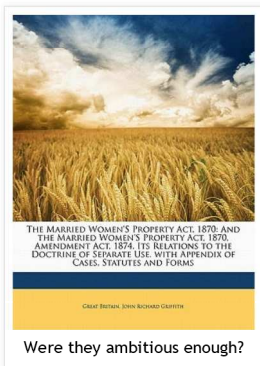


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Sunday, 7 September 2014

Women's property - the case for ambitious change



The proposal for constitutional recognition of Aboriginal and Torres Strait Islander Australians is in the news again, with Tony Abbott [putting the brakes](#) on anything that looks like a 'bill of rights'. At the moment, it's looking like a split argument as between 'minimalists' and others - just as occurred with the republic referendum all those years ago.

I've written about my [own views on constitutional recognition](#), suggesting that a full suite of changes is necessary to achieve the goal. In this post though, I'll explore another minimalist change to rights - that of married women's property. My suggestion is that in failing to be

ambitious in the change ushered in, what looks like a win only really reinforces the status quo.

Property and married women

At common law (the English law that Australia has inherited) married women lost their identity at law, including the right to own property. They did not own property jointly with their husband - instead, any property they owned as a single woman became vested in their husband. It was not until statutory reform in the [Married Women's Property Acts](#) in the 1880s that married women were given the right to own property.

Enacted across the common law world, the Acts were an important recognition of married women's existence before the law, and in an economic sense. However the reforms implemented by the Acts created a regime of individual property. This sounds attractive, but the reality for married women is that this reform has not been supported by complimentary reforms that would empower women economically to become property owners in the first place.

This is one part of the feminisation of poverty. Women earn lower wages (the current gap in Australia is around 18%); they have less superannuation due to lower wages and an interrupted working life; they are constructed by gender norms as being responsible for unpaid caring work and take on a disproportionate amount of this relative to men.

At the same time, distribution of finances within the family has a gendered flavour. Sociological research over the last couple of decades reveals that men tend to pay for 'big ticket' items such as house, car, and women tend to pay for children's needs and day-to-day items. When working out who owns property, this division of finances can play an important role in justifying property ownership - privileging the spouse who contributes to acquisition of the property itself.

This inequality in economic standing is recognised in [family law](#). Family law upholds the individualist approach to spouses' separate property, and after ascertaining what each party owns in their own right, will redistribute property according to what is fair. So the law does provide a remedy to married and cohabiting partners - but what interests me is

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that the original foundation has never shifted. We continue with a system that is inherently skewed away from women making ground in terms of property ownership.

This may be changing somewhat in Australia with different patterns of cohabitation and different life patterns overall. However there is still a lot of evidence showing that despite couples *wanting* and *believing* that they are distributing their labour and finances equitably, in fact they are unconsciously reinforcing gender norms that skew this distribution.

Outside Australia, the issue of women's property ownership remains of [fundamental importance in many nations](#) and so it is useful to critique the approaches that have been taken in the west, in terms of women's empowerment and even economic advancement.

The case for ambitious change

And so back to the question of ambitious change. How might married women's property have looked different? Perhaps implementing 'family property' whereby a couple is deemed by law to own everything jointly - not in the man's name as occurred pre-Married Women's Property Acts, but jointly. This would be a baseline of property ownership. From there, a redistribution could occur (under family law) if the circumstances warranted. There could be other more radical schemes but this is one adopted in many jurisdictions.

Additionally, I would argue that reforms in women's property ownership should have been accompanied by recognition of women's human rights (which took another century), state support for caring responsibilities (such as occurs in Nordic countries), and even re-thinking the nature of intimate relationships as they are policed by the law (such as support for single motherhood, questioning the role of marriage).

This illustrates, I think, that reforms always need to be considered as part of a big picture. To make a 'minimalist' reform, no matter how important that step is, ignores down stream consequences that undermine its capacity to engender change. And after all, change is what reform is all about.

*Image from <http://www.betterworldbooks.com/the-married-women-s-property-act-1870-id-1141842963.aspx>

Posted by Kate Galloway at 11:04

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