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# Flexible Schedules, Lower Pay and Women's "Opportunities" in Law

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A number of theories seek to explain how increases in women's participation in job markets relate to decreases in women's wages.<sup>1</sup> While not contesting the general observation that as more women enter an employment field, wages tend to decrease in that field, this paper addresses a rather more restricted result. A decrease in relative wages can lead to women entering a field. Certainly, women are not attracted to low salaries *per se*. Rather, as a salary is suppressed below market rates, employers in that field must increase other benefits in order to maintain their employment levels.<sup>2</sup> It is possible that these increased benefits may be relatively more attractive to women than to men. I propose that Australian academia, especially in the areas with a high paid professional private sector, is just such a case. I look specifically at law, and ask the question: Is this a problem, or an opportunity? Should this phenomenon be opposed or used?

A university administrator<sup>3</sup> recently noted to me that the professoriate in my faculty will become more balanced by gender because men want higher pay and women appreciate the hours. When pressed, she explained that although there is pressure for increased "efficiency" and regular hours, she does not think that movement will succeed. Likewise, while I was calling universities to get general information about academic law in Australia, a head of school discussed this topic with me. He thought that

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<sup>1</sup> O Ashenfelter and T Hannan, 'Sex discrimination and product market competition: the case of the banking industry' (1986) 101 *Quarterly Journal of Economics* 149-173. K Bayard, 'New evidence of sex segregation and sex differences in wages from matched employee-employer data' (1998) University of Michigan Econometrics and Economic Theory Paper No 9801. M Carter and S Boslego Carter, 'Women's recent progress in the professions or, women get a ticket to ride after the gravy train has left the station' (1981) 7 *Feminist Studies* 476-504. D MacPherson and B Hirsch, 'Wages and gender composition: Why do women's jobs pay less?' (1995) 13 *Journal of Labor Economics* 426-471. B Reskin and P Roos, *Job Queues, Gender Queues, Explaining Women's Inroads into Male Occupations* 1990. E Sorensen, 'Measuring the effect of occupational sex and race composition on earnings,' in R T Michael, H I Hartmann and B O'Farrell (eds) *Pay Equity: Empirical Inquiries* 1989.

<sup>2</sup> Two key assumptions underlie this conclusion. First, previous wage rates were balanced relative to other markets and non-wage working conditions. Second, individuals may enter or leave the field of employment. Note that the time for entrance and exit would contribute to the length of time taken to adjust other benefits.

<sup>3</sup> Individuals will remain unidentified beyond role and gender.

academic law should particularly suit women with small children: “If there is no baby sitter, stay home”. He expressed three concerns with employees: publications, teaching quality, and availability to students. Given the state of electronic communication, he considered availability to be easily maintained. Thus, academic faculty should be able to function from home if they wished. He claimed to have no interest in controlling academic staff members’ time, although one would suspect that he would like the school to have significant input in scheduling of units. He did acknowledge that certain of his superiors do want academic staff to be on campus for regular work hours.<sup>4</sup>

#### *Salaries in law practice have increased relative to salaries in academia*

Academic salaries have not risen as much as legal salaries recently. For example, consider the years between 1986 and 1993, the most recent years with consistent data available. In 1986 lawyers earned an average of about 80 percent of average academic salaries. By 1993, law salaries had risen to equal academic salaries.<sup>5</sup> See figure 1. During the 1990s the government tightened university funding and loosened regulations on the private sector, therefore it is likely that this trend continued in kind if not degree.

#### *Academia offers more flexibility in work hours compared to law practices*

Becker contrasted her experience practicing law and serving as an associate dean with “being a regular faculty member”.<sup>6</sup> While her observations are not quantified, they are convincing. Three of her comparisons are particularly telling on the issue of working hours. In administration and practice she “had to keep track of vacation and sick days”, “worked a good portion of most weekends” and “had to be physically present at work many more hours than any brand of pantyhose would comfortably accommodate.”

Few Australian women professionals in private legal practice take their full entitlement of parental leave due to pressure to maintain their careers.<sup>7</sup> Hunter and McKelvie document that barristers face particular constraints imposed by court schedules, solicitor contracts, and the premium placed on continuous practice. These constraints limit barristers’ ability to adjust work schedules around other needs.<sup>8</sup> Personally, my wife and I have found it much easier to adjust academic schedules around child rearing needs than to adjust law practice schedules.

#### *Theory of preferences*

Universities and academic staff both care about wages and staff control of work schedules. Of course, they do not precisely agree. Universities would prefer to pay lower salaries for any given quality of employee, and to have more control over work

<sup>4</sup> Rather than actually increasing flexibility, universities may lag behind the private sector in a broad drive toward greater employer control. This position presented in this paper addresses the difference in flexibility between universities and the private sector, rather than absolute levels of flexibility.

<sup>5</sup> Australian Bureau of Statistics, *Distribution and Composition of Employee Earnings and Hours—Australia* (various years).

<sup>6</sup> S Becker, ‘Thanks, But I’m Just Looking: Or, Why I Don’t Want to Be a Dean’ (1999) 49 *Journal of Legal Education* 595.

<sup>7</sup> C Sherry, ‘Parenting and the legal profession’ (1999) 73 *Law Institute Journal* 58-59.

<sup>8</sup> R Hunter and H McKelvie, ‘Balancing Work and Family Responsibilities at the Bar’ (1999) 12 *Australian Journal of Labour Law* 167-192.

schedules. Staff members desire the opposite: higher wages and more staff control over their work schedules (flexibility). In large, free and well-informed markets, employers and employees find a mutually agreeable (tolerable) balance. In this balance, both employees and employers "trade" lower wages for more flexibility and *vice versa*. In this trade-off, women tend to emphasise control over work schedules more than do men.<sup>9</sup> There are many biological, cultural, and social reasons for this difference. These reasons centre on, but are not limited to, caring for young children.<sup>10</sup> For example, part-time solicitors in large Australian law firms were primarily women with young children.<sup>11</sup>

Consider a colleague's experience in her first private practice position. Katherine (not her real name) was called for an interview with a small but high-pressure litigation practice. She wanted to work for this firm, but did not want to work the normal 70 to 80 hours per week. In her second interview she proposed a billable hours target of 1800 hours per year and a salary 20 percent lower than advertised. They accepted her reduction in hours – although they subsequently still tried to get her to work more hours – and rather than reducing her salary, they acknowledged that she was not on a track for partnership until she removed her hours cap.

One way to organise this information about willingness to trade salary for control over work-times is to draw it in a diagram. Consider figure 2. The curve labelled "University" shows all the combinations of salary and control over staff work-times that the university's representatives consider equally satisfactory. The curve labelled "Staff" indicates all the combinations of salary and work-time control that a standardised staff member would consider equally satisfactory. Since equally satisfactory points are linked, these are called indifference curves (IC).

The indifference curve for the university slopes down to the right indicating that the university would be willing to surrender control over time to academic staff – a movement to the right – if there is also a decrease in wage – a movement downward. As staff control over time increases, the slope of the curve increases. This shows that when academic staff have high levels of flexibility, the university would be increasingly unwilling to give yet more control to the staff. Likewise, when the university already has considerable control over staff time (areas on the left of the diagram) the university would concede some flexibility for relatively small reductions in wage.

The staff members would also be indifferent to a loss of control over work-time only if it came with an increase in salary. Thus, the indifference curve for the staff members also slopes downward to the right. However, unlike the university, at lower levels of staff control of work-time, staff members would require greater increases in compensation to remain indifferent to further reductions in control over their time. Expressed differently, when the employer controls work-times closely, a bit of freedom

<sup>9</sup> K Arnold, *Lives of Promise; What Becomes of High School Valedictorians: A Fourteen-year Study of Achievement and Life Choices* 1995. R Easterlin, 'Preferences and prices in choice of career, the switch to business, 1972-87' (1995) 27 *Journal of Economic Behavior and Organization* 1-34. 'Why women managers are bailing out' *Fortune* August 18, 1986, 16-23.

<sup>10</sup> See for example M Thornton, *Dissonance and Distrust: Women and the Legal Profession* 1996, 139-165.

<sup>11</sup> M Martin, 'Working nine to five: Not a way to make a living if you're bringing up young children' (1992) 66 *Law Institute Journal* 286-287.

is very valuable (steep slope) to the employee. Conversely, when employees can work whenever they like, being able to at least set one meeting time and require everyone to be there may be very valuable (steep slope) to an employer.

These diagrams also illustrate an additional element of choice. Staff members do not take jobs below and to the left of the indifference curves because of alternate opportunities. The placement of the curves shows, in effect, the next best job available to the potential employee.<sup>12</sup> A job to the lower left has lower pay *and* less work-time autonomy. We will refer to the employee's curves as indifference/offer curves (IOCs).

In this simplified diagram, all staff members have the same preferences and the university acts as a unified whole. Allowing preferences to differ between individuals and within the university makes the diagram fuzzy, but does not substantially change the results. There are a few other core assumptions that drive this diagram, and they are worth reviewing explicitly. First, universities desire lower salaries for academic staff and desire higher levels of control over work schedules. Second, as university control over staff members' time decreases, the remaining control is increasingly valuable to the university. Third, academic staff prefer higher wages and more autonomy over their time. Fourth, as staff members' control over their time decreases, the remaining control is increasingly valuable to the staff members. Fifth, potential staff members are informed about alternative employment. The diagram is useful and relevant only to the degree that these assumptions apply to any given situation.

The diagram can be modified to illustrate gender differences in values of control over work-times. A steeper slope means a higher value of control over work-time. That is, a steeper slope means that a greater increase in salary would be required to compensate for lost work flexibility. Now suppose we add a sixth assumption that women value flexibility more than men do. Therefore, women's indifference curves are steeper than men's at all levels of control over work-times. See figure 3.

### *Consequences of differing preferences*

This figure shows an industry with predominantly male employment. By altering the employer's preferences (lower and wider IC) we can easily illustrate an industry with predominantly female employment.<sup>13</sup> In figure 3, the university can reach the men's IOC with the relatively high wage and low flexibility point A (flexibility of  $F_A$ , salary of  $S_A$ ). In order for the university to hire women, given their preferences for time-control and wages, the university would have to provide a package at point B. Since B lies outside of the IC with A, the university prefers A. Given this configuration of preferences, academic staff would be predominantly men.

The results change dramatically when a wage lower than  $S_A$  is imposed on the university. See figure 4. Suppose that the government imposes wage  $S_G$  on the universities, possibly through low funding. In order to hire men at the imposed wage, universities would have to reach point C, providing flexibility at  $F_M$ . Counter-intuitively, women are willing to work at a lower level of flexibility  $F_W$  than are men at

<sup>12</sup> This diagram can thus also show the impact to employment from changes in discrimination, technology, etc in the economy as a whole.

<sup>13</sup> It may be interesting to note that gender-balanced results are much more restricted in their configuration.

this low wage. The deeper intuition behind this is that men do not value additional flexibility much at high levels, and so must receive large amounts of it to be indifferent to a wage reduction. The result is that the university provides the imposed wage and flexibility at  $F_w$ , and university employment becomes increasingly feminine.

If one accepts the assumptions behind the diagrams, then one should consider that it is likely that lowered salaries are a force for feminisation of the legal academic workplace. Further, this force is not simply that men have surrendered the field, leaving it to be passively filled by women, as Strober's relative attractiveness theory would have it.<sup>14</sup> Rather, women and men both compare salary to flexibility, and feminization occurs through a *comparative attractiveness*.<sup>15</sup> In this comparative attractiveness, both genders compare the attractiveness of various goods (flexibility and salary). However, the comparative attractiveness concept does not imply that women are on an equal footing with men in labour markets. The comparative attractiveness of flexibility and salary across genders is built upon alternatives in employment and considerations of family care. Each of these foundations may arise from external constraints imposed upon women. What comparative attractiveness contributes is a suggestion of potential opportunity, placed on equal footing with disadvantage in the labour sector.

#### *Current gender patterns in law school academic staff*

Although realistic assumptions and direct logic yield an interesting result, it is expedient to check observations. Gender distributions in employment between associate lecturer, lecturer, and senior lecturer in Australian Schools of Law are consistent with the theoretical result above. If women are entering law more now than in the recent past, one would expect relatively more men among senior lecturers and relatively more women among at entry level, either associate lecturer or lecturer. Twenty Australian Schools of Law identify their staff by academic rank on their web-sites and gender can be identified for nearly all of these academicians by personal name or photographs. Seventeen of these 20 law schools indeed have relatively more women in the junior ranks than at senior lecturer.<sup>16</sup> This result is consistent with the theory developed above. However, other factors such as discrimination could also lead the same observation. A more complete empirical analysis would require data on experience, publications, teaching, service, and other work related characteristics for academicians in law. Yet even with more thorough data and analysis, discrimination could not be precluded as a cause for women constituting relatively more of junior staff. Currently, the author is content that real world observations do not contradict expectations and that colleagues recognise that the forces described here fit their experiences and their observations of their universities. Since theory, personal experiences, and observations match well, perhaps the next step should not be detailed statistical analysis of the obvious, but rather a political decision.

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<sup>14</sup> M Strober, 'The relative attractiveness theory of gender segregation: the case of physicians' (1992) *Proceedings of the 44<sup>th</sup> Annual Meetings of the Industrial and Labor Relations Association* at 42-50.

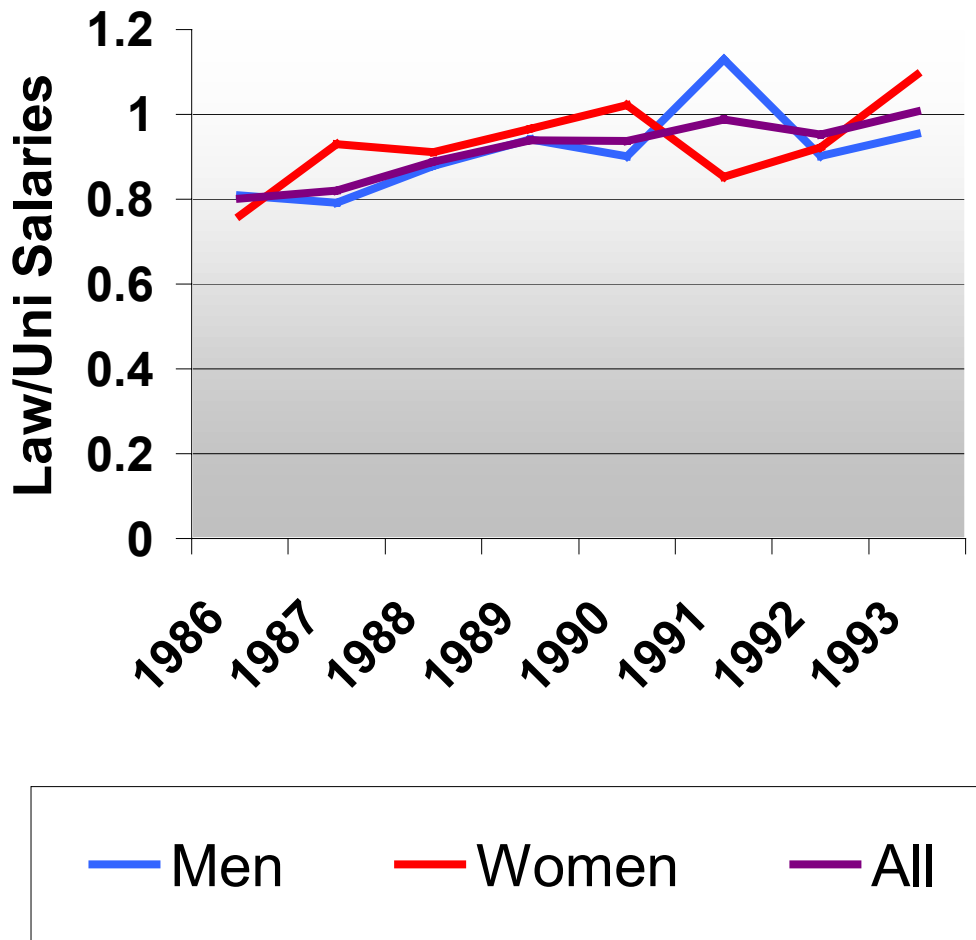
<sup>15</sup> This is a parallel to comparative advantage, which compares two producers' trade-off between producing two goods. Although I do not know of "comparative attractiveness" being used before, the close parallel comparative advantage makes it unlikely that the former was coined here.

<sup>16</sup> Documented using links from Macquarie University's fine central resource Jurist Australia at <<http://jurist.law.mq.edu.au/lawschl.htm>> on 21 and 22 July 2001.

*Call for response*

What should be done? Is this feminisation that is driven by low relative wages a problem to solve or an opportunity to grasp? Should this author be part of the process of these decisions and actions, or should he go on to other theoretical work and request to be informed about developments? Please E-mail your thoughts and word of any actions to [cgeller@deakin.edu.au](mailto:cgeller@deakin.edu.au).

**Figure 1**  
**Law Earnings as fraction**  
**of University Earnings**



Source: Australian Bureau of Statistics, *Distribution and Composition of Employee Earnings and Hours—Australia* (various years).

Figure 2  
Willingness to Trade  
Flexibility for Salary

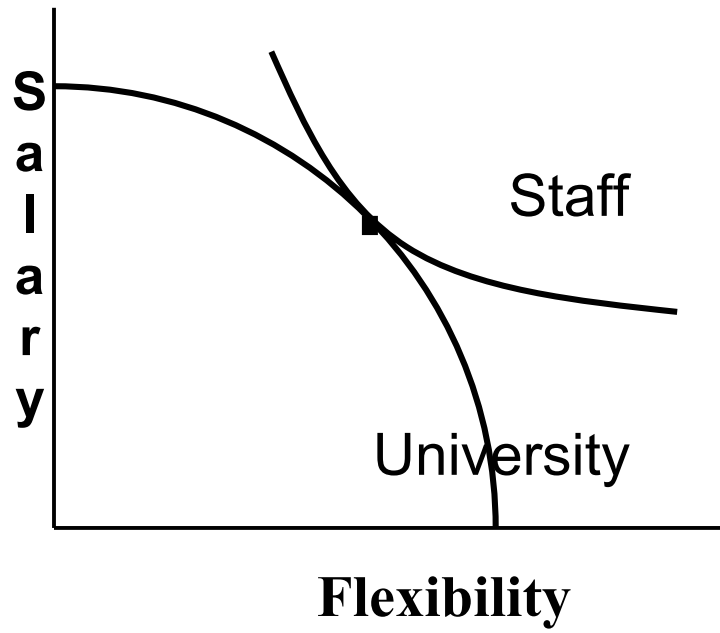




Figure 3  
Willingness to Trade  
Flexibility for Salary  
by Gender

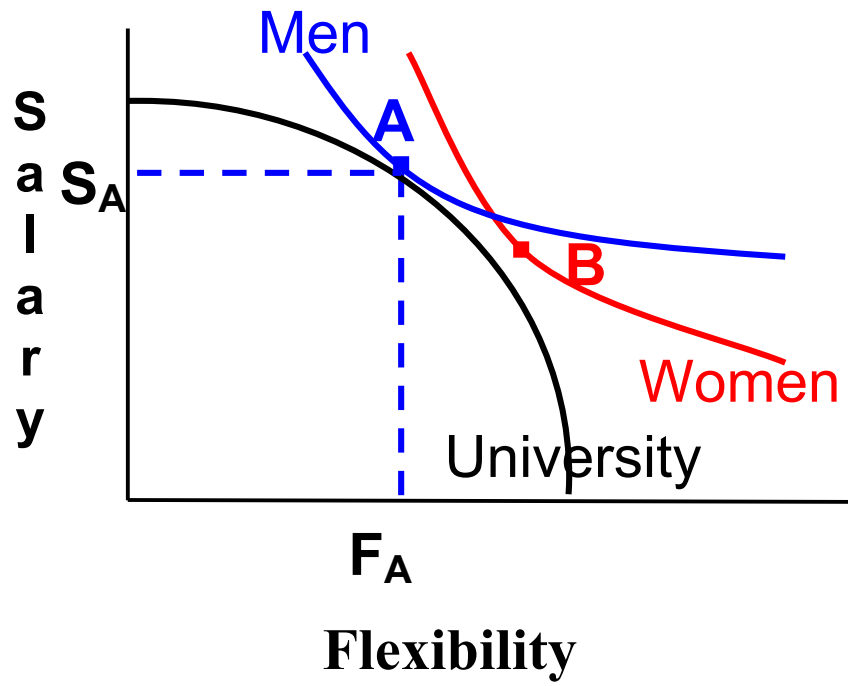


Figure 4  
Flexibility and Fixed Salary  
by Gender

