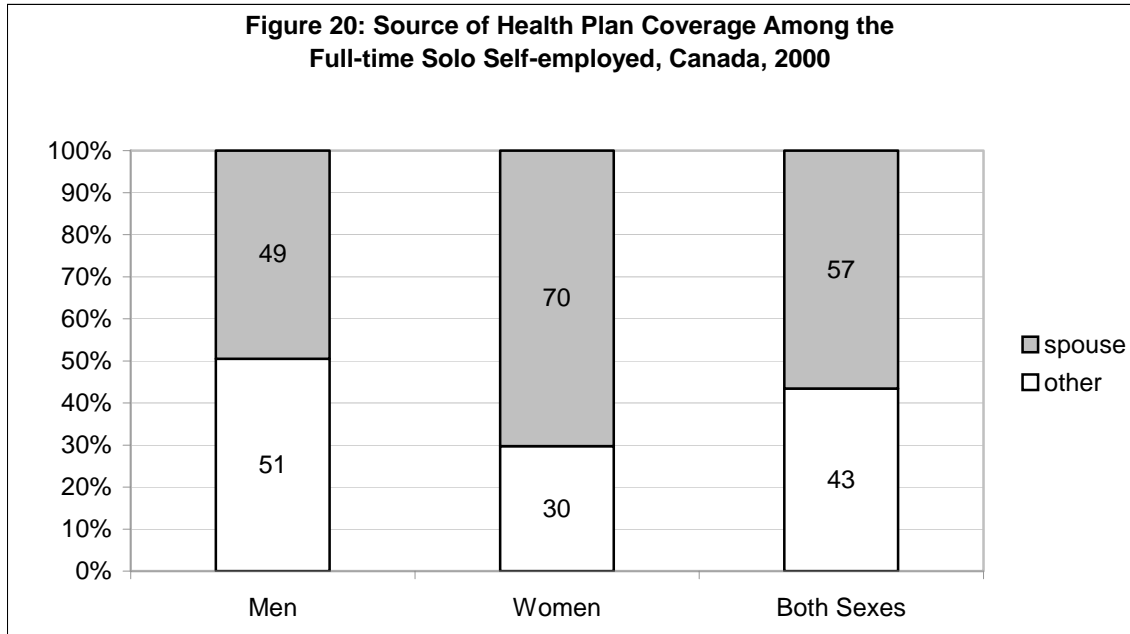


Access to a package of social benefits and entitlements akin to the social wage is one feature of high quality of employment. Among the self-employed, a good indicator is extended benefits coverage. In general, those in full-time solo self-employment have low levels of benefit coverage and men and women lack benefits in equal measure; in 2000, 43 percent of men and

45 percent of women had no benefits whatsoever and 61 percent of full-time solo self-employed people lacked extended health coverage, a rate that also holds equally for both sexes (Figure 19).



Exploring the source of extended health coverage clarifies this picture further. Among those with extended health coverage, spousal coverage is quite common. As a source of coverage, it is considerably higher for the full-time solo self-employed (57 percent) than those engaged in full-time employer self-employment (20 percent). Yet there are significant gender differences among the full-time solo self-employed: 70 percent of women in contrast to 49 percent of men access these benefits through a spouse (Figure 20). Not only do many more women than men in the full-time solo group pursue self-employment because of care-giving responsibilities, many more women than men confront dependency as a consequence.

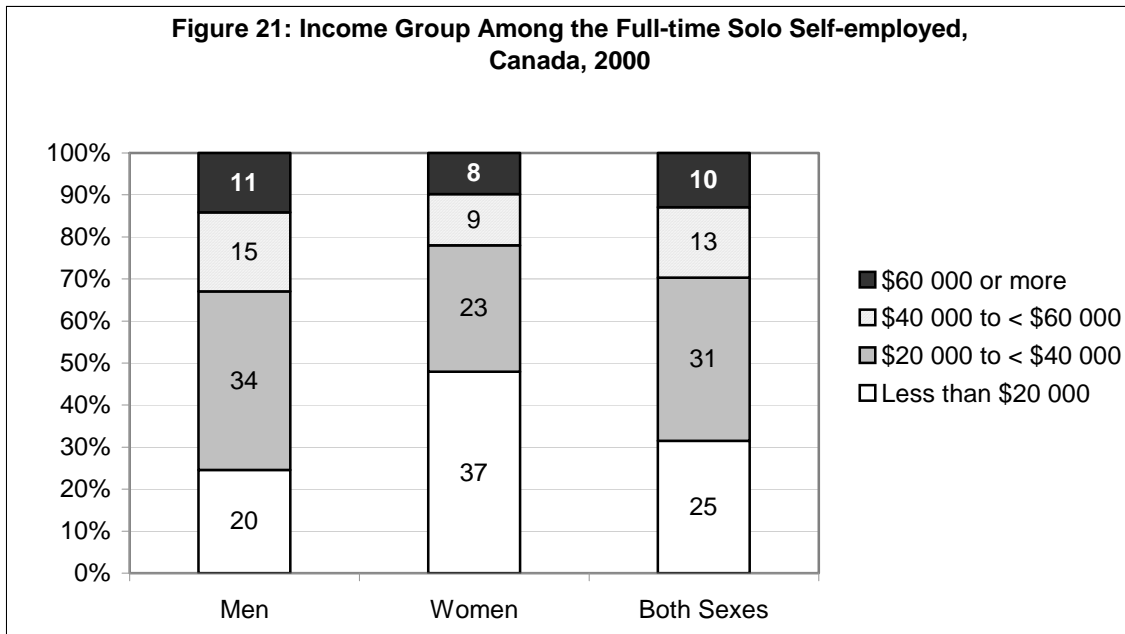


The absence of benefits coverage generally, and independent access to benefits more specifically, leads to insecurity for many full-time solo self-employed people, especially women. But an even truer test of whether a self-employed person is a genuine entrepreneur is income level.<sup>41</sup> Beyond employer status, among the full-time solo self-employed, income from self-employment is key to identifying those in legal arrangements differing from an employment relationship but resembling paid employees (Fudge, Tucker and Vosko 2002, 99). Income level<sup>42</sup> is also a good indicator of precarious employment amongst the self-employed, especially when analyzed in relation to benefits coverage and source of benefits coverage. Fifty-six percent of full-time solo self-employed people have annual incomes of \$40,000 or less in comparison to 64 percent of full-time permanent employees. And 25 percent earn less than

<sup>41</sup> Data on income level refer to income from self-employment. Income is a good indicator of the economic situation among the self-employed since they derive a range of benefits from their employment status invisible in earnings data (Fudge, Tucker and Vosko 2002, 26). While income may be underreported amongst the self-employed, these data still highlight broad patterns.

<sup>42</sup> The Survey of Self-Employment allows for analysis of income by four major income groups: less than \$20,000; \$20,000-\$40,000; \$40,000-\$60,000; and \$60,000 plus. The ensuing analysis considers the full-time solo self-employed with incomes under \$40,000. It also considers those with incomes of under \$20,000 since this group is unequivocally precarious along the dimension of income level.

\$20,000 in contrast to 16 percent of full-time permanent employees.<sup>43</sup> Gender differences are particularly stark amongst those in the lowest income group: the percentage of women falling into the lowest income group is double that of men. In both income groups, the full-time solo self-employed resemble paid employees. They do not have paid help and they have income levels similar to (or lower than) paid employees.



Combining benefits coverage and income level, the percentage of male full-time self-employed employers with incomes of \$40,000 or less and no benefits (15 percent) is around half the size of the percentage of male full-time solo self-employed (29 percent). Amongst the full-time solo self-employed, the percentage of men and women with incomes of \$40,000 or less and no benefits is equal. Yet considering benefits coverage in isolation obscures gendered dependency among the full-time solo self-employed. Sharp differences emerge in comparing men and women earning incomes of less than \$40,000 and lacking independent access to

<sup>43</sup> This figure is consistent with other studies. For example, Lin, Yates, and Picot (1999) reveal that almost three quarters of self-employed women (72 percent) earned less than \$20,000 in 1994 compared to 48 percent of women employees.

benefits. Full-time solo women are much more poorly off than men: among these women, 57 percent have incomes of \$40,000 or less and have no benefits and/or no independent access to dental and health benefits<sup>44</sup> in contrast to 45 percent of men. As Rooney et al (2002, 5) argue, “although self-employment allows women to work more autonomously and may provide the flexibility needed to accommodate family-related obligations, the lower incomes associated with self-employment, and the instability in income associated with fluctuations in the demand for products and services places many self-employed [women] in a precarious financial situation.” Among those in the full-time solo group most resembling employees, precariousness is highly gendered.

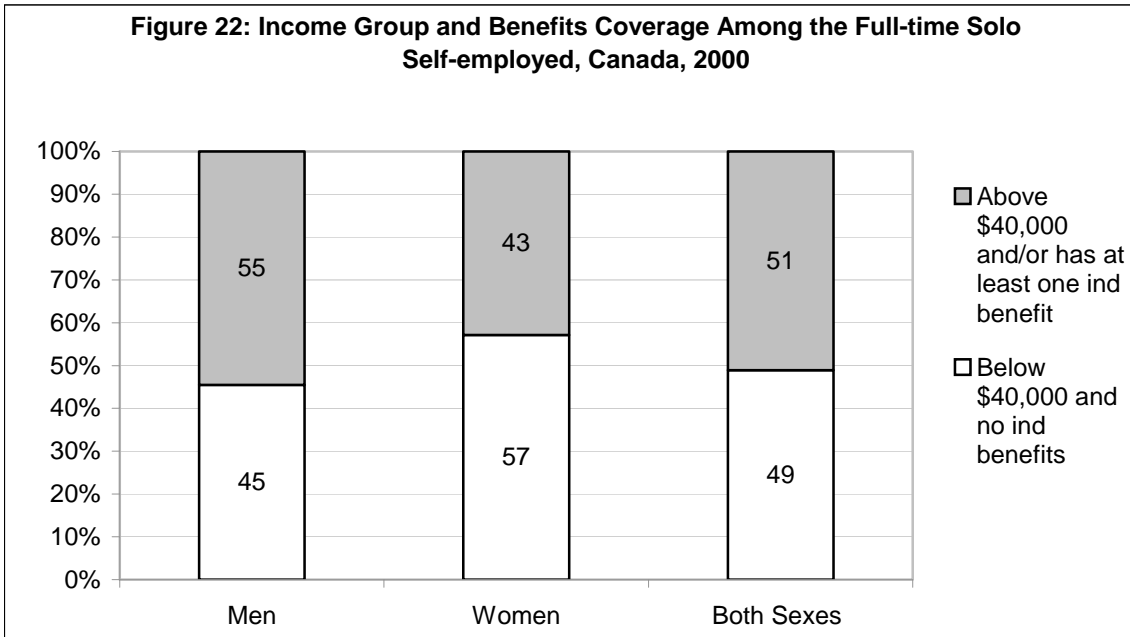
Regardless of whether contractual manipulation is the source of the problem (i.e., the root of exclusion from labour and social protection), a large percentage of full-time solo self-employment resembles paid employment, a sizeable segment of which is highly precarious. In addition to lacking social benefits and statutory entitlements, from maternity leave<sup>45</sup> to, in many instances, employment insurance coverage, and normally collective bargaining rights, half of full-time solo self-employed earn less than \$40,000 and have no benefits and/or no independent access to benefits. Even more striking, 30 percent earn less than \$20,000 and have no benefits and/or no independent access to benefits (Figure 23a) – and among women the percentage is 45 (Figure 23b).

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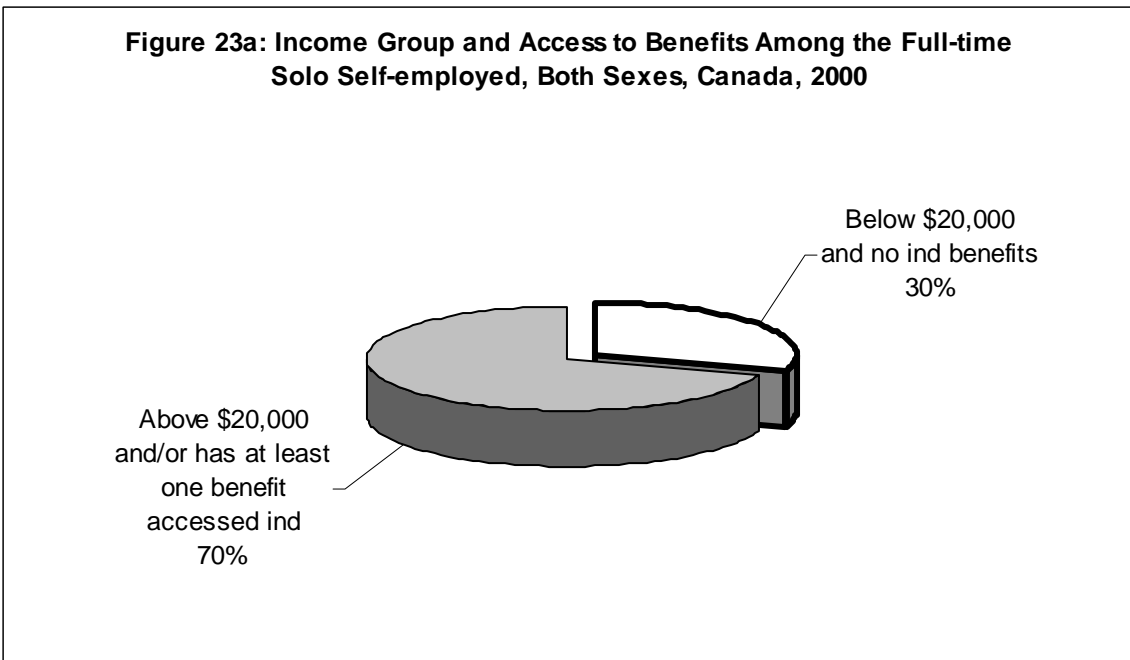
<sup>44</sup> The Survey of Self-Employment 2000 does not include a question about source of disability insurance; hence, data on source of benefits refer exclusively to dental and health benefits.

<sup>45</sup> As a consequence, the average maternity leave is much shorter for women in self-employment than paid employment. According to a study by Katherine Marshall (1999), 80 percent of self-employed women returned to self-employment within the first four weeks after having a child, compared to only 16 percent of paid employees.

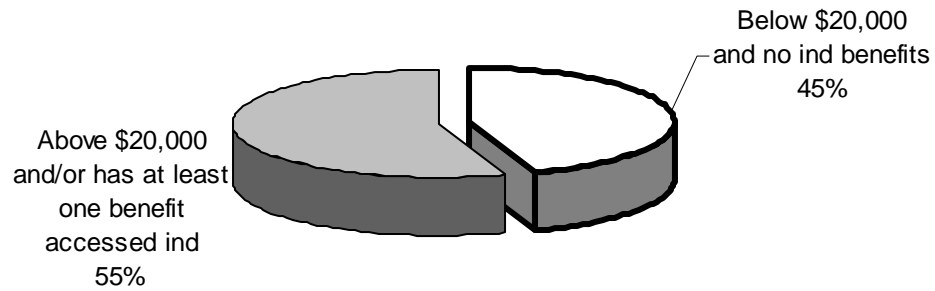
**Figure 22: Income Group and Benefits Coverage Among the Full-time Solo Self-employed, Canada, 2000**



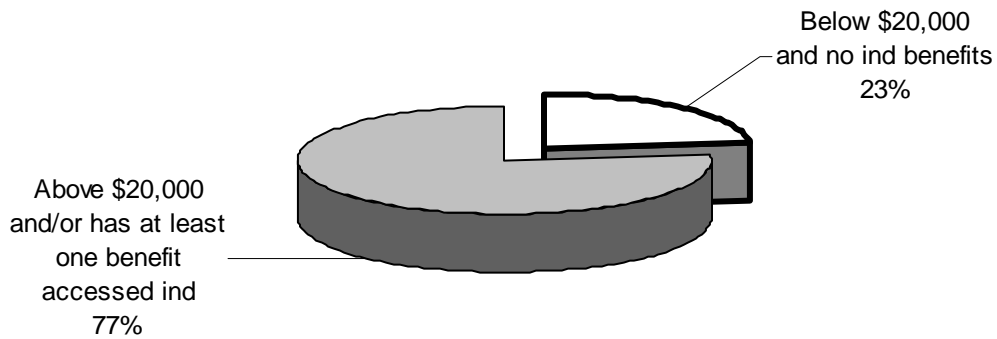
**Figure 23a: Income Group and Access to Benefits Among the Full-time Solo Self-employed, Both Sexes, Canada, 2000**



**Figure 23b: Income Group and Access to Benefits Among the Full-time Solo Self-employed, Women, Canada, 2000**



**Figure 23c: Income Group and Access to Benefits Among the Full-time Solo Self-employed, Men, Canada, 2000**



The sharp differences between men and women in this highly precarious group of workers reflects the continued dominance of a male breadwinner/female caregiver gender contract – many more women than men pursue self-employment on account of care-giving responsibilities.

## 1. The Status-Modified Employment Norm in Context

Workers lacking labour protection because their work arrangements are given the appearance of a different legal nature than an employment relationship in order to deny them certain rights and benefits are the main target of ongoing efforts at international labour regulation. The long-term goal of standard-setting on the scope of the employment relationship is to improve the situation of people cast as self-employed that are actually dependent workers (i.e., they resemble paid employees). Eliminating disguised employment is the starting point. And the premise that “the conditions governing the method, time and place of the performance of services may not bear any similarity to the elements considered by the courts of a relationship of this kind” underlies this goal; so do concerns about the precarious situation of dependent workers, especially women, on account of recent developments in employment relationships (ILO 2000b, par 14; see also ILO 2003a, 53). Thus far, the approach to re-regulation under consideration entails devising international guidelines for the development of national policies fostering access to labour protection among workers with an identifiable employment relationship.

Canada supported this approach at the International Labour Conference in 2003; it also advocated initiating the process of standard-setting with a recommendation on disguised employment. Speaking on behalf of New Zealand, South Africa, and the United States, in a rare acknowledgement of problems prevalent in liberal industrial countries, the Canadian government representative successfully proposed the following wording for conclusions on the scope of the employment relationship:

One of the consequences associated with changes in the structure of the labour market, the organization of work, and the deficient application of law is the growing phenomenon of workers who are in fact employees but find themselves without the protection of an employment relationship. This form of false self-employment is more common in less formalized economies. However, many countries with well-structured labour markets also experience an increase in this phenomenon (ILO 2003b, par 32).



And yet the Canadian case highlights the limits of approaches addressing status-based deviation from the employment norm by narrowly targeting disguised employment. Among the full-time solo self-employed, a sizeable percentage resemble paid employees, a significant subset of whom are precarious, especially women, whether or not their employment relationships are disguised. So-called disguised employees who work for just one company, and whose status is a device to reduce total taxes paid by the firms and the workers involved, are virtually impossible to distinguish, not only statistically but also conceptually, from workers in “objectively ambiguous” situations (ILO 2003a, 2). Furthermore, workers in both types of situations often have characteristics similar to self-employed contractors with multiple clients (i.e., income level, benefits coverage, source of benefits). In Canada, so-called dependent workers in situations needing protection represent a much broader group of the self-employed than those in disguised employment relationships. Recall that solo self-employment, itself a blurred category,<sup>46</sup> covers self-employed contractors who normally have multiple clients and may contract for a service or product; this group includes artists and cultural workers of various sorts (MacPherson 1999, Vosko forthcoming), fishers (Clement 1986), construction workers (MacDonald 1998), and truck drivers (Madar 1999). People labelled independent contractors that work directly for a contractor, such as newspaper carriers (Tucker forthcoming) also fall under this group. So, too, do employees, such as rural mail couriers (Fudge forthcoming), who are explicitly excluded from the personal scope of labour protection, and collective bargaining, and are thereby disguised. The latter group, however, only represents a limited segment of the solo self-employed. The absence of an identifiable employment relationship is only one among several variables key to establishing whether a group is in need of labour protection.

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<sup>46</sup> Data indicate that solo self-employment may, in practice, be larger than is often estimated since conventional measures fail to capture the degree to which people move between solo and employer forms. The self-employed that do not hire others in a given reference year are normally classified as solo self-employed while the self-employed that hire others are considered employers. Based on this definition, in 2000, 46% of the self-employed in Canada were employers. Yet, when the same group was asked whether they had paid help during a particular reference week, only 38% fell into this category.

Guidelines for ensuring that persons within an employment relationship have access to the protection that they are due are the expected outcome of talks in 2006. Evaluated against the Canadian case, international intervention of this sort could contribute to extending labour protections to some such workers, but it would do little for the many self-employed contractors in occupations or industries defined by these norms and practices. Even if the evolving guidelines are over-inclusive, these workers will never fulfil criteria required to establish an employment relationship because of the nature of their profession or their trade.

The Canadian example thus highlights the problems with taking the distinction between employees and the self-employed as a basis for labour protection. In this context, many people in full-time solo self-employment are in need of the same labour and social protections enjoyed by paid employees, not simply those employees whose relationships are technically disguised. As Judy Fudge, Eric Tucker and I argue (2002, 119-121), there is no principled reason for excluding any persons that are dependent on the sale of their capacity to work from the scope of labour law unless there is a compelling reason.<sup>47</sup> The challenge is to design and adopt appropriate systems of extending protections and entitlements – ranging from access to collective bargaining rights, to social wage benefits and anti-discrimination procedures – capable of protecting this group.

Even if the goal is more modest – that is, limiting precarious work by addressing status-based deviations from the employment norm – the preceding portrait illustrates that policies aimed at combating disguised employment and clarifying ambiguous situations are insufficient. Canada is nevertheless already following this path. In the last quarter of the 20<sup>th</sup> century, the Canadian policy emphasis centred on refocusing the employment relationship. The legal status

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<sup>47</sup> We include the following areas of labour regulation in our recommendations: anti-discrimination law, pay and employment equity legislation, occupational health and safety legislation, minimum standards legislation, collective bargaining legislation and social wage and social revenue legislation. Yet we acknowledge that there may be relevant distinctions between different groups of workers, such as the nature of their relationship to the entity that purchases their service, and these distinctions should be taken into account in the design of instruments to provide labour protections to all workers regardless of type of income they receive.

of employment remains the entry point for most employment-related protection but policy-makers, courts, and administrative decision-makers have responded to the problem of the personal scope of labour protection in myriad ways (Fudge, Tucker and Vosko 2002, 8; for a detailed review see: England, Christie and Christie 1998, 2.1). In some instances, legal tests that allow for an expansive category of employee have been adopted – this has often involved moving from tests resting on control and subordination to tests centring on economic dependence, a tendency growing in the post-1960 period (Arthurs 1965; Bendel 1982; Davidov 2002). In others, they have minimized the significance of the distinction between employees and independent contractors by deeming persons not normally classified as such to be employees. This has normally involved legislative or administrative action, illustrating that extending coverage to non-employees is ultimately a question of public policy (Fudge, Tucker and Vosko 2003b).<sup>48</sup>

In the process, either by adapting tests or through a course of deeming, groups such as freelance journalists and homecare workers have gained access to collective bargaining rights (Cranford forthcoming; Vosko forthcoming). Several Canadian jurisdictions have also minimized the salience of the employee/independent contractor distinction under human rights legislation (e.g., Federal, Nova Scotia and Prince Edward Island) and a majority have done so under occupational health and safety standards (Commission for Labor Cooperation 2003, 14; for a broader discussion of legislation focussing on social justice, see Fudge, Tucker and Vosko 2002, 65-73). Furthermore, social policies, like employment insurance, have been extended with slight modifications to specific groups of workers, such as fishers (Schrank 1998, Vosko 2003),<sup>49</sup> as well as barbers, hairdressers and manicurists that are not employees and some taxi-

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<sup>48</sup> The well-known example here is the extension of the personal scope of collective bargaining law to dependent contractors, that is, worker who are economically dependent (see Arthurs 1965; see also Bendel 1982; Davidov 2002).

<sup>49</sup> Fishers' EI is financed by self-employed fishers and designated employers and qualifying requirements are organized on the basis of earnings rather than hours.

drivers and drivers of other passenger-carrying vehicles (Fudge, Tucker and Vosko 2002, 81-82).<sup>50</sup> The Canada Pension Plan also covers independent contractors but they are required to pay both employer and employee contributions.

Under federal legislation on the *Status of the Artist (1992)*, and parallel legislation in Quebec, collective bargaining legislation also extends to independent contractors that are professional artists. This unique federal and provincial legislation represents the crest of innovation in Canada (MacPherson 1999; Vosko forthcoming). The more dominant approach has been to maintain the employee/independent contractor distinction while simultaneously extending coverage to workers resembling paid employees, who would otherwise fall out of this definition, through other means.

The boldest efforts to address forms of self-employment resembling paid employment in Canada cater to specific groups of contractors, such as artists, fishers and owner-drivers, while the remainder are concerned effectively with limiting what, in ILO and OECD parlance, are described as disguised and objectively ambiguous situations. There has been virtually no attention to addressing the normative issue – that is, whether labour protection should extend primarily to employees (Fudge, Tucker and Vosko 2002, 95, 105-108). This is the central weakness of the Canadian approach – a weakness underscored by the extent of precarious full-time solo self-employment. However, there are other major shortcomings that relate to gender inequality.

Indeed, the Canadian case illustrates the consequences of adopting an approach centred on minimizing status-based deviation from the standard employment relationship that retains male norms not only of employee status but entrepreneurship as well. A sizeable proportion of full-time solo self-employment is precarious, and women in this category

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<sup>50</sup> Among these groups, it is extended to those that are not employees and who neither own or operate the business nor own more than fifty percent of the vehicle and who are provided supports from the business operator. In these cases, contributions are split between the owner or operator of the business and the self-employed person.

experience dimensions of precariousness disproportionately. Granted, there is some recognition that many more women than men in self-employment endure financial hardship in Canada. In 2004, the Prime Minister's Task Force on Women Entrepreneurs proposed that the federal government extend maternity leave benefits to self-employed women. It noted that "women *entrepreneurs* would gladly pay into Employment Insurance if it meant that they would have access to these benefits" (Canada 2003, Recommendation 4.01, italics added). And, it also observed that "many [women] are in lower income categories than their male counterparts," and that their socio-economic situation unfairly compromises their ability to save for retirement (Canada 2003, Recommendation 12.06).<sup>51</sup> But despite these acknowledgments, the main thrust at the policy level is the promotion of women's entrepreneurship rather than extending labour protection to self-employed workers.

### III. Erosion of the Standard Employment Relationship

Precarious work and deviation from the standard employment relationship are often conflated. The result is that efforts to limit precarious work frequently focus on forms of employment that in some way differ from the employment norm or its closest proxy – full-time permanent employment. But is full-time permanent employment necessarily characterized by the security and durability associated with the standard employment relationship? If full-time permanent employment does indeed reflect this employment norm in practice, then an approach to curbing precarious work centred on minimizing deviations from it offers promise. If not, efforts to resuscitate the standard employment relationship, by crafting shorter-hours and place-modified employment norms as well as re-centering the employment relationship, are likely to

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<sup>51</sup> To remedy this problem, it called for addressing inequities in the RRSP system to improve women's preparation for retirement.

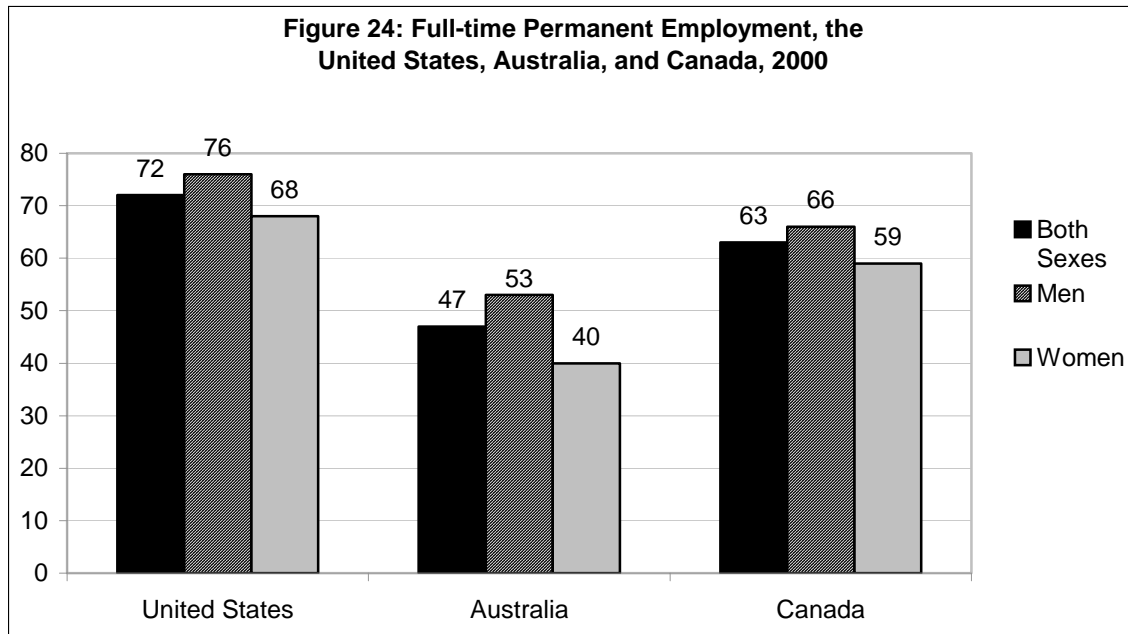
be deficient. The logical next step in evaluating the ILC model thus entails probing what is otherwise taken for granted as unproblematic – or, at least, less problematic. It involves examining the quality and character of the standard employment relationship itself with attention to the shifting gender contract. The United States offers a suitable case study for this endeavour.

## A. Full-Time Permanent Employment in the United States

Labour force trends in the United States indicate the resilience of time- and status-based deviations from the standard employment relationship, but the prevalence of part-time permanent employment and the size of full-time solo self-employment, and solo self-employment as a whole, are overshadowed by the deteriorating quality of full-time permanent employment.

Recall that in the United States, part-time employment represents 19 percent of total employment (Table 1). In this context, there is a shorter-hours employment norm, and it is highly gendered. Fully 14 percent of total employment is part-time permanent employment and 20 percent of all employed women, in contrast to just 8 percent of men, hold part-time permanent jobs. Furthermore, 38 percent of women working fewer than 40 hours per week (i.e., fewer than full-time weekly hours) cite childcare or the care of other family members as their main reasons for working “non-standard hours” (USDOL 1999, 33). Standing at 5 percent of total employment, full-time solo self-employment is also quite significant, including among women, whose share of total self-employment increased between 1976-2002 (USDOL 2004, Table 32). At the same time, the United States has a much larger share of full-time permanent employment than Australia and Canada. Full-time permanent employment constituted 72 percent of total employment in the United States in 2001 in contrast to 47 percent in Australia and 63 percent in Canada and a greater percentage of women hold these jobs than in the past

(Figure 17a; see also USDOL 1999, 35-36). Indicative of this trend, the proportion of men and women working more than 40 hours per week on average has grown: according to the U.S. Department of Labour (1999, 36), between 1969 and 1998, it rose from 35 to 40 percent for men and from 14 to 22 percent for women. Furthermore, one-quarter of men and one-tenth of women worked more than 50 hours per week (Jacobs and Gerson 1998, 458).



Trends in the quality and conditions of employment, such as the movement towards longer work weeks, affect how analysts characterize changing employment relationships, and thereby the descriptive concepts associated with the phenomenon of precarious work. Politico-legal institutions and traditions, in turn, shape the meaning and substance of descriptive categories associated with employment – terms such as full-time and part-time, temporary and permanent. In the 1980s, U.S. analysts coined the term “contingent work” as a shorthand moniker aimed at capturing the simultaneous growth of forms of employment and work arrangements differing from full-time permanent employment, such as part-time permanent employment, full-time solo self-employment, and market-mediated work arrangements, and the

declining security attached to paid employment more generally. Shortly thereafter, the *Fact-Finding Report of the Commission on the Future of Worker-Management Relations* (1994a, 93) defined contingent work as “marginal job relations” or “job opportunities that diverge from full-time continuing positions with a single employer.”<sup>52</sup> In practice, contingent work normally connotes temporary or transitory employment; the distinction between contingent and non-contingent pivots on permanency (Vosko, Zukewich and Cranford 2003, 17; Vosko 2000, Chapter 1).<sup>53</sup> The U.S. Bureau of Labour Statistics classifies contingent workers as people who expect their job to end (some with a pre-determined end-date), many of whom are employees, and the rest of whom are self-employed or independent contractors.<sup>54</sup> A lack of certainty of ongoing work is the foremost feature of contingent work. However, countless studies also demonstrate that contingent work is also frequently characterized by low income and a lack of control over the labour process – both key features of precarious work.<sup>55</sup>

Legal definitions, customs, and conventions help explain the durability of the concept contingent work – and its emphasis on a lack of permanency. They also provide important clues as to the nature of precarious work in the United States, specifically, the dynamics of an eroding employment norm. In the face of high levels of full-time permanent employment, the focus on contingency reflects the virtual absence of legislation on unjust dismissal at the

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<sup>52</sup> In describing “‘contingent’ worker-management relations,” the report defined the contingent work broadly noting that it “often includes part-time workers, some of whom are voluntarily part-time, some of whom would like full-time work, and some of whom are multiple job holders. It also includes employees of temporary help agencies – who may be full-time workers – and some of the self-employed including “owner-operators” or independent contractors with only a single contract of employment” (Dunlop 1994a 93).

<sup>53</sup> Contingent work is not synonymous with precarious work – indeed, it is much narrower.

<sup>54</sup> Three definitions of contingent work are used in the United States, each pivoting on the degree of certainty of continuing employment. The first definition includes all wage and salary workers who do not expect their job to last. This corresponds with the Canadian definition of temporary work. The second definition narrows the focus to employment of very limited duration by including only those wage and salary workers who expect to work in their current job for one year or less and who have worked for their current employer for less than one year. The third definition broadens the second by including self-employed workers who expect to be, or have been, in their current employment situation for one year or less (Vosko, Zukewich and Cranford 2003, 17). For detailed discussions of this mode of classification see also: Belman and Golden 2002; Polivka and Nardone 1989; and, Polivka 1996.

<sup>55</sup> See for example, contributions to the following two edited volumes: Barker and Christensen 1998 and Carre et al 2000.



national and state levels. Unlike most other industrialized democracies and many industrializing countries, the United States has never had either a broad protection against unfair dismissal or discharge without just cause or any period of notice through the common law or by statute. Rather, employment at will prevails – an employee can be discharged legally at any time “without notice for good reason, bad reason or no reason” (Commission for Labor Cooperation 2003, 26).<sup>56</sup> The central consequence, put succinctly by Summers (2000, 69), is that while permanent employment is *indefinite* employment, “indefinite employment [is], by definition employment at will.”<sup>57</sup>

The significance of employment at will has varied over time. Its legal meaning, and thereby its effects on the security and durability of full-time permanent employment, has progressed through several phases in parallel with the rise and decline of a particular version of the standard employment relationship, fostered by the growth of internal labour markets (Edwards, Gordon and Reich 1982; Doeringer and Piore 1971) and large vertically-integrated firms (Hyde 1998; Stone 2001), and a particular version of the male breadwinner/ female caregiver contract (Applebaum 2001; Fraser 1997). After World War II, implicit contracts for lifetime employment<sup>58</sup> grew to dominance in the United States. In this first phase, employment at will prevailed but employers “routinely entered into contracts in which people were effectively guaranteed lifetime employment” (Hyde 1998, 3). Underpinning this practice was an implicit bargain between workers and employers that firms would invest in workers’ acquisition of skills and knowledge, provide workers with a range of social benefits and entitlements, including

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<sup>56</sup> The employment at will doctrine dates to a treatise written by Horace Wood in 1877 seeking to distinguish American law from the English common law; according to Summers (2000, 67), this doctrine advances the premise that the “employer has sovereignty except to the extent it has expressly granted employees rights.”

<sup>57</sup> Where the gender contract is concerned, indirect consequences include that “workers in the US can be – and frequently are – fired if their family responsibilities interfere with their jobs” (Applebaum 2002b, 94). Furthermore, employees do not have the right to refuse overtime, for example, even if they are asked to stay beyond their shift without sufficient notice to arrange for childcare or eldercare.

<sup>58</sup> I borrow this term from Alan Hyde (1998), although similar concepts are used by numerous scholars such as Stone (2001) and Jacoby (1985).

back-loaded benefits such as pensions, and increase workers' wages incrementally – all in exchange for loyalty over the long term (Jacoby 1985; Stone 2001).

The lifetime employment model was relatively short-lived in the United States, however. It waned in the 1980s with the contraction of internal labour markets, the break-up of vertically integrated firms, falling real wages, and declining rates of unionization. To cushion the potentially severe effects of employment at will, three judicially-created exceptions emerged: the public policy exception, the handbook rule, and an exception based on the covenant of good faith and fair dealing, “an implied obligation in every contract” (Summers 2000, 72; see also Hyde 1998; Sheehan 1997).<sup>59</sup> And state courts gradually recognized these means of challenging employee discharges, thereby “transforming their traditional hands-off posture towards employment at will” (Dunlop Commission on the Future of Worker-Management Relations 1994a, 108). However, after a brief hiatus in the 1980s, as Hyde points out, “sharply accelerating rates of job separation, increases in those responding to surveys that they were involuntarily terminated, and the new phenomenon of intentional decreases in the size of the workforce previously found only in troubled companies” coincided with this greater recognition of “a variety of causes of action by which discharged employees could challenge their discharges” (Hyde 1998, 101; see also Block and Roberts 2000, 293).

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<sup>59</sup> The first exception involves allowing an employee defined to be at will to sue in tort rather than contract; this strategy emerged as an attempt to circumvent the doctrine entirely and it has been used widely to protect employees who are discharged for refusing to violate public policy or who are discharged when an employer refuses to pay benefits already earned or in response to, for example, the filing of claims for workplace injuries (Block and Roberts 2000, 293; Summers 2000, 70-71). The second device involves using principles of contract to craft exceptions. Its aim is to show that the employer has circumvented its own general rules of conduct, procedures, and practices, often found in handbooks or personnel manuals distributed to employees, in discharging a worker (Sheehan 1997, 324-325). In such instances, an employee handbook outlining disciplinary procedures or assurances that employees will not be dismissed without just-cause are used as evidence. This exception applies “the basic contractual principle that a person is bound by implicit promises in a course of conduct” (Summers 2000, 72); according to Hyde (1998, 101) it contributed to a growing tendency within the courts in the postwar period to “treat the employment contract as the total of all communications on the job.” The third type of exception is also contractual, although its focus is demonstrating that the employer is bound by an implied contract of good faith and fair dealing common to all contracts (Hyde 1998; Sheehan 1997). It has been used successfully in the discharge of long-service employees (Summers 2000, 73).

Since the early 1990s, the positive impacts for employees of judicially-created exceptions on unfair dismissal or discharge without just cause have grown weaker. Some judicial exceptions still hold sway but only one U.S. state – Montana – has a *Wrongful Discharge from Employment Act* (1987) that provides all non-union employees broad legal protection against wrongful dismissal.<sup>60</sup> Legislatures are at an impasse where the adoption of new statutes is concerned and, with the decline of job stability (Swinnerton and Wial 1995), protection against unfair dismissal remains more limited in practice in the United States than in both Canada and Australia.<sup>61</sup> While many American unions continue to negotiate collective agreements prohibiting dismissal without just-cause, enforcement is also a major problem.<sup>62</sup>

In the United States, and arguably elsewhere, full-time permanent employment does not necessarily provide the security, durability, and continuity associated with a standard employment relationship. In a context of shifting employment norms where there is employment at will, continuity in full-time permanent employment is far from given.

In addition to the reasonable expectation of continuing employment, the standard employment relationship, as a norm, is characterized by social benefits and statutory entitlements that complete the social wage, union coverage, and a wage sufficient to support not only the worker but his or her dependents. The high level of uncertainty surrounding *permanent* full-time employment in the United States should now be evident. Yet what are the

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<sup>60</sup> Despite an agreement in 1991 by the National Conference of Commissioners on Uniform State Laws on a Model Employment Termination Act, no other state has adopted similar legislation (Commission on Labor Cooperation 2003).

<sup>61</sup> For comparisons of Canada and the United States, see Block and Roberts 2000; Commission on Labor Cooperation 2003.

<sup>62</sup> Two pieces of federal legislation place some limits on this problem by cushioning the consequences of job loss among employees either displaced by plant closing or mass layoffs or discharged. Enacted in 1989, the federal *Worker Adjustment and Retraining Notification Act* requires large employers (i.e., those employing 100 or more full-time employees or a 100 of more full-time and part-time employees who work an aggregate of at least 4,000 hours per week, exclusive of overtime) to provide 60 days advance notice of planned plant closings and mass layoffs. And, the *Consolidated Budget Reconciliation Act* (1985) requires employers that provide a group health insurance plan (excluding churches, public employers, and employers that normally employ fewer than 20 employees) to offer participating employees and their spouses and dependent children the chance to continue coverage when they are discharged, except for “gross misconduct” – such coverage may continue for 18-36 months.

other characteristics of full-time permanent employment<sup>63</sup> in the contemporary United States and how are they gendered?

Medical benefits are among the most important social benefits historically linked to employment in the United States, in contradistinction to liberal industrialized countries like Canada, where core medical coverage is neither attached to the contract of employment, nor the employer, nor the workplace.<sup>64</sup> Most Americans with health benefit coverage (i.e., medical care, prescription drug, dental, and vision coverage) access it through plans provided by their employers and requiring employee contributions.<sup>65</sup> Public health insurance is available to the elderly through Medicare, which provides virtually free hospitalization insurance and low cost medical insurance covering physician services for people that are eligible for social security retirement or disability benefits. It is also provided to a segment of people with low-incomes through Medicaid, which, according to the federal government mandate, must cover hospital visits, physician care, dental surgery, and other expenses, and may cover additional services depending upon the policy of a given state. The remainder of the population must either secure benefits through an employer, self-insure (a practice common among the self-employed), or go without these benefits altogether.<sup>66</sup>

While full-time permanent employees have significantly higher levels of independently-accessed health benefits coverage than their part-time counterparts (Jacobs and Gerson 2004;

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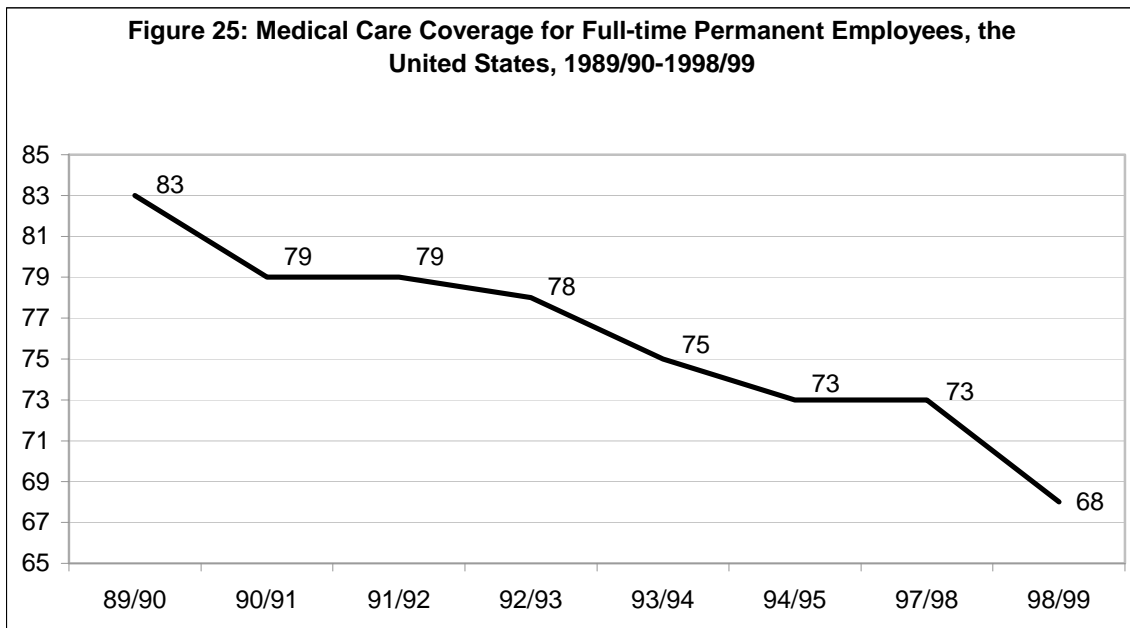
<sup>63</sup> Due to data limitations, the proxy used for full-time permanent employment in the ensuing analysis is full-time employment. Aside from technical reasons, the rationale for adopting this proxy is that full-time temporary employment accounts for just 1 percent of total full-time employment; thus, even when full-time temporary and permanent employment are grouped together, a reasonably accurate picture of full-time permanent employment emerges.

<sup>64</sup> In Canada, while there are various means of extending labour and social protections, medical care and health insurance flow from what Brian Langille (2002, 140) aptly labels a “citizenship platform,” which provides social infrastructure regardless of an individual’s labour force status.

<sup>65</sup> For all wage and salary workers in private industry, employee contributions for family coverage averaged \$228.98 per month for family coverage and \$60.24 per month for single coverage in March 2003. Average monthly contributions required of employees rose by 75 percent for both family and single coverage between 1992/1992 and 2002/2003 (USDOL 2003, 1).

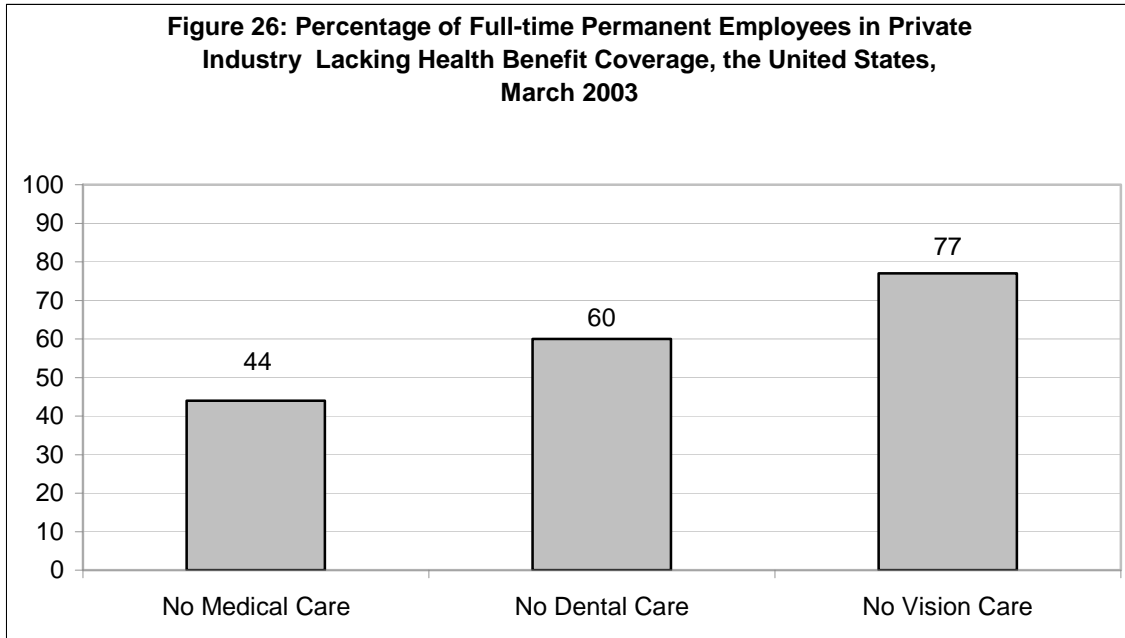
<sup>66</sup> Notably in 1997, 17 percent of non-elderly U.S. residents fell into this last category – that is, they did not have access to either public health insurance or employer-based plans.

USDOL 1999),<sup>67</sup> their rates of medical coverage provided by an employer are declining.<sup>68</sup> Between 1989/90 and 1998/99, their coverage rate declined from 83 to 68 percent (Figure 25). In private industry, where coverage is highest in white-collar occupations and lowest in service occupations and where large establishments are more likely than smaller establishments to offer health insurance, an even higher percentage of full-time permanent employees lack medical care coverage (44 percent). High percentages of full-time permanent employees in private industry also lack dental coverage (60 percent) and vision coverage (77 percent) (Figure 26).



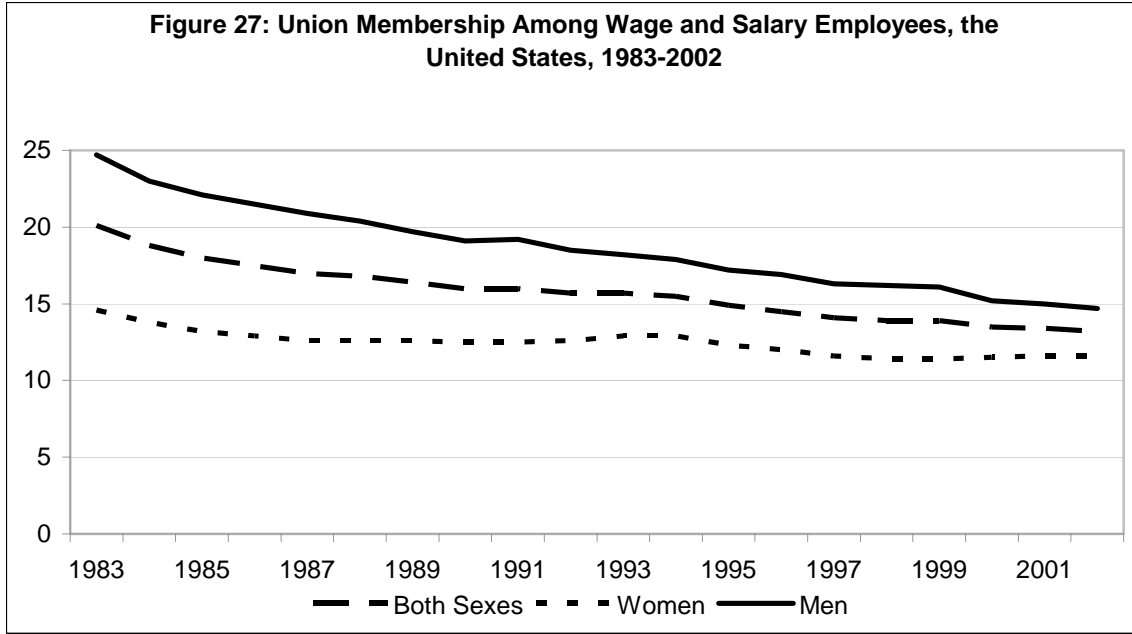
<sup>67</sup> In 2003, only 9 percent of part-time employees in private industry had independent access to medical care coverage, only 6 percent had dental coverage and only 5 percent had vision coverage (USDOL 2003).

<sup>68</sup> Along with other commentators, Jacobs and Gerson (1998) contend that part-time permanent employment remains sizeable as a percentage of total employment because it provides an easy route for employers to avoid providing health coverage. They argue further that fixed rates of health coverage for full-time employees encourage longer worker hours, especially among salary workers since paid overtime is not required. In other words, the structure of employer-provided health benefits coverage shapes bifurcated trends in working hours as well as erosion in access to benefits.

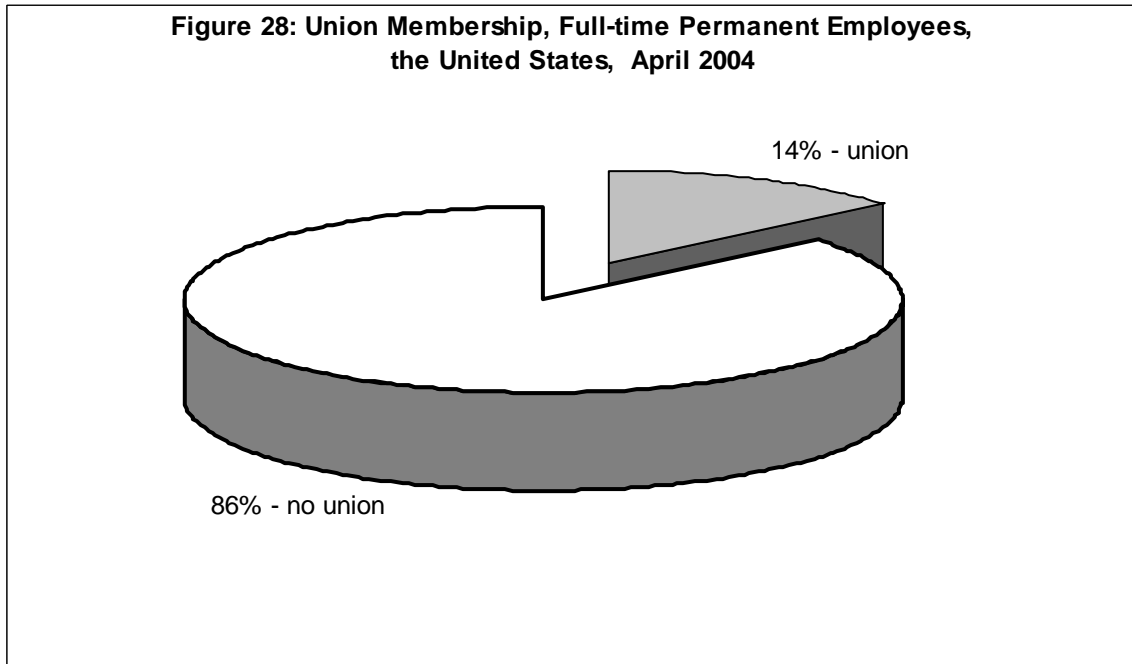


The erosion of the standard employment relationship illustrates the consequences of delivering such fundamental social benefits as core health benefits primarily via the contract of employment. Alongside chronically low levels of independent access to benefits among part-time employees – even among those in full-time permanent employment – access to basic health benefits, such as medical care coverage, became more limited in the post-1970 period.

Union coverage, another element of the standard employment relationship, is highly correlated with decent wages and social wage protections in the United States. It has also long served as a primary means of securing protection against unfair dismissal or discharge without just cause. Yet union membership declined dramatically in the post-1970 period, particularly in the 1980s and the 1990s, such that the proportion of private sector non-agricultural employees who are union members is less than one-third of that covered in the 1950s. Among all wage and salary workers, union membership declined from 20 percent in 1983 to 13 percent in 2002. The pace of decline was especially dramatic for men, whose membership rates dropped from 25 to 15 percent although women’s membership rates still remain lower, standing at 12 percent in 2002.



Even among full-time permanent employees, rates of union membership are very low – only 14 percent have the protection of a collective bargaining agreement. These trends are also gendered: 13 percent of women, in contrast to 15 percent of men, are unionized (Figure 28).



Low rates of union membership among full-time permanent employees in private industry in the United States are the result of several interrelated trends in worker representation and collective bargaining under the *National Labour Relations Act* (1935). These trends include the small, and declining, number of National Labour Relations Board (NLRB) certification elections held and the small number of workers involved in successful certifications relative to the number of workplaces and employees. As the *Fact-Finding Report of the Commission on the Future of Worker-Management Relations* (1994a, 67, emphasis added) observed:

The extent of NLRB election activity has trended downward through much of the post-World War II period. In the early 1950s for example, the Board conducted nearly 6,000 elections, involving over 700,000 workers. By the 1970s, the total number of certification elections had risen to over 7,500, but in smaller-sized units totalling 490,000 employees. *From 1975 to 1990 the number of elections fell by 55 percent to 3,628 elections involving 230,000 workers.*

Fewer workers were involved in the NLRB representation process annually throughout the 1990s and early 2000s than in preceding decades despite an expanding workforce; the small percentage of full-time permanent employees in private industry that are unionized reflects the declining number of workers unionized through NLRB elections. As Kate Bronfenbrenner (2003, 32) has shown, “for the last two decades, unions have been able to gain representation for fewer than 100,000 workers each year, far fewer than the 400,000 union jobs that are lost each year from plant closings, layoffs, corporate restructuring, de-certifications, and contracting out.” Furthermore, for those that manage to secure representation by a union, establishing collective bargaining, by way of a written agreement from the employer, is by no means secure; while analysts providing estimates for the 1950s report that 14 percent of efforts to secure a first contract failed over that decade, estimates of union failure grew in the 1980s and ranged from 20 to 37 percent (St. Antoine; and, Pavvy, as cited in Dunlop Commission 1994a, 73). And, by 1994, about a third of workplaces that voted to be represented by a union did not obtain a collective bargaining contract with their employer (Dunlop Commission 1994a, 79). In the last



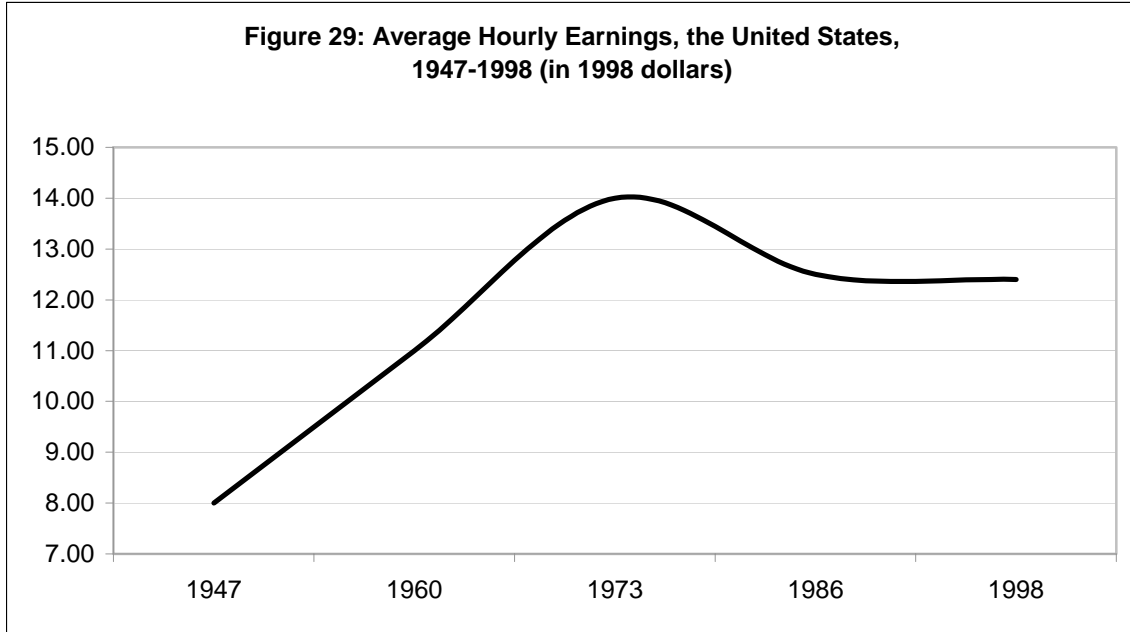
decade, according to Brofenbrenner (2003, 48) the situation has grown even worse such that “the overall private sector first contract rate is only 60 percent.”<sup>69</sup>

A large percentage of Americans are full-time permanent employees, many of whom, especially women, are working longer weekly hours than in the past. Consistent with this trend, the percentage of married couples in which both spouses work more than 40 hours a week rose from 3.6 percent in 1969 to 10.1 percent in 1998; furthermore, almost 7 percent of couples with children under 6 were in this situation in 1998 in contrast to just 2 percent in 1969 (USDOL 1999, 35-36). Falling and/or stagnating wages and increasing wage inequality help explain these trends. While real hourly earnings rose by more than half for production and non-supervisory workers in private non-agricultural industries after World War II, when the male breadwinner/ female caregiver norm reached its height at over half of all married couples, most of this growth occurred in the 1950s and 1960s (Figure 29). After peaking in 1973, real hourly earnings fell or stagnated for two decades – and they only began to stabilize in 1998. Wage inequality also grew in the 1980s and 1990s; according to the United States Department of Labor (1999, 19), “after forty years of narrowing inequality, the high-to-low wage ratio<sup>70</sup> increased by 19 percent between 1979 and 1999 (from 3.7 to 4.4), largely because low-wage workers’ earnings fell dramatically [in the 1980s].”

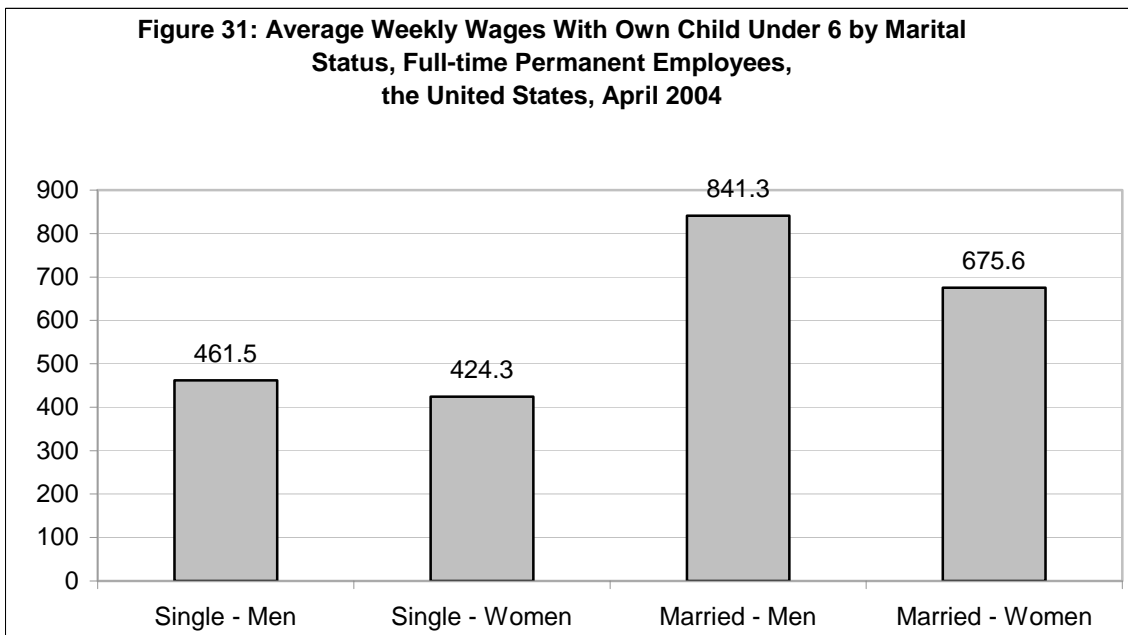
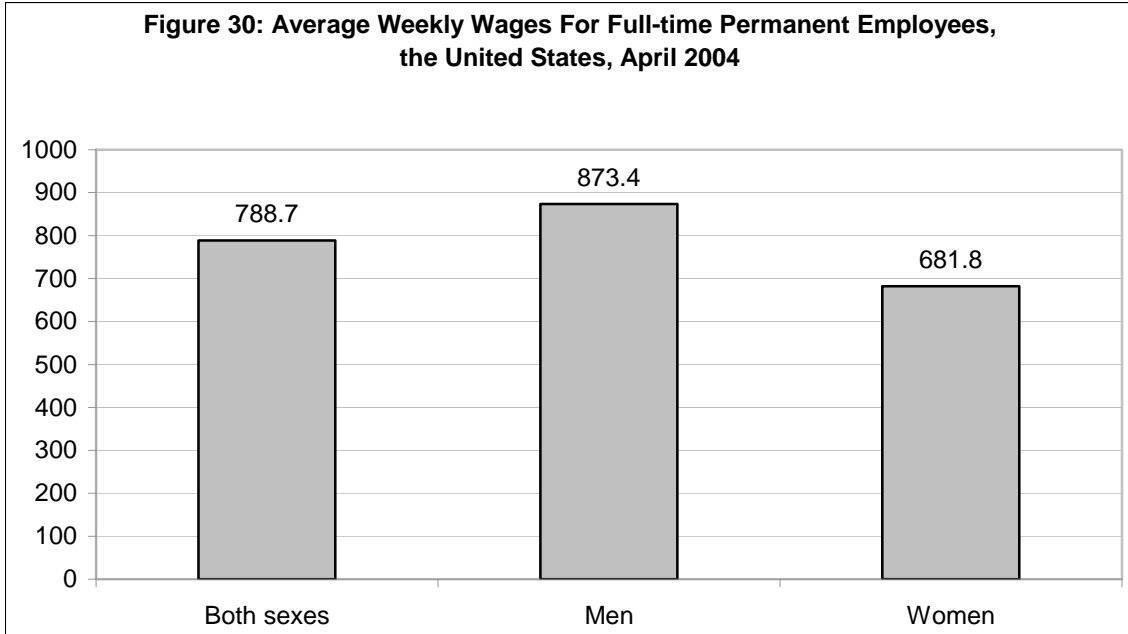
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<sup>69</sup> Employees’ efforts to obtain representation are also increasingly thwarted by the threat of discharge or unfair discrimination. Indeed, according to the *Fact-Finding Report of the Commission on the Future of Worker-Management Relations* (1994a, 79) “the probability that a worker will be discharged or otherwise unfairly discriminated against for exercising legal rights under the NLRA has increased over time.”

<sup>70</sup> The wage ratio is measured by the Bureau of Labour Statistics as the ratio of a high wage worker’s earnings (in the 90<sup>th</sup> percentile of the wage distribution) to that of the low wage worker’s earnings (in the 10<sup>th</sup> percentile). The figures cited here reflect weekly earnings ratios.



Among all full-time permanent employees, average weekly wages stood at \$788.70 in April 2004. Despite rising hours of work among this group, particularly among women, men earned \$873.40 on average while women earned just \$681.80 – a weekly wage gap of 78 percent (Figure 30). There is a strong relationship between average weekly earnings of men and women, marital status, and presence or absence of young children. Among full-time permanent employees, average weekly wages are lower than the national average for both married and single people with children under 6. This is especially the case for women. The average weekly wages of women in full-time permanent employment who are married with children under 6 are lower than the average for all women (\$675.60) and they are lowest for single women with children under 6 (\$424.30), who comprise the vast majority of single parents in the United States (Figure 31).

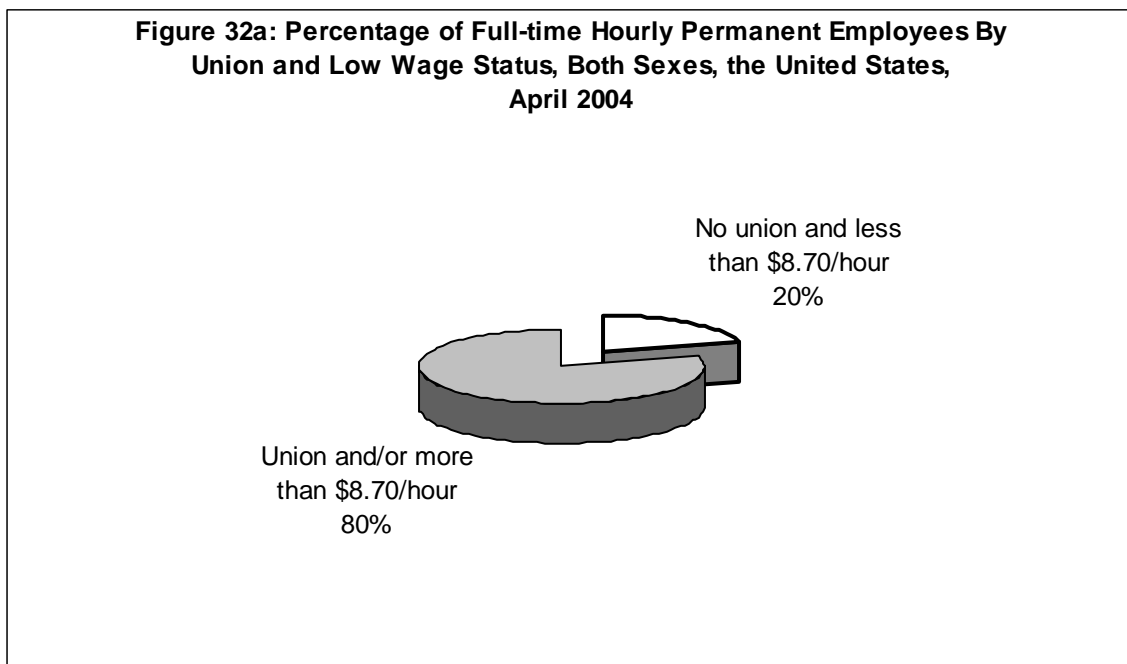


Many full-time permanent employees not only lack the protection afforded by a collective agreement, and the formal protections against unjust dismissal and social wage benefits flowing normally from such protection, but earn hourly wages that leave them in poverty.<sup>71</sup> An hourly

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The ensuing discussion focuses on full-time permanent hourly employees for technical reasons. Yet in order to be able to generalize the analysis to all full-time permanent employees, I use indicators of a lack of control

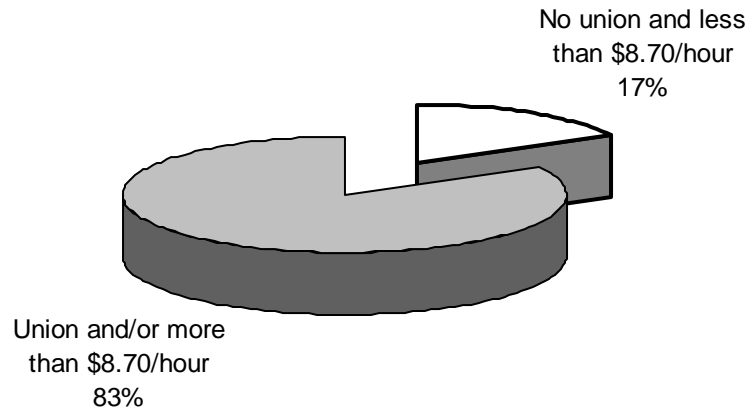
wage of \$8.70 or less is a conservative measure of low income in the United States as it amounts to \$18,100 annually, the current official poverty level for a family of four (Schulman 2003). Exploring low income and union status together, Figures 32a-c depict the percentage of full-time permanent hourly employees that are not unionized and earn less than \$8.70/hr. In April 2004, 20 percent of all full-time permanent hourly employees were in this situation. One-fifth of all full-time permanent hourly employees – and fully a quarter of women – experience precariousness along these two dimensions (Figures 32a, b and c).



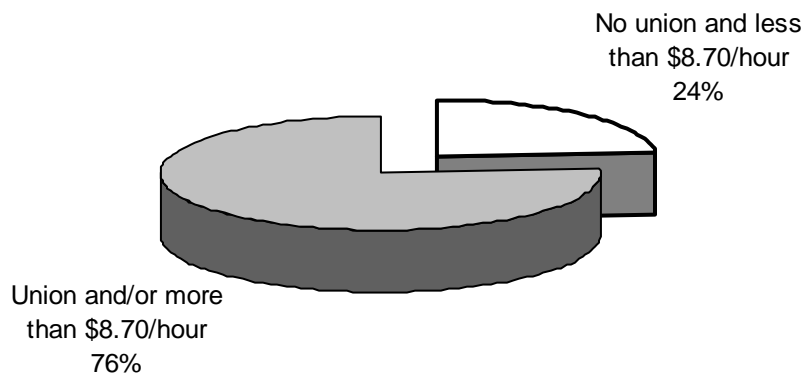
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over the labour process and low-income level suitable for both salaried and hourly employees. I also omit employee-sponsored health care benefits from the analysis since they are more common among salaried than hourly employees (Jacobs and Gerson 1998, 461).

**Figure 32b: Percentage of Full-time Hourly Permanent Employees by Union and Low Wage Status, Men, the United States, April 2004**



**Figure 32c: Percentage of Full-time Hourly Permanent Employees by Union Status and Low Wage Status, Women, the United States, April 2004**



## 1. Erosion of the Standard Employment Relationship in Context

In the United States, the rise of precarious work takes sharp expression in the deterioration of the normative model of employment that reached its apogee in the era of the lifetime employment model. Employment that is full-time and permanent still dominates. As the

preceding section illustrated, however, many full-time permanent employees lack certainty of continuing work, social benefits, such as employer-provided health care coverage, and protections afforded by a collective agreement. Many also confront low income and women, especially single women with young children, are highly vulnerable to precariousness. As Alan Hyde (2000, 8) observes, “it is entirely possible in the U.S. to be [a full-time indefinite] ‘employee,’ and yet be employed at will, have no legal or factual expectation of continued employment, no union, no practical way of obtaining union representation, no health insurance or pension.” In the face of declining and/or stagnating real wages and job instability, these trends are contributing to the bifurcation of the labour force and longer weekly hours. Considering total employment, most American men work longer weekly hours than men in most other countries. The same is true for women – and the percentage of women working over 50 hours per week is higher in the United States than any other country in the world (Jacobs and Gerson 1998, 458-59). Although many women still work part-time, rising weekly hours among women<sup>72</sup> and the high prevalence of dual-earner households are wholly consistent with the trend towards longer total hours. The case of the United States highlights the complex character of precarious work in liberal industrialized countries: not only is the standard employment relationship declining numerically, its quality is deteriorating and thus its social meaning is changing.

The ILO model provides limited guidance for countries, like the United States, where many full-time employees are enduring longer weekly hours as well as a low degree of regulatory and social protection and low income. Because their strategy is to stretch the standard employment relationship, new and emerging international labour standards on part-time work, home work, private employment agencies, and the scope of the employment

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<sup>72</sup> Women’s average weekly hours stood at 36.1 in 1998. In Australia, people with weekly hours above 35 are considered full-time and, in Canada, people with weekly hours above 30 hours are considered full-time. However, in the United States, people whose weekly hours fall below 40 are deemed to be part-time.

relationship are ill-equipped to empower national governments to limit erosion of the form of employment that falls within the traditional standard. The *Social Declaration* offers some potential as a tool for change as it endorses the Convention on Discrimination and the Convention on Freedom of Association and the Right to Organize. However, as the American example so vividly illustrates, the equal treatment paradigm underpinning anti-discrimination legislation – in this case nationally but also in the ILC – is not designed to address an eroding employment norm. Stronger minimum standards are required, such as those on hours of work and wages, but the *Social Declaration* – like anti-discrimination legislation in the United States – is limited by its procedural orientation. The *Social Declaration* also promotes freedom of association and the right to organize and bargain collectively. In this instance, the American case highlights the limits of a promotional standard that assumes a correlation between regulatory effectiveness and the presence of labour rights – technically, most full-time permanent employees have the right to freedom of association and the right to organize and bargain effectively in the United States, although they face significant hurdles in securing union certification, first contracts, and/or the enforcement of collective agreements. Not surprisingly, then, in its *Fact-Finding Report, the Dunlop Commission* (1994a, 23) found that while “the number of statutes affecting the workplace...have increased significantly over the past twenty-five years...the appropriations for organization and staff to secure enforcement have not kept pace with the enlarged responsibilities of federal agencies.”

In other areas, some initiatives for change that address the erosion of the employment norm and growing instability in the gender contract are emerging. Among the most promising are initiatives related to working time, broadly conceived. These initiatives take three distinct forms. Two respond to the erosion of the employment norm and to what is increasingly described as growing work-family conflict: “work-facilitating reforms” (Gerson and Jacobs 2003, 464-465) and “family-friendly” reforms (Rosenfeld 2001, 105). The goal of work-facilitating reforms is to limit barriers to employment, especially for dual-earning parents and single

mothers; employer-sponsored daycare, after-school programs, and syncing the workday and the school day are examples. “Family-friendly” reforms, in turn, aim to encourage employers to support workers in spending more time with their families in the private sphere, especially their children. They range from flex-time, job sharing, and provision for working at home to unpaid leaves for care and they are, by far, the most prominent type of work-time reforms in the United States (Applebaum 2002a; Rosenfeld 2001).

Introduced in 1994, the *Family and Medical Leave Act* epitomizes reforms of the “family-friendly” variety. This legislation requires federal public employers and private employers that maintain fifty or more employees on their payroll over 20 calendar workweeks in a given year to allow employees to take up to twelve weeks of unpaid family leave for medical reasons, the birth or adoption of a child, or for the care of a child, spouse or parent who has a serious health condition.<sup>73</sup> There are several important limitations to the Act. Many part-time and temporary employees, and most independent contractors, cannot access protection because employees are only eligible for this leave if they have been employed by the employer for twelve months and have at least 1,250 hours of service. Many parents and people with dependents, especially women, are employed in firms with fewer than fifty employees. Like Australia, the leave is unpaid and, as a consequence, since women on average earn less than men, they are more apt to take leave, exacerbating “a cumulative cycle of low wages and increased career interruptions that [in practice] inhibits job mobility for women” (Jacobs and Gerson 1998, 466). Finally, while some family-friendly policies are cast as enhancing ‘choices’ for employees, their individualistic orientation neglects fundamental structural issues – they do little to alter the culture of long work hours and leave rigid job structures intact. There is still ‘no such thing as a part-time career.’

More compelling than either work-facilitating or family-friendly policies are working time reform proposals that relate to the length of work hours, and thereby to job structures

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<sup>73</sup> Over the leave, the employer “must provide health care benefits at the same level and under the same conditions as if the employee were actively at work” (Commission on Labor Cooperation 2003, 26).



themselves. In the United States, no such reforms have been introduced but proposals that speak directly to structural issues, such as addressing long weekly hours and the bifurcation of hours, are mounting. Jerry Jacobs and Kathleen Gerson (1998, 466) make three promising proposals<sup>74</sup> premised on their argument that the current structure of working hours “forces some people to either accept longer hours than they would prefer or pay a substantial penalty in terms of career mobility. It compels others to accept part-time jobs with fewer hours than they would prefer and lower benefits, job security, and economic resources than they need.” Their first proposal is to extend the *Fair Labour Standards Act* (1938) to employees that are professionals and managers. At present, these groups do not fall under this Act and are therefore not subject to existing wage- and hours-legislation. In practice, this means that employers are not required to pay for overtime. Since professional and managerial employees are at high risk of excessive weekly hours, they argue that extending this Act would reduce overwork among salaried workers. Their second proposal is to shorten the standard work week slightly – to 35 hours – for all employees by providing tax incentives for employers to adopt shorter hour weeks, such as reduced payments into mandatory employer contribution systems. Their third, and final, proposal involves the introduction of mandatory prorated benefits for all employees – and while it focuses on the American context, this proposal could have application beyond it. Its goal is twofold: to discourage excessively long hours among salaried employees and to reduce working-hours polarization. The idea is to provide all employees with mandatory benefits<sup>75</sup> that accrue on the basis of hours of work. As it stands, full-time workers do not receive additional increments in benefits if they work more than forty-hours per week. At the same time, even if they work close to a full-time or *standard* work week, part-time employees often do not receive any benefits. If this type of proposal were to be adopted, it could reduce the tendency among

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<sup>74</sup> Jacobs and Gerson first set out these proposals in their article “Toward a Family-Friendly and Gender-Equitable Work Week” (1998, 466-469). For further elaboration, see also Jacobs and Gerson (2004).

<sup>75</sup> Jacobs and Gerson do not define mandatory benefits, although in discussing a standard package based on a forty-hour work week, they mention life insurance, health care benefits, and disability insurance.

employers to require salaried employees to work excessive overtime because there would be no cost savings in the provision of benefits. It would also improve the situation of part-time employees, many of whom work weekly hours equivalent to a standard full-time work week elsewhere. Granted, this proposal for prorated benefits has several potential pitfalls, specifically those identified in the discussion of the limits of a shorter-hours employment norm extending pro-rated benefits to part-time employees without altering fundamentally the norm itself. The question “by whose standard?” (Fudge and Vosko 2001b) remains critical but, in the American context, using prorated benefits to limit excessive hours of work could curtail growing economic inequality and improve gender equality.

The latter two proposals resemble alternative approaches to limiting precarious work emerging elsewhere, principally those in Europe at the national and supranational levels – initiatives and alternative visions that merit greater scrutiny.

## **PART FOUR: Limiting Precarious Work? Alternative Approaches to Regulating Labour and Social Protection**

The pattern of deviation from the standard employment relationship in Australia and Canada and the character of its erosion in the United States highlight the complexities surrounding the international regulation of precarious work. They point, in particular, to the implications – especially the gender implications – of adopting the standard employment relationship as a baseline for regulation. This section concludes this study by sketching alternative approaches to regulating labour and social protection. It begins by advancing a typology of approaches defined by two intersecting continua – a continuum of approaches to extending labour and social protection and a continuum of different configurations of the gender

contract. It then uses this typology to classify Australia, Canada, and the United States, to identify two competing prototypes for constructing 'new' employment norms, and, finally, to locate the ILC model.

## I. A Typology of Approaches

Approaches to regulating labour and social protection may be conceptualized by developing a typology with two axes.

The first axis aims to capture mechanisms governing labour and social protection as they intersect with social norms. Depicted horizontally in Figure 33, it distinguishes between approaches based on the employment relationship at one pole and the life-course at the other pole. The employment relationship approach organizes labour and social protection around the standard employment relationship. Under this approach, comprehensive social benefits and statutory entitlements are accrued not only on the basis of participation in employment but especially full-time permanent employment, where the worker has one employer, works on the employer's premises under his or her direct supervision, normally in a unionized sector.

At the opposite pole, the life-course approach adopts a vision of publicly provided labour and social protection inclusive of all people, regardless of their labour force status, from birth to death, in periods of training, employment, self-employment, and work outside the labour force, including voluntary work and unpaid care-giving for people (Supiot 2001). It is concerned with spreading social risks and is thus attentive to transitions in the lifecycle, such as movements from paid employment to retirement and from school-to-work; it also values civic engagement (Gazier 2002; Schmid 2002). The assumption here is that every worker, over the course of his or her lifecycle, should have access, as needed, to reductions in working hours while retaining access to comprehensive labour and social protections as well as publicly funded and

administered income supports and, at the same time, the maintenance of regular hours in key periods (Applebaum 2002b, 142). The life-course approach conceives of working hour adjustments in a flexible manner, to accommodate shorter working-hours in periods of weak demand, ongoing voluntary community activities, periodic skills-upgrading, and phased-in retirement as well as extended leaves, such as maternity and parental leave.

The intersecting continuum delineating the gender contract, and depicted vertically in Figure 33, aims to reflect the material as well as the normative bases around which sex/gender divisions of paid and unpaid work operate institutionally as well as socially. It is defined by an unequal work/ undervalued care gender contract at one pole and a “shared work/valued care” (Applebaum 2002b) gender contract – or the universal caregiver model (Fraser 1997) – at the other pole. The unequal work/ undervalued care gender contract places a high premium on labour force participation. The male-breadwinner/ female caregiver model is one version of this gender contract as it assumes a primary male-breadwinner with access to a standard employment relationship and a female caregiver principally performing unpaid work, which is often undervalued, and receiving social protection indirectly via her spouse. Yet there are other variations of this combination where dual-earning is assumed while care-giving is virtually ignored, perpetuating *de facto* (and highly marginalized) female caregiver norms.

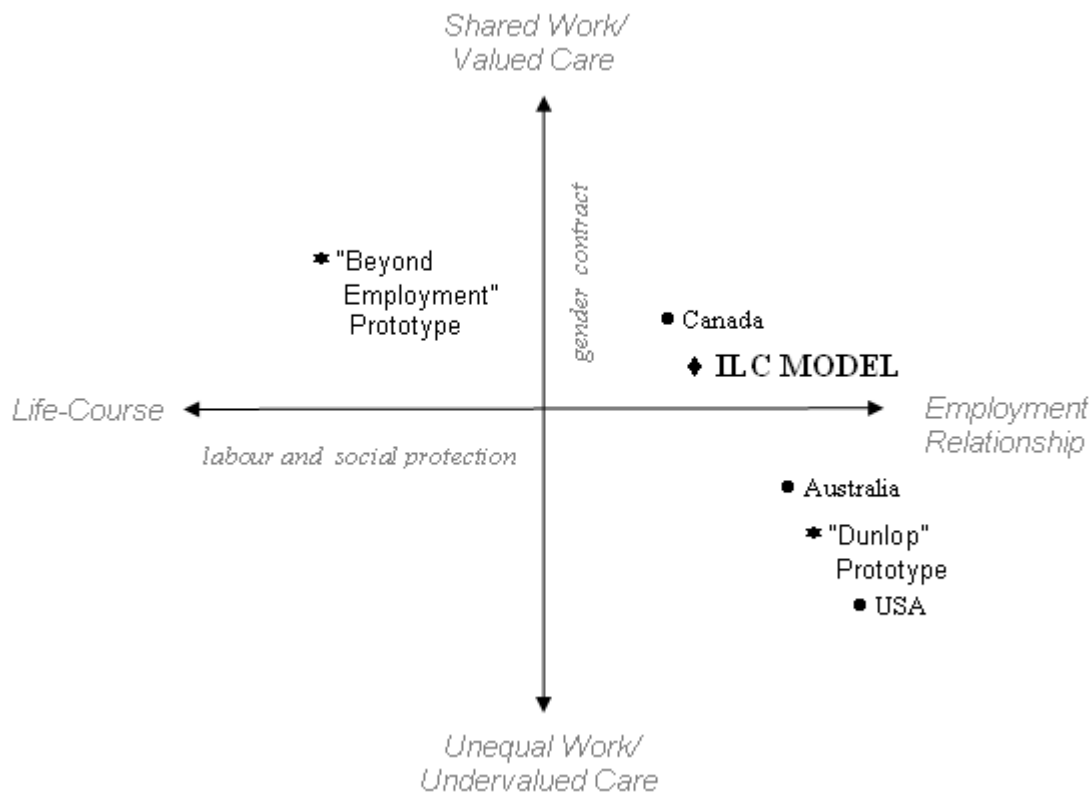
The shared work/valued care contract occupying the opposite end of this continuum aims, in contrast, to reshape the behaviours, goals, and values of men and women and the social norms that they engender by limiting employers’ ability to make demands on employees and by rewarding care, learning, and civic participation. As Applebaum (2002a, 95) conceives of it, shared work encompasses a fairer distribution of paid work among people through the type of shorter work weeks, limits to overtime, graduated benefits for part-time workers (others also propose more extensive benefit contributions for full-time workers working overtime as a means of limiting excessive hours; see for e.g.: Jacobs and Gerson 2004), flexible scheduling, and job sharing associated with “family-friendly” working time reforms (see also: Campbell 2002;

Rosenfeld 2001). One of its central aims is to improve access to the labour force for those (mainly women) who conventionally bear the responsibility for children and other dependent family members. Another is to foster a more equal distribution of unpaid work between the sexes within and outside households, especially domestic labour and the care of children, and other socially necessary unpaid work between households and communities. The flipside of this contract is valued care, which is linked, on the one hand, to giving people greater control over their time and, on the other hand, to improving care-giving as well as the terms and conditions of those who provide it (both paid and unpaid). For some, valued care entails enabling people to “negotiate the flexibility they need to meet their *individual responsibilities*” (Applebaum 2002a, 95, emphasis added; see also Jacobs and Gerson 1998). However, it is used here to convey both increased social responsibility for care (Eichler 1997) and an expansion of the public provision of services for those requiring care and the attendant commitment to improving the quality and quantity of employment in the public sector for care-providers similar to the situations common in countries such as Denmark (Esping-Anderson 2002, 120; Jackson forthcoming) and Sweden (Anxo 2002, 102, 104).

A range of possible approaches to labour and social protection, linked to various configurations of the gender contract, fall within this typology. One configuration – the most familiar – brings together a male breadwinner/female caregiver contract and an approach to labour and social protection pivoting narrowly on the standard employment relationship. This configuration dominated in the post-World War II era, especially in liberal industrialized countries – and it is reminiscent of an approach fostered by international labour regulation well into the 1970s. Alternatively, a country or grouping of countries may remain attached to the employment relationship as the foundation for labour and social protection yet adopt policies directed at recognizing and valuing care, as well as sharing work and distributing income more equitably. There may also be alternative visions combining a life-course approach to labour and social protection, tying social benefits and statutory entitlements to people and communities

rather than the employment relationship, with a shared work/valued care gender contract. A final variation might involve the application of a life-course approach in a dualistic fashion that leaves a male breadwinner/female care-giver gender contract intact. This variation would enable young and single men and women and (especially male) labour force participants approaching retirement to make transitions smoothly yet, at the same time, leave intact unequal gendered divisions of paid and unpaid work by neglecting to acknowledge the socially necessary work of care giving in the design of labour and social protection, with severe consequences for women in households where children and others requiring care are present.

**Figure 33:**  
**Regulating Labour and Social Protection - A Typology of Alternative Approaches**



## A. Locating Australia, Canada, and the United States

Approaches to regulation in Australia, Canada, and the United States occupy distinct locations within this typology.

The scale of time-based deviation from the standard employment relationship and the precarious and gendered character of the most dominant form of part-time employment places Australia in the bottom right-hand quadrant of the typology of approaches. Part-time work is highly prevalent in this context, much more so than in Canada and the United States, and part-time ongoing casual employment, a grouping populated principally by women, is sizeable. Consequently, many women, especially women with young children, are unable to accrue entitlements to income security such as sick leave, annual leave, severance pay, maternity leave and, in many cases, protection against unfair dismissal (O'Donnell 2004; Owens 2001). In Australia, the policy direction gaining most prominence – and offering greatest promise for limiting precarious work – involves fostering the growth of permanent part-time employment through measures ranging from conversion for part-time ongoing casuals to interventions compensating this group of workers more fully for their precarious situation and providing greater access to protections such as parental leave to more people (Buchanan and Thornthwaite 2001; Junor 1998; Pocock et al 2004). While it sheds protective relics of an older order, this modified approach to labour and social protection still rests on a gendered version of the standard employment relationship, one where conventional definitions of normal hours are adjusted to bring more women into the labour force while retaining a male employment norm. Strong male breadwinner and female caregiver norms prevail in Australia, more than in Canada and the United States; accompanying adjustments in the gender contract centre on preserving men's socially prescribed roles as primary breadwinners while cultivating a shorter-hours employment norm for women.

In contrast to Australia, Canada sits somewhat closer to the life-course end of the labour and social protection continuum. Broadly, Canada's location on this axis relates partly to its somewhat superior maternity and parental leave policies, especially for those eligible for paid leaves under Employment Insurance (still mainly employees with a considerable number of accumulated hours), although its policies compare very poorly to most European countries (Kamerman 2000; Fudge and Vosko 2003). The recommendation by the Prime Minister's Task Force on Women Entrepreneurs to extend parental and maternity leave entitlements to self-employed workers reflects this orientation. And it attests to the greater social openness in Canada to displacing the male-breadwinner/female caregiver gender contract in an attempt to move towards shared work and, to a lesser degree, valued care, evidenced by the commitment among statisticians and policy-makers to measure unpaid work and value it in key policy areas (e.g., pensions, care-giving for people with disabilities) (Bakker 1998; Luxton and Vosko 1998; Towson 1997; Zukewich 2003). Still, as the preceding portrait of self-employment illustrates, Canada's focus on limiting disguised self-employment, rather than extending comprehensive labour and social protections to all self-employed workers, places it at the employment relationship end of labour and social protection axis. And its placement along the gender contract continuum reflects escalating tensions in public policy: in the absence of sufficient support for care-giving, both greater supports for care via the public sector and state policies and union and employer practices that foster and value shared care-giving, Canada's emphasis on promoting entrepreneurship among women positions it at a mid-point on this axis.

Among the three countries, the United States is situated at the farthest point on the employment relationship end of the labour and social protection continuum – given the size and character of full-time employment and the policy emphasis on employment as the primary route to economic security and social value. And it is positioned closest to Australia on the gender contract continuum. However, the practical situations in these two countries are qualitatively distinct: in contrast to the bifurcation evident in men's and women's patterns of labour force



participation in Australia, full-time permanent employment is increasingly common among American women as well as men. At the same time, its dominance has not displaced traditional female care-giving norms since it encourages all workers to behave as though they have no responsibilities outside the labour force. The consequences of this situation are far-reaching, as Eileen Applebaum (2002a, 94) contends:

Since most US households now have every available adult engaged in paid employment, and most married couples – even those with young children – are dual earners, there are great stresses. These are borne disproportionately by women, who – in a holdover from the male breadwinner and female homemaker model – still have the main responsibility for domestic homemaking and child and elder care.

The *Family Medical Leave Act* signifies a major improvement in the United States but men and women employees have relatively limited access to these leaves, especially those that are part-time and/or temporary and those that work in small firms (Kamerman 2000). Leaves are also unpaid, unless employers subsidize them, and the career penalties for people who take breaks from employment are often great due to the structure of weekly hours and high levels of wage inequality (Lovell and Hartman 2002).

## B. Two Competing Prototypes

To decipher current directions in the international regulation of precarious work as well as predict future trends, it is useful to examine two leading prototypes put forward in the United States and Europe respectively. One prototype is exemplified by the final proposals of the American *Dunlop Commission on the Future of Worker-Management Relations* (1994b) as well as developments flowing from it in the United States context. This prototype focuses on reviving an approach to labour and social protection based exclusively on wage-earning. It envisions an employment norm characterized by a lower set of statutory entitlements and social benefits, as well as less job security, than that associated with the standard employment relationship, and it

is silent on gender. The other prototype arises from proposals to move 'beyond employment' in the EU, which have particular resonance in member countries such as Germany, the Netherlands, and Sweden. This approach is more sensitive to the need for changes in the gender contract, although even greater sensitivity is required to confront the male norm of the standard employment relationship.

The first prototype embraces the idea that all adults should be engaged in employment, preferably full-time and ostensibly permanent, and supports maintaining a system of protection tying eligibility to a single job, such as by way of continuous service requirements. It emphasizes private decision-making in the workplace as a means to furnish benefits ranging from health insurance to vacation pay (Dunlop 1994b, 16; see also Applebaum 2001; Hyde 2000; Piore 2002; Stone 2001). This prototype does not call for pro-rated social wage benefits for part-time employees. Rather, it leaves intact longstanding policies permitting employers to treat "part-time employees/workers differently from those with permanent or indefinite relationships with the employer" (Commission on Labor Cooperation 2003, 5). And it fails to advocate reducing standard full-time weekly hours in order to extend labour and social protection to underemployed part-time workers. Place-based exclusions are also permissible under this model. This prototype authorizes the exclusion of several groups of workers, such as domestic workers, whose location of work differs from conventional worksite norms. However, one important area where subtle changes are proposed relates to establishing employee status – specifically, modifying legal tests conventionally used to determine the scope of labour protection. Most American laws still use a "common law agency test" that places greatest emphasis on the right of control; however, a few employ an economic realities test (e.g., the federal *Fair Labour Standards Act* and the *Occupational Health and Safety Act*), which allows for fuller examination of other factors suggestive of what is often labelled 'economic dependence,' an approach growing in popularity in international discussions concerned with

disguised employment.<sup>76</sup> Quite controversially, the *Dunlop Commission* (1994, 12) recommended adopting a single definition of employer and a single definition of employee “for all workplace laws based on the economic realities of the employment relationship.” It endorsed shifting away from the common law agency test towards an economic reality test where chances for profit and risks of loss and capital investment have greater weight.<sup>77</sup>

Despite some subtle proposals for change, however, the *Dunlop Commission* ultimately took an ambivalent approach to the growth of ‘contingent work,’ a development criticized by the Taskforce on the Future of Worker-Management Relations that preceded it. On the one hand, the *Dunlop Commission* opposed the introduction of “contingent arrangements... simply to reduce the amount of compensation paid by the firm for the same amount and value of work” (Dunlop 1994b, 61). Yet, on the other hand, it “affirmed the valuable role contingent work arrangements can play in diversifying the forms of employment relationship available to meet the needs of American workers and companies” (Dunlop 1994b, 62). Attesting to the gender contract implied by this conception of new employment norms, it also claimed that the “flexibility” that “contingent arrangements” provide “helps some workers, more of whom must balance the demands of family and work as the number of dual-earner and single parent households rise” (Dunlop 1994b, 61). Under this prototype, the worker whose situation approximates the norm most closely is still assumed to be male. As Applebaum says:

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<sup>76</sup> Historically, U.S. courts have used three tests in distinguishing between employees and independent contractors: the common law agency test and the economic realities test – both noted here – and the hybrid test. However, the common law agency test operates as the default position. Unless a statute specifies otherwise, this is the test to be used. The Commission on Labor Cooperation (2003, 31) offers a concise summary of the list of factors normally, although not exclusively, considered under this test (also called the 13 factor test) which include: “(1) the hiring party’s right to control the manner and means by which the work is accomplished; (2) the skill required; (3) the source of the instrumentalities or tools; (4) the location of work; (5) the duration of the relationship between the parties; (6) whether the hiring party has the right to assign additional projects to the hired party; (7) the extent of the hired party’s discretion over when and how long to work; (8) the method of payment; (9) the hired party’s role in hiring and paying assistants; (10) whether the work is part of the regular business of the hiring party; (11) whether the hiring party is in business; (12) the provision of employee benefits; and, (13) the tax treatment of the hired party (as an employee or a self-employed worker).”

<sup>77</sup> This recommendation, however, has not been taken up in the United States, although it resembles the direction of change in Canada.

Anyone – male or female – can work. The only requirement is that, as employees, they should conform to the norm of the ideal worker. An ideal worker is a worker who behaves in the workplace as if he or she has a wife at home full-time, performing all of the unpaid care work that families require. Personal problems do not belong in the workplace. Conflicting demands are expected to be resolved in favour of requirements of the job (Applebaum 2001, 29).

The “personal problems” referred to here include care for children and other dependants as well as unpaid training, voluntary work, and work in the public interest. This philosophy encourages women to be “flexible,” to bear the costs associated with accepting part-time work to accommodate care-giving. However, even in the post-Dunlop era, leave entitlements in the United States, while they rest on a version of equal treatment, are meagre. The outcome is a gender contract that embraces dual wage-earning while marginalizing care-giving.

The second prototype – the ‘beyond employment’ approach to labour and social protection – differs sharply from the first prototype and its associated gender contract. And it is considerably more promising as a policy model in confronting the norm. Originating from *Transformation of labour and future of labour law in Europe* (European Commission 1998), this prototype embraces a broad concept of *work* that covers all people “in both periods of inactivity proper and periods of training, employment, self-employment and work outside the labour market,” where “work outside the labour market” includes training at one’s own initiative, voluntary work, and care for others (Supiot 2001, 55). It calls for replacing the paradigm of employment with a paradigm of labour market membership based on the notion of “statut professionnel” or the idea that “an individual is a member of the labour force even if he or she does not currently have a job” (Supiot 2001, x). More consistent with a life-course approach, the idea is to allow for breaks between jobs as well as lifecycle changes, to reject a linear and homogeneous conception of working life tied to the employment contract and, specifically, the relationship of subordination it establishes between the worker and the party to whom services are rendered (Supiot 2001, C.1).

Rather than treating “regular” part-time employment as a valid variation on the norm and calling for an extension of benefits, the “beyond employment” prototype advocates reducing working time for all people over the course of the lifecycle and for reorganizing production for the market to reflect its different phases. It embraces “worker-time” to reconcile occupational and personal life, to encourage genuinely work-centred flexibility, and to promote the redistribution of employment (Supiot 2001, 84; see also Fudge and Vosko 2001b). At the outset of discussions towards what later became the Convention on Part-Time Work, several member countries and worker representatives proposed the type of working time adjustment posed under the ‘beyond employment’ prototype but it was rejected almost immediately (ILO 1993a). However, this type of adjustment resembles more recent developments in Germany and the Netherlands under the influence of the EC *Directive on Part-Time Work* (1997) that have met with some success.

The German *Act on Part-Time Work and Fixed-Term Contracts (2001)* confers a right to all employees (full-time and part-time) with six months continuous service whose employer regularly employs more than fifteen people to reduce work time (Section 8).<sup>78</sup> The dual objective of this measure is to lessen unemployment and to allow employees (men and women) to fulfil family responsibilities and/or to engage in unpaid voluntary work, training, apprenticeship or educational programs (Berg 2002; Burri, Opitz and Veldman 2003; Jacobs and Schmidt 2001). The Act also grants part-time employees fulfilling these criteria to extend their working time (Section 9), and compels the employer to “give preference to an interest [in] an extension of working time unless this would conflict with *urgent* operational reasons or request of other part-time employees” (Berg 2002, 208). The aim of this measure is to cultivate greater equality between men and women by fostering a better gender balance not only among who works part-

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<sup>78</sup> Employers, however, may deny employees this right by invoking ‘business reasons’ and there are few checks to police this provision. The outcome will ultimately be left to the courts (Burri, Opitz and Veldman 2003, 322).

time but who works full-time. Analysts predicted that, together, these two measures may contribute to an increase of the proportion of men working part-time, and thereby prompting more men to take on a greater share of unpaid care giving. One of the central strengths of this Act is that it covers so-called marginal part-time workers, defined in Germany as those whose monthly income does not exceed certain specified limits (325 Euros in 2002) and/or whose weekly working time is 15 hours or fewer (Berg 2002, 209). The inclusion of this group under the Act parallels the extension of statutory social security measures to workers in these types of employment relationships, a decision motivated initially by Germany's desire to preserve its ability to continue to fund statutory social security schemes in the face of changing employment relationships that is having the paradoxical effect of safeguarding equal treatment (Berg 2002, 210).

The *Working Time Adjustment Act (2000)* in the Netherlands is even stronger than its German counterpart. It grants employees a statutory right to both reduce and extend working time unless an employer can demonstrate that serious business reasons preclude the granting of such a request.<sup>79</sup> Consequently, since the onus is on the employer to make a case for rejecting a worker's desire to adjust his or her hours, the take-up of these measures has been much more widespread in the Netherlands than in Germany despite the otherwise similar features of legislation in the two countries. Furthermore, the formal objective of the Dutch Act is to "enhance the possibilities for workers to change their working time according to their needs during different periods in their careers" (Burri, Optiz and Veldman 2003, 322). In this way, Dutch legislation challenges squarely dominant assumptions of what constitutes regular weekly hours among employees and seeks to transcend them, while German legislation focuses on ensuring that part-time employees are not treated less favourably than comparable full-time

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<sup>79</sup> For an in-depth discussion of this Act, see Burri 2001 and Burri forthcoming.

workers unless different treatment is justified on objective grounds, language reminiscent of the ILO Convention on Discrimination (Berg 2002, 209).

Under the 'beyond employment' prototype, social drawing rights are the proposed solution to the problem of minimum standards that approaches to labour and social protection premised on equal treatment are ill-equipped to address. These rights are essentially "a new type of social right related to work in general (work in the family sphere, training work, voluntary work, self-employment, working the public interest, etc.)" based on a prior contribution to the labour force, but "brought into effect by the free decision of the individual and *not as a result of risk*" (Supiot 2001, 56, italics added). On the question of status, this prototype also casts as central the need for freedom to work under different statuses – from employee to independent contractor status – without forfeiting social rights and entitlements (Supiot 2001, 10). Adding an important layer to the evolving rationale for collapsing the distinction between employees and self-employed workers, it is concerned less with quantitative changes, such as those documented in discussions on the scope of the employment relationship, than with qualitative changes across the employment relationship.

The vision for the gender contract in 'beyond employment' requires greater elaboration as well as some expansion. Early architects of this prototype devoted scant attention to exploring avenues for fostering greater sharing of unpaid care-giving among men and women. Granted, the effort to move 'beyond employment' in organizing labour and social protection is attentive to the danger that the emerging social and legal system of production "will be built along strongly biased gender lines, discriminating against women from the standpoint of economic independence and professional careers; and against men with respect to the developments of bonds of affection and family relations" (Supiot 2001, 180). The 'beyond employment' prototype rejects a policy direction compelling workers to trade-off precarious conditions for the type of flexibility necessary to engage in unpaid care-giving, volunteer work, training, or other activities in the public interest. Together, the explicit call for high-quality

opportunities for training and employment for men and women and the implied support for placing greater value on care-giving amount to a tacit endorsement of a new gender contract characterized by universal and integrated earning, learning, and care-giving. However, central design elements of the model are not fully in sync with this philosophical recognition of the importance of gender equity and thereby the endorsement of a shared work/ valued care gender contract. For example, as they are envisioned, social drawing rights are to be attained on the basis of a prior contribution to the labour force. This conception highlights an operational limit of this prototype. The need for respite for unpaid caregivers in households and communities and supports to ease these workers through various lifecycle transitions, including shifts from contributing largely to unpaid work to contributing to the labour force, is well documented. Although it is challenging to envisage, a model of social drawing rights taking greater account of changes necessary in the gender contract might also allow workers to qualify for social drawing rights on the basis of prior contribution to socially necessary forms of unpaid work or some combination of prior contribution to the labour force and unpaid work. This type of subtle change would better secure the bi-directional pathways that the 'beyond employment' prototype aims to cultivate.

### **C. The ILC Model: Between Containing Erosion and 'Beyond Employment'**

The ILC represents an interlocking system of supranational and national labour regulation whose central role is to construct normative principles and frameworks that assist national governments in crafting substantive labour standards. Thus, the approach to regulating precarious work in the ILC is, perhaps predictably, shaped by tensions between an approach to labour and social protection seeking to move 'beyond employment,' imagining fluidity in the design of public systems delivering supports to accommodate different phases in the lifecycle,



the sharing of work, and the improved valuation of care, and an approach that retains the employment relationship as the fulcrum of labour and social protection, where wage-earning is prescribed for all adults and care-giving is devalued. In its emphasis on stretching the standard employment relationship, the ILC model responds somewhat to the shape of precarious work in liberal industrialized countries, such as Canada and the United States, although its response is unsatisfactory. Within the typology, the new constellation of international labour standards aimed at limiting precarious work situate this model further towards a life-course approach along the labour and social protection axis than the Dunlop prototype and marginally closer to the alternative visions of shared work and valued care advanced under the beyond employment prototype. Still, the norm-driven orientation to equal treatment in the ILC, augmented by the *Social Declaration*, limits the capacity of this model to respond to the growth of precarious work beginning dating to the mid-1970s as well as deal with gender inequality – whether precarious work takes expression mainly in the form of deviation or predominantly in the form of erosion.

## Conclusion

The commitment to equal treatment is forcing the stretching of the standard employment relationship to cover more employment situations, but without altering fundamentally the male norm itself. In doing so, it is reinforcing a shift to a dual-earner/female caregiver contract, where there is greater equality between men and women in terms of occupational choice as well as terms and conditions of work, at least among those that are similarly situated. But, because this contract neglects fundamental “social structures of power” (Fredman 1997, 15), minimum standards remain of limited concern and the primary responsibility for care-giving continues to be associated with women. The neglect of care-giving extends far beyond these instruments to international labour regulation writ large, both in its organization and its substance. And, along

with the promotion of consistent (or equivalent) treatment, it lies at the crux of a series of paradoxes characterizing the international regulation of precarious work. These paradoxes took sharp expression in the last quarter of the 20<sup>th</sup> century, as the ILC expanded to include new international labour standards addressing part-time work, home work, and private employment agencies and they are becoming even more marked in ongoing discussions of the scope of the employment relationship.

In 2000, the ILO Committee of Experts on Workers in Situations Needing Protection recognized women's high representation in unprotected forms of dependent work. It asserted further that: "Today there is less justification than ever before for differences in protection between stable workers and those who are employed in precarious conditions, when there are so many forms of instability in contracts of employment. The same may be said of men and women" (ILO 2000b, par 125). Moving from observation to action, the Conclusions to a General Discussion on the Scope of the Employment Relationship in 2003 make a parallel – and unprecedented – link between the rise of precarious work and gender inequalities. They connect the lack of labour protections among workers without an identifiable employment relationship, displaying characteristics of subordination and dependency and women's high representation in certain forms of dependent work. Still, there is a disjuncture between international efforts to regulate precarious work that are attentive to its gendered character and a continued commitment to equal treatment (narrowly conceived) in the ILC. The adoption of a life-course approach to extending labour and social protection should follow logically from the ILO's now explicit acknowledgement of the link between gender and precarious work but this approach conflicts fundamentally with a norm-driven emphasis on equal treatment. So long as the ILC model rests on a narrow vision of equal treatment and remains centered on preserving a single baseline for extending labour and social protection, the international regulation of precarious work will remain gendered. It will hinder the transformation of outmoded labour

market structures and reproduce the gendered power relationships surrounding precarious work.



# Bibliography

- Alcock, A. (1971). History of the ILO. New York, Octagon.
- Anxo, D. (2002). Time Allocation and the Gender Division of Labour of France and Sweden. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/ International Institute for Labour Studies.
- Applebaum, E. (2001). Transformation of Work and Employment and New Insecurities. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/International Institute For Labour Studies: 17.
- Applebaum, E. (2002a). Introductory Remarks: Shared work/valued care: New norms for organizing market work and unpaid care work. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/ International Institute for Labour Studies: 91.
- Applebaum, E. (2002b). Synthesis. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/ International Institute for Labour Studies: 141.
- Armstrong, P. and H. Armstrong (1994). The double ghetto: Canadian women and their segregated work. Toronto, McClelland & Stewart.
- Arthurs, H. W. (1965). "The Dependent Contractor: A Study of the Legal Problems of Countervailing Power." University of Toronto Law Journal 16: 89.
- Auer, P. and B. Gazier, Eds. (2002). The Future of Work and Social Protection: The Dynamics of Change and The Protection of Workers. Geneva, International Institute for Labour Studies.
- Australia (1996). *Workplace Relations Act*.  
<http://scaleplus.law.gov.au/html/pasteact/0/70/top.htm>
- Australia (Queensland) (1999). *Queensland Industrial Relations Act*.  
<http://legislation.qld.gov.au/Legislation%20Docs/Currentl.htm>
- Australian Industrial Relations Commission (AIRC) (1997). *Award Simplification Decision. P7500*. [http://www.airc.gov.au/documents/full\\_bench/full\\_bench\\_decisions.html](http://www.airc.gov.au/documents/full_bench/full_bench_decisions.html)
- Australian Industrial Relations Commission (AIRC) (2000). Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (C No. 22704 of 1999), *The Metal Casuals Case. T4991*.  
[http://www.airc.gov.au/documents/full\\_bench/full\\_bench\\_decisions.html](http://www.airc.gov.au/documents/full_bench/full_bench_decisions.html)

- Australian Bureau of Statistics (ABS) (2000). Survey of Employment Arrangements and Superannuation, Special Request. Sydney.
- Australian Bureau of Statistics (ABS) (2001). Labour Statistics: Concepts, Sources and Methods. Sydney.
- Bakker, I. (1998). Unpaid Work and Macroeconomics: New Discussions, New Tools for Action. Ottawa, Status of Women Canada.
- Barker, K. and K. Christensen, Eds. (1998). Contingent Work: American Employment Relations in Transition. Ithaca, NY, ILR Press.
- Belman, D. and L. Golden (2002). Which Workers are Non-Standard and Contingent and Does it Pay? Flexible work arrangements: conceptualizations and international experiences. I. U. Zeytinoglu. Netherlands, Kluwer Law International: 214.
- Bendel, M. (1982). "The Dependent Contractor: An Unnecessary and Flawed Development in Canadian Labour Law." University of Toronto Law Journal 32: 374.
- Benjamin, P. (2002). Who needs labour law? Defining the scope of labour protection. Labour law in an era of globalization: transformative practices and possibilities. J. Conaghan, M. Fischl, Klare, K. Oxford Onati, Oxford University Press: 75.
- Block, R. and K. Roberts (2000). "A Comparison of Labour Standards in the United States and Canada." Relations Industrielles/Industrial Relations 55(2): 293.
- Bronfenbrenner, K. (2003). The American Labour Movement and the Resurgence in Union Organizing. Trade Unions in Renewal: A Comparative Study. P. Fairbrother and C. Yates. London, Continuum: 32.
- Buchanan, J. and L. Thornthwaite (2001). Paid work and parenting: Charting a new course for Australian families. Sydney, University of Sydney.
- Buchtemann, C. F. and S. Quack (1990). "How Precarious is 'Non-Standard' Employment? Evidence for West Germany." Cambridge Journal of Economics 14: 315.
- Burgess, J. and I. Campbell (1998). "The Nature and Dimensions of Precarious Employment in Australia." Labour and Industry 8(3): 5.
- Burri, S. (2001). "Part-Time Work in the Netherlands: Towards Policies on Differentiation of Working Time During One's Lifetime?" EuroAS 11: 208.
- Burri, S. (2004). "Flexibility and Security, Working Time and Work-Family Policies in the Netherlands." Paper presented at Workshop on Precarious Work, Women, and the New Economy: the Challenge to Legal Norms, International Institute of Sociology and the Law, July 2, Onati, Spain.
- Burri, S. D., H. C. Opitz, and A. G. Veldman. (2003). "Work-Family Policies on Working Time put into Practice. A Comparison of Dutch and German Case Law on Working Time Adjustment." International Journal of Comparative Labour Law and Industrial Relations 19(3): 321.

- Campbell, I. (1998). Labour restructuring and the growth of casual employment in Australia, 1982-1996. Melbourne, University of Melbourne, Australia.
- Campbell, I. and J. Burgess (1998). "The Nature and Dimensions of Precarious Employment in Australia." Labour and Industry 8(3): 97.
- Campbell, I. and J. Burgess (2001). "Casual Employment in Australia and Temporary Employment in Europe: Developing a Cross-National Comparison." Work, Employment and Society 15(1): 177.
- Canada (1992). *Status of the Artist Act*. Statutes of Canada c.33.
- Canada (2004). Prime-Ministers Task Force on Women Entrepreneurs. Ottawa.
- Carre, F., M. Ferber, G. Lonnie and S. Herzenberg. (2000). Non-Standard Work Arrangements. Wisconsin, Industrial Relations Association.
- Carter, D., G. England, B. Etherington and G. Trudeau. (2002). Labour law in Canada. Markham, Ont. and The Hague, Netherlands, Butterworths Canada/Kluwer Law International.
- Clayton, A. and M. Mitchell (1999). Study on the Employment Situations and Worker Protection in Australia: A Report to the International Labour Office. Melbourne, The Centre for Employment and Labour Relations Law at the University of Melbourne.
- Clement, W. (1986). The struggle to organize: resistance in Canada's fishery. Toronto, Ont., McClelland and Stewart.
- Cobble, D. S. and L. F. Vosko (2000). "Historical Perspectives on Representing Workers in 'Non-Standard' Employment." Industrial Relations Research Association: 291-312.
- Commission for Labor Cooperation (2003). The Rights of Nonstandard Workers: A North American Guide. Washington, D.C., Secretariat of the Commission for Labor Cooperation.
- Conaghan, J. (2002). Women, Work and Family: A British Revolution? Labour Law In An Era of Globalization: Transformative practices and possibilities. J. Conaghan, M. Fischl and K. Klare. London, Oxford University Press: 54.
- Connell, R. W. (1987). Gender and Power. Cambridge, Polity Press.
- Cooney, S. (1999). "Testing Times for the ILO: Institutional Reform for the New International Political Economy." Comparative Labor Law and Policy Journal 20: 364.
- Cranford, C. (forthcoming). From Precarious Workers to Unionized Employees and Back Again?: The Challenges of Organizing Personal-Care Workers in Ontario. Self-Employed Workers Organize: Law, Policy, and Unions. C. Cranford, J. Fudge, E. Tucker and L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.
- Cranford, C., J. Fudge, E. Tucker and L. F. Vosko. (forthcoming). Self-Employed Workers Organize: Law, Policy, and Unions. Montreal and Kingston, McGill-Queen's University Press.

- Dale, A. (1991). Self-Employment and entrepreneurship: notes on two problematic concepts. Deciphering Self-Employment. R. Burrows. London and New York, Routledge: 35.
- Davidov, G. (2002). The Three Axes of Employment Relationships: A Characterization of Workers in Need of Protection. Toronto, University of Toronto.
- Davies, P. and M. Freedland (2001). Employees, Workers, and the Autonomy of Labour Law. Zur Autonomie des Individuums. D. Simon and M. Weiss. Baden-Baden, Nomos Verlagsgesellschaft: 31.
- Deakin, S. (2002). The Many Futures of the Contract of Employment. Labour Law in an Era of Globalization: Transformations, Practices and Possibilities. J. Conaghan, M. Fischl and K. Klare. London, Oxford: 177.
- Delage, B. (2002). Results from the Survey of Self-Employment in Canada. Hull, Quebec, Human Resources Development Canada.
- Doeringer, P. B. and M. J. Piore (1971). Internal labor markets and manpower analysis. Lexington, Mass., Heath Press.
- Duffy, A. and N. Pupo (1992). Part-time paradox: connecting gender, work and family. Toronto, McClelland and Stewart.
- Dunlop Commission on the Future of Worker-Management Relations (1994a). Fact Finding Report: Commission on the Future of Worker-Management Relations. Washington, D.C., Secretary of Labor and Secretary of Commerce.
- Dunlop Commission on the Future of Worker-Management Relations (1994b). The Dunlop Commission On the Future of Worker-Management Relations: Final Report. Washington, D.C., Secretary of Labor and Secretary of Commerce.
- Eardley, T. and A. Corden (1996). Low income self-employment: work, benefits, and living standards. Aldershot, Avebury.
- Edwards, R., D. Gordon and M. Reich. (1982). Segmented work, divided workers : the historical transformations of labor in the United States. Cambridge [Cambridgeshire] New York, Cambridge University Press.
- Eichler, M. (1997). Family Shifts: Families, policies, and gender equality. Toronto, Oxford University Press.
- Elias, P. (2000). "Status in Employment: A World Survey of Practices and Problems." Bulletin of Labour Statistics 1: XI.
- Engblom, S. (2001). "Equal Treatment of Employees and Self-Employed Workers." International journal of comparative labour law and industrial relations 17: 211.
- England, G., I. Christie and M. Christie. (1998). Employment law in Canada. Toronto, Butterworths.
- Esping-Anderson, G. (2002). Towards a post-industrial gender contract. The Future of Work and Social Protection: The Dynamics of Change and the Protection of Workers. P. Auer and B. Gazier. Geneva, International Institute for Labour Studies: 109.



- European Commission (1997). Council Directive on Part-Time Work. Official Journal of the European Communities. 97/81/EC.
- European Commission (1998). Transformation of Work and the Future of Labour Law in Europe. Luxembourg, Office for Official Publications of the European Communities.
- Fraser, N. (1997). Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition. New York, Routledge.
- Fredman, S. (1997). Women and the Law. London, Oxford.
- Fudge, J. (1997). Precarious Work and Families. Toronto, Centre for Research on Work and Society, York University.
- Fudge, J. (2002). From Segregation to Privatization: Equality, the Law, and Women Public Servants, 1980-2001. Privatization, Law and the Challenge to Feminism. J. Fudge and B. Cossman. Toronto, University of Toronto Press: 86.
- Fudge, J. (forthcoming). Deemed to be Entrepreneurs: Rural Route Mail Couriers and Canada Post. Self-Employed Workers Organize: Law, Policy, and Unions. C. Cranford, J. Fudge, E. Tucker and L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.
- Fudge, J., E. Tucker, and L. F. Vosko. (2002). The Legal Concept of Employment: Marginalizing Workers. Ottawa, Law Commission of Canada.
- Fudge, J., E. Tucker, L. F. Vosko. (2003a). "Employee or Independent Contractor? Charting the Legal Significance of the Distinction in Canada." Canadian Journal of Labour and Employment Law 10(2): 193.
- Fudge, J., E. Tucker, L. F. Vosko. (2003b). "Changing Boundaries in Employment: Developing a New Platform for Labour Law." Canadian Labour and Employment Law Journal 10(3): 361.
- Fudge, J. and L. F. Vosko (2001a). "Gender, Segmentation and the Standard Employment Relationship in Canadian Labour Law and Policy." Economic and Industrial Democracy 22(2): 271.
- Fudge, J. and L. F. Vosko (2001b). "By Whose Standards? Re-regulating the Canadian Labour Market." Economic and Industrial Democracy(22): 327.
- Fudge, J., and L. F. Vosko (2003). Gendered Paradoxes and the Rise of Contingent Work: Towards a Transformative Feminist Political Economy of the Labour Market. Changing Canada: political economy as transformation. W. Clement, Vosko, Leah F. Montreal, Kingston, McGill-Queen's University Press: 183.
- Gazier, B. (2002). Introductory Remarks: Labour Markets & Transitions. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/International Institute For Labour Studies: 25.
- Hyde, A. (1998). "Employment law after the death of employment." University of Pennsylvania Journal of Labor and Employment Law 1(1).

- Hyde, A. (2000). Classification of U.S. Working People and its Impact on Worker Protection: A Report Submitted to the International Labour Office.
- ILO (1919a). Hours of Work (Industry) Convention (No. 1). Washington, International Labour Office.
- ILO (1919b). Maternity Protection Convention (No. 3). Geneva, International Labour Office.
- ILO (1919c). Night Work (Women) Convention (No. 4). Washington, International Labour Office.
- ILO (1924). Utilisation of Spare Time Recommendation (No. 21). Geneva, International Labour Office.
- ILO (1928). Minimum Wage-Fixing Machinery Convention (No. 26). Geneva, International Labour Office.
- ILO (1930). Hours of Work (Commerce and Offices) Convention (No. 30). Geneva, International Labour Office.
- ILO (1934a). Record of Proceedings. 18th Session International Labour Conference, Geneva, International Labour Office.
- ILO (1934b). Night Work (Women) Convention (Revised) (No. 41). Geneva, International Labour Office.
- ILO (1934c). Unemployment Provision Convention (No. 44). Geneva, International Labour Office.
- ILO (1944). Declaration Concerning the Aims and Purposes of the International Labour Organization (The Declaration of Philadelphia). International Labour Conference, 26th Session. Philadelphia, International Labour Office.
- ILO (1947). Report VII: Freedom of Association and Industrial Relations. International Labour Conference, 30th Session. Geneva, International Labour Office.
- ILO (1948a). Report VII: Freedom of Association and Protection of the Right to Organize. International Labour Conference, 31st Session. Geneva, International Labour Office.
- ILO (1948b). Report VIII (2): Industrial Relations. International Labour Conference, 31st Session. Geneva, International Labour Office.
- ILO (1948c). Freedom of Association and Protection of the Right to Organize Convention (No. 87). Geneva, International Labour Office.
- ILO (1949). Right to Organize and Collective Bargaining Convention (No. 98). Geneva, International Labour Office.
- ILO (1952a). Report VII Revision of the Maternity Protection Convention (1919). International Labour Conference, 35<sup>th</sup> Session. Geneva, International Labour Office.
- ILO (1952b). Social Security (Minimum Standards) Convention (No. 102). Geneva, International Labour Office.

- ILO (1952c). Maternity Protection Convention (Revised) (No. 103). Geneva, International Labour Office.
- ILO (1952d). Discrimination (Employment and Occupation) Convention (No. 111). Geneva, International Labour Office.
- ILO (1954). Holidays with Pay Recommendation (No. 98). Geneva, International Labour Office.
- ILO (1958). Discrimination (Employment and Occupation) Convention (No. 111). Geneva, International Labour Office.
- ILO (1963). Report VI (1) Women Workers in a Changing World. International Labour Conference, 48th Session. Geneva, International Labour Office.
- ILO (1965). Employment (Women with Family Responsibilities) Recommendation (No. 123). Geneva, International Labour Office.
- ILO (1975). Declaration on Equality of Opportunity and Treatment of Women Workers. Geneva, International Labour Office.
- ILO (1981). Workers with Family Responsibilities Recommendation (No. 165). Geneva, International Labour Office.
- ILO (1984a). Report VII: Evaluation of the International Programme for the Improvement of Working Conditions and Environment. International Labour Conference, 70th Session. Geneva, International Labour Office.
- ILO (1984b). Sixth Item on the Agenda: Evaluation of the International Programme for the Improvement of Working Conditions and Environment (PIACT). International Labour Conference, 70th Session, Provisional Record. Geneva, International Labour Office.
- ILO (1985a). Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO. Geneva, International Labour Office.
- ILO (1985b). Resolution on Equal Opportunities for Men and Women in Employment. Geneva, International Labour Office.
- ILO (1988). Asian Sub-Regional Tripartite Seminar on the Protection of Homeworkers: Proceedings of PIACT (International Programme for the Improvement of Working Conditions and Environment), Manila, International Labour Office.
- ILO (1990a). Documents of the Meeting of Experts on the Social Protection of Homeworkers. Geneva, International Labour Office.
- ILO (1990b). Resolution Concerning Self-Employment Promotion. Resolutions Adopted by the International Labour Conference at its 77th Session. Geneva, International Labour Office.
- ILO (1993a). Report V (1): Part-Time Work. International Labour Conference, 80th Session. Geneva, International Labour Office.

- ILO (1993b). Report V (2): Part-Time Work. International Labour Conference, 80th Session. Geneva, International Labour Office.
- ILO (1994a). Part-Time Work Convention (No. 175). Geneva, International Labour Office.
- ILO (1994b). Recommendation on Part-Time Work (No. 182). Geneva, International Labour Office.
- ILO (1995). Report V (2): Homework. International Labour Conference, 83rd Session. Geneva, International Labour Office.
- ILO (1996a). Home Work Convention (No. 177). Geneva, International Labour Office.
- ILO (1996b). Home Work Recommendation (No. 184). Geneva, International Labour Office.
- ILO (1997a). Report VI (2) Contract Labour. International Labour Conference, 85th Session. Geneva, International Labour Office.
- ILO (1997b). Private Employment Agencies Convention (No. 181). Geneva, International Labour Office.
- ILO (1998a). Report V (2B) Committee on Contract Labour. International Labour Conference, 86th Session. Geneva, International Labour Office.
- ILO (1998b). Report V (2B) Committee on Contract Labour. Addendum. International Labour Conference, 86th Session. Geneva, International Labour Office.
- ILO (1998c). ILO Declaration On Fundamental Principles And Rights At Work And Its Follow-up. Geneva, International Labour Office.
- ILO (1999). Decent Work: Report of the Director General. Geneva, International Labour Office.
- ILO (2000a). Maternity Protection Convention (No. 183). Geneva, International Labour Office.
- ILO (2000b). Meeting of Experts on Workers in Situations Needing Protection (The Scope Employment Relationship): Basic Technical Document. Geneva, International Labour Office.
- ILO (2003a). Report V: The Scope of the Employment Relationship. International Labour Office, 91st Session. Geneva, International Labour Organization.
- ILO (2003b). Report of the Committee on the Employment Relationship, Provisional Record, 91st Session of the International Labour Conference. Geneva, International Labour Office.
- ILO (2004). Governing Body, 28th Session. Date, Place and Agenda of the 95th Session (2006) of the International Labour Conference. Geneva, International Labour Office.
- Jackson, A. (forthcoming). Regulating Precarious Labour Markets: What Can We Learn from New European Models? Precarious Employment: Understanding Labour Market Insecurity in Canada. L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.

- Jacobs, A. and M. Schmidt (2001). "The Right To Part-Time Work: The Netherlands and Germany Compared." International Journal of Comparative Labour Law and Industrial Relations: 371.
- Jacobs, J. and K. Gerson (2004). The Time Divide. Boston, Harvard University Press.
- Jacobs, J. and K. Gerson (1998). "Toward a family friendly and gender-equitable work week." University of Pennsylvania Journal of Labor and Employment Law: 457.
- Jacoby, S. M. (1985). Employing bureaucracy : managers, unions, and the transformation of work in American industry, 1900-1945. New York, Columbia University Press.
- Junor, A. (1998). "Permanent Part-Time Work: New Family-Friendly Standard or High Intensity Cheap Skills?" Labour and Industry 8(3): 77.
- Kamerman, S. B. (2000). "Parental Leave Policies: An Essential Ingredient in Early Childhood Education and Care Policies." Social Policy Report XIV(2): 3.
- Kessler-Harris, A. (2001). In Pursuit of Equity: Women, Men and the Quest for Economic Citizenship in 20th Century America. New York, Oxford University Press.
- Langille, B. (2002). "Labour Policy in Canada - New Platform, New Paradigm." Canadian Public Policy 28: 133.
- League of Nations (1919). Report on the Eight Hours Day or 48 Hours Week. Washington, Organising Committee for the International Labour Conference.
- Lin, Z., J. Yates and G. Picot (1999). Rising Self-Employment in the Midst of High Unemployment: An Empirical Analysis of Recent Developments in Canada. Research Paper Series. Ottawa, Statistics Canada, Analytical Studies Branch.
- Loufti, M. F. (1991). "Self-Employment Patterns and Policy Issues in Europe." International Labour Review 130(1): 1.
- Lowe, G. S. and G. Schellenberg (2001). What's a Good Job? The Importance of Employment Relationships. Changing Employment Relationships Series, CPRN Study No. W05. Ottawa, Renouf Publishing Co. Ltd.
- Luxton, M. and L. F. Vosko (1998). "Where Women's Efforts Count: The 1996 Census Campaign and 'Family Politics' in Canada." Studies in Political Economy 56(Summer): 49.
- MacDonald, D. (1998). The New Deal Model of Collective Bargaining and the Secondary Labour Market. Department of Law, Policy and Society, Northeastern University.
- MacPherson, E. (1999). "Collective bargaining for independent contractors: is the status of the artist act a model for other industrial sectors." Canadian Labour and Employment Law Journal 7: 355.
- Madar, D. (2000). Heavy traffic : deregulation, trade, and transformation in North American trucking. Vancouver, UBC Press.

- Marshall, K. (1999). "Working Together-Self-Employed Couples." Perspectives on Labour and Income 11(4): 9.
- Montana (1987). *Wrongful Discharge from Employment Act*. Montana Code (Annotated) Title 39 Labor Chapter 2 The Employment Relationship Part 9.
- Muckenberger, U. (1989). "Non-Standard Forms of Work and the Role of Changes in Labour and Social Security Legislation." International Journal of Sociology of the Law 17: 267.
- Murray, J. (1999). "Social Justice for Women? The ILO's Convention on Part-Time Work." International Journal of Comparative Labour Law and Industrial Relations 15(1): 3.
- Murray, J. (2001). "The International Regulation of Maternity: Still Waiting for the Reconciliation of Work and Family Life." International Journal of Comparative Labour Law and Industrial Relations 17(1): 25.
- Murtough, G. and M. Waite (2000a). *The Growth of Non-Traditional Employment: Are Jobs Becoming More Precarious?* Melbourne, Productivity Commission.
- Murtough, G. and M. Waite (2000b). *The Diversity of the Casual Contract of Employment*. Melbourne, Productivity Commission.
- O'Donnell, A. (2004). "'Non-Standard' Workers in Australia: Counts and Controversies." Australian Journal of Labour Law 17: 1.
- OECD Labour Force Statistics - Indicators. [www.oecd.org](http://www.oecd.org). Accessed June 2004.
- OECD (2000). *Employment Outlook: The Partial Renaissance of Self-Employment*. Paris, OECD.
- Owens, R. (1995). *The Peripheral Worker: Women and the Legal Regulation of Outwork*. Public and Private: Feminist Legal Debates. M. Thornton. Melbourne, Oxford University Press.
- Owens, R. (2001). "The 'long-term or permanent casual' -- an oxymoron or a 'a well enough understood Australianism' in the law?" Australian Bulletin of Labour 27(2): 118.
- Owens, R. (2002). "Decent Work for the Contingent Workforce in the New Economy." Australian Journal of Labour Law 15: 209.
- Paterson, W. A. (2003). *Desire for Social Justice: Equal Pay, The International Labour Organization, and Australian Government Policy, 1919-1975*. Schools of Humanities and Liberal Arts, Faculty of Education and Arts. Newcastle, University of Newcastle.
- Pfau-Effinger, B. (1999). *The Modernization of Family and Motherhood in Western Europe*. Restructuring Gender Relations and Employment: The Decline of the Male Breadwinner. R. Crompton. London, Oxford University Press: 60.
- Picchio, A. (1998). *Wages as a Reflection of Socially Embedded Production and Reproduction Processes*. The dynamics of wage relations in the New Europe. L. Clarke, P. de Gijssel, J. Janssen. London, Kluwer: 195.

- Piore, M. (2002). The Reconfiguration of Work and Employment Relations in the United States at the Turn of the 21st Century. The Future of Work, Employment and Social Protection: The Dynamics of Change and the Protection of Workers. P. Auer and B. Gazier. Geneva, International Institute for Labour Studies: 171.
- Pocock, B. and M. Alexander (1999). "The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia." Labour and Industry 10(2): 82.
- Pocock, B., J. Buchanan and I. Campbell (2004). Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia. Adelaide, Chifley Research Centre.
- Polivka, A. (1996). "Contingent and alternative work arrangements, defined." Monthly Labour Review (October): 3.
- Polivka, A. and T. Nardone (1989). "On the Definition of 'Contingent Work'." Monthly Labour Review (December): 9.
- Probert, B. (1995). Part-Time Work and Managerial Strategy: Flexibility in the New Industry Relations Framework. Canberra, AGPS: 40.
- Probert, B. (1997). Gender and Choice: The Structure of Opportunity. Work of the Future: Global Perspectives. P. James, W. F. Veit and S. Wright. Sydney, Allen & Unwin.
- Rainbird, H. (1991). The self-employed: small entrepreneurs or disguised wage-labourers? Farewell to flexibility. A. Pollert. Oxford, Blackwell: 200.
- Rodgers, G. (1989). Introduction. Precarious jobs in labour market regulation : the growth of atypical employment in Western Europe. G. Rodgers and J. Rodgers. Geneva, International Institute for Labour Studies: 1.
- Rooney, J., D. Lero, et al. (2002). Self-Employment for Women: Policy Options that Promote Equality and Economic Opportunities, Status of Women Canada.
- Rosenfeld, R. A. (2001). Employment Flexibility in the United States: Changing and Maintaining Gender, Class, and Ethnic Work Relationships. Reconfigurations of class and gender. J. Baxter and M. Western. Stanford, Calif., Stanford University Press: 105.
- Rubery, J. (1998). Women in the Labour Market: A Gender Equality Perspective. Paris, OECD Directorate for Education, Employment, Labour and Social Affairs.
- Schmid, G. (2002). Employment Insurance for Managing Critical Transitions During the Life Cycle. The Future of Work, Employment and Social Protection: The dynamics of change and the protection of workers. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/International Institute For Labour Studies.
- Schrank, W. E. (1998). "Benefitting fishermen: origins of fishermen's employment insurance in Canada, 1935-1957." Journal of Canadian Studies 33(1): 61.
- Schulman, B. (2003). The Betrayal of Work: How Low-Wage Jobs Fail 30 Million American Workers and Their Families. New York, The New Press.
- Scott, J. (1988). "Deconstructing Equality Versus Difference: Or The Uses of Poststructuralist Theory For Feminism." Feminist Studies 14(1): 33-50.

- Sen, A. (2000). "Work and Rights." International Labour Review 139(2): 119.
- Sheehan, K. (1997). "Has Employment-At-Will Outlived its Usefulness? A Comparison of U.S. and New Zealand Employment Law." California Western International Law Journal 28:323.
- South Australian Industrial Relations Tribunal (2000). *Clerks (South Australia) Award Case*.
- Statistics Canada (2000). Labour Force Survey, Public Use Microdata File Custom Tabulation. Ottawa.
- Statistics Canada (2000). Survey of Self-Employed. Public Use Microdata File Custom Tabulation. Ottawa.
- Stewart, A. (1992). "Atypical employment and the failure of labour law." Australian Bulletin of Labour 18: 217.
- Stone, K. V. W. (2001). "The New Psychological Contract: Implications of the Changing Workplace for Labour and Employment Law." UCLA Law Review 48: 519.
- Summers, C. (2000). "Employment at Will in the United States: The Divine Right of Employers." University of Pennsylvania Journal of Labor and Employment Law 3: 65.
- Supiot, A. (2001). Beyond Employment: Changes in Work and the Future of Labour Law in Europe. Oxford, Oxford University Press.
- Supiot, A. (2002). Introductory Remarks: Between market and regulation: new social regulations for life long security. The Future of Work, Employment and Social Protection. P. Auer and B. Gazier. Geneva, Ministry of Social Affairs, Labour and Solidarity, France/ International Institute for Labour Studies: 147.
- Swinerton, K. and H. Wial (1995). "Is Job Stability Declining in the U.S. Economy? Reply to Diebold, Neumark and Polsky." Industrial and Labor Relations Review 48(2): 293.
- Tham, J-C. (2003). Legal conceptions of casual employment. The Proceedings of the 17th AIRAANZ Conference: Refereed Papers. P. Holland. Melbourne, AIRAANZ.
- Tham, J-C. (2004). Employment Security of Casual Employees: A Legal Perspective. New Economies, New Industrial relations, Noosa, Queensland, Australia.
- Tilly, C. (1996). Half a Job: Bad and Good Part-time Jobs in a Changing Labor Market. Philadelphia, Temple University Press.
- Towson, M. (1997). Non-Standard Work: The Implications for Pension Policy and Retirement Readiness. Ottawa, Women's Bureau, Human Resources Development Canada.
- Trudeau, G. (1998). "Temporary Employees Hired Through A Personnel Agency: Who Is The Real Employer?" Canadian Labour and Employment Law Journal(5): 359.
- Tucker, E. (forthcoming). Star Wars: Newspaper Distribution Workers and the Possibilities and Limits of Collective Bargaining. Self-Employed Workers Organize: Law, Policy, and Unions. C. Cranford, J. Fudge, E. Tucker and L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.



- United States (1935). *National Labor Relations Act*.  
<http://www.nlr.gov/nlr/legal/manuals/rules/act.asp>
- United States (1938). *Fair Labor Standards Act*. <http://www.dol.gov/esa/whd/flsa/>
- United States (1985). *Consolidated Omnibus Budget Reconciliation Act*.  
<http://www.dol.gov/dol/topic/helathplans/cobra.htm#doltopics>
- United States (1989). *Employment and Training Act*.  
[http://www.dol.gov/dol/allcfr/ETA/Title\\_20/Part\\_639/toc.htm](http://www.dol.gov/dol/allcfr/ETA/Title_20/Part_639/toc.htm)
- United States (1989). *Worker Adjustment and Retraining Notification Act*.  
[http://www.dol.gov/dol/allcfr/ETA/Title\\_20/Part\\_639/toc.htm](http://www.dol.gov/dol/allcfr/ETA/Title_20/Part_639/toc.htm)
- United States Bureau of Labor Statistics (2000). Current Population Survey and Contigent Workers Supplement. Public Use File Custom Tabulation. Washington.
- United States Bureau of Labor Statistics (2001). Current Population Survey. Public Use File Custom Tabulation. Washington.
- United States Department of Labor (1999). *futurework: Trends and Challenges for Work in the 21st Century*. Washington.
- United States Department of Labor (2004). Documenting Benefits Coverage for All Workers. Compensation and Working Conditions Online. Washington, Contact: William J. Wiatrowski.
- United States Department of Labor (USDOL) (2004). Union Members in 2003. Washington, Bureau of Statistics.
- United States Department of Labor (USDOL) (2004). Women in the Labor Force: A Data Book. Washington, D.C., Bureau of Labor Statistics: Table 32.
- Vosko, L. F. (1997). "Legitimizing the Triangular Employment Relationships: Emerging International Labour Standards From a Comparative Perspective." Comparative labor law and policy journal(19): 43.
- Vosko, L. F. (2000). Temporary Work: The Gendered Rise of a Precarious Employment Relationship. Toronto, University of Toronto Press.
- Vosko, L. F. (2002). "'Decent Work': The Shifting Role of the ILO and the Struggle for Global Social Justice." Global Social Policy 2(April): 19.
- Vosko, L. F. (2003). Gender Differentiation and the Standard/Non-Standard Employment Distinction in Canada, 1915 to the Present. Patterns and Processes of Social Differentiation: The Construction of Gender, Age, 'Race/Ethnicity' and Locality. D. Juteau, University of Toronto Press/University of Montreal Press: 25.
- Vosko, L. F. (2004). Standard Setting at the ILO: The Case of Precarious Employment. Hard Choices, Soft Law: Combining Trade, Environment, and Social Cohesion in Global Governance. J. Kirkton and M. J. Trebilcock. New York, Ashgate: 139.

- Vosko, L. F. (forthcoming). The Precarious Status of the Artist: Freelance Editors' Struggle for Collective Bargaining Rights. Self-Employed Workers Organize: Law, Policy, and Unions. C. Cranford, J. Fudge, E. Tucker and L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.
- Vosko, L. F. and N. Zukewich (forthcoming). Precarious by Choice? Gender and Self-Employment. Precarious Employment: Understanding Labour Market Insecurity in Canada. L. F. Vosko. Montreal and Kingston, McGill-Queen's University Press.
- Vosko, L. F., N. Zukewich, and C. Cranford. (2003). "Precarious jobs: a new typology of employment." Perspectives on Labour and Income: 17: 16.
- Watson, I., J. Buchanan, I. Campbell and C. Briggs (2003). Fragmented Futures: New Challenges in Working Life. Sydney, Federation Press.
- Wilkander, U., A. Kessler-Harris, J. Lewis, Eds. (1995). Protecting Women: Labor Legislation in Europe, The United States, and Australia, 1880-1920. Urbana, University of Illinois Press.
- Wooden, M. and D. Warren (2003). "The characteristics of casual and fixed-term employment: evidence from the HILDA survey." Melbourne Institute Working Paper 15/03: 12.
- Zukewich, N. (2003). "Unpaid Informal Caregiving." Canadian Social Trends 70(Autumn): 14.