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4	From Women and Labour Law to
5	Putting Gender and Law to Work
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7	Judy Fudge
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14	My goal in this chapter is to reconstruct the main themes and key debates that have threaded
15	through the 'feminist theoretical project' in labour law. I will begin by defining my terms,
16	and setting out the scope of the endeavour. I am borrowing the phrase 'feminist theoretical
17	project' from Joanne Conaghan (1999: 17) who laid out some of the theoretical foundations
18	of feminist labour law scholarship. She identified three core features of this project: first,
19	that feminist scholarship ought to highlight and explore the gendered nature of accounts
20	of the social world; second, that it should focus on disadvantage and change; and finally,
21	that it should place women at the centre of the analysis. Like Conaghan, I believe that the
22	scope of what counts as labour law is ideological and not conceptual (Conaghan 1999: 21,
23	Fudge 2011a: 136). <sup>1</sup> A distinctive contribution of much recent feminist scholarship is that it
24	has expanded the reach of labour law's domain, to include women's unpaid work that takes
25	place in the household, and, thus, feminists have expanded labour law's normative concerns
26	beyond redistribution to include recognition of identity and status (Conaghan 1999).
27	In this chapter I use the term 'reconstruct' advisedly when referring to the feminist
28	theoretical project in labour law because it is simply not possible to summarize the key
29	theoretical debates. In the 1970s and 1980s, feminists who wrote about labour law were not
30	very explicit about their theoretical approaches and commitments. In fact, early attempts
31	to classify feminist approaches used fairly traditional political labels such as 'liberal',
32	'integrative', 'socialist' and 'radical' feminism (Conaghan 2000: 357). It was only in the 1990s
33	that a more explicitly theoretical, specifically epistemological, classificatory system was
34	adopted (Conaghan 2000). Carol Smart (1995), for example, identifies 'feminist empiricism',
35	'standpoint feminist' and 'postmodern feminist' approaches to law, and to this list
36	'materialist feminism' can be added (Conaghan 2000, Fudge and Cossman 2002, Fudge and
37	Owens 2006). At the same time as feminist legal scholars became increasingly self-reflective
38	about feminist theoretical approaches, we also became more conscious of theoretical debates
39	about how 'labour' is conceived and about how 'law' is understood. While a distinctively
40	feminist approach to labour, one which extends the boundaries of the field beyond paid
41	work to unpaid caring labour, has developed (Rittich 2002b), feminist approaches to law
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44	1 'Labour law' is conventionally defined to denote a specific subject of regulation, employment
45	relations and law to encompass a variety of legal forms. It refers to the legal regulation of
	individual and collective employment via contract, statute and collective bargaining, and
	it includes the application of legislation and common law by administrators, statutory
	adjudicators, private arbitrators and the courts.

1	have tended to adapt other theoretical approaches, such as liberal, critical legal studies and	1
2	postmodernist.	2
3	My reconstruction of the key theoretical themes and debates in feminist labour law	3
4	scholarship will historicize the scholarship (Fraser 2005) in order to reveal how it was	4
5	'shaped by social milieu, political background, and theoretical debates of the time' (Sangster	5
6	2010: 2). My goal is to re-contextualize and re-interpret feminist labour law scholarship in	6
7	light of the concepts and questions that have percolated beneath the surface. Using this	7
8	approach I argue that it is possible to discern three conceptual shifts in the feminist legal	8
9	literature on employment and labour law over the past 30 years. The first shift is away	9
10	from focusing on women as a unified category of analysis and object of study to exploring	10
11	gender as a constructed, contested and differentiated social relationship. The second shift	11
12	broadens the scope of inquiry beyond formal employment contracts to the labour market	12
13	in general and the relationship between unpaid and paid work in particular. The third shift	13
14	is from an instrumental conception of law in which law is seen as a tool for remedying sex	14
15	discrimination to a more complex and multi-dimensional understanding of the relationship	15
16	between law and society. These shifts in feminist legal writing about employment and	16
17	work both reflect and are informed by changes in feminist and legal theory. They also track	17
18	profound changes in the structure and operation of labour markets, the organization of	18
19	production and the politics and power of the nation state.	19
20	The chapter begins by showing how the literature in the 1970s and the 1980s concentrated	20
21	on identifying and remedying women's employment inequality. This work tended to focus	21
22	on specific dimensions of, or topics relating to, women's inequality, such as unequal pay,	22
23	occupational segregation, sexual harassment and discrimination on the basis of pregnancy.	23
24	The overarching debate during this period was whether an approach to equality that	24
25	emphasized women's sameness to men or one that emphasized women's differences,	25
26	especially women's role as child bearers and carers, was more effective in redressing	26
27	women's subordination. Most of the literature was oriented towards law reform. Law was	27
28	regarded as instrumental, and theoretical approaches tended to map on to political claims.	28
29	Feminist concerns with labour law were deeply linked with the second wave of the feminist	29
30	movement. <sup>2</sup>	30
31	In the 1990s, feminist concerns about addressing various axes of subordination that	31
32	influenced a women's social location combined with the erosion of the standard employment	32
33	relationship to reveal differences between women and the profoundly gendered nature of	33
34	employment norms. The third section discusses how feminist legal researchers attempted	34
35	to develop both a transformative conception of equality and a postmodern understanding	35
36	of law that appreciated its discursive and ideological effects. Following this discussion, the	36
37	chapter focuses on some key themes – the relationship between gender and intersectionality,	37
38	the conflict between employment and unpaid, but socially necessary, work and the shift	38
39	from instrumental to discursive conceptions of law – that have shaped contemporary	39
40	feminist labour law literature. The chapter concludes by summarizing some of the major	40
41	achievements in feminist theorizing about labour law and identifying some of the key issues	41
42	with which feminists who study labour law continue to grapple.	42
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<sup>2</sup> For a discussion of second wave feminism, see Fraser 2005.

<b>1</b>	<b>Using Law to Achieve Women's Equality in Employment:</b>	<b>1</b>
<b>2</b>	<b>1970s and 1980s</b>	<b>2</b>
<b>3</b>		<b>3</b>
4	In the 1970s, a literature that focused on women in labour law emerged in the United States	4
5	(Williams 2000: 204–226). It tended to concentrate on topics that specifically pertained	5
6	to women such as pregnancy and maternity leave, wage discrimination, occupational	6
7	segregation and sexual harassment. The focus was not on the broad field of labour law;	7
8	instead, it was on what, from a labour law perspective, is a narrower subfield – anti-	8
9	discrimination law. <sup>3</sup> The primary question was how to redress women's unequal treatment in	9
10	employment. Law was primarily viewed as instrumental, a tool to remedy a social problem.	10
11	However, although there was general agreement among feminist scholars who focused on	11
12	women as the key subjects of labour law that the problem was women's inequality and	12
13	law was a solution, there were profound disagreements about whether the best strategy	13
14	for improving women's employment situation was to emphasize their sameness with or	14
15	difference from men. <sup>4</sup>	15
16	The rise of a feminist legal literature on women's equality in employment was fuelled	16
17	by the increase in women's labour force participation that took off in the mid-1960s and	17
18	continued throughout the 1970s. Marriage bars in the civil service (many of which took	18
19	the form of subordinate legislation such as regulations) that prohibited the employment	19
20	of married women were repealed throughout the 1960s as women joined the ranks of	20
21	the expanding public sector (Fudge 2002). Legislation outlawing sex discrimination in	21
22	employment began to be enacted in advanced industrialized countries in the mid-1960s.	22
23	The second wave of the women's movement demanded women's autonomy and equality	23
24	and, despite political divisions between social, liberal and radical feminists, there was	24
25	general agreement that anti-discrimination law could be used to improve women's situation	25
26	(Fredman 1997, Fudge 2002, Williams 2010).	26
27	Initially, there was little explicit theorizing in feminist labour law scholarship. However,	27
28	the selection of the topic or dimension of women's inequality in employment reflected	28
29	important distinctions in broader theoretical approaches, especially in the United States.	29
30	Feminists who examined the legal treatment of pregnancy in employment were worried that	30
31	a focus exclusively on women's sameness with men would disadvantage women because of	31
32	their biological difference from men. They wanted legislation that enabled a woman to take	32
33	leave to give birth and care for an infant, and then return to her job. These feminists focused	33
34	on women's differences from men (see, for example, Krieger and Cooney 1983, Littleton	34
35	1987). Yet at the same time, feminists who were concerned with occupational segregation	35
36	and women's unequal pay emphasized the similarities between men and women, and	36
37	challenged employment practices and laws that treated women differently than men (see, for	37
38	instance, Ginsberg 1975, Williams 1992). Feminists who emphasized equality and sameness	38
39	were concerned that protective legislation stressed women's roles as mothers at the expense	39
40	of their need to earn an adequate income for themselves, their children and others, and that	40
41	this emphasis would stigmatize women. The problem with this approach is that it tackles	41
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45	3 I recognize that from an anti-discrimination perspective, labour law and women are specific	45
	areas within a broader field.	
4	For a discussion of the debate in the US literature see Williams 2000: 204–226, Williams 2010:	
	109–138, Albitson 2009: 1130.	

1	the symptoms but not the causes of women's inequality, which are the household division of labour, violence against women and sexism.	1
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3	Feminist legal scholars have characterized these approaches to women's inequality as caught on the horns of the sameness/difference dilemma, which is a version of what political theorist Carole Pateman labelled the 'Wollstonecraft dilemma'. According to Pateman (1989: 196), the 'two routes towards citizenship that women have pursued are mutually incompatible within the confines of the patriarchal welfare state, and within that context they are impossible to achieve'. <sup>5</sup> On the one hand – mostly liberal – women have demanded that the ideal of citizenship be extended to them and they have insisted on gender-neutrality. For women to achieve this form of 'universal' citizenship they must participate in paid employment in the same way that men do. However, to do that they must abandon the domestic and private sphere of women's distinctive work. On the other hand, women have demanded that women's unpaid domestic work, especially their tasks as mothers, be recognized as productive and, therefore, a contribution to the welfare state. The problem with the sameness/difference dilemma is that it:	3
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17	<i>believes the hard choices that women must make when they choose between social policies that emphasize their differences from men and those that insist that men and women be treated as alike for workplace purposes. These choices are often blurred.</i>	17
18		18
19		19
20	(Wikander et al. 1995: 2)	20
21		21
22	Some feminist legal scholars found a way out of this dilemma by changing how they conceptualized law; instead of regarding it as a neutral instrument, they saw law's so-called neutrality as embodying a male bias (MacKinnon 1987). The goal of this strand of feminist legal scholarship is to show how laws that are gender neutral on their face impact on men and women differently. Conaghan (1986: 377) observed that, apart from sex discrimination law, equal pay legislation and the maternity provisions in which women were explicitly recognized, 'labour law is a world made up of full-time male breadwinners and the legal rules reflect this conception of the male worker'. Similarly, in a review of textbooks and casebooks on Australian labour law, Rosemary Hunter (1991) looked at how the law fails to take into account the experiences and values that seem more typical of women than men. Her goal was to reveal the 'masculinist bias' in labour law by tracing how gender is implicated in rules and practices that otherwise appear to be neutral. She also drew upon Pateman's theory of the 'sexual contract' to illustrate how the non-regulation of the private sphere of the household really means the freedom for men to exercise untrammelled patriarchal power in that domain.	22
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39	<b>Gender at Work: The 1990s</b>	39
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41	The concern to 'unmask the male perspective in law' in order to enable 'us to give due weight to that of women' was a central theme of feminist approaches to labour law during the 1990s (Fredman 1997: 3). Ranging over a broad historical canvass, in <i>Women and the Law</i> , Sandra Fredman sought to identify and deconstruct male bias when it comes to the legal regulation of employment. She examined the social reality of women's lives and	41
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5 By citizenship, Pateman (1989) is referring to full participation in all realms of social life.

1 contrasted it with the idealized male worker embodied in employment norms. In doing 1  
2 so, she recognized that 'the business of revealing perspectives has its own momentum' 2  
3 (Fredman 1997: 3). Referring to Elizabeth Spelman (1991: 3), Fredman acknowledged that 3  
4 there is no unitary female perspective, and that 'the nature of subordination differs between 4  
5 women depending on other factors such as race, class, sexual orientation, marital status 5  
6 and parenthood'. Despite this caveat, she argued that 'gender is an important and at times 6  
7 determinative feature in the pattern of domination' that needs to be studied in conjunction 7  
8 with other forms of domination (*ibid.*). 8

9 Fredman's book exemplifies the three-fold shift in the theoretical commitments of 9  
10 feminist labour law scholarship described in the introduction: from women to gender, 10  
11 from employment to work and away from an instrumental view of law to one that sees 11  
12 law as ideological and institutional. Yet, although Fredman deploys the concept of gender, 12  
13 and understands the significance of socially constructed norms in justifying the different 13  
14 treatment of men and women, she does not elaborate upon it. By contrast, she developed 14  
15 the relationship between women's 'private' unpaid caring and domestic duties and 15  
16 women's paid employment, illustrating how the former shapes the latter, which embodies 16  
17 the male norm of the unencumbered worker. Moreover, Fredman illustrated the tension 17  
18 in law between the 'tenacious status ascriptions to which the law continues to subscribe 18  
19 and the liberal tenets which underpin much of the legal framework' (Fredman 1997: 36). 19  
20 She maintained that equality claims reify and reinforce the male employment norm and 20  
21 alternatively argued that: 21

22  
23 *real change requires far more radical intervention, in which legal forms are* 23  
24 *complimented by wide-ranging social measures opening the door to balanced* 24  
25 *participation by women in paid work and facilitating balanced participation by men* 25  
26 *in family work. Such measures require changes in working time for both men and* 26  
27 *women, a high level of child-care provision, and parental leave for both parents on* 27  
28 *sustainable levels of pay.* (Fredman 1997: 415) 28

29  
30 In the 1990s, feminist labour law scholars and theorists, especially those of a materialist 30  
31 persuasion, also specifically linked the broader feminist challenge to the male breadwinner 31  
32 norms embedded in labour law to changes in the structure and operation of labour markets 32  
33 (Conaghan 1999, Fudge 1991a, Fudge 1997). From the end of World War II, the normative 33  
34 focus of labour law had been the standard employment relationship, which was an ongoing 34  
35 and full-time job that was regulated by a mixture of collective bargaining and statutory 35  
36 standards and provided the male head of the household with sufficient income to support a 36  
37 dependent wife and children throughout the lifecycle. The standard employment relationship 37  
38 and its male breadwinner ideal assumed, and depended upon, a female-housewife gender 38  
39 contract in which women did not work for wages and took care of domestic and household 39  
40 responsibilities (Fudge and Vosko 2001). In the early 1980s, the two-fold feminization of 40  
41 labour (the increase in the labour force participation rates of women and the deterioration 41  
42 in jobs caused by economic restructuring) and a policy emphasis on flexible labour markets 42  
43 undermined the male employment norm (Fudge 1991b). The restructuring of wages reduced 43  
44 the capacity of households to live on a single-male wage. At the same time, because women 44  
45 continued to perform a disproportionate share of caring and household responsibilities, 45  
they were unable to compete equally in the labour market for good jobs. Women tended  
to work in atypical and non-standard forms of precarious work (Fudge and Owens 2006),

1 which enabled them to supplement the declining male wage but did not provide them with	1
2 full independence (Owens 2002).	2
3 Conaghan (1999: 26) noted that it 'is only as the male norm of full-time, long-term	3
4 employment has broken down, following a growing economic demand for more flexible	4
5 working arrangements, that labour law has properly begun to recognize and address the	5
6 situation of the "atypical" (predominantly female) worker who does not correspond to	6
7 the legally enshrined one'. Changes in the structure and operation of the labour market,	7
8 combined with a more sophisticated approach to inclusive equality (Sheppard 2010) presaged	8
9 a recognition of the significance and contingency of the boundary between production – the	9
10 domain of men and paid employment – and reproduction – women's domestic realm of	10
11 the family. As women's employment rate rose and promoting women's paid employment	11
12 became an increasingly desirable public policy goal in advanced welfare states, reconciling	12
13 the conflict between work and family life came to be seen as an important goal of labour	13
14 law. Feminists, however, used the conflict as an aperture to re-imagine the scope of labour	14
15 law, broadening it to encompass the law of work. According to Joanne Conaghan and	15
16 Kerry Rittich (2005: 1), the 'application of a feminist lens to the world of work has served	16
17 simultaneously to highlight and problematize the structural and discursive boundaries	17
18 between work and family, production and reproduction, paid and unpaid work'.	18
19 Feminist labour law scholarship in the 1990s was also much more explicitly theoretically	19
20 self-conscious than that of its forebears. It was no longer so tightly linked with political	20
21 positions and became more epistemological as feminists explicitly examined the discursive	21
22 and political foundation of conventional understandings of labour law and gender	22
23 (Conaghan 2002: 357 referring to Smart 1995). This epistemological turn incorporated several	23
24 further developments. There was a shift from an initial, and important, concern to reveal	24
25 the masculinist bias at work to discussion of how gendered norms operated in the labour	25
26 market. At the same time the admonition not to essentialize women (Spelman 1991) fuelled	26
27 scholarship that looked at how various social relations of subordination – especially race	27
28 and gender – intersected. Attempts to expand the activities that count as work to unpaid	28
29 caring and household labour (Waring 1988) and the increased recognition of paid work in	29
30 the home (Prügl 1996) troubled the traditional work–family divide that has long been at the	30
31 heart of labour law. Simultaneously, feminist legal scholars began to explore the discursive,	31
32 and not simply the instrumental, power of law. The remaining sections of the chapter deal	32
33 with these three matters in turn.	33
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35	35
36 <b>From Women to Gender</b>	36
37	37
38 A common feature of feminist labour law scholarship is its 'women-centredness'. However,	38
39 the enduring focus on 'women' obscures both changes in, and debates over, how 'women'	39
40 was conceptualized. The focus on women was closely related to feminist standpoint theory,	40
41 which starts from the assumption that because women's lives and roles in almost all	41
42 societies are significantly different from men's, women have a different type of knowledge.	42
43 According to Nancy Hartsock (1983), women's contributions to subsistence and childrearing	43
44 result in a systematic difference of experience for women and men: women's location as	44
45 a subordinated group allows women to see and understand the world in ways that are	45
different from, and challenging to, the existing male-biased conventional wisdom. In the	
field of labour law, both Marion Crain (1991, 1992) and Gillian Lester (1991) focused on	

1 women's experience of collective bargaining in the United States and Canada to show how 1  
2 the dominant 'masculinist' model of collective bargaining disadvantaged women. Each 2  
3 drew upon women's experience of work and unions to suggest strategies to empower 3  
4 women,<sup>6</sup> and both critiqued male-centred notions of power as adversarial and hierarchical, 4  
5 and contrasted them with women-centred views. 5

6 This feminist labour law scholarship was important not only because it was explicitly 6  
7 theoretical, but also because it focused on the centre of labour law – collective bargaining – 7  
8 and not the margin, which is anti-discrimination law. Moreover, Crain cautioned feminists 8  
9 not to 'essentialize' women, and to recognize that other oppressions – such as race and class 9  
10 – intersect with sex (Crain 1992: 1824). She also claimed that law was not simply a tool to 10  
11 remedy discrimination, since law itself 'articulates and reflects patriarchy' (Crain 1991: 489). 11

12 Although standpoint feminism revealed the structural bias in labour law in favour of 12  
13 men's work, especially paid employment in the manufacturing sector, it was criticized for 13  
14 failing to recognize the many differences that divide women. There were two strands of 14  
15 the criticism that standpoint feminism assumed a universal 'women's experience'. The first 15  
16 complained of the failure of standpoint feminists to appreciate other systems of domination 16  
17 such as capitalism, racism, homophobia and colonialism. In response, feminists absorbed 17  
18 this criticism, and developed the idea of 'intersectionality'. Building on the work of Kimberly 18  
19 Crenshaw (1989) in the United States, Nitya Duclos (1993) and Diamond Ashiagbor (1999) 19  
20 demonstrated how anti-discrimination law in Canada and the United Kingdom, respectively, 20  
21 systematically ignored the claims of Black women. 21

22 The feminist scholarship that emphasized intersecting forms of discrimination in the 22  
23 labour market was a step away from treating women's experience as the touchstone of 23  
24 feminist analysis towards a social relations approach to understanding women's position 24  
25 in the labour market. Instead of concentrating on experience and identity, feminists 25  
26 increasingly focused on status and social relations and were careful to avoid the claim that 26  
27 all categories of subordination had the same ontological status (Fudge and Cossman 2002). 27

28 The second strand of the critique of standpoint feminism was from postmodern 28  
29 feminists, who argued that there is no concrete 'women's experience' from which to 29  
30 construct knowledge. However, instead of emphasizing the need to incorporate other social 30  
31 relations into an analysis of women's subordination, they challenged the categories of 'man' 31  
32 and 'woman', arguing that they are discursive and socially constructed, and not ontological 32  
33 categories. In order to stress the discursive nature of these social relations, feminists 33  
34 increasingly referred to 'gender' instead of 'women' in their analyses. 34

35 Feminists writing about labour law tended to conceive of gender as the social process 35  
36 by which significance and value is attributed to sexual difference through symbols, concepts 36  
37 and institutions (Fudge 1997: 253). They drew upon the work of feminist historians, some 37  
38 of whom were influenced by postmodernism (Scott 1986). According to this view, gender 38  
39 discourses naturalize sexual differences through family relations, sexuality, state institutions 39  
40 and work practices that organize procreation and maintain the population (Lerner 1997, 40  
41 Scott 1986). Labour markets, because they 'operate at the intersection of ways in which 41  
42 people make a living and care for themselves', are bearers and reinforcers of gender (Elson 42  
43 1999: 612). Joan Williams (2010) noted that the beauty of the market is its ability to transmit 43  
44  
45

6 Crain specifically considered the potential and basis for building an alliance between the  
feminist and labour movements. Lester focused on changes to collective bargaining law that  
were more women-friendly.

- 1 socially created preferences efficiently, including those pertaining to racial and gender 1  
2 norms, for example. 2
- 3 Gender is both material, in the sense that it is crucial to how work and families are 3  
4 organized and human life is reproduced in the short and long term in any society, and 4  
5 cultural, in that gender signifies values that permeate society. What the concept of gender does 5  
6 is provide an explicitly historical, relational and dynamic understanding of how inequality 6  
7 in the labour market is configured, refashioned and challenged. A feminist-inspired gender 7  
8 analysis explicitly recognizes that gender is a socially constructed relationship and, thus, 8  
9 departs from feminist standpoint theory that treats women's experience as an ontological 9  
10 and epistemological touchstone. A gender analysis is sensitive to how gender relations 10  
11 change over time and to how gender is intertwined with other social relations such as age, 11  
12 class and race, for example. 12
- 13 Feminist labour law scholars from the 1990s onwards have shown how employment 13  
14 relations are gendered (Conaghan 1999, Fredman 1997, Fudge 1997, Fudge and Owens 2006). 14
- 15 Norms about the forms and role of law and types of worker shape labour markets, labour 15  
16 institutions and labour law. These norms select, organize and describe salient features of 16  
17 the social environment and emerge out of and in relation to particular historical processes. 17
- 18 Moreover, they have a power beyond their verisimilitude. For example, immediately after 18  
19 World War I, although one-quarter of Canadian women were the sole breadwinners for 19  
20 dependent children, the norm of male breadwinning obscured this social and economic 20  
21 reality when it came to setting minimum wages for women, where the assumption that 21  
22 women had no dependents prevailed (McCallum 1986, Fudge 1991a). The power of legal 22  
23 and employment norms is ideological and discursive, and these norms can develop a life of 23  
24 their own that is quasi-independent of actually existing social relations. 24
- 25 Feminists have demonstrated the gendered nature of the standard employment 25  
26 relationship, which has been the fulcrum of labour law and regulation since the end of World 26  
27 War II.<sup>7</sup> Not only has the standard employment relationship pertained – initially exclusively 27  
28 and now predominantly – to men, it rested upon a gendered division of labour in which 28  
29 women had the primary responsibility for the socially necessary, but generally unpaid 29  
30 labour that occurred within the household. Some feminists who write about labour law have 30  
31 referred to a gender contract, which blends Pateman's (1989) notion of a sexual contract with 31  
32 the idea of social contract, a concept that aims to capture social, legal and political norms 32  
33 surrounding the exchange between breadwinning and caregiving, protection and freedom, 33  
34 and public and private responsibility (Fudge and Vosko 2001, Vosko 2010). The notion of 34  
35 gender contract seeks to capture how the gendered division of labour in the public sphere 35  
36 of employment is deeply connected to the gendered division of labour within the private 36  
37 sphere of the family and household. 37
- 38 The erosion of the standard employment relationship and the proliferation of feminized 38  
39 forms of employment, which are poorly paid, part-time and insecure, have eaten away at the 39  
40 basis of the traditional gender contract (Fudge and Vosko 2001). But, although the material 40  
41 basis for the traditional gender contract has been eroded, especially since the 1980s, with the 41  
42 decline in male wage and the increase in women's labour force participation, the continued 42  
43 gender division of labour within the family has undermined women's employment equality. 43  
44 44
- 45

<sup>7</sup> The standard employment relationship is a full-time year-round employment relationship with a single employer that is highly regulated by labour law and/or unions (Fudge and Vosko 2001).

- 1 Feminist legal scholars have shown how masculine and feminine norms and roles that 1  
2 were designed for the 1950s and 1960s no longer pertain today (Williams 2010). In most 2  
3 industrialized countries, the majority of women, including those who live in a household 3  
4 with another adult and have young children, work for wages. However, despite the increase 4  
5 in women's labour force participation, which is known as the feminization of employment, 5  
6 work – both in the public and private spheres – remains a deeply gendered activity. 6  
7 Women work at jobs that are different from those of men. Labour markets are hierarchically 7  
8 segmented according to gender (Rittich 2002b). Thus, feminists have argued that labour 8  
9 markets, the family and welfare policy are witnessing the simultaneous intensification and 9  
10 erosion of gender (Fudge and Cossman 2002: 25). 10
- 11 Walby (1997: 2), for example, identified a convergence and polarization in the 11  
12 contemporary restructuring of gender relations. In some ways, the visibility and relevance 12  
13 of gender difference is disappearing as the employment experiences of men and women 13  
14 converge. Yet, in other ways, the relevance of gender in the labour market is increasingly 14  
15 marked. Although the employment history of many women increasingly resembles that of 15  
16 men as women continue to work after childbirth and while they are raising children, women 16  
17 remain overrepresented in precarious employment (jobs that are temporary, part-time, 17  
18 insecure, lacking in benefits, and poorly paid) in order to accommodate their disproportionate 18  
19 share of unpaid caring and domestic labour. These processes of intensification and erosion, 19  
20 of convergence and divergence, are occurring both within labour market and family 20  
21 institutions and discourses. 21
- 22 22
- 23 23
- 24 **Broadening the Conception of Work** 24
- 25 25
- 26 Women's precarious position in the labour market is inextricably bound up with the 26  
27 gendered division of labour in the family. Feminist legal scholars have deployed the 27  
28 concept of gender to probe the permeable and changing boundary of what counts as work. 28  
29 They have focused in particular on the relationship between paid employment and family. 29  
30 Conaghan (2005: 19) claims that a 'focus on the operation of the work/family dichotomy' 30  
31 in labour law offers a window through which to (re)view and (re)consider labour law's 31  
32 fundamentals'. She challenges traditional labour law theory's emphasis on disciplinary 32  
33 unity and coherence, and calls instead for an approach that draws on feminist standpoint 33  
34 theory that incorporates the postmodern insight that labour law does not have a unitary 34  
35 subject but one that is fluid and fragmentary (*ibid.*: 36). She endorses a critical and reflexive 35  
36 theoretical stance that advocates surveying 'the field from a marginalized point of view' 36  
37 (*ibid.*: 35). Conaghan argues that 'labour law is beset by boundaries' that rest on: 37
- 38 38
- 39 *dichotomized pairing of concepts hierarchically positioned in relation to one* 39  
40 *another: public/private; work/family; paid/unpaid; employed/unemployed; formal/* 40  
41 *informal economy; typical/atypical workers; standard/nonstandard work; regulation/* 41  
42 *deregulation; citizens/aliens, to name but a few.* (Conaghan 2005: 38) 42
- 43 43
- 44 The problem with these boundaries is that they create hierarchies and exclusions. A crucial 44  
45 disciplinary boundary for labour law has been that between work and family or paid and 45  
unpaid labour. These boundaries are profoundly gendered. Thus, Conaghan (2005: 40)  
warns: '[u]nless, and until, labour lawyers confront the full consequence of the gender

1 division of labour in terms of effective and entrenching inegalitarian work relations, any 1  
2 project of progressive transformation through labour law is likely to founder.<sup>8</sup> 2  
3     Recent labour law scholarship has sought to widen the ambit of the field of labour 3  
4 law beyond employment to cover the labour market more generally (Fudge 2011a). This 4  
5 expanded conception of labour law's domain, which has been driven by the breakdown of the 5  
6 standard employment relationship, is congruent with recent feminist labour law scholarship, 6  
7 although, generally, most labour law scholars have not adopted a feminist approach to 7  
8 understanding the labour market. The concept of social reproduction, which is drawn from 8  
9 political economy literature, has been used by feminists to illuminate the significance of 9  
10 women's unpaid labour for the functioning of labour markets. 'Social reproduction' refers 10  
11 to the social processes and labour that go into the daily and generational maintenance of 11  
12 the population. It also involves the reproduction of bodies and minds located in historical 12  
13 times and geographic spaces. It 'includes the provision of material resources (food, clothing, 13  
14 housing, transport) and the training of individual capabilities necessary for interaction in 14  
15 the social context of a particular time and place' (Picchio 2003: 2). Social reproduction is 15  
16 typically organized by families in households and by the state through health, education, 16  
17 welfare and immigration policies (Fudge 2011a). It can also be organized through the market 17  
18 and through voluntary organizations such as churches. Production and reproduction 18  
19 are highly gendered. However, as Rittich (2002b: 129) notes, 'there is nothing natural or 19  
20 inevitable about the boundaries between productive and reproductive activity or the ability 20  
21 of different parties to pass on or absorb greater or lesser parts of the costs of production'. 21  
22     Traditional accounts of work and labour law have ignored all of the unpaid domestic 22  
23 work, overwhelmingly performed by women, that is involved in maintaining living spaces, 23  
24 buying, and transforming the commodities used in the family, supplementing the services 24  
25 provided to family members by the public and private sectors, caring for people and 25  
26 managing social and personal relationships. Feminists have emphasized how the gendered 26  
27 division of paid and unpaid work has negative distributive consequences for women (Rittich 27  
28 2002a). Some have claimed that 'the reconciliation of paid work to unpaid care is arguably 28  
29 the most pressing problem currently facing labour law', and have argued for the need to 29  
30 shift the emphasis from the employment rights of carers to the provision of caring rights for 30  
31 those who engage in paid work (Busby 2011: 1). However, in doing so, feminists have been 31  
32 careful to caution against an 'institutional and political preoccupation with family-friendly 32  
33 policies', and instead to broaden the focus to appreciate the extent to which the gender 33  
34 contract has been destabilized (Conaghan 2005: 40, see also Fudge 2005: 266). Feminists have 34  
35 also observed that the instability in the current gender contract presents an opportunity for 35  
36 a more egalitarian division of reproductive and productive labour. 36  
37     While many feminist labour law scholars have begun to stress the importance of unpaid 37  
38 care work and rights for care providers in order to achieve substantive equality for women 38  
39 in the labour market, other feminist labour law scholars, such as Vicki Schultz, for example, 39  
40 continue to emphasize the significance of paid work to the good life and women's equality. 40  
41 Although Schultz (2000) agrees that it is vitally important to create society-wide mechanisms 41  
42 in order both to allocate the costs of household labour and to enable people to realize their 42  
43 43  
44

45 8     Similarly, Rittich (2002b: 124) observes had there been serious engagement with the situation 45  
of women in the labour market, it seems highly unlikely that the world of production would  
have been defined as it is, and the intersection of unpaid work and market work would have  
been placed beyond the concerns of labour law.

1 preferences, unlike other feminist labour law scholars, she does not acknowledge the limits 1  
2 to the commodification of care (Busby 2011, Fudge 2011a, 2011c). Referring to work of the 2  
3 economist Jean Gardiner (1997), Linda McDowell (2001: 460) has argued that 'those aspects of 3  
4 domestic provision that entail the giving of care are particularly resistant to commodification 4  
5 as the relations of exchange are not susceptible to monetary evaluation'. Shultz's sensitivity 5  
6 to the institutional contexts in which household work is valued and individual choices 6  
7 are realized does not fully appreciate the distinctive features of caring activities. Care is 7  
8 more than a task that can be performed in exchange for wages; it is embedded in personal 8  
9 relationships of love and obligation, and is a crucial part of identity formation (Fudge 9  
10 2011a: 132). Treating care work as work, that is, as a socially necessary activity that is a 10  
11 matter of obligation and initiative, rather than women's natural role, results in a profound 11  
12 reconceptualization of labour law (Fudge 2011a: 132). I have argued that: 12  
13  
14       *in societies that value paid employment as the primary path to "citizenship", treating 14  
15 unpaid care work, the socially necessary labour predominantly performed by women, 15  
16 as a matter of social or family law, and not labour law, reinforces the idea that such 16  
17 work is not only a woman's natural role, but also that in the social hierarchy it is of 17  
18 lower value than paid employment. (Fudge 2011a: 136)* 18  
19  
20 A feminist reconceptualization of labour law requires scholars to comprehend that the 20  
21 relations of social reproduction are as important as employment relations (and productive 21  
22 relations more generally) for individual development as well as viable and sustainable 22  
23 societies. The conflict between the competing demands of employment and social 23  
24 reproduction cannot be resolved through the wholesale commodification of care. 24  
25       The commodification of caring labour has been characterized as the new Wollstonecraft 25  
26 dilemma – does it strengthen or weaken the gendered division of labour? (Lister 1997). 26  
27 This dilemma is particularly acute in the current era of globalization. Feminist political 27  
28 economists have argued that gender inequalities are constitutive of contemporary patterns of 28  
29 intensified globalization, and that gender differences in migration flows often reflect the way 29  
30 in which gender divisions of labour are incorporated into uneven economic development 30  
31 processes (Herrera 2008: 94). They have emphasized the connection between migrant care 31  
32 work, globalization and the privatization of social reproduction. They note that many of the 32  
33 women who leave the South to work in the North are temporary migrant workers who do 33  
34 not enjoy either the right to become permanent residents in their host country or the right to 34  
35 circulate freely in the labour market. Given the basic gender division of labour in destination 35  
36 countries, women migrants are often restricted to traditionally 'female' occupations – such 36  
37 as domestic work, care work, nursing, work in the domestic services and sex work – that 37  
38 are frequently unstable jobs marked by low wages, the absence of social services and poor 38  
39 working conditions (Antonopoulos 2008: 38). 39  
40       Arlie Hochschild (2000: 131) coined the term the 'global care chain' to refer to 'a series of 40  
41 personal links between people across the globe based on the paid or unpaid work of caring'. 41  
42 Global care chains are transnational networks that are formed for the purpose of maintaining 42  
43 daily life; these networks comprise households that transfer their caregiving tasks across 43  
44 borders on the basis of power axes as well as employment agencies, governments and their 44  
45 departments, and other agents, institutions and organizations (Orozco 2009). Ann Stewart 45  
(2011) combines the notion of global care chain with a feminist relational framework of ethics  
of care to explore the relationship between gender, justice and law in a global market. She

- 1 notes that commodifying care work may solve the care crisis in the North at the expense of 1  
2 creating a care crisis in the South (see also Fudge 2011b, 2011c). Global care chains exemplify 2  
3 the globalization of services. 3
- 4 The globalization of services helps to create a new international division of immaterial 4  
5 labour. 'Immaterial labour' is a term coined by Michael Hardt and Antonio Negri (2001: 290) 5  
6 to describe labour that 'produces an immaterial good, such as a service, a cultural product, 6  
7 a knowledge or communication'. They identify three forms of immaterial labour: the first 7  
8 involves industrial production that has incorporated information technologies; the second 8  
9 is analytic and symbolic labour involved in computer and communication work, which can 9  
10 either involve creative manipulation or be routine; and the third is affective labour that has 10  
11 traditionally been regarded as women's caring work. Not only are these 'categories infused 11  
12 with class relations', they are profoundly gendered (Kelsey 2008: 189). The gender-saturated 12  
13 nature of immaterial labour is particularly true of 'affective' labour, which is associated with 13  
14 women and care. 14
- 15 Global care chains illustrate the shift from industrial to immaterial, especially affective, 15  
16 labour, and expose 'the conceptual limitations of labour law within the present context of 16  
17 globalisation' (Stewart 2011: 312). The first limitation is the territorial scope of labour law 17  
18 (Mundlak 2009), which is starkly revealed by migrant labour (Williams 2002). In this context, 18  
19 the precarious migrant status of migrant workers undermines labour rights and standards 19  
20 initially for migrant workers and, in the longer term, for all but those few workers whose 20  
21 credentials and skills are officially recognized and valued (Fudge 2012). 21
- 22 The second conceptual limitation of labour law is its: 22
- 23
- 24 *failure to recognize fully the changed nature of the labour relations that occurs when 24  
25 caring is performed in the market through relationships that are personalised, less time 25  
26 bound and conducted in "private" workplaces. As a result, the conditions in which the 26  
27 content – "affect" – is performed can result in more extraction of the workers' labour 27  
28 than is acceptable. (Stewart 2011: 313)* 28
- 29
- 30 Feminist political economists and labour law scholars have argued that not only do global 30  
31 care chains illustrate the ways in which unequal resources are distributed globally (Hassim 31  
32 2008: 397), they also reveal the gendered nature of this inequality. Thus, they claim that it 32  
33 is not possible to consider gender equality in a comprehensive manner without considering 33  
34 global redistribution (Hassim 2008, Stewart 2007). As a result, feminist labour law scholars 34  
35 have broadened the scope of labour law in two important ways. The first is to expand the 35  
36 scale of labour law so that it is no longer unquestionably identified with the territory of the 36  
37 nation state, and the second is to expand it materially, so that it includes the processes of 37  
38 social reproduction, which include both immigration and unpaid work in the household. 38
- 39 The partial de-territorialization, the recognition that labour law operates beyond the 39  
40 boundaries of the nation state, challenges feminists, and other labour law scholars, to 40  
41 develop normative foundations for labour law that are not confined to narrow conceptions 41  
42 of national citizenship. Simultaneously, by expanding the material scope of labour law 42  
43 to include caring labour, whether paid or unpaid, feminist labour law scholars are at the 43  
44 forefront of grappling the specific dynamics governing affective or embodied labour. For 44  
45 example, focusing on the conflict between the obligation to care and the need to work for 45  
an income, Emily Graham (2011) has examined how flexibility in the context of work-life  
balance debates is discursively created through legal documentation, such as case reports,

1	that operate within prescribed networks and practices. Increasingly, contemporary feminists	1
2	tend to emphasize the discursive power of law.	2
3		3
4		4
5	<b>From Law as Instrumental to Law as a Gendering Practice</b>	5
6		6
7	The least explicitly theorized aspect of feminist labour law scholarship is how law is	7
8	conceptualized. Law is no longer understood as a neutral tool or instrument that can 'solve'	8
9	the problem of women's inequality. Nor do most feminists accept the positivist tenet that law	9
10	can be understood as autonomous from society (Lacey 1998: 9). Feminist labour law scholars	10
11	appreciate that law has both institutional and normative dimensions. Law is an important	11
12	site for the production of discourses that play a powerful role in shaping consciousness and	12
13	behaviour. Some feminists consider law to be a gendering practice, which constitutes 'male'	13
14	and 'female' subject positions and contributes to identity formation. According to Conaghan	14
15	(2000: 363), '[w]ithin such a theoretical framework, law is relocated as one of a range of	15
16	practices through which gender is acquired, a process of which gender and gender differences	16
17	are an effect'. Conaghan and Rittich (2005: 3), for example, consider how the terrain of work	17
18	is legally constituted and regulated through the creation and deployment of distinctions	18
19	such as public and private, work and family, production and reproduction. Rittich (2002a,	19
20	2002b) is also attentive to the distributional consequences of gender at work. Other feminists	20
21	emphasize the coercive force of law that distinguishes it from other discourses (Fudge and	21
22	Cossman 2002: 5).	22
23	Recently, Grabham (2011) has focused on how legal technologies and texts, such as	23
24	adjudication and case reports, create discourses and subjectivities that result in a specific	24
25	understanding of flexibility at work in which women's labour is seen as infinitely elastic. She	25
26	elucidates how legal networks of actors and texts orient themselves in time, and she cautions	26
27	against prevailing conceptions of work-life balance that condemn women to precarious	27
28	work and require women to adapt to employer-driven flexibility.	28
29	Other feminist legal scholars have broadened the notion of law beyond standard legal	29
30	texts and officials to regard it as a system of enacted norms that operates outside of the	30
31	'official' state legal system (Lacey 1998: 9). Stewart (2011: 61) adopts a 'strong' legal pluralist	31
32	account of law, which assumes that there are multiple forms of ordering beyond state	32
33	law that govern legal subjects. Focusing on the impact of globalization on legal discourse,	33
34	she emphasizes the extent to which law is porous and how it interacts with other social	34
35	fields. Stewart treats law as a system of thought or discourse rather than a system of rules,	35
36	and, thus, she identifies one of the tasks of feminist labour law scholars as mapping the	36
37	relationship between 'interpenetrating legalities' that operate at a number of scales from	37
38	the local, through the regional and national, to the transnational and international. <sup>9</sup> She also	38
39	recognizes that legal discourses are not stable, but are constantly changing.	39
40	Most contemporary feminist labour law scholars accept legal pluralism, at least in the	40
41	weak variety, and recognize that discourses of legality are deeply entwined with other	41
42	social discourses. <sup>10</sup> They also recognize that legal discourses have a distinctive relationship	42
43		43
44		44
45	<sup>9</sup> Stewart (2010: 61) refers to Melissaris (2004), who, in turn, refers to De Sousa Santos (2002).	45
10	Weak pluralism accepts the centrality of state law, but recognizes the existence of customary	
	and Islamic law, for example, in post-colonial contexts. Strong pluralists recognize multiple	
	forms of ordering that are not dependent upon the state (Stewart 2010: 60–61).	

- 1 to the state. Moreover, by and large, feminist labour law scholars accept that that law 1  
2 has no 'essential' meaning; although there are structural and institutional biases, there 2  
3 are contradictions in law that can be exploited with a view towards contesting existing 3  
4 gender roles and relations. The challenge is to developed nuanced accounts of law that are 4  
5 not confined to the nation state, while, at the same time, appreciating the specific power 5  
6 of legality, which is its close proximity to both justice and coercion, and harnessing this 6  
7 view of law with the overall goal of redressing women's material inequality and discursive 7  
8 difference. 8
- 9 9
- 10 10
- 11 **Conclusion** 11
- 12 12
- 13 The erosion of the standard employment relationship, the male breadwinner and female 13  
14 housewife gender contract, the vertically integrated firm and the hegemony of the nation 14  
15 state have created a crisis for labour law as its norms have been weakened and its ability to 15  
16 protect workers has been undermined. Despite a flourishing feminist labour law scholarship 16  
17 that challenges the traditional boundaries of labour law, it has proven difficult to move 17  
18 gender from the margin to the centre of the discipline. As Conaghan and Rittich (2005: 2) 18  
19 note, 'while virtually all labour regulation strategies are necessarily shaped and informed 19  
20 by encounters at the boundaries of productive and reproductive realms, labour law fails to 20  
21 acknowledge or take account of this in large part because of the lack of conceptual apparatus 21  
22 to identify and chart such encounters'. Feminists have long claimed that women's location in 22  
23 the labour market should be addressed as a moral matter of substantive inequality; now we 23  
24 are also arguing that it is a conceptual necessity to attend to the specificity of women's paid 24  
25 and unpaid work in order to understand how labour markets operate. Excluding unpaid 25  
26 care work from the scope of labour law is an example of what the philosopher Elizabeth 26  
27 Anderson (1999: 311–312) characterizes as a 'perfect reproduction of Poor Law thinking', 27  
28 including its sexism and its conflation of responsible work with market wage-earning'. 28  
29 Feminist labour law scholarship is now at the forefront of the discipline in reconceiving the 29  
30 material scope of labour law to include all of the processes that make up the labour market, 30  
31 including social reproduction (Fudge 2011a, Stewart 2011). 31
- 32 Moreover, feminist legal scholars who concentrate on global care chains are challenging 32  
33 the nation state as the appropriate frame of labour law and the methodological nationalism 33  
34 (Wimmer and Schiller 2002) with which it is associated. Public policies in developed 34  
35 countries that emphasize increasing women's employment rates without simultaneously 35  
36 stressing the obligations of men to engage in care activities are likely to perpetuate global 36  
37 care chains in which women from poor countries migrate to richer countries to perform 37  
38 care work (Fudge 2011c, Stewart 2011). Such policies not only reinforce the gendered nature 38  
39 of care work, they perpetuate global inequality. More generally, Lucie Williams (2002: 95) 39  
40 has argued that 'privileging nation-state waged work as the site for redistributive politics 40  
41 ignores and devalues the needs and concerns of millions of low and non-waged workers in 41  
42 a globalized economy'. 42
- 43 And finally, feminist labour law scholars are questioning whether the traditional 43  
44 normative basis of labour law, which is to mediate the unequal power relations between 44  
45 employers and employees, provides sufficient grounding for the discipline. Some, like 45  
Stewart (2011), are drawing upon the ethic of care, which is based on relationship and  
connection, rather than on individualism, to ground normative positions. Others, like Nicole

1	Busby (2011) and Fudge (2011), are turning to modified versions of the capabilities approach (Nussbaum 2000, Sen 1999), to provide the conceptual tools for a robust understanding of substantive equality.	1 2 3
4	However, despite the conceptual and normative advances of feminist labour law theory, there is more work to be done. Understanding the role and characteristics of immaterial and affective labour as labour markets globalize, challenging the binary opposition between male and female in order to convey and appreciate the full array of sexualities and gender relations (Chapman 2005, Conaghan and Grabham 2007), and attending to the nuanced and contradictory roles of legal institutions and discourses, and how they interact with other forms of social-ordering discourses, are some of the intellectual and political tasks with which feminist labour law scholars continue to grapple.	4 5 6 7 8 9 10 11 12 13
14	<b>References</b>	13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45
15	Albitson, C. 2009. Institutional inequality. <i>Wisconsin Law Review</i> , 29(5), 1093–1168.	15
16	Anderson, E. 1999. What is the point of equality? <i>Ethics</i> , 109(2), 287–337.	16
17	Antonopoulos, R. 2008. The Unpaid Care Work–Paid Work Connection. The Levy Economics Institute of Bard College, Working Paper No. 541. Available at: <a href="http://www.levyinstitute.org/publications/?docid=1081">www.levyinstitute.org/publications/?docid=1081</a> .	17 18 19 20
18	Ashiagbor, D. 1999. The intersection between gender and ‘race’ in the labour market: lessons for anti-discrimination law, in <i>Feminist Perspectives on Employment Law</i> , edited by A. Morris and T. O’Donnell. London: Cavendish, 139–160.	21 22 23
19	Busby, N. 2011. <i>A Right to Care? Unpaid Work in European Employment Law</i> . Oxford Monographs on Labour Law, Oxford University Press.	24 25
20	Chapman, A. 2005. Challenging the Constitution of the (White and Straight) Family in Work and Family Scholarship. <i>Law in Context</i> , 23(1), 65–87.	26 27
21	Conaghan, J. 1986. The invisibility of women in labour law: gender-neutrality in model- building. <i>International Journal of the Sociology of Law</i> , 14, 377–392.	28 29
22	Conaghan, J. 1999. Feminism and labour law: contesting the terrain, in <i>Feminist Perspectives on Employment Law</i> , edited by A. Morris and T. O’Donnell. London: Cavendish, 13–42.	30 31
23	Conaghan, J. 2000. Reassessing the feminist theoretical project in law. <i>Journal of Law and Society</i> , 27(3), 351–385.	32 33
24	Conaghan, J. 2002. Women, work and family: a British revolution? in <i>Labour Law in an Era of Globalization: Transformative Practices and Possibilities</i> , edited by J. Conaghan, R.M. Fischl and K. Klare. Oxford: Oxford University Press, 54–73.	34 35 36
25	Conaghan, J. 2006. Time to dream? Flexibility, families and the regulation of working time, in <i>Precarious Work, Women, and the New Economy: The Challenge to Legal Norms</i> , edited by J. Fudge and R. Owens. Oxford: Hart, 101–130.	37 38 39
26	Conaghan, J. and Grabham, E. 2007. Sexuality and the Citizen-Carer: The “Good Gay” and the Third Way. <i>Northern Ireland Legal Quarterly</i> , 58(3), 325–342.	40 41
27	Conaghan, J. and Rittich, K. 2005. Introduction: interrogating the work/family divide, in <i>Labour Law, Work, and Family: Critical and Comparative Perspectives</i> , edited by J. Conaghan and K. Rittich, Oxford: Oxford University Press, 1–18.	42 43 44
28	Crain, M. 1991. Images of power in labor law: a feminist deconstruction. <i>Boston College Law Review</i> , 33(3), 481–538.	45
29	Crain, M. 1992. Feminism, labor, and power. <i>Southern California Law Review</i> , 65(4), 1819–1886.	

- 1 Crenshaw, K. 1989. Demarginalizing the intersection of race and sex: a black feminist 1  
2 critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University* 2  
3 of Chicago Legal Forum, 1989, 139–168. 3
- 4 Duclos, N. 1993. Disappearing women: racial minority women in human rights cases. 4  
5 *Canadian Journal of Women and the Law*, 6(2), 25–51. 5
- 6 Elson, D. 1999. Labour markets as gendered institutions: equality, efficiency and 6  
7 empowerment issues. *World Development*, 27(3), 611–627. 7
- 8 Fraser, N. 2005. Mapping the feminist imagination: from redistribution to recognition to 8  
9 representation. *Constellations*, 12(3), 295–307. 9
- 10 Freedman, S. 1997. *Women and the Law*. Oxford: Clarendon Press. 10
- 11 Fudge, J. 1991a. *Labour Law's Little Sister: The Employment Standards Act and the Feminization of* 11  
12 *Labour*. Ottawa: Canadian Centre for Policy Alternatives. 12
- 13 Fudge, J. 1991b. Reconceiving employment standards legislation: labour law's little sister 13  
14 and the feminization of labour. *Journal of Law and Social Policy*, 7, 73–89. 14
- 15 Fudge, J. 1997. Rungs on the labour law ladder: using gender to challenge hierarchy. 15  
16 *Saskatchewan Law Review*, 60(2), 237–263. 16
- 17 Fudge, J. 2002. From segregation to privatization: equality, law and women public servants, 17  
18 1908–2000, in *Privatization, Law and the Challenge to Feminism*, edited by B. Cossman and 18  
19 J. Fudge. Toronto: University of Toronto Press, 86–127. 19
- 20 Fudge, J. 2005. The new dual-earner gender contract: work–life balance or working-time 20  
21 flexibility?, in *Labour Law, Work and Family: Critical and Comparative Perspectives*, edited by 21  
22 J. Conaghan and K. Rittich. Oxford: Oxford University Press, 261–288. 22
- 23 Fudge, J. 2011a. Labour as a 'fictive commodity': radically reconceptualizing labour law, in 23  
24 *The Idea of Labour Law*, edited by G. Davidov and B. Langille. Oxford: Oxford University 24  
25 Press, 120–135. 25
- 26 Fudge, J. 2011b. Global care chains, employment agencies and the conundrum of jurisdiction: 26  
27 decent work for domestic workers in Canada. *Canadian Journal of Women and The Law*, 27  
28 23(1), 235–264. 28
- 29 Fudge, J. 2011c. Gender, equality and capabilities, in *The Role of Labour Standards in Sustainable* 29  
30 *Development: Theory in Practice*, edited by T. Novitz and D. Mangan. London: Oxford 30  
31 University Press/The British Academy. 31
- 32 Fudge, J. 2012. Precarious Migrant Status and Precarious Employment: The Paradox of 32  
33 International Rights for Migrant Workers. *Comparative Labor Law and Policy Journal*, 34(1), 33  
34 101–137. 34
- 35 Fudge, J. and Cossman, B. 2002. Privatization, law and the challenge to feminism, in 35  
36 *Privatization, Law and the Challenge to Feminism*, edited by J. Fudge and B. Cossman. 36  
37 Toronto: University of Toronto Press, 3–37. 37
- 38 Fudge, J. and Owens, R. (eds), 2006. *Precarious Work, Women, and the New Economy: The* 38  
39 *Challenge to Legal Norms*. Oxford: Hart Publishing. 39
- 40 Fudge, J. and Vosko, L. 2001. Gender, segmentation and the standard employment 40  
41 relationship in Canadian labour law and policy. *Economic and Industrial Democracy*, 22(2), 41  
42 271–310. 42
- 43 Gardiner, J. 1997. *Gender, Care and Economics*. Hampshire: Macmillan. 43
- 44 Ginsberg, R. 1975. Gender and the Constitution. *University of Cincinnati Law Review*, 44, 1–42. 44
- 45 Grabham, E. 2011. Doing things with time: flexibility, adaptability, and elasticity in UK 45  
equality cases. *Canadian Journal of Law and Society*, 26(3), 485–508.
- Hardt, M. and Negri, A. 2001. *Empire*. Cambridge: Harvard University Press.

- 1 Hartsock, N. 1983. The feminist standpoint, in *Discovering Reality*, edited by S. Harding and 1  
2 M.B. Hintikka. Dordrecht, Holland: D. Riedel Publishing Company, 283–310. 2
- 3 Hassim, S. 2008. Global constraints on gender equality in care work. *Politics and Society*, 3  
4 36(3), 388–402. 4
- 5 Herrera, G. 2008. States, work and social reproduction through the lens of migrant experience: 5  
6 Ecuadorian domestic workers in Madrid, in *Beyond States and Markets: The Challenges of* 6  
7 *Social Reproduction*, edited by I. Bakker and R. Silvey. London: Routledge, 93–107. 7
- 8 Hochschild, A.R. 2000. Global care chains and emotional surplus value, in *On the Edge: 8  
9 Living with Global Capitalism*, edited by W. Hutton and A. Giddens. London: Jonathon 9  
10 Cape, 131–146. 10
- 11 Hunter, R. 1991. Representing gender in legal analysis: a case/book study in labour law. 11  
12 *Melbourne University Law Review*, 18(2), 305–327. 12
- 13 Kelsey, J. 2008. *Serving Whose Interests: The Political Economy of Trade in Services Agreements*. 13  
14 Abingdon: Routledge-Cavendish. 14
- 15 Krieger, L.J. and Cooney, P.N. 1983. The Miller-Wohl controversy: equal treatment, positive 15  
16 action and the meaning of women's equality. *Golden Gate University Law Review*, 13(3), 16  
17 513–572. 17
- 18 Lacey, N. 1998. *Unspeakable Subjects: Feminist Essays in Legal and Social Theory*. Oxford: Hart 18  
19 Publishing. 19
- 20 Lester, G. 1991. Toward the feminization of collective bargaining law. *McGill Law Journal*, 20  
21 36(4), 1181–1221. 21
- 22 Lerner, G. 1997. *Why History Matters: Life and Thought*. New York: Oxford University Press. 22
- 23 Lister, R. 1997. *Citizenship: Feminist Perspectives*. Basingstoke: Macmillan. 23
- 24 Littleton, C. A. 1987. Reconstructing sexual equality. *California Law Review*, 75(4), 1279–1337. 24
- 25 MacKinnon, C. 1987. *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard 25  
26 University Press. 26
- 27 McCallum, M. 1986. Keeping women in their place: the minimum wage in Canada. *Labour/ 27  
Le Travail*, 17, 29–56. 28
- 29 McDowell, L. 2001. Father and Ford revisited: gender, class and employment change in the 29  
30 new millennium. *Transactions of the Institute of British Geographers*, 26(4), 448–464. 30
- 31 Melissaris, E. 2004. The more the merrier: a new take on legal pluralism. *Social and Legal 31  
Studies*, 13(1), 57–79. 32
- 33 Mundlak, G. 2009. De-territorializing labor law. *Law and Ethics of Human Rights*, 3(2), 189– 33  
34 222. 34
- 35 Nussbaum, M. 2000. *Women and Human Development: the Capabilities Approach*. Cambridge: 35  
36 Cambridge University Press. 36
- 37 Orozco, A. P. 2009. *Global Care Chains (Gender, Migration and Development Series)*. The United 37  
38 Nations International Research and Training Institute for the Advancement of Women, 38  
39 Working Paper No. 2. Available at: [www.un-instraw.org/data/media/documents/GCC/](http://www.un-instraw.org/data/media/documents/GCC/WORKING%20PAPER%202%20INGLES.pdf) 39  
40 WORKING%20PAPER%202%20INGLES.pdf 40
- 41 Owens, R. 2002. Decent work for the contingent workforce in the new economy. *Australian 41  
Journal of Labour Law*, 15(3), 209–234. 42
- 43 Pateman, C. 1988. *The Sexual Contract*. Cambridge: Polity Press. 43
- 44 Pateman, C. 1989. *The Disorder of Women: Democracy, Feminism and Political Theory*. Cambridge: 44  
45 Polity Press. 45
- Picchio, A. 1992. *Social Reproduction: The Political Economy of the Labour Market*. Cambridge:  
Cambridge University Press.

- 1 Picchio, A. 2003. A Macroeconomic Approach to an Extended Standard of Living, in *Unpaid Work and the Economy: A Gender Analysis of the Standard of Living*, edited by A. Picchio. 1  
2 New York: Routledge, 1–10. 2  
3 3
- 4 Prügl, E. 1996. Biases in labor law: a critique from the standpoint of home-based workers, in 4  
5 *Homeworkers in Global Perspective: Invisible No More*, edited by E. Boris and E. Prügl. New 5  
6 York: Routledge, 203–218. 6
- 7 Rittich, K. 2002a. *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform*. 7  
8 Boston: Kluwer Law International. 8
- 9 Rittich, K. 2002b. Feminization and contingency: regulating the stakes of work for women, 9  
10 in *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*, edited by 10  
11 J. Conaghan, R.M. Fischl and K. Klare. Oxford: Oxford University Press, 117–136. 11
- 12 Sangster, J. 2010. *Through Feminist Eyes: Essays on Canadian Women's History*. Edmonton: 12  
13 Athabasca University Press. 13
- 14 Santos, B. 2002. *Toward a New Legal Common Sense: Law, Globalisation and Emancipation*. 14  
15 London: Butterworths. 15
- 16 Schultz, V. 2000. Life's Work. *Columbia Law Review*, 100(7), 1881–1964. 16
- 17 Schultz, V. 2010. Feminism and workplace flexibility. *Connecticut Law Review*, 42(4), 1203– 17  
18 1222. 18
- 19 Scott, J. 1986. Gender: a useful category of historical analysis. *The American Historical Review*, 19  
20 91(5), 1053–1075. 20
- 21 Sen, A. 1999. *Development as Freedom*. Oxford: Oxford University Press. 21
- 22 Sheppard, C. 2010. *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in 22  
23 Canada*. Montreal: McGill-Queen's University Press. 23
- 24 Smart, C. 1995. *Law, Crime and Sexuality: Essays in Feminism*. London: Sage Publications. 24
- 25 Spelman, E. 1991. *Inessential Woman: Problems of Exclusion in Feminist Thought*. Boston: Beacon 25  
26 Press. 26
- 27 Stewart, A. 2007. Who do we care about? Reflections on gender justice in a global market. 27  
28 *Northern Ireland Legal Quarterly*, 58(3), 358–374. 28
- 29 Stewart, A. 2011. *Gender, Law and Justice in a Global Market*. Cambridge: Cambridge University 29  
30 Press. 30
- 31 Vosko, L. 2010. *Managing the Margins: Gender, Citizenship, and the International Regulation of 31  
32 Precarious Employment*. Oxford: Oxford University Press. 32
- 33 Walby, S. 1997. *Gender Transformations*. London: Routledge. 33
- 34 Waring, M. 1988. *If Women Counted: A New Feminist Economics*. San Francisco: Harper and 34  
35 Row. 35
- 36 Wikander, U., Kessler-Harris, A. and Lewis, J. 1995. Introduction, in *Protecting Women: Labor 36  
37 Legislation in Europe, the United States, and Australia, 1880–1920*, edited by U. Wikander, 37  
38 A. Kessler-Harris and J. Lewis. Urbana and Chicago: University of Illinois Press, 1–28. 38
- 39 Williams, J. 2000. *Unbending Gender Why Family and Work Conflict and What To Do About It*. 39  
40 Oxford: Oxford University Press. 40
- 41 Williams, L. 2002. Beyond labour law's parochialism: a re-envisioning of the discourse 41  
42 of redistribution, in *Labor Law in an Era of Globalization: Transformative Practices and 42  
43 Possibilities*, edited by J. Conaghan, R.M. Fischl and K. Klare. Oxford: Oxford University 43  
44 Press, 93–116. 44
- 45 Williams, J. 2010. *Reshaping the Work Family Debate: Why Men and Class Matter*. Cambridge: 45  
Harvard University Press.

1	Williams, W.W. 1992. The equality crisis: some reflections on culture, courts and feminism.	1
2	Women's Rights Law Reporter, 14(2), 151–174.	2
3	Wimmer, A. and Schiller, G. 2002. Methodological nationalism and beyond: nation-state	3
4	building, migration and the social sciences. <i>Global Networks</i> , 2(4), 301–334.	4
5		5
6		6
7		7
8		8
9		9
10		10
11		11
12		12
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