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Regulating Clothing Outwork: A Sceptic's View

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Abstract: By applying the strategies of international anti-sweatshop campaigns to the Australian context, recent regulations governing home-based clothing production hold retailers responsible for policing the wages and employment conditions of clothing outworkers who manufacture clothing on their behalf. This article argues that the new approach oversimplifies the regulatory challenge by assuming (1) that Australian clothing production is organized in a hierarchical 'buyer-led' linear structure in which core retail firms have the capacity to control their suppliers' behaviour; (2) that firms act as unitary moral agents; and, (3) that interventions imported from other times and places are applicable to the contemporary Australian context. After considering some alternative regulatory approaches, the article concludes that the new regulatory strategy effectively privatizes responsibility for labour market conditions – a development that cries out for further debate.

Keywords: *clothing industry; labour market; outwork; regulation*

Introduction

As advancing global economic integration and neo-liberal economic policies combine to transform the Australian economy, changes in the nature of firms, workplaces and work are creating new challenges for the protection of workers'

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rights. Designing effective mechanisms for regulating the wages and conditions of workers who make clothing in their own homes – known in Australia as clothing outworkers – has proven particularly difficult.

In recent years, innovative approaches to the re-regulation of clothing outwork in Australia have drawn on strategies developed by activist campaigners in Europe and the USA. These have brought together broad progressive community and political constituencies (including unions, community groups and students) in alliances dedicated to improving garment workers' wages and conditions. As well as harnessing the opinion-forming influence of the mass media to pressure governments to introduce effective regulation, these strategies target firms directly, challenging them, as corporate citizens, to adopt ethical business practices (Harrod and O'Brien, 2002). These campaigns stand at the forefront of new models of union action in which activist networks promote communication and exchange across disparate locations – linking people together through shared ideas and values, joint processes of issue construction and collective participation in debates about strategy – to produce communities of interest that legitimate collective action (Keck and Sikkink, 1998). By reinterpreting and incorporating widely accepted ideas (of fair treatment, for example), activists are able to tap into 'rhetorical commonplaces' that resonate with a broad audience (De Winter, 2001). As campaigns span multiple scales and sites, ranging from university campuses and workplaces to international regimes, their 'global' strategies and alliances have influenced the shape of labour internationalism (Silvey, 2004: 191).

From a perspective attuned to the dynamic nature of economic processes and the ways in which they reflexively interact with regulatory frameworks, this article develops a sympathetic, theoretically informed critique of these new interventions.[1] It views firms as social constructs and as social actors enmeshed in multiple, constantly changing relationships that are infused with inequalities of power and influence. Individual firms restructure their operations in anticipation of and in response to regulatory changes, producing dynamic reconfigurations of inter-firm relationships, industrial structures and the locations at which particular production tasks are performed. Workforce profiles alter accordingly. In this way, the industrial division of labour, the labour market and forms of labour market regulation are dynamically intertwined with both the evolution of capitalist firms and the symbiotic relationship between states and firms (Offe, 1985; Strange, 1994). In this context, the organizational effects of regulatory interventions are uneven – not only do they control the behaviour of some firms more effectively than others, but they also at the same time stimulate the development of new profit-maximizing organizational strategies. Therefore, the design of new labour market regulations should be based on a plausible account of industry structure and should anticipate how new provisions will alter firm strategies, relationships and organizational forms.

From this starting point, this article argues that Australia's new outwork policy solutions rely on idealized metaphors of industrial organization that do not sufficiently acknowledge the heterogeneity and inherent instability of the clothing industry's local organizational realities. As it details the gap between the theories on which the new outwork regulations are based and the reality of the Australian industry, it advocates a more critical examination of the longer term implications of interventions that rely on firm goodwill. The article is structured as follows. The next section provides a brief background to regulation in Australia's outwork clothing sector and details the new regulatory strategies. Section Three questions the universal applicability of the hierarchical 'buyer-led' commodity chain metaphor on which the new regulations are based. It then examines the limitations of this understanding of the sector's industrial organization in the Australian policy context. Section Four challenges the idea that garment production firms act as moral agents and expresses deep reservations about the discursive construction of outworkers' identities as victims of unscrupulous employers. Section Five considers issues of compliance, discusses the potential for avoidance, and foreshadows some complementary approaches to regulation. The article concludes that as the new regulatory approaches transfer responsibility for the surveillance and enforcement of labour standards to firms, they effectively privatize labour market regulation.

Outwork Regulation in Australia

Across western economies, the manufacture of clothing is an important source of low wage employment and a major employer of women and migrants. Its low entry and exit costs, mobility, modest skill demands and accessible product markets attract small business entrepreneurs seeking quick profits. Inexpensive technologies combine with the divisible nature of the work process to make clothing production amenable to small-scale, home-based enterprise. These characteristics create numerous challenges for labour regulation.

In the early twentieth century, Australia's centralized system of industrial regulation had restricted the organizational forms available to clothing producers and as a result most clothing production took place in highly regulated factory environments. Although the small factory 'sweat-shop' form familiar in the USA barely existed in Australia, a semi-clandestine outwork sector persisted despite various attempts to outlaw it (Ellem, 1991; Frances, 1993). Australia's system of arbitration and conciliation was ill-equipped to manage the dispersed organization, intermittent activity and lack of worker organization characteristic of home-based clothing production. In the early 1980s, however, as Australian trade unions responded to feminism, professionalism and the changing nature of work (Briggs, 2004: 224), the policy attitude toward outwork changed from exclusion to inclusion, and outwork came to be recognized as legitimate work (Booth and Rubenstein, 1990). In 1987, amendments to the federal Clothing Trades Award 'deemed' outworkers to be employees, a move that brought them into the centralized employment system and established Award wages and conditions (Australian Conciliation and Arbitration Commission [ACAC], 1987).

The new regulations had an uneven impact. In the first place, the regulatory coverage was incomplete, for its provisions applied only to those firms that were 'signatories' to the Award; that is, to firms operating within the centralized industrial relations system. Second, enforcement of Award conditions was inhibited by the logistical difficulties inherent in monitoring a spatially dispersed home-based workforce. Third, the effectiveness of regulation was hampered by worker non-compliance: whether through loyalty, desperation or fear of retribution, it appeared that outworkers were often complicit in disregarding Award conditions. In effect, the regulatory framework contributed to the development of a three-tier structure within the outwork sector: some outworkers were employed under Award conditions; others worked outside the regulatory framework earning inferior wages and working in substandard conditions; while a third group operated as quasi-independent small business subcontractors, earning profits rather than wages. By 1995, the Textiles Clothing and Footwear Union of Australia claimed that the local garment industry was structured around outwork in a barely regulated system that exploited pockets of disenfranchized labour, especially newly arrived migrants and refugees (Textile Clothing and Footwear Union of Australia [TCFUA], 1995). As the 'unregulated' sub-sector flourished by undercutting the prices of both factory and 'regulated' outwork manufacturers, employer groups came to support the introduction of additional regulation (Weller, 1999).

The rapid expansion of outwork-based production in the years 1993–6 reflected the international reorientation of the Australian economy. In the early 1990s, the removal of the quotas and tariffs that had protected Australian manufacturers from import competition resulted in a flood of imported garments and many factory-based manufacturers and their employees were forced out of the industry. A new generation of subcontractor firms entered the domestic market (Webber and Weller, 2001). Operating on a shoestring 'just-in-time' production model, they avoided the 'sunk costs' of factory premises and opted for the numerical and temporal flexibility of outworker-based production.

The new production structure involved deep changes to the sector's composition and relationships. The Federal government's 1994 'Working Nation' labour market reforms, which allowed welfare beneficiaries to earn modest additional income, created a labour force available to work cheaply and on an intermittent basis. Outwork also flourished as falling real wages made it increasingly difficult for families to manage with one 'breadwinner' income. The restructuring of the clothing sector's labour supply transcended the 'spatial fix' of the old, protected economy as it relocated from the inner city to the suburbs and replaced an ageing, unionized and factory-based pre-liberalization workforce (predominantly of post-Second World War European migrants) with a younger, more 'flexible' workforce drawn predominantly from Asian background migrant groups (Webber and Weller, 2001). The sector's dispersal to the suburbs made it a difficult target for regulators. More importantly, regulatory frameworks that assumed continuous employment and unionized workplaces could not effectively regulate outwork's intermittent work, its blurring of the relationship between employers and employees, or its positioning beyond the reach of organized labour and collective bargaining mechanisms. Effective intervention would require novel strategies.

The *Fairwear* Strategies

In the mid-1990s, Australian clothing unions and local *Fairwear* campaigners combined to pioneer new forms of community–union cooperation that target multiple actors including retailers, clothing firms and state instrumentalities (at federal, state and local levels) simultaneously. These campaigns have drawn in less radical constituencies such as church groups by emphasizing the protection of basic human rights and the enforcement of internationally accepted core labour standards, as expressed in International Labour Organization (ILO) and United Nations (UN) agreements. The local campaigns drew extensive support from international advocacy networks (Delaney, 2004). As such, they represent a worker-oriented version of the international processes of 'fast policy transfer' that have become an integral component of economic globalization (Peck and Theodore, 2000).

The debates generated by local activists in the mid-1990s highlighted the inadequacies of the existing regulations and turned public opinion toward bolstering regulatory mechanisms. After being targeted by *Fairwear* shame campaigns, numerous firms agreed to adopt voluntary 'Codes of Practice' and to observe Award conditions. The campaigners won widespread support for the idea that retailers should be made responsible for policing working conditions in subcontracting firms. Activist pressure prompted a Parliamentary Inquiry in 1996, after which the Federal (Howard) Government acknowledged outwork as the 'rotten apple' that threatened to discredit its neo-liberal workplace reform agenda. Outwork regulation was subsequently included as an Allowable Matter in the 1996 Workplace Relations Act.

New Regulatory Approaches

Since 1996, activist campaigns have increasingly targeted State jurisdictions, where Labor governments have been more amenable to protecting workers' rights. As a result, governments in five States have legislated to provide outworkers with the legal status of employees, giving them access to the range of benefits – such as superannuation and long service leave – enjoyed by factory-based workers (Hulls, 2003).

The new regulatory frameworks in Australia's two leading garment-producing States, New South Wales and Victoria, represent a major change in approach to labour regulation by shifting responsibility for outworker wages and conditions to the leading firms in disarticulated supply chains. In both the New South Wales 2001 'Behind the Label' strategy and the Victorian Outwork (Additional Protection) Act 2003, the retail or brand firms that commission the production of outworker-made garments are made responsible for monitoring outworker wages and conditions in subcontracting firms. The provisions also establish a system for the recovery of unpaid wages from an 'apparent' employer located at a higher level in the production hierarchy, strengthen government enforcement powers, provide mechanisms for union representatives to enter premises to monitor the system, and establish committees to oversee implementation. In both States, regulation has been accompanied by public awareness and education campaigns, the promotion of corporate 'Codes of Practice', and renewed efforts to organize outworkers. In New South Wales, a complementary project promotes cooperation and efficiency along the supply chain (Greig, 2002). Together, the interventions aim to produce a dynamic and competitive local garment production industry in which home-based outworkers are fairly remunerated.

While on the surface the new approaches appeared to revolutionize regulation and offer an effective method for protecting vulnerable workers, they were grounded in a particular set of assumptions about the nature of clothing firms and the relationships between clothing sector firms and workers. The next section analyses these assumptions and their implications for regulation. It begins by examining the linear metaphor of industrial organization that underpins the new approach and then assesses its applicability to the Australian context, considering in turn the extent 'vertically disintegrated' subcontracting, the power of retailers, the power of consumers and the notion of supply chain efficiency.

Foundational Assumptions of the New Strategies

The new outwork regulations rely on a widely accepted description or 'way of seeing' the garment production industry as organized in hierarchical 'retailer-led' constellations of interlinked, vertically disintegrated firms. In this linear metaphor, groups of firms are envisaged as linked by the sequential order of value-adding processes that transform raw materials into finished goods. This view unites otherwise disparate interests by creating a common understanding of how the industry 'works' – creating a space where the understandings of firms, unions, government and community activists converge. However, this commonplace description is actually a hybrid of two potentially conflicting explanations of industrial organization: the world system theory-inspired 'global commodity chain' (GCC) metaphor and the more business-oriented supply chain management perspective.

In the 'global commodity chain' metaphor, firms are 'ordered' by the sequential stages of the vertical value-adding commodity flow. As commodity chains extend across space to link organizations, activities and individuals in product-focused, transnational production systems, they transcend national boundaries and sidestep national regulatory constraints as they reconfigure to maximize profitability (e.g. by relocating to low wage production sites). Structurally, GCCs are characterized by three interdependent dimensions: an input–output structure, a territoriality, and a structure of governance (Gereffi and Korzeniewicz, 1994). In consumer-oriented industries like garment production, chains typically adopt a *buyer-led* formation dominated by core firms positioned close to retail markets (Gereffi, 1994).

Central to the GCC approach is the notion that production systems are permeated by power inequities that shape the nature of interactions both within and between firms. Capital-rich core firms at the peak of chains accrue wealth (surplus) because, as buyers in the subcontracting structure, they enjoy a bargaining advantage that enables them to transfer business risk down the chain, to smaller firms and ultimately to individual (out)workers. Here, competition is played out between firms *within* chains at least as much as it is between opposing chains. This effect is exaggerated in the clothing sector, where brand-based quasi-monopolies limit competition to non-price factors and reduce direct inter-chain price competition. By this assessment, the exploitation of production-level workers is central to the process of extracting economic rents (surplus). The GCC metaphor's foundational assumptions can be summarized as follows:

1 The clothing industry comprises linear sequences of subcontracting firms linked by value adding processes;
2 These chains link firms and individuals whose roles are defined sequentially as retailer, wholesaler, manufacturer, subcontractor and outworker;
3 Sequences of firms are organized hierarchically and controlled by powerful core firms (usually retailers);
4 'Chains' extend from outworkers to consumers and are coherent through their length. It is possible to trace direct linkages in chains;
5 Given the monopolistic and oligopolistic competition characteristic of garment markets, surplus accrues from competition within chains;
6 The magnitude of the profit shares in different parts of the chain reflects inherent power differentials.

The global commodity chain approach reveals the human face of exploitation and politicizes industrial structures in a way that links the micro world of consumer purchases to the macro issues of capitalist globalization. Through its capacity to incorporate power relations, firm strategies and community resistances, this metaphor stimulates political action for social change. Accordingly, it dominates popular Left examinations of the global clothing industries (such as Klein, 2000; Ross, 1997; see also Johns and Vural, 2000). In these accounts, the growth of outwork exemplifies the emergence of a Third World underclass within the First world.

Business managers and government policy makers have been guided by a related metaphor based on 'value chain' or 'supply channel' management. This version of the linear production model is derived from Porter's (1990, 1998) influential studies on the competitive advantage of firms and nations. Like GCC, it conceptualizes firms as embedded in a production system organized around the vertical flow of value-adding processes. Like GCC, it stresses core firms' imperative to control production costs, delivery schedules and product quality through the active management of suppliers. But in contrast to GCC, this process is understood as a joint enterprise, where all firms in the supply flow share responsibility for ensuring the market competitiveness of the final product. The supply chain's constituents interact on an equal footing as rational, independent economic actors with a common objective. Power differences within the chain are downplayed; competitiveness is promoted by nurturing inter-firm trust and cooperation.

In contrast to GCC, which views competition as occurring *within* chains, the value chain perspective stresses cooperation and efficiency within chains and competition *between* chains. Although this fundamental theoretical difference is rarely explicit, it leads to quite different conclusions about the likely outcomes of regulatory intervention. It is important to recognize that Australia's new forms of outwork regulation – where the core firms in supply chains are responsible for policing 'subordinate' subcontractors – only make sense from within a linear understanding of industry structure. Moving from this perspective destabilizes the strategies' apparent coherence.

The problem is that linear metaphors are only some of a number of plausible 'ways of seeing' the structure of clothing industry. The first alternative view comes from the network-based approaches commonly associated with the 'industrial districts' and 'learning regions' literature (Scott, 1999). These emphasize place-based industrial agglomeration where local synergies promote the competitiveness of groups of small, specialized firms. Numerous small-scale examples of this type of local agglomeration can be found in the garment manufacturing suburbs of Surrey Hills in New South Wales and Richmond in Victoria. The second alternative perspective is based on a neoclassical account of industrial structure where atomistic independent firms make rational, profit-maximizing 'make or buy' decisions and trade on an arms-length basis. This view guided Australia's policy settings for the clothing sector in the 1980s and early 1990s (Industry Commission [IC], 1997). The third option is the notion of global production networks (GPN), where observed industrial structures are conceived as the outcome of complex interactions between firms, markets, organizations, governments and other actors, within and between places and at various (local, regional, national and global) scales (Henderson et al., 2002). The point is that forms of industrial organization cannot simply be read from knowledge of the type of industry or the nature of its products. Actual configurations – of any part, of any industry, at any time or place – must be established empirically. In summary, the linear metaphor is by no means the only way to comprehend the clothing industry's interfirm interactions or its strategies of accumulation.

From Theory to Policy

The value chain approach has been influential in industrial policy, where governments have sought to promote the competitiveness of local, territorially defined supply chains by creating supportive regulatory conditions that promote efficiency without distorting market processes. However, the Australian Government's 2000 Action Agenda (Textiles, Clothing Footwear and Leather [TCF&L] Action Agenda, 2000) contains elements of both GCC and supply chain thinking. Its primary objectives of promoting inter-firm cooperation and targeting supply chain inefficiencies follow a value chain metaphor, but it also includes the GCC-like expectation that outworkers' conditions can be improved by redistributing benefits within the production chain. From its perspective, the policy understanding of situation of clothing outworkers might be summarized as follows:

1 Improving the efficiency of supply chains will translate into better quality products at a more competitive price, and therefore improve the overall competitiveness of the Australian clothing sector;
2 The major inefficiencies are persistent quality problems, labour turnover and the numerous intermediaries or 'middlemen' that take a share of the surplus but add little 'value' to commodity production;
3 These problems can be addressed by developing inter-firm cooperation, eliminating superfluous production steps and processes, and by improving the wages and conditions of outworkers;
4 This can be achieved without increasing retail prices by redirecting surplus from 'middlemen' to the outworker labour force.

Thus, the policy framework for the revitalization of the local garment industries complements the new outwork regulatory strategies by providing a discourse in which the objective of improving the outwork wages and conditions is made consistent with the objective of improving industry efficiency. However, as the policy framework follows the linear supply chain metaphor, it makes numerous assumptions about the structure and composition of the local garment production industry and about the likely effects of intervention. As the following sections explain, some of these are not applicable to the Australian context, and others apply only with qualification.

Vertically Disintegrated Production

Outwork regulation and industry policy settings assume that the clothing industry is organized in a *vertically disintegrated* production structure linking sequences of highly specialized firms, where those specializing in 'fabrication' (sewing pieces of cut cloth together) engage or comprise outwork labour. Yet although a significant part of the Australian garment industry is organized on a vertical disintegrated subcontracting model (Parliament of Australia, 1996), this organizational form is by no means universal. In fact, one of the central requirements of a competitive vertically disintegrated structure – the presence of large pools of competing and cooperating firms – is not met in the Australian case. As local factory production contracted in the 1990s, remaining firms became increasingly dependent on smaller groups of customers and suppliers, and by 2001 the local production sector had become too small for the 'buyer-led' model to operate in textbook fashion.[2] Competitive subcontracting could have been sustainable in the sector's least specialized segments, where production volumes are sufficient to support multiple firms, but these segments are also the most vulnerable to import competition. A smaller range of subcontracting options implies higher subcontracting risk.

Although conditions of codependency favour cooperative 'value chain' network forms of organization, cooperative structures are not the most efficient organizational option for the garment industries. Cooperative supply structures tend to 'work' in industries such as automobile manufacture, where stable product markets, complex technologies, long product life cycles, high levels of 'sunk' immobile investments and long return-on-investment horizons promote supply chain 'lock-in' and durable, clear-cut authority structures. In contrast, clothing production thrives in conditions where dynamic, loosely coupled structures are able to alter their shape seasonally, depending on the skills and materials demanded by the product range and the shifting fortunes of particular retail brands. Although garment retailers may seek to 'lock in' committed suppliers, there is little pay-off for suppliers to make credible commitments to buyers, since a rational supplier would maximize her autonomy in anticipation of a change in buyer fortunes.

In supply structures characterized by short-term or transient inter-firm relations, buyer firms have limited capacity to exercise the coercive powers of control that are expected in retailer-led outwork regulation.

Retail Dominance

Popular accounts of the clothing sector's 'buyer-led' linear formation are based on well-known studies of the competitive success of vertically disintegrated international firms like Nike and Benetton – firms that draw supplies from production facilities in low wage sites across the globe and act as price-setters in global markets. International outwork campaigns are modelled on the experiences of campaigns targeting these powerful firms that are unquestionably in a position to dominate their suppliers. Negotiated bilateral international trade agreements and World Trade Organization (WTO) agreements continue to protect garment markets in Europe and the USA, where these firms mainly operate. These conditions are not typical of garment retailing in Australia.

In Australia, in fact, retailers are frequently less powerful than their suppliers. As a result of the peculiarities of Australia's pre-liberalization structures of industry protection, mergers and acquisitions in both the garment retailing and garment manufacturing sectors generated an unusually concentrated industry structure. In the years before 1991, the organizational structure did not conform to the 'buyer-led' model, but was framed by a power struggle between the major retailer, Coles-Myer, and the major manufacturer/wholesaler Pacific Dunlop, now Pacific Brands (O'Neill, 1994). By the late 1990s, restructuring associated with trade liberalization had not only changed the structure of the garment manufacturing industries, it had also altered the structure of garment retailing. This brought it closer to the 'buyer-led' configuration as specialist retailer chains – the part of the industry using vertically disintegrated outwork production – increased their market share relative to Department stores (see Weller, 2000). In international terms, however, Australian garment chain stores are small firms with limited market power.

The crucial difference between Australian garment retailing and the situation in Europe and the USA is that local chain retailers are forced to compete directly with the global fashion brands that manufacture in low wage countries and derive economies of scale from their international market reach. As a result, local firms are not able to raise their prices above the international benchmarks set by imports, which undermines their capacity to set prices that are 'fair' in terms of local factor (wage) costs. Limited price flexibility in retail markets is a major point of divergence from the overseas prototypes on which anti-sweatshop campaigns are based.

If local retail brands increased their price and become uncompetitive relative to global import brands, outworkers' jobs would be lost and indirectly moved offshore.[3] As Australia's clothing industry policies recognize, given that local garment prices cannot increase in a competitive market, then improved wages and conditions for outworkers must be achieved either by reducing firms' profit margins or by eliminating supply chain inefficiencies. To avoid the former, the only option is to target inefficiencies. Given that outwork is a highly 'efficient' model in terms of labour productivity, the search for efficiency must target other aspects of the production process.

Supply Chain Efficiency

In practice, the aim to improve the situation of outworkers by improving the transparency and efficiency of supply chains translates into strategies to eliminate 'unnecessary' steps in the value adding sequence, in effect, to close the gap between retailers and outworkers (TCF&L Action Agenda, 2000). This objective involves demonizing the greedy 'middlemen' who extract profits from the supply chain without adding a commensurate amount of 'value'. In some instances, for example, retailers have blamed outworkers' plight on wholesalers' failure to pass on their contract payments, which are based on the assumption of the payment of Award wages to production workers (Parliament of Australia, 1996).

Yet portraying 'middlemen' as inefficient reflects the commodity-based linear metaphor's tendency to undervalue processes that are not directly concerned with the commodity production sequence. As a result, intermediaries' irreplaceable functions are overlooked. First, intermediaries maintain and reproduce networks of outworker labour. This indispensable if ethically questionable task – of locating pools of workers willing to work on intermittent schedules for comparatively low wages – is best organized at the community level, close to the potential workforce.[4] Second, intermediaries bridge a social divide. Few retailers could comfortably work in the communities where outworkers are located; the social and geographical distances between retailers and outworkers are simply too great. Third, intermediaries not only manage the logistics of delivering and picking up work from outworkers' homes, but they also monitor quality standards and ensure timely completion. This requires skills that retailers rarely possess: a detailed knowledge of garment production technologies combined with the ability to deploy methods of power that are effective in the outwork context. Shifting from a commodity-based to a production management perspective reveals 'middlemen' as *the* crucial link in the outwork production chain.

Perhaps more importantly, the notion that the 'fat' in the production system could be captured from middlemen and redistributed to outworkers directly contradicts the GCC expectation that surplus will accrue to the most powerful actors in the commodity chain structure. In a market economy where differences in bargaining power at each dyad link of the supply chain determine prices, including the price of outwork labour, it is unlikely that savings from improved supply chain efficiency would flow to outworkers. It is instructive to recollect that before trade liberalization, when the clothing industry was protected from competition, it offered the lowest wages of all manufacturing sectors while enjoying better than average rates of profit (Webber and Weller, 2001).[5]

Traceable Linkages and Consumer Power

When retail-led outwork regulation and activist campaigns pressure retailers to accept responsibility for outworker wages and conditions, they assume that inter-firm linkages in the clothing sector can be directly traced from outworkers to consumers, and that this inescapable link makes firms vulnerable to intervention.

This notion has transferred to the clothing industry from studies of the food industries, where marketers enhance the symbolic value of their products by promoting their provenance and highlighting the 'natural' connections between products and their places of origin (e.g. Scotch Whisky, King Island cheese). Activist attention to the unpleasant or unethical aspects of production at the source of food chains is successful because it directly attacks the core marketing values of these brands. But this link between value and origin takes a different form in clothing sector, where the symbolic value of garments is undermined by reminders of the raw materials and the work involved in their fabrication.[6] Instead, garment marketers associate finished products with fashionable places (Paris, Milan) and create allusions to cosmopolitan or luxury lifestyles that aim to separate products from their commodity natures. As a result, retail firms purposefully seek to generate discontinuities that break up or conceal tangible connections between the conditions of production and the ambience of retail showrooms. It follows that in garment markets, firms are likely to respond to activist campaigns by intensifying their efforts to obscure any direct linkages with the origins of garments. If outworker-made garments emerge from fractured organizational configurations in which arms-length, 'ask no questions' transactions are the norm, conditions in the labour market will not be controllable by supply chain based intervention. Moreover, as the complexity of the industry increases, the likelihood and feasibility of effective top-down control decreases.

Connectedly, one of the central pillars outwork activism is the idea that firms will derive a market advantage, through enhanced brand image or increased sales, by publicizing their compliance with outwork regulation. Accordingly, and following accepted labelling practices ('No animal testing'), compliance with the new regulations in New South Wales and Victoria earns firms the right to label garments with a tag certifying that their products are made under Award conditions. But reminding potential buyers of the real world origins of garments directly contradicts the principles of fashion marketing. Fashion retailers spend lavishly to construct luxurious in-store environments or 'dream worlds' that transform shopping into an opportunity to step out of the mundane everyday world and its worries (Wilson, 1987). Fair trade labelling would break the spell by encouraging consumers to think about the number of hours of work required to purchase a garment and about the amount of money outworkers have been paid to make it. For consumer groups sensitive to labour standards, labelling might promote sales by bringing the brand closer to the world-view of its target consumers, but in 'dream-world' markets, drawing attention to the conditions of production is likely to reduce rather than increase sales, and firms are therefore likely to resist labelling initiatives.

Discourses about Firms and Workers

Global anti-sweatshop campaigns consciously work to reshape public expectations of appropriate corporate behaviour and to reconstruct the boundaries of corporate social responsibility. In Australia, campaigns to re-regulate outwork labour rely on a discourse that constructs firms as moral agents – that is, as entities with the ability to undertake directed action, to recognize the outcomes of action, to take responsibility, and if necessary, to adjust their behaviour accordingly (De Winter, 2001).[7] This discourse extends firm responsibilities beyond the accepted range of business activities focused on enhancing the commercial bottom line (Millstein, 1998: 25). The new regulations in New South Wales and Victoria also rely on the idea that firms – rather than the people that work in them – are capable of behaving ethically.

When firms are conceived as moral agents, they are attributed the capacity to experience human-like emotions such as shame. Shaming strategies have been central to community action on unethical corporate practices, including the exploitation of outwork labour. These strategies place consumers 'above' retailers in the hierarchy of supply chain power and challenge firms to live up to their own 'socially responsible' corporate slogans. They threaten to penalize recalcitrant firms by activating consumer buying power.

However, by casting firms as moral actors, this discourse conceals firms' identities as profit-seekers in the capitalist economy and alters the ways we think about industrial relations and corporate practices. When these strategies have been effective, firms' compliance with 'ethical sourcing' is taken as evidence of their ethical intent, and as demonstrating their status as unitary moral agents. But responsible behaviours can also be interpreted as the favoured strategy of firms marketing to 'socially aware' consumer groups. To insinuate their brand messages into the world-view of their target consumers, clothing firms routinely nurture the relationship between dress practices and identity (Davis, 1992). If fashion conscious consumers believe that shopping for 'ethically made' fashion clothing is an effective means to change the world, then that sentiment will be quickly incorporated into the brand image. Responding to such market signals is simply good business. However, if firm motivation is strategic, aiming to protect of brand image (Cragg, 2005), rather than an indication of an 'ethical' disposition then the level of corporate goodwill will vary with the intensity of anti-sweatshop sentiment among each brand's target consumer segment. Gains made in progressive market segments will not generalize to the wider industry until all consumers decline to buy goods made under exploitative conditions.

The negative aspects of constructing firms as moral agents have long-term implications that need to be considered. There are two issues here – one concerns corporate power and the other, workers' rights. First, as corporate 'shaming' strategies target brand identities, they can also act to reinforce firms' powerful, monolithic brand images, in effect, creating greater brand coherence by inserting a defining opposition. In this way, strategies that 'play' to brand identities risk being co-opted and negated by brand marketers, as in the case of Nike, which has managed to subvert the anti-sweatshop message to reinforce its 'No Sweat' brand identity (McKay, 1995).

With regard to worker rights, the use of moral entreaties to secure community support for social action necessarily positions outworkers as morally wronged. Thus, outworkers must be depicted as more vulnerable than other workers, as the victims of unscrupulous middlemen, and as incapable of defending their interests (that is, not without more external intervention than other workers). By 'constructing the sweatshop workers as tragic victims for the colonizing gaze of benevolent liberal reformers and anti-sweatshop activists' (Morton, 2003), campaigners have created outworkers in a Third World underclass image, as an 'Other' that is the antithesis of the ethical consumer. Activist campaigns then neatly reunite the opposites by forging an emotional and political link in which consumers reach out to outworkers. There is no space here for alternative narratives, such as the outworker as ambitious migrant entrepreneur (O'Neill, 1997). Outworkers are never constructed as *heroically* managing households, children and work under arduous circumstances.[8] Such stories, unfortunately, do not fit the 'moral' framing of the issue. Neither are they as appealing to the media, whose continuing interest in the plight of outworkers sustains activist strategies.

In contrast to union-based campaigns that have emphasized bringing outworkers onto an equal footing with factory-based workers, activist campaigns based their emphasis on 'shaming' work to welfarist objectives (a social rescue mission), rather than industrial ones (the universal defence of workers' rights). The politics of compassion risks further undermining outworkers' social position by stereotyping their qualities and reinforcing their social disempowerment. In this context, it is not at all surprising that many outworkers attempt to reinvent themselves as small business entrepreneurs to avoid the social stigma that emerges as an unintended consequence of the outwork campaigns. In addition, as these campaigns characterize outwork as atypical, they locate clothing outworkers as different from both factory workers and from home-based workers in other industries. Yet, in the current industrial relations environment, outworkers are by no means the only workers facing manifestly inequitable bargaining conditions. It is important to keep in mind, too, that working in a clothing factory has not always been a bed of roses, even under Award conditions, and that women with care responsibilities see many benefits in the flexibilities of outwork. Typecasting outwork drives further the wedge of social inequality in Australia.

Compliance and Dynamic Readjustment

Internationally, competitiveness in the garment production industries has been intertwined with firms' capacities to exploit the uneven landscapes of regulation. At the same time, multiple forms of industrial organization coexist in dynamic economies and the organizational mosaic changes continually as firms alter their competitive strategies and refigure their social linkages to maintain competitiveness. It follows that any changes in regulation will stimulate reactive and proactive reconfigurations of firms and industries. As Australia's new forms of outwork regulation generate reactive restructuring, the test of the new rules will be in their capacity to restrict the previously 'unregulated' subsector without creating new opportunities for regulatory avoidance.

If we accept that firms' uneven compliance with outwork regulation reflects their market position rather than their ethical disposition, then it is reasonable to think about how different types of outwork production might be influenced by the new regulatory context. For this purpose, the structure of Australian garment production can be understood as comprising four basic segments:

a Brands that sell their products to a consumer market sensitive to the conditions of production;
b Brands that sell their products to a consumer market more interested in price than the conditions of production;
c Firms that are not brand owners (and are therefore not directly subject to the discipline of the consumer market) but which operate in accordance with the spirit and letter of industrial relations law;
d Firms that are not brand owners and which operate on a profit-maximization basis.

Accurately gauging the size of these segments is less important for the current argument than recognizing their different positions in relation to outworker regulation. To date, the successes of consumer activist campaigns have been concentrated in segment (a), where the appearance of social responsibility reinforces the brand message, and (c) where firms are operated by people who willingly comply with labour laws. Both these sectors are likely to have complied with earlier forms of outwork regulation. Some firms in segment (b), on the other hand, have actively resisted anti-sweatshop campaigns and oppose the new regulations, and are likely to continue to do so. Firms in segment (d), on the other hand, might be expected to reorganize their activities to quietly slip out from under the net of regulation. In essence, their competitive advantage derives from their positioning on the periphery of regulation, where legislative ambiguities can be profitably exploited. There are no grounds for assuming that the gains made with regulating firms in segments (a) and (c) will extend to firms in segments (b) and (d), unless there is commercial advantage from cooperating or commercial disadvantage from not cooperating. These 'amoral' firms should be the primary targets of regulation.

In this author's reading, the Victorian Outworkers (Improved Protection) Act 2003 incorporates three escape clauses that will enable such firms to deny responsibility for outworker entitlements. First, firms that are insolvent are exempt from the Act's obligations. This enables unscrupulous firms to simply exit the industry and re-enter at a later time under a new name – a strategy not uncommon in the clothing sector. Second, the obligations apply only when the organizational relationship takes a direct contracting configuration. In this case, the intervention can be defeated by 'breaking' the supply chain and dealing only in (apparently) arms-length purchases. Third, because core firms are exempt from the obligations if they 'seek a written statement from a subcontractor which states the money payable to outworkers for work done under the contract has been paid', the most powerful firms may be able to simply pass responsibility down the chain. Power relationships in the supply chain will continue to frame the allocation of responsibilities.

Experiences in other jurisdictions provide some indications of the creative avoidance strategies that might emerge. In response to the voluntary Ethical Trading Initiative, which commits US retailers subcontracting in low wage countries to upholding ILO labour standards, Hong Kong based intermediaries (analogous to Australian outwork middlemen) have extended their services to incorporate the management of compliance in Chinese source factories. In addition to the obvious potential for conflicts of interest, these new responsibilities encourage the creation of institutional barriers intended to insulate western buyers from unwanted knowledge about manufacturing conditions. Moreover, as intermediaries restructure cross-border governance to consolidate their control over work practices in supplier factories, they are vertically reintegrating subcontractors into multi-site organizations (Weller, 2002). The result is an increase in the power of 'middlemen' relative to both retailers and manufacturers (Hale, 2000). This example highlights how firms adapt their operations and restructure their linkages to both accommodate new rules and use them to pursue competitive interests. While the effect of re-regulation on the structure of the Australian industry will be difficult to predict and quantify, there is no doubt that it will have effects. The Hong Kong example suggests the empowerment of middle-level gatekeepers that control flows of information in the supply chain.

A final point concerns the scale and scope of regulatory intervention. Given the inhospitable character of Federal labour market policies, recent regulatory changes have been developed at State level and have concentrated on micro-level interventions in inter-firm and workplace relations. In the case of a dispersed industry like garment outwork, micro-level labour management will always be faced with enforcement failures, and unenforceable laws generally invite infringement. If, on the other hand, the prevalence of outwork in the Australian economy is understood as the outcome of an intersection of trade policies, the rules of the social security system and the international uncompetitiveness of local garment firms, then the Federal jurisdiction, which controls these contextual forces, must remain the crucial site for intervention. Because of its industrial characteristics, garment production will not disappear from the Australian economy, but the industry's size and its forms of organization can be managed indirectly; for example, by ensuring that unemployed and under-employed workers are in a position to refuse unreasonable work, or by introducing industrial sewing machine technologies that prohibit their operation on domestic power supplies.

A nation with a well-developed regulatory framework has at its disposal a broader range of regulatory options than the strategies of the anti-sweatshop repertoire, which assume transnational production in the context of weak national regulatory frameworks. Although outwork was never effectively managed in the arbitral system, interventions need not and should not rely solely on consumer pressure, firm goodwill or media interest. To bring regulation to unwilling firms and hesitant workers it must be accompanied by active, independent surveillance, must not rely on worker complaints, and must be constantly refined as new avoidance strategies emerge.

Conclusion

Australia's new forms of regulation of the clothing outwork sector rely on a hybrid 'value chain' metaphor that oversimplifies the complex array of organizational forms that coexist within and between firms in the real world. This article has provided a detailed critique of the assumptions underlying the new interventions. It has suggested that to be effective, policies should not simply apply strategies developed overseas, but should seek to analyse and respond to the unique circumstances of the Australian clothing industries. Interventions based on the assumption that firms are 'moral' agents are unlikely to alter the behaviour of unscrupulous firms.

Despite its exceptional aspects, the similarities between outwork and other less secure and less reliable forms of work in contemporary Australia are real and persistent. Seeing outwork as a unique, sectoral phenomenon generated solely by conditions within the clothing industries separates outwork from more general labour market and social welfare issues. This perpetuates the myth that unregulated outwork is the 'rotten apple' in the business basket, rather than an integral part of the more general neo-liberal policy agenda of undermining labour standards. The Federal Government's support for the regulation of outwork in 1996 enabled further labour market 'reform' to be presented as a politically palatable possibility. Finally, by constructing firms as moral agents and extending firm jurisdiction over labour, the new forms of outwork regulation can be viewed as effectively privatizing the regulation of workers' wages and conditions. Whether or not this is a positive development needs to be debated vigorously; its implications extend beyond the short-term issues of one sector.

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Notes

1 This article was written before the introduction of the Workplace Relations Amendment (Work Choices) Act 2005 and does not consider how Work Choices will alter the situation of outworkers.

2 This occurs through complex circuits of debt, in which the bankruptcy of one firm could set off a chain reaction of associated failures. Industry insiders describe the sector as having contracted below its necessary competitive 'critical mass'.

3 As international logistics services improve, local 'quick response' production offers less 'natural' protection. In addition, while in other western economies smaller garment brands compete by outsourcing production tasks to adjacent, economically dependent low wage nations, this option is less practical in Australia. I have argued elsewhere that Australian firms' offshore assembly in Fiji cannot be viewed as equivalent to the road-based US–Mexico or EU–Eastern Europe connections (see Weller, 2000).

4 Transaction cost theory anticipates that outwork organized around existing social networks will incur fewer coordination and organizational costs. However, while intermediaries have in the past been recruited through ethnic community networks, anecdotal evidence suggests that more formal recruitment mechanisms are developing as outwork becomes institutionalized.

5 Data on profit rates in this industry is distorted by the high firm exit rate (which increases the apparent profits of remaining firms), but I think on balance this conclusion is valid.

6 An exception is a firm like Australian work-wear specialist Yakka, where the core values celebrate Australian workers and egalitarian mateship.

7 According to De Winter's (2001) relational analysis, moral agency is itself a social construct with no content prior to or outside of social historical processes.

8 Perhaps this is because the characterization 'heroic' is reserved for men (Enstad, 1999).

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