



THE AUSTRALIAN NATIONAL UNIVERSITY

# The Downside of Flexible work for Women Lawyers in Private Law Firms

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# Work and the Good Life

## Role of Work - 8-hour day

- A major achievement of the labour movement in the 19<sup>th</sup> century.
- A balanced life: work, leisure & sleep
- Male artisan with an 'economically inactive wife'
  - Women expected to run household & care of children
- Didn't apply to professionals – autonomy over hours of work
- What is a 'good life' – virtue (Aristotle), peace, security, prosperity (Hobbes), happiness (Bentham)

## How much is enough

**Keynes 1930:** ‘Economic Possibilities for our Grandchildren’

- 15 hours per week sufficient; avarice & greed undesirable
- But **neoliberalism presently in vogue everywhere** – the **market** the ‘metanarrative of our time’ (Roberts)
- **Polanyi** – rapacious form of **capitalism** developed in the 19<sup>th</sup> century (Marx)
- **Derber** ‘proletarianisation’ (drawing on Marx) to refer to the work of employed lawyers
- Keynes’ 15 hours per week now fanciful in light of focus on profit maximisation. **Where is the balance?**

## Long hours culture

### **Professional workers, esp lawyers** - from late 20<sup>th</sup> Century

- Work/life collision not work/life balance
- On-line survey (n 424) (Aust corporate lawyers, 2013)
  - 73% <40 hrs per week
  - 61% <50 “ “ “
  - 20% <60 “ “ “
  - Some respondents claimed to work 80, 90 or 100 hrs per week
- **Billable hours** – 7-7½ hrs per day; double that with admin, training, supervision & marketing

# The neoliberal law firm

## Market embrace – maximisation of profits

- Competition policy - end of legal monopolies
- Litigation funders; incorporation of legal practices
- Listing on the stock exchange; mergers – global firms
- ‘Offshoring’ & technological change
- No long loyal to employees; downsize, expendable – eg global financial crisis – partners may be made redundant
- Long hours culture – dissatisfaction

**Quaere:** is ‘the good life’ attainable for (employed) lawyers – esp women - in corporate law firms?

# Towards feminisation

## Aust (Cf UK, US & Europe)

- **Gender equality?** Women 65% law students; 50% practising solicitors (in law firms), but gender pyramid
- **Partnerships** (beneficiaries of profits): Women 17.4% equity partners; 22% equity + salary partners
- **High attrition rate** – Law Council of Aust: *National Attrition & Re-engagement Study (NARS) Report, 2014* & State studies
  - 50% women leave private practice within 5 years
  - Lack of a balanced life & long hours culture major sources of dissatisfaction
- Social model of the **‘ideal lawyer’**: a man without family responsibilities but an ‘economically inactive wife’ – still prevails as in the 19<sup>th</sup> century

# The normalisation of long hours

- **The Protestant ethic & the ‘driven man’** – endless quest for recognition. Competition between lawyers & between firms
- Young lawyers must ‘prove their metal’ by working excessive hours – eg ‘all-nighters’
- **The longer & harder employed lawyers work, the greater the profits for partners**
- The whip used for much of human history; lawyers must meet billable hours targets – **But** increase in bullying, stress, depression
- **Incentives**
  - Free dinners
  - Cab home
  - Approbation (& envy) of peers
  - Hope for partnership – 10 or 20 years’ time!

# Seeking a balanced life

**Flexible Work:** women lawyers saw as a means of work/life balance – eg variable hours, time in lieu, job-sharing + work remotely

**Rhetoric supported by law firms** – but ambiguities

- Uninterrupted career pattern still the norm
  - Too difficult
    - doesn't suit transactional work or litigation
    - applicant too senior – or too junior
  - Suspicion that employee 'not really working'
  - Need to be seen
    - 'face time' or being present assists promotion
  - Clients want full-time availability
  - Must be available for clients or they will go elsewhere



# Feminisation of flexible work

## Ostensibly gender-neutral

**Difficult for men** unless lecturing, sport or semi-retired; 2 weeks paid parental (old paternity) leave

- Acceptable for women with caring responsibilities – but doesn't alter **gendered nature of caring – equality?**
- **Guilt** for absence
- **Resentment** of colleagues
- **Visibility** still a tacit prerequisite for promotion
- Some respondents felt a **clean break** best to escape the **'churn & burn' pressure** of corporate law – went in house, small firm, government – more family-friendly

# Stigma of Flexible Work for Women

View that women with caring responsibilities were not ‘ideal workers’

- **Adverse repercussions** – lesser assignments; affects long-term career & promotion: ‘mummy track’
- Career progression more difficult
- They lost clients if absent
- Burn-out for employed lawyer in mid-40s in corporate firm
- **Leave practice**
  - Establish own firm
  - Drop out from law altogether

## Flexibility and masculinity

- **Harder for men** to obtain as feminised – stigma
- Men still generally play a secondary role in caring
- **But** gender equality depends on both men & women sharing caring
- In 2-lawyer/parent families, the woman usually the one to drop out to care – **economically rational**
- If men primary carers – **a flexibility stigma** - effects masculinity according to US study – become feminised & less likely to be promoted
  - A strong **disincentive for men** to take up
- Women will take up even though **motherhood penalty**

# Dissolution of the boundary between work and life

- **Time off from work often not respected**
- Expected to be available to clients & colleagues when not in the office
- **24/7 availability:** Told to keep phone all night
- No one did their work when absent. Had to catch up – so better to work 5 days & be paid
- **Guilt** in looking after a sick child
- **To escape pejorative overtones of ‘carer’s leave’, sometimes opted for annual leave or sick leave**
- Pressure to take less than 12 months for parental leave

# The Cyborg

- **Cyborg:** A hybrid of machine & organism (Haraway) – metaphor for the lawyer who is always connected to a mobile phone or computer
- **Temporal flexibility:** as to when & where work is performed
- **Technological revolution** – threatens to collapse walls of office
- **Liberation or enslavement?**
- **Millennials & Generation Y:** ‘Digital natives’ – accepting
- **Marx** recognised that if no need to sleep, capital would take the full 24 hours of the day

## Internet addiction

- **‘Job creep’** – insidious increase of work
  - Impact on intimacy & domestic life
  - Flexible work as ‘time banditry’ – Aust study 2012 – average worker donates 17 days per year of unpaid work to employer from working at home
- **Work/life integration** replacing **work/life balance** – increases time spent on work at home – eg email at the dining table, in bed, on holidays, on sick leave
- But **disproportionately impacts on women** – a new form of subordination?
- Entrenches masculinity of apex of organisational pyramid

## Women & Seniority

### Will attitudes towards flexible work change if women assume leadership positions?

- The long-hours culture is a product of a traditional **masculinist ordering** & conservatism
- Boosted by the neoliberal changes; conjunction of power and competition between elite firms
- Unlikely to change as **neoliberalism** currently has a stranglehold on current thought – ‘the economy’ privileged over ‘the good life’. **Law as a business.**
- No such thing as work/life balance; more of a roller coaster

# Cracks in Big Law

## High rate of stress, depression

- Counselling sessions offered by some firms
- NSW Law Society has set up a 24-hour telephone support service for lawyers (Lifeline for Lawyers)
  - NB: Remedial not prophylactic

## Big Law under attack from clients

- Objection to billable hours - work undertaken by juniors
- Growth in boutique law firms – ‘liberated’ from billable hours; commitment to flexible work; appeal to women
- Is ‘the good life’ in law realisable after all?



# New Law

**Disruptive innovations** : Williams, Platt & Lee (2015) US

New firms devoted to flexible work schedules:

- No permanent office, keep overheads low
- Choose hours of work
- Reject billable hours
- Don't check emails after-hours – tell clients
- **But capital is always agile** in finding new forms of profit-making (Marx) aided by
- **Technological innovations** – eg Highster Mobile can log calls & emails, has a camera – check on employees working flexibly
- Flexible work not the great advance that was hoped
- **What's next?**

## Recent papers

**Margaret Thornton, 'Work/life or Work/work? Corporate Legal Practice in the Twenty-first Century' (2016) 23(1) *International Journal of the Legal Profession* 13-39**

**Margaret Thornton, 'The Flexible Cyborg: Work-Life Balance in Legal Practice' (2016) 38(1) *Sydney Law Review* 1-21**

