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Symposium
Minimum Labour Standards and Their Enforcement

Preface

Minimum labour standards are the outcome of state regulation that provides social protection in the form of a floor for working and employment conditions. They provide the most disadvantaged and vulnerable with a modicum of security at work and in living standards and are thus indicative of a broader societal commitment to fairer outcomes and processes in the labour market. Their achievement has often come only after sustained political and social mobilisations, at times intersecting with broader democratic and social struggles during modernisation and industrialisation.

Contributors to this symposium explore standards and protections provided at national or state/provincial levels in four countries — the USA, Canada, Taiwain and Australia — and examine how those standards have been achieved and variously sustained, improved, eroded or lost. Their articles powerfully demonstrate the unfinished nature of the project to establish decent work and employment standards, and the danger, in an era of neo-liberalism, of slipping backwards, as new forms of unprotected work emerge and gaps widen in coverage and in application.

Given the extensive array of specific labour standards requiring collective enforcement, it was not possible, in this symposium, to cover all significant areas. Notable omissions include equal pay, parental leave and childcare. This is unfortunate not only because these areas are important but also because interactions among different bodies of labour standards — and among these and prevailing social security systems — are often neglected.

In their opening overview, **Michael Quinlan and Peter Sheldon** use cross-national, interdisciplinary and historical insights to set the scene. They make a number of arguments as to the trajectory of the rights agenda and how researchers have dealt with the field. In particular, they outline the negative effects of the recent dominance of neo-liberal ideas and practices — as well as the current global economic crisis — on labour standards compared to more propitious eras for advancing or improving them. They compare labour standards trajectories experienced in the wealthier, longer-term industrialised countries and those in countries undergoing rapid industrialisation such as China. Quinlan and Sheldon see minimum labour standards as involving both substantive conditions and procedural rights. They argue that, conceptually and for policy and practice, there needs to be greater awareness of how substantive and procedural elements interact in order to provide the most effective protections. Their article makes clear the often negative effects of disjunctures between standards emerging within differing or even diverging regulatory jurisdictions — such as industrial relations, occupational health and safety, workers' compensation, anti-discrimination — when the phenomena under examination are inextricably

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interconnected as part of people' experience of work and life. They survey recent international responses to the multi-faceted impacts of neo-liberalism and global labour markets, pointing to areas requiring further study as well as to positive responses such as the current decent work agenda.

David Weil's article presents a powerful image — the 'fissuring' of the terrain of regulation with the emergence of new forms of indirect employment relationship in which large concentrations of the USA's low wage workers are now concentrated. For Weil, this fissuring is increasingly due to interactions of corporate product and labour market strategies that separate 'lead' firms reaping the benefits of successful commercial brands from their subordinated, price-taking and therefore cost-minimising contractors and franchisees, the actual employers of the workers who deliver the branded goods and services. Weil examines the rise of this devolved and indirect form of employment relations and its implications for labour market policy in the USA. He suggests different approaches to ensuring that labour standards — and their enforcement — might better protect these most vulnerable workers.

The contribution of **Miles Goodwin and Glenda Maconachie** helps address the paucity of academic work on enforcement processes and outcomes.Writing on Australia, they apply a typology of formal and informal enforcement based on state, union or individual agency. They define enforcement along a continuum from sanction-based deterrence to conciliatory or accommodative approaches to gaining compliance, noting that compliance approaches themselves may be either 'soft'(persuasive/educative) or more 'insistent'. Providing a historical overview of approaches to the enforcement of regulations, statutes, contracts and collective agreements determining workers' pay and conditions, Goodwin and Maconachie note the risk of a return to the laissez-faire conditions of the late nineteenth century. Regulatory entitlements are now more diverse and harder to identify than during that period of the twentieth century when they were centrally-determined by comprehensive awards made by industrial tribunals. Even then, however, the absence of an effective and well-funded system for ensuring employer compliance meant that trade unions stepped into the enforcement role, relying on two rights — that workplace entry and that of seeking binding collective resolution of disputes over award breaches. The shift since the late twentieth century, to a national workplace relations system based on decentralised agreement-making had several contradictions. A neo-liberal conservative government set out to replace the role of unions and tribunals with a legislated floor of minimum standards, but the enforcement of the legal minima required an enhanced government inspectorate. The recent partial return to a 'fair work' regime under a Labor government still influenced by neo-liberal tenets has further strengthened complaints investigation mechanisms. Thus Goodwin and Maconachie argue that tensions between government and employers and between the major political parties have produced a particular pattern of enforcement practices in which past influences remain strong.

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In their fascinating account of the perverse outcomes of an approach to minimum standards enforcement based on the resolution of individual complaints in Ontario, Canada, **Mary Gellatly, John Grundy, Kiran Mirchandani, J. Adam Perry, Mark Thomas and Leah Vosko** show how neo-liberal administrative practices have generated new social and labour market divisions. The design of the complaints mechanism mirrors the individualising tendencies in much neo-liberal policy. Devolution of responsibility for the enforcement of standards to individual complaint processes was, they argue, both a response to the long-term ineffectiveness of provincial-level enforcement of labour standards, and a factor in making enforcement even more unworkable. The new approach has created bottlenecks through its inefficient case-by-case approach to what are systemic abuses. In responding to these bottlenecks, the authorities have effectively blamed the failed system's victims, those workers with least power to manage the technicalities of negotiating on their own behalf. The resulting creation of a stigmatised category of 'illegitimate claimants' has in turn led to the systemic exclusion of whole groups of workers, based indirectly on racialised and gendered stereotypes, from access to the protection by minimum labour standards.

Much of the labour standards literature looks at a relatively small group of countries or is essentially internationalised. Particularly welcome therefore is the work on Taiwan by **Jen-Te Hwang, Chieh-Hsuan Wang and Chien-Ping Chung**. These writers illustrate, in the case of Taiwan, the risk of a working class fractured between local and immigrant workers and the need to ensure access by the latter to a uniform minimum wage. Their article documents a form of labour market division in which some unions tend to support employers' demands for a separate minimum wage for immigrant workers. It investigates, from a number of perspectives, the outcomes of this type of proposed 'decoupling'. The authors argue that foreign workers should not be treated as a separate group of workers in Taiwan's minimum wage policy. They support this argument, not only from a social justice perspective, but by arguing adverse economic, trade and international relations consequences.

Sandra Cockfield, Donna Buttigieg, Marjorie Jerrard and Al Rainnie demonstrate, in the case of Victoria, Australia, how the erosion of protections for low-paid workers may have impacts that are indirect and not apparent statistically, but are nevertheless very real for the well-being and standards of living of those who suffer them. This is an important but often neglected point. The authors' mixed methods research finds that the impacts on the low-paid of neo-liberal industrial relations legislation have been multi-pronged and often insidious. These effects include an increased wage-effort ratio, particularly people working more unpaid hours and at an increased pace. The authors argue that these hidden effects are the most likely to linger, even given the recent introduction of somewhat more protective legislation. Like other contributors, they point out the importance of enforcement and how public policy needs to explicitly address it.

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In the final contribution, **Roy Adams** insists that the right to bargain collectively be recognised as both a labour right and an irreducible human right. Particularly in the Anglophone countries, unions and collective bargaining seem most vulnerable and to be suffering the greatest attacks. It is not sufficient to see collective bargaining as just one option in the exit/voice model or as one pole of a choice whether to bargain or not. Adams argues that, as a fundamental and universally affirmed human right, the achievement of universal collective bargaining should be considered a minimum labour standard.

Taken together, the symposium contributions make a powerful case for the role of state regulation and enforcement in establishing and maintaining a strong regime of basic labour standards. They demonstrate that the standards of decent work are inextricably linked to the quality of all aspects of health, and of social and economic life. They affirm the right of all workers and their families, including migrant workers, to participate in these standards, and the fundamental rights of collective workers' movements in advancing and safeguarding this participation. The articles also provide a sobering reminder of the complexity of the task that lies ahead, in the face of globalisation and the lingering impact of the neo-liberal ascendancy of the past quarter-century. The greatest challenges lie in a reaffirmation of collective rights, an overcoming of new divides amongst workers on the basis of gender, ethnicity and locality, and regulatory and union approaches to new fissured work arrangements. As David Weil argues, it will be necessary to find ways of ensuring that those responsible for the erosion of labour standards can no longer evade their responsibility to the workers who are the indirect source of their wealth. This goal requires universal access to collective bargaining processes and equitable access to a uniform floor of outcomes. As Roy Adams argues, any shortfall from these standards should be seen as a social problem requiring effective policy solution.

Peter Sheldon and Michael Quinlan

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