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The Need for a Reduced Workweek in the United States

VICKI SCHULTZ AND ALLISON HOFFMAN

INTRODUCTION

FIFTY YEARS FROM now, what kind of lives will women and men in the United States and other advanced industrial societies lead? Will women still do more of the work of raising the children and running the household, unable to pursue paid work on equal terms, while men devote themselves to their jobs, unable to participate fully in family life? Will people continue to face problems of overwork and underwork, with the highest earners putting in Herculean hours at their jobs, while the lowest earners work at less-than-full-time, even temporary, jobs that do not pay enough to make ends meet? Or, will we find ways to ensure that all workers, particularly women, can change this pattern and have the time and resources needed to combine working at decent jobs, caring for themselves and their loved ones, and participating meaningfully in civic life?

In the United States, as elsewhere, increased globalisation has ushered in a new paradigm of production and work—one in which many employers demand ‘flexible’ workers whose jobs and hours can be altered easily in order to match rapidly changing production demands. This shift has created new vulnerabilities that our eroding system of worker and welfare state protections is not equipped to address. Our regulatory system presumes that most families have a full-time (typically male) breadwinner and a supportive, near full-time (typically female) caregiver (Kessler-Harris, 2001). This image no longer fits reality. In today’s economy, most men are not sole breadwinners; few jobs provide a family wage or promise the long-term security or generous benefits needed to fulfil such a role. Nor do most women now specialise in family care alone; the great majority of families with children now include a mother who works for pay, either as a dual earner or as a single head of household (Kalleberg *et al*, 1997; Jacobs and Gerson, 2004). Just as women have come to depend more on paid work, the protections traditionally accorded employment have eroded. A growing

number of men and women now occupy what is sometimes called 'contingent' or 'precarious' employment—meaning jobs that are characterised by less security (Stone, 2003), shorter hours, less regular schedules, lower wages, less union support, weaker pension or health care benefits, and fewer opportunities for voice and community than previous breadwinner jobs (Kalleberg *et al.*, 1997; Lester, 1998; Fudge and Owens, chapter 1 in this volume). In the United States, as elsewhere, women are disproportionately employed in such precarious work, especially in the least remunerative, least secure forms (Kalleberg *et al.*, 1997; Lester, 1998). But many men have also lost security and real wages, as men's employment patterns have come to resemble women's (Schultz, 2000). Unfortunately, the social supports that might alleviate these new insecurities have not materialised, but have actually diminished as traditional welfare state protections have weakened. As the family wage has all but disappeared and the government has withdrawn support for raising families, the burden of providing sustenance and care has fallen more than ever on individual Americans—all too often, on women, who continue to provide the lion's share of unpaid family labour. In a real sense, women are bearing disproportionate costs of the new economy.

Some of the same factors that have led to a rise in precarious employment are causing new stresses around working time. Over the past few decades, as employers have sought greater flexibility in the deployment of workers, many Americans have moved away from the 40-hour workweek (Schor, 1991; Jacobs and Gerson, 2004). At one extreme, with the rise of precarious employment, many employees now face a problem of underwork, with growing numbers working fewer than 30 hours per week at paid jobs (Bell, 1998; Jacobs and Gerson, 2004), even though almost half of them want or need to work more hours (Tilly, 1996, citing Shank, 1986). At the other extreme, growing numbers of employees now experience overwork, often working more than 50 hours a week. These patterns create gender- and race-based inequalities, as well as broader class-based vulnerabilities. The long hours associated with the higher-paying, white-collar jobs disproportionately held by college-educated men often conflict with family caretaking and other important commitments, while the lower wages and opportunity sets associated with the low-hours, contingent jobs disproportionately held by women, racial minorities, and the unskilled create short- and long-term economic insecurities that also threaten family life and individual well-being.

The policy interventions made at this juncture will shape people's lives, and their available choices, for years to come. In contrast to dominant US legal feminist approaches, which define the problem as one of work–family conflict and seek reforms that will take account of women's caretaking responsibilities, we argue that, in order to alleviate time stresses and address the related problems of overwork and underwork in ways that make genuine equality for women possible, feminists must call for broader measures to

reduce and reorganise working time for everyone. Perhaps paradoxically, our analysis reveals, equality for women can best be achieved through universal measures that benefit all workers.

FEMINIST APPROACHES TO WORKING TIME IN THE UNITED STATES

Dominant Legal Feminist Approaches

American feminists have long been concerned with working time. In the past, feminists attributed economic disparities between men and women primarily to women's inferior position in the labour force. Feminists sought to promote equality by eliminating various forms of employment discrimination that denied women equal access to paid work, including higher-paying, full-time breadwinner positions that had historically been reserved for men (Hartmann, 1976; Bergmann, 1986). Over the past decade, many feminists have shifted away from the earlier focus on sex segregation and have begun to attribute remaining gender-based economic disparities to women's disproportionate responsibilities for family caretaking.

In the US legal feminist literature, two basic approaches have emerged: a 'compensation' approach that seeks to fund and increase the time available for women's family caretaking *outside* the workplace and an 'accommodation' approach that advocates workplace reforms that will accommodate family caretaking roles *inside* it. Both approaches assume that women will continue to do most of the unpaid family caretaking and urge mechanisms to eliminate the costs and burdens associated with it.

The first approach aims to provide economic security for women by increasing the economic value of their unpaid family labour. Some scholars promote private family law-based 'joint property' solutions (see Siegel, 1994), which require husbands to share more of the income and assets made possible by their wives' family labour. Joint property advocates have proposed a number of solutions, including giving married mothers a greater portion of their husbands' ongoing income, for a longer period, after divorce (Williams, 2000b), and treating a homemaker's non-monetary contributions on a par with a spouse's monetary contributions in premarital contract cases (Silbaugh, 1998). Moving away from such private law solutions, other feminists have called for greater public subsidies to support care work. Law professor Martha Fineman, one of the earliest and most powerful advocates for this position, emphasises the 'inevitable dependency' experienced by mothers and calls for broad-ranging subsidies to support those who have primary care of children (1995). Anne Alstott proposes that primary caretakers receive an annual grant to spend on child care, self-education, or retirement savings—all enabling greater lifetime security (2004).

Writers in this tradition reject an emphasis on paid work and stress that women should have the choice to perform childcare on a full-time or near full-time basis if they so desire (Zatz, 2004).

The accommodation approach, by contrast, assumes that, even though women will continue to be the primary family caretakers, most will also spend time working for pay. As a result, advocates call for reforms to make the workplace more 'family friendly' by accommodating women's caretaking responsibilities. For example, some writers urge the use of employment discrimination law to attack practices, such as requiring long hours or providing inadequate leaves, that are said to have a disparate impact on women as primary caregivers (see Kelly, 2003; Travis, 2003; Williams, 2003). Proposed reforms include creating more and better part-time options, more flexible work schedules, and more generous family leave, all of which restructure caregivers' working time in an attempt to alleviate their 'time crunch' at work (Williams, 2000b; Kelly, 2003; Glass, 2004). Some feminists even speculate that the rise of part-time and other non-standard forms of employment could ultimately prove beneficial to caregivers by undermining traditional breadwinner norms (Pateman, 1988).

Problems with the Dominant Approaches

Many of these proposals could, in the short-term, alleviate problems people face in obtaining resources for caretaking or balancing it with paid work. Yet, ultimately, by focusing so narrowly on caretaking issues, the dominant feminist strategies fail to address the broader socioeconomic and quality of life problems that the current crises around working hours poses. Most proposals risk reproducing existing gender, class, and racial hierarchies rather than seizing the opportunity to address and deal with structural inequalities in a more comprehensive, and equality-enhancing, way.

By tying compensation for caretaking to a spouse's income, for example, joint property proposals presume and perpetuate a middle-class, married family structure in which one spouse (typically, the husband) earns enough to support the other's caretaking activities. But, given that in most couples women earn lower wages than men, increasing intra-couple compensation for caretaking only increases the incentive for women to invest in caretaking and their spouses' careers at the expense of their own—a trade-off that can lower their labour force attachment, earnings capacity, and economic security in the long run. Not only do these trade-offs potentially harm the women who make them; they harm all working women, by lending credence to employers' stereotypes about women's lack of career commitment that foster statistical discrimination (Mahoney, 1995). In fact, as feminists of colour have noted, focusing on the situation of middle-class wives and mothers who care for their own families neglects the plight of

the many low-wage workers who care for other people's families, while struggling to provide for their own (Romero, 1999; Smith, 1999). Furthermore, joint property proposals would do nothing to help those who care for their own loved ones outside marriage, including a larger share of men and women of colour (who are less likely to marry), gays and lesbians (the legality of whose marriages remains uncertain), and single parents (Schultz, 2000).

Although public subsidies for caretaking alleviate some of the biases in joint property proposals, most schemes still encourage women to invest more heavily in caretaking at the expense of developing their own job skills, while still failing to deliver adequate funding for intensive caretaking. Scholars have shown that, as important as it is to spread the cost of family caretaking more equally throughout society, proposals to pay people to invest primarily in care work for long periods can reinforce the gendered division of labour, hurting both women and men in the long run (Bergmann, 1996; Fraser, 1997; Lester, 2005). Caretakers are left to rely on a second wage earner, or on part-time or other precarious forms of paid work that they can combine easily with caretaking, which in turn increases pressure on their partners to work longer hours. Thus, the compensation approach seems likely to reproduce existing inequities.

The accommodation approach at first seems more promising because, at least theoretically, it could lead to reforms that would enable men and women alike to combine paid work with caretaking. Yet, in practice, such proposals can reproduce traditional arrangements. For example, using disparate impact lawsuits to obtain accommodation reforms requires claiming that women are less likely to be able to comply with standard work requirements. Furthermore, the proposed reforms, such as more and better part-time work options, would segregate women into separate 'career-primary tracks' and 'family-and-career tracks' (Schwartz, 1989), rather than incorporate them as full equals into workplaces that provide all employees more time for outside commitments. Without reforms to address the larger structural problems underlying the 'time crunch', work-life balance remains an individual problem, requiring difficult trade-offs between meaningful participation in market work and sufficient time for family, community, and leisure.

Ultimately, many legal feminists in the United States have missed the opportunity to address the broader problems posed by the new economy, including rising insecurity, unpredictable work schedules, decreased benefits, and serious problems of both overwork and underwork. Resolving work-family conflict and providing adequate resources for caretaking must be addressed in this larger context. Feminist solutions that encourage part-time or flexible work for women, in isolation, risk exacerbating current disparities in which well-educated, white men hold higher-paying, more mobility-enhancing positions, and women and minorities occupy

more precarious jobs. Such solutions also neglect the gender-based burdens placed on higher earners (typically, men) who feel pressure to support intensive caretaking by their spouses or partners. To enable their partners to stay at home or to work part time, many men must work overly long hours in ways that may compromise their health or their relationships with their children. There is a need for newer approaches that treat work–family conflict as part of a larger set of issues confronting workers and citizens, both men and women, in the twenty-first century.

The Need for a More Transformative Approach

By combining redistributive policies with more imaginative gender politics, newer feminist initiatives seek to chart a future in which both men and women have more freedom to lead lives that combine paid work, intimate care, and civic involvement in more empowering ways (Bergmann and Hartmann, 1995; Fraser, 1997; White, 2001; Young, 2003; Lester, 2005). Barbara Bergmann, for example, has criticised traditional welfare programmes in the United States for penalising poor women's involvement in paid work. She advocates creating a publicly funded system of high-quality, universal child care such as that provided in France, supplemented by other benefits such as health care and rent vouchers (Bergmann and Hartmann, 1995) to assist poor working parents. Along similar lines, Lucie White argues that funding diverse forms of child care will facilitate poor people's employment without forcing them into low-wage jobs on employers' terms (2001). Gillian Lester offers a carefully crafted proposal for paid family leave that will allow both mothers and fathers to make lasting commitments to their careers, while minimising the potential for women to harm their long-term career-building prospects (2005). Other feminists have advocated broader workplace reforms, including stronger disability protections and personal sabbaticals for workers to minimise backlash against women and parents and to facilitate better work–life balance for everyone (Schultz, 2000; Young, 2000). Many feminists have also agreed on the need for earnings subsidies or other basic income supports to ensure that people have sufficient economic resources to avoid both poverty and overwork (Bergmann and Hartmann, 1995; White, 2001; Young, 2003).

More recently, feminists have begun to recognise that current problems cannot be resolved without addressing the issue of working time itself (Schor, 1991, 1994; Jacobs and Gerson, 2004). A society in which large numbers of people feel pressured to work overly long hours at the expense of their families and communities, while other people are limited to low-hours, sub-standard jobs that offer no prospect of mobility, is an inherently divided and unequal society.

THE NEED FOR A REDUCED WORKWEEK

Workweek Trends and Preferences in the United States

Over the past 30 years, as stated above, Americans have moved away from a 40-hour workweek. Some older literature portrayed this trend as an increase in working time for most Americans (Schor, 1991; Hochschild, 1997). But newer work by Jerry Jacobs and Kathleen Gerson disaggregates averages of hours worked to reveal that the real story of working time in the United States is its increasing dispersion, moving away from the 40-hour norm to higher incidence of both longer *and* shorter weeks (Jacobs and Gerson, 2004).

In the United States, in particular, the rise in women's employment and in the hours worked by women, with no countervailing decrease in hours worked by men, has created a 'time crunch' (Jacobs and Gerson, 2004). Compared to nine other countries with a similar level of economic and social development, the United States has the highest average working week for women (37.4 hours), and also the highest percentage of women (11.3 per cent) and men (26.8 per cent) who work over 50 hours per week. Because both men and women work slightly more hours in the United States than in most other countries, American couples put in the most combined time at work as well. The typical American couple with at least one employed spouse works 72.3 hours per week, compared to 57.4 in the United Kingdom and even less in the Netherlands. Dual earner couples, the fastest growing household type, in the United States work a combined average of 81.2 hours per week, longer than their dual earner counterparts in other countries; the United States also has the highest proportion of couples working over 80 and over 100 hours per week (Jacobs and Gerson, 2004).

Contrary to popular explanations, these increases are not attributable to Americans' penchant for overwork. Most Americans, men as well as women, regardless of marital and parental status, say they would like to work less and devote more time to personal and family care (Jacobs and Gerson, 2004). Some people even report being willing to trade wages for reduced working time (Jacobs and Gerson, 2004). At the other end of the spectrum, around 20 per cent of Americans would like to work more, reflecting a coordinate problem of underwork (Jacobs and Gerson, 2004). Evidence suggests that this phenomenon may be magnified for African-American workers, who experience higher unemployment and underemployment, and more often express the need for additional hours of work (Bell, 1998).

While the majority of Americans would like to work less, most feel they cannot afford to do so or that their employers would not allow it. In general, survey data show that workers perceive a trade-off between their use of family-friendly policies and their own advancement, and recent empirical work suggests this perceived trade-off may be grounded in reality

(Drago *et al.*, 2001; Glass, 2004; Jacobs and Gerson, 2004). Women in the United States may be particularly reluctant to risk sacrificing hard-won career advances by using gender-stigmatising forms of family-friendly policies. For example, a study at Pennsylvania State University revealed that faculty members utilised family-friendly policies at very low rates, probably out of a fear that they would be marginalised or discriminated against for doing so (Drago *et al.*, 2001: 40, 46). Such fears may be realistic. For example, studies show that US companies with the most family-friendly policies are not those with the best records for promoting women (Dobrzynski, 1996). Moreover, a recent study suggests that actually using such policies results in negative wage growth for women over time (Glass, 2004). In particular, months worked at home and months of part-time work hours show significant negative effects on wage growth for women who remained working for the same employer, suggesting that employers may stereotype workers who use family-friendly policies (Glass, 2004).

Survey evidence shows most Americans do not want part-time work because they perceive that such work would harm both their short-term economic well-being and their long-term career-building prospects (Jacobs and Gerson, 2004). In some countries, including the Netherlands and Sweden, family-friendly policies have been purchased at the expense of US versions of equality; women in these countries are more likely to work in part-time jobs as a way of accommodating family responsibilities. Despite shorter average workweeks, the workforce in these countries is more highly gender-segregated than in the United States (Jacobs and Gerson, 2004). Thus, feminist strategies to promote part-time work as a way to alleviate work–family conflict may risk compromising more comprehensive versions of equality by limiting women’s opportunities in the workplace.

American workers state a preference, not for part-time work, but rather for the ability to set their own hours, to work from home, and to have the benefit of employer-sponsored or funded child care (Jacobs and Gerson, 2004). Such preferences correspond to social support policies that have enabled greater gender equality in other countries. In the countries studied by Jacobs and Gerson (2004), for example, a greater public investment in child care was associated with a more gender-egalitarian distribution of working time between mothers and fathers. Thus, evidence suggests that policies such as subsidised child care and greater employee control over scheduling may both be preferred by American workers, and more conducive to gender equity in workforce participation.

The Advantages of a Reduced Workweek (and Related Reforms)

Reforms to US overtime and benefits law are required to eliminate the current incentives for employers to utilise employees for overly long, and overly

short, hours. At one extreme, managerial and professional salaried workers are exempt from receiving overtime wage premiums (time and a half) mandated for most other employees under the Fair Labor Standards Act (FLSA),¹ the law setting a 40-hour workweek standard. This exemption, plus the fixed costs of benefits for managerial and professional employees, sets up incentives for employers to utilise them for longer hours, rather than incur the costs of additional wages and benefits that would be entailed by hiring more employees to do the work. Indeed, while comprising one-third of the workforce, such workers constitute nearly 50 per cent of the workers who work 50 or more hours a week (Jacobs and Gerson, 2004). At the other extreme, the Employee Retirement Income Security Act (ERISA)² regulates private employer benefit plans but does not mandate them. As a matter of custom, most employers in the United States voluntarily offer benefits such as health care and pension coverage only to regular full-time employees, and not to part-time, temporary, or contract workers (Langbein and Wolk, 2000)—a pattern that creates strong incentives for employers to create these more precarious forms of work in order to avoid paying benefits. Particularly in light of the rising costs of benefits, the ERISA and the FLSA create incentives for employers to achieve flexibility in their workforces by resorting to overtime and contingent work, even in the absence of genuine market efficiencies for such patterns.

In order to avoid the extremes of overwork and underwork, some scholars have called for eliminating the FLSA exemption for managerial and professional employees and requiring employers to pay pro-rata benefits to all who work for them, regardless of their employment status, proportional to the number of hours they work (Jacobs and Gerson, 2004). Under such an approach, someone who worked 20 hours a week would receive one-half the usual benefits, despite not being a regular 'full-time' employee. At the other extreme, someone who worked 80 hours a week would receive double the employer's usual contribution to benefits—just as if the employer had actually hired a second full-time employee. These measures would remove the current incentives to overutilise existing employees and contingent workers as a way to avoid paying for additional benefits.

Even apart from the extremes, however, the traditional 40-hour workweek is overly burdensome for many people, including the dual-earner and single-parent households that have become the new American norm. Reducing the standard workweek would decrease the stress on all workers, provide a foundation for greater equality in working time between spouses or partners, and create a more level playing-field for single parents who are balancing wage-earning and family responsibilities.

¹ Fair Labor Standards Act of 1938, 29 USC § 201 *et seq* (2004). The executive exemption can be found at 29 USC § 213 (2004).

² Employee Retirement Income Security Act of 1974, 29 USC § 1001 *et seq* (2004).

More moderate workweeks are associated with greater gender equality in a number of countries. In seven out of 10 countries studied by Jacobs and Gerson, more moderate household workweeks—those in which married couples' combined work hours averaged in the 60–79 and 80–99 ranges—were associated with greater equality in working time between husbands and wives (Jacobs and Gerson, 2004). Greater equality in time spent at work creates the potential for a more equitable division of time spent on family caretaking, as well. Wives who have more equal work hours and earnings to their husbands enjoy more economic and social independence, which in turn can give them greater bargaining power to demand more equitable division of household responsibilities (see Mahoney, 1995; Deutsch, 1999; sources cited in Schultz, 2000). Simultaneously, men with more moderate working hours, and less demand on their time by employers, have a greater capacity to spend more time on childcare and household work (Mahoney, 1995). Thus, it is not surprising that studies show that families with more egalitarian distribution of household labour are those in which both spouses have more similar working hours (Coltrane, 1996; Deutsch, 1999). A shorter workweek would also allow single parents to create communal child care or other options, by arranging care with friends, neighbours, and relatives.

Adopting a universal approach that aims to bring the workweek towards 35 hours for *everyone* would also free women and parents from the stigma and disproportionate costs associated with more targeted policies. Employer mandates, when narrowly designed, can result in the employer passing off costs onto the group that is intended to benefit from the mandate, either in the form of reduced employment or wages (Summers, 1989; Jolls, 2000; Lester, 2005). Creating a new universal reduced workweek norm would allow all employees to share in the costs and benefits, and would simplify the process of finding ways for government to redistribute some costs among taxpayers in general (discussed further below).

For all of these reasons, we believe feminists in the United States should join with other concerned groups to advocate a coordinated series of steps designed to achieve a more moderate, more controllable workweek norm as the foundation for a restructured regime of working time. Our programmatic vision of the changes necessary to achieve a more equitable organisation of working time would include:

- reducing the standard workweek from 40 to 35 hours for *all* employees;
- mandating pro-rata benefits for all who work for an employer, tied to the number of hours they work, to reduce artificial incentives for employers to use workers for overly long or overly short hours (alternatively, detaching important benefits, such as basic health care and adequate pensions, from employment and providing them to all citizens as a matter of right);

- eliminating the executive exemption for overtime, to reduce artificial incentives for employers to require long working hours for managerial and professional employees;
- providing reasonable, but not overly long, paid family leave and personal sabbaticals to protect jobs for employees who must care for loved ones or meet other important personal commitments;
- adopting strong anti-discrimination measures to ensure that those who take advantage of reduced hours are not discriminated against for doing so; and
- providing earnings subsidies or other basic income supports to allow low-earners to work a shorter workweek, while still having the economic means to support themselves and their families

(Schultz, 2000; White, 2001; Jacobs and Gerson, 2004; Lester, 2005).

Introducing these elements into American society could occur through a number of approaches, ranging from top-down legislation to voluntary efforts by employers, as explored below.

PROBLEMS ACTUALISING A REDUCED WORKWEEK IN THE FACE OF GLOBALISATION AND NEW LIBERALISM

While a new working time regime would produce immeasurable benefits for workers and provide a foundation for greater gender equality within and beyond the workplace, the current political and economic environment is not conducive to such large-scale reforms. New initiatives around working time have encountered serious problems, even in western and northern European countries and Canada, where there is more political and institutional support for worker protections than in the United States. The new paradigm of labour regulation and widespread employer control over the workplace makes any egalitarian vision difficult to achieve, and serious challenges face any approach.

Legislative Mandates

Traditional 'top-down' mandates to regulate hours currently exist in the United States, including most notably in the FLSA, which established a 40-hour workweek for most workers at the federal level, and state or local extensions, such as legislation in California that established an eight-hour workday. The primary goal of the FLSA was work spreading. By requiring employers to pay premium wages for overtime work, Congress believed it would discourage companies from overworking existing employees, as opposed to hiring new ones (Malamud, 1998). In the current version of the

FLSA, compensatory time ('comp time') is permitted in lieu of overtime pay in limited circumstances—only for public employers, and at a rate of at least 1.5 hours for each hour over 40 hours worked in any one week.³

New Overtime Legislation to Reduce Standard Workweek to 35 Hours

One possible approach to restructuring the workweek is to amend the FLSA to require overtime pay or comp time for hours worked beyond 35 in a week, instead of 40. Federal legislation could also incorporate the other elements of a new working time regime. The FLSA could be amended to eliminate the executive exemption, and the ERISA, likewise, to mandate pro-rata benefits. Anti-discrimination laws could be amended to protect people from discrimination based on their hours. Anti-retaliation provisions under the FLSA⁴ could be strengthened to include punitive damages when employers retaliate or discriminate against employees who enforce their rights under the law. The federal Family and Medical Leave Act,⁵ which requires employers to provide up to a total of 12 workweeks of unpaid leave during any 12-month period, could be amended to require paid leave instead. The Earned Income Tax Credit could be expanded, or other basic income supports adopted, to ensure that everyone is brought up to an income level that will protect them from the need for overwork.

Even if the ideal legislative package were enacted, its success in actually reducing the workweek would not be guaranteed, depending on the response to the regulation (Trejo, 1991; Hunt, 1999; Costa, 2000; Hamermesh and Trejo, 2000; Trejo, 2001). Economic models estimate differing responses from employers, depending on the economic and political conditions in place when legislation was enacted, and the quality of the data set and the methodology used by the researchers (Trejo, 1991; Hunt, 1999; Costa, 2000; Hamermesh and Trejo, 2000; Trejo, 2001). A traditional demand-side model predicts that employers will decrease working hours as marginal hours become more expensive, discouraging employers from using overtime or comp time. By contrast, a compensating differential model predicts that employers will simply lower straight-time wages to achieve the same total hours and salary as before the legislation was enacted, resulting in no change in hours worked (Trejo, 2001). There is some evidence that employers adjust base wages downward in non-minimum wage jobs, reducing the effect of the statutory premiums but not neutralising it completely (Trejo, 1991). Some writers believe that overtime wages create incentives for employees to work overly long hours, so that both employers and employees become locked into overtime as a way of meeting production demands (Schor, 1994).

³ 29 USC § 207(o) (2004).

⁴ 29 USC § 215.

⁵ Family and Medical Leave Act of 1993, 29 USC § 2601 (2004).

Comp Time Instead of Overtime

One option for dealing with these problems is to replace overtime with comp time, essentially mandating a limit on the total numbers hours worked until they reach desired levels. This type of proposal might require that for any hour worked beyond 35 hours in a week, or seven in a day, an employee would receive 1.5 hours (or one hour) of comp time to use as additional time off work. This type of programme currently exists for many US government employees and has been implemented in some industries in France, Germany, and elsewhere, where workers must average no more than 35 hours per week over a predetermined number of weeks.

Where employers enjoy sole control over the structure of the workplace, workers may suffer in a comp time system. In US government positions currently offering comp time, the risk of abuse is relatively low (Eisenbrey, 2003). Record keeping is reliable and transparent, so employees can ensure they receive the right amount of comp time. Turnover is low, so employees are unlikely to lose time off when leaving a job. Labour unions, which are more prevalent in the public sector, can protect employees' rights to use comp time or to resist compelled overtime work. Problems still arise, however. For example, some employers require or pressure employees to use up their comp time quickly in order to avoid accumulating large quantities of 'banked' time.⁶

Concerns about employer power over decisions about comp time use may be magnified in the private sector. Comp time makes overtime hours less expensive to employers, who do not have to pay for them when they are worked. Employers can increase hours to match levels of maximum production, while at the same time saving money if employees fail to use up their accrued comp time hours or use them during less busy times (Golden, 1998). Because most employees in the United States are 'hours takers' instead of 'hours makers', employers are likely to control when employees work longer hours and weeks and when they can take time off, as has occurred in both the German and French cases (Golden, 1998).

By confronting such problems, however, comp time could be shaped in a way that renders it beneficial for employees. Potential policies would include penalising employers for unreasonable denial of employees' requests to use comp time; allowing 'borrowing' of comp time in advance by workers instead of just 'lending' comp time to employers; prohibiting employer substitution of comp time for vacation, holiday, sick-leave, and personal days; insuring comp time in case of employer bankruptcy or relocation; and banning or limiting mandatory or coerced overtime hours (Golden, 1998: 537).

⁶ See, eg, *Christensen v Harris County*, 529 US 576 (2000).

Government Incentives and Negotiated Solutions

In face of the decline of the New Deal regulatory regime, US policy-makers are seeking new models of regulation, replacing legislative mandates with more flexible regulatory approaches to achieve policy goals in a way that can still support democratic principles and encourage innovation (Ayres and Braithwaite, 1992; Estlund, 2004; Lobel, 2004). The proposals attempt to find a middle ground between older ‘command and control’ models, which involve top-down government mandates, and deregulation, which has the potential to unleash free industry reign. Under various names including ‘workplace governance’ and ‘responsive regulation,’ these negotiated solutions seek a balance by using ‘carrots’, ‘sticks’, or some combination of both to encourage industry to comply voluntarily with government policy goals. A reduced workweek could be achieved through a negotiated solution, under which the government would set guidelines or policy goals and then provide industry some level of autonomy in determining the means with which to reach those goals.

Legislative Incentives

Legislative incentives could stand alone or could form the backbone of a more complex negotiated solution aimed at creating a 35-hour workweek by providing financial support for employers who agree to implement it for their employees. Incentives must be accepted widely to avoid stigmatising employees with shortened workweeks; programmes that call on employees to volunteer for lower hours may ultimately backfire. For example, in a reduced workweek trial in mid-1990, Finnish municipal governments attempted to implement six-hour days in order to decrease hours and increase jobs in the face of high unemployment (Mutari and Figart, 2001). Some studies suggest that, in practice, 94 per cent of the employees who opted for the shorter days were women in what tended, in Finland’s sex-segregated workforce, to be female-dominated fields of social services and health services. These women expressed shame over their short shifts, relative to men (Antilla, 2004). As soon as the subsidies were lifted, the shorter days disappeared, as unions and some employees were unwilling to accept the salary cuts that accompanied the reduced hours (Mutari and Figart, 2001). Thus, Finland illustrates how subsidies for ‘voluntary’ programmes can fail.

France offered subsidies to all employers as one part of a legislative attempt to ameliorate high unemployment levels by reducing the workweek from 39 to 35 hours. Through a two-stage legislative process, France moved toward a 35-hour standard workweek beginning in 1998. Initially, the law passed in 1998, known as Aubry I,⁷ offered an incentive grant for

⁷ Loi No 98-461 du 13 juin 1998, Journal officiel, 14 juin 1998, 9029.

companies who would create new jobs equivalent to 6 per cent of their company's workforce, maintain staffing levels for at least two years, and reduce working time by 10 per cent before year 2000 deadlines (Bilous, 2000; Bloch-London, 2004). Employers who sought the subsidy had to follow a set method of calculating working time: in order to achieve an *effective* working time decrease of 10 per cent, employers could not exclude break time or holidays when calculating the total number of hours worked (Bloch-London, 2004). Many employers declined the subsidies under Aubry I, because they anticipated being able to avoid the government's terms if they waited to implement a reduced workweek under the second phase of the law (Bloch-London, 2004). Aubry II,⁸ enacted in 2000, replaced the earlier incentives with a broader structural aid scheme, which subsidised low pay (up to 1.8 times the minimum wage) on a sliding scale to cushion wages until 2005 when the minimum wage would be increased. In contrast to Aubry I, receipt of aid under the second law was not contingent on job creation or on the old method of calculating working time. Employers could comply, in part, by changing the way they calculate hours worked, resulting in less than a 10 per cent reduction in the effective number of hours worked (Bloch-London, 2004). Thus, while subsidies could provide an incentive to adopt a 35-hour standard workweek, to be effective the subsidies must be offered widely and on terms employers will accept—either because the terms are agreeable or because employers believe they must acquiesce to them in order to receive the subsidy or to comply with the law, conditions absent in France.

Negotiated Solutions

Other approaches to negotiated solutions attempt to solve compliance problems by using a careful mix of government punishment and persuasion, and marshalling third-party monitors. The responsive regulation model developed by Ian Ayres and John Braithwaite, for example, posits a pyramid of enforcement in which compliant parties are rewarded, but non-compliance moves them up a pyramid of sanctions toward a 'big gun' aimed at the most serious offenders (1992). Additionally, recognising and seeking to avoid capture of regulatory agencies, Ayres and Braithwaite propose empowering public interest groups to monitor compliance and, especially in situations where unions or employee groups serve as monitors, to ensure internal accountability (Ayres and Braithwaite, 1992). Building on this tradition, Cynthia Estlund proposes a new approach to protect workers' rights in the face of insufficient union strength or agency resources. Questioning the ability of employees, who face collective action problems or fear of reprisal, to serve as adequate monitors, and asserting that US agencies have

⁸ Loi No 2000-37 du 19 janvier 2000, Journal officiel, 20 janvier 2000, 975.

insufficient 'big guns' to pose a credible threat, Estlund proposes a hybrid model where outside consumers serve as monitors, targeting multinational corporations which fail to comply with regulations or which buy from non-compliant suppliers (2004).

A number of countries, including France and Australia, have turned to negotiated solutions to reduce working hours (Berg *et al*, 2004; Bloch-London, 2004). In France, the parameters of Aubry II, which guides implementation of the 35-hour workweek, were determined in negotiations between employers' and employees' unions and representatives. Because of strong opposition to the reduced workweek and threats of non-compliance from employers, the government allowed the second law to be weakened in many aspects in comparison to the first law. As discussed above, the method of calculating working time was relaxed, working time was measured for managerial and professional staff in days rather than hours, limits on total use of overtime hours were relaxed, computation of hours was annualised, and the amount paid for overtime hours was decreased. The newer French government further relaxed the overtime regime, allowing more use of overtime at a lower cost (Bloch-London, 2004).

The relaxation of overtime use and the annualisation of hours gave French employers considerable flexibility to organise workers' hours, in a phenomenon known in Europe as 'flexibilisation', which has also occurred in Australia, Germany, and other countries that have reduced the workweek through negotiated solutions (Berg *et al*, 2004). For some employers, flexibilisation works similarly to comp time systems discussed above, in which they can shift labour to peak times and away from slow times. For example, in France, workers at Samsonite agreed, through negotiation, to work 42 hours per week in the summer, when demand for luggage is high, and 32 hours per week in the winter (Trumbull, 2001). In other work settings, flexibilisation is imposed on a more transitory basis, often to the detriment of employees. One author describes companies in which lower-paid workers have had to make themselves available for work anytime between 6 am and 10 pm, five days a week, as well as Saturday mornings, with little prior notice. Their time off is often dictated to them, at the last minute, in a process called 'demodulation' (Pélisse, 2004a).

The French negotiated regime resulted in some job creation and working time reduction, with estimates ranging from three to 10 hours' reduction depending on the setting. Some employees, especially women in professional jobs, said they appreciate the fact that the new law provided them more time for family and leisure. Other employees, particularly lower-wage employees, reported inadequate control over their working hours and vacation time, which may be mandated by their employers (Bloch-London, 2004; Pélisse, 2004a). Unfortunately, the law left regulation of part-time work completely to company-level negotiations, a process that effected little change for most part-time workers. Nonetheless, there is some evidence of an overall reduction

in part-time work, especially for workers with hours near 30 per week, who were able to transition into full-time work (Bloch-London, 2004).

Some of the shortcomings of the French negotiated solution are due to the relative strength of employers over labour unions or other groups representing employees—a condition that would be even more problematic in the United States. France attempted a weak version of legislated representation in Aubry I, in which companies without union representation could choose a designated employee to participate in the negotiation process (Bloch-London, 2004). While this process created wider employee representation in initial working time negotiations, studies indicate it was often used as a tool by management to validate a decision that was already made and has not created lasting new links to trade unions (Bloch-London, 2004). More positively, in Germany, employee works councils have been successful in helping to enforce collective agreements; working time has been estimated at 0.6 fewer hours per week in companies that have works councils compared to companies that do not have them (Lehndorff, 2004).

Experiences in France and other countries point to a number of conditions that would need to be ensured before the United States could take a negotiated approach to a 35-hour workweek standard. Most importantly, any proposal would have to incorporate a stronger structure to bolster representation of employees' interests for purposes of designing and enforcing corporate compliance. Legislation guiding the policy could create negotiating committees that would include diverse employee representatives (including women and minorities, low-wage and part-time workers). In addition, consumers or public interest groups could be charged with protecting workers by monitoring multinational corporations. Finally, it would be necessary to increase the monitoring capacity of agencies to detect and punish non-compliance. Agencies would need the power to impose stronger penalties for repeated violations of regulatory guidelines. With a fairly strong civil rights litigation-based regime in the United States, it might also be possible to bolster compliance by providing employees a private right of action backed up by punitive damages if they are fired for trying to enforce workplace standards or rights (Estlund, 2004). With more of these conditions in place, a negotiated approach could be effective.

Collective Bargaining

In some unionised settings, it might be possible to achieve new working time standards through collective bargaining. A collective bargaining approach might, in many ways, look like responsive regulation without government incentives. Assuming some unions have sufficient strength to bargain for the necessary reforms, their achievements might pave the way for broader adoption of a 35-hour standard.

Reductions of working time through collective bargaining have occurred in Germany and the Netherlands. German unions have long negotiated for a reduced workweek, mostly in order to preserve predominantly male manufacturing jobs (Figart and Mutari, 1998). For example, a prominent agreement between IG Metall and Volkswagen in 1993 implemented a 28.8-hour week over four days with a pay cut in order to preserve employment. By the mid-1990s, printing and metalworking unions had negotiated 35-hour weeks with flexibilisation, which allowed extended workweeks in peak periods or unusual circumstances, with time off usually given at a later time (Fajertag, 1999). Similar agreements have been arranged at Dutch companies (Fajertag, 1999).

The strength of collective bargaining in Germany may be weakening. Coverage by collective agreements fell from 69 per cent to 63 per cent in the former West Germany and from 56 per cent to 44 per cent in the former East Germany between 1996 and 2001 (Lehndorff, 2004). IG Metall suffered a significant defeat in East Germany in trying to bring work hours down to 35, to match those in West Germany (Fajertag, 1999). Furthermore, actual working time appears to be longer than collectively bargained time, reflecting insufficient enforcement, and pressure to increase hours despite efforts to negotiate otherwise. Flexibilisation can provide the mode for the workweek to stretch beyond the negotiated hours (Fajertag, 1999). With efforts to reduce working hours through collective bargaining failing in a country with strong union presence, such a strategy is likely to face serious difficulties in the United States. Unions would have to see a surprising upsurge, and stronger structures to enforce agreements would have to develop, before a collective bargaining approach to a 35-hour workweek could succeed on any significant scale.

Private Industry Initiatives

In light of the difficulties in achieving a reduced workweek through legislative and collective bargaining approaches, private industry initiatives may provide a way for change to begin. Employees could press individual employers to restructure the workweek, and some companies might comply in order to retain or to attract qualified employees or to achieve other efficiencies. By doing so, these employers would create best-practice models that provide success stories and impetus for larger change.

In the United States during the Great Depression, many companies reduced working hours in order to maintain employment. Under the leadership of its visionary founder and Chief Executive Officer, WK Kellogg, the Michigan cereal manufacturer Kellogg's maintained a 30-hour week for many years after the depression abated (Hunnicut, 1998). WK Kellogg asserted that, with the reduction in hours, employees' efficiency and morale

increased so much that the company could pay them the same wages for six hours as they had previously paid them for eight (Hunnicut, 1998). When Kellogg left a direct management position, the six-hour days began to disappear. But they remained, to some degree, until the mid-1980s, when a new management team, as part of a strategy to trim the payroll to meet a loss in market share, threatened to relocate its headquarters if the workers and unions did not agree to end the remaining six-hour shifts (Hunnicut, 1998).

Even today, some companies have reaped tangible benefits by reducing working hours in the current economy. SAS, a North Carolina software company, has a written policy allowing a standard 35-hour week; although not all employees take advantage of the policy, it is perceived as an option. SAS also provides a full range of on-site benefits to employees, including health care, a fitness centre, on-site car service, and guidance for children choosing colleges and parents seeking nursing homes (Bankert *et al*, 2001; Safer, 2003). This employee-centred, private company, run by co-founder and Chief Executive Officer Jim Goodnight, is highly profitable, partially due to its 3 per cent employee turnover in an industry that averages closer to 20 per cent (Safer, 2003).

In the recent past, some consultants advised companies of the benefits of reduced workweeks. Companies who followed such advice, such as Metro Plastic Technologies, found they attracted better workers and were able to fill empty positions more easily, while producing a higher-quality product with fewer defects (Saltzman, 1997). Such an approach may not apply as easily for some firms with highly skilled workers who require substantial training, where paying overtime can be less expensive than hiring additional employees (Saltzman, 1997). Reduced working time initiatives are more likely to be adopted by firms who face labour shortages and need to attract workers, companies that gain efficiency by increasing utilisation of capital, or companies that can reap the benefits of government incentives.

Nonetheless, industry efforts can provide individual models of success for later legislative and negotiated solutions. Furthermore, in industries where companies compete for highly skilled workers—such as SAS—a domino effect may take hold. As some employers reduce required work hours, others may have to follow suit or be at a comparative disadvantage.

CONCLUSION

At the dawn of the twenty-first century, the old breadwinner/caregiver model has become obsolete. Americans need a new social policy that recognises and provides greater support for the complex, simultaneous involvements in paid work, family caretaking, and civic affairs in which men and women are already engaged. In order to succeed, this new policy should reduce and restructure working time.

In the current political and economic climate, it will be difficult to reorganise working time in a way that genuinely improves workers' lives inside and outside of the workplace. Sustained public education and attention must be focused on the growing problems of overwork and underwork and on the lack of choice Americans face. Women's rights activists must join forces with domestic and international labour movements, civil rights groups, and other social activist groups to articulate a programmatic agenda and to press for change. Together, these groups can lay the foundation for a shift to reduced working time with greater benefits and protections for all workers. Preconditions include stronger employee representation and voice, government monitoring and enforcement capacity, and norms that enable and encourage all men and women to work more moderate, manageable hours.

Sustained academic attention and activism are developing in a number of countries, including the United States, to study and resist the growing time demands that threaten the integrity of family life, the fulfilment of personal goals, and the viability of civic and political engagement. At one level, groups like the Sloan Foundation are funding research on family-friendly initiatives, such as the path-breaking book by Jacobs and Gerson quoted in this chapter. On another level, activist groups have also begun to gain momentum for resisting increased pressures to work longer and harder and for ensuring enforcement of any legislation that succeeds. In the United States, the 'Take Back Your Time' movement, organised by the Center for Religion, Ethics, and Social Policy at Cornell University, has garnered national attention and support from academics, leaders of the labour movement, religious leaders, and non-profit organisations. Its stated role is as a 'nationwide initiative to challenge the epidemic of overwork, over-scheduling and time famine that now threatens our health, our families and relationships, our communities and our environment' (Center for Religion, Ethics, and Social Policy). A similar movement in Canada, 32 Hours: Action for Full Employment, seeks 'to achieve full employment and a high quality of life for all, through a legislated standard work week of 32 hours across Canada' (32 Hours).

As such activism spreads, we are beginning to witness progress in forming and fostering international norms at both the national and global levels. For example, the European Union (EU) has issued directives creating binding labour regulation on member states, including a 1993 Working Time Directive⁹ that restricts and regulates working time for all employees (Murray, 2001b)¹⁰ and a 1997 Part-Time Work Directive¹¹ mandating

⁹ EC Council Directive 93/104 of 23 November 1993 concerning certain aspects of the organization of working time, [1993] OJ L 307.

¹⁰ See also European Commission, 1998.

¹¹ EC Council Directive 97/81 of 15 December 1997 concerning the Framework Agreement on part-time work, [1998] OJ L 14.

pro-rata benefits for part-time workers. Recently, the International Labour Organization (ILO) has also begun to advocate a range of measures to upgrade non-standard and other forms of unregulated labour, and to ensure the creation of more secure forms, in the global 'Decent Work' programme of action (Murray, 2001, 208–12; ILO, 2002; Fudge and Owens, chapter 1 in this volume). A 2001 Report prepared for the European Commission, entitled *Beyond Employment*, explicitly addresses the need to reduce and restructure working time in ways that will broadly protect workers, rather than benefiting only traditional male head-of-household employees (Supiot *et al*, 2001: 90–93, 180). In particular, the Report advocates 'a model where men and women would share working time and keep enough free time for both without forfeiting social rights' (Supiot *et al*, 2001: 181). Such international initiatives may provide valuable resources for activists as they work to advocate for and develop policies at the national level. Although much more remains to be done, these types of efforts offer promise for mobilising support for policies that give Americans more power over the one resource that should truly be theirs to control: their time.