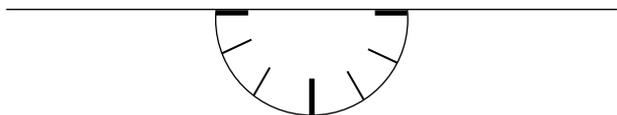
A blue-tinted photograph of a modern transit station. A clock is mounted on a curved metal structure. The background shows blurred motion lines, suggesting a train or people moving quickly. The text is overlaid on the lower part of the image.

A TIME FOR
EVERY PURPOSE
LAW AND THE
BALANCE OF LIFE
TODD D. RAKOFF

A TIME FOR EVERY PURPOSE

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EVERY PURPOSE

Law and the Balance of Life



TODD D. RAKOFF

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For Dena
and
For Hannah

PREFACE



In the summer of 1965, having just completed my sophomore year in college, I spent a dozen weeks in Zinacantan, a Mayan village in the state of Chiapas, Mexico. As a junior member of an anthropological crew known as the Harvard Chiapas Project, I was supposed to help map out how Zinacantecos lived and thought, but my problem was this: I spoke English, a bit of Spanish, and very little Tzotzil, while most villagers spoke Tzotzil, a little bit of Spanish, and no English. I needed a study project that required very little speaking at all. Accordingly, I spent my summer living in villagers' homes recording, as precisely as I could, when they did what they did. The ways people use time, it turned out, form patterns that are at least in part constructed by the society in which they live.

I subsequently became a lawyer and law professor, and did not think further about time as a subject of study until one day in 1996 when I heard a report on National Public Radio about legislation pending in Congress regarding "flextime." What caught my attention was that, in a battle fundamentally between business and organized labor, women's groups were, according to the reporter, mostly siding with business. Here, I thought, is a phe-

nomenon worth investigating. Fortunately my Dean, Robert Clark, agreed, and supported my plan to switch my summer research project to an unknown topic: “the law of time.”

Six years later, I have written this book. Although it is entirely about conditions in the United States, it shows the heritage of both its parents. It is both about how our society shapes its use of time, and about the particular laws that participate in that shaping. I hope that it speaks both to the quest to understand how we live, and to the desire to decide what we should do to give a better shape to our temporal framework.

In those six years, I have been encouraged and helped by a large number of people. My colleague Daniel Coquillette was from the start a one-man cheering squad, sure when others doubted. Many other colleagues sent me clippings and references, and four—David Barron, Christine Jolls, Martha Minow, and Frank Sander—read and critiqued entire early drafts. So, too, did my Special Assistant Catherine Claypoole and my special friend Stephen Koster. The staff of the Harvard Law School Library and my secretary, Nancy Thompson, were assiduous in securing books and articles from all sorts of disciplines resident in all sorts of libraries. Two college buddies, Jon Boorstin and Stephen Poppel, each spent hours with me brainstorming possible titles. And several years’ worth of Harvard Law School students pursued obscure questions on behalf of this book—among whom I should especially name John Golden and Kathleen Hartnett. To all of these friends and supporters, I can only say thank you. I certainly could not have written this book without your help. And I want to say an especial thanks to Professor Evon Vogt, head of the Harvard Chiapas Project, who had the true teacher’s instinct to see that, even for undergraduates not destined to be anthropologists, field work in a foreign culture could be an eye-opening part of a general education.

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A TIME FOR EVERY PURPOSE

1

THE LAW OF TIME



Sunday is more like Monday than it used to be. The Fourth of July is more like the third. Places of business that used to keep daytime “business hours” are now open late into the night. Schools in some communities are open throughout the year. And on the Internet, the hour of the day and the day of the week have become nearly as irrelevant as they are in the casinos of Las Vegas.

It is also true that most Americans still work less on the weekends than during the week. Trips and family gatherings are still scheduled around holidays. Yellow school buses are still more common in the winter than in the summer. And at any given moment, the clocks in Portland, Maine, still show a different hour than do those in Portland, Oregon, and individuals’ lives are arranged accordingly.

The structure of our time is changing, and not changing, too. A half-century ago in the United States, most people experienced strong and definite dividing lines between days of rest and days of work, school time and summer time, work time and leisure time. Today the boundaries still exist, but they seem hazy and porous.

The law that helps order time is part of what has changed, and also part of what has not. The law in almost all states used to re-

quire labor to cease, or stores to close, on Sunday; in most, it no longer does. The law in almost all communities used to keep the schools open only during the fall, winter, and spring, and closed in summer; in most, it still does. And whether the work week should retain its legal limits, or whether it should become more “flexible,” is repeatedly debated in Congress.

How should we, as a society, structure our time? Should we go even further than we have in relaxing the boundaries of time until we live in a world in which every minute is much like every other? Or should we sharpen some of the edges that we have let go dull? Or should we construct a new set of boundaries to shelter us from a formlessness that will make it impossible for us to balance the various time demands of our lives? And how should we use the law to pursue any of these goals? These are the questions this book attempts to answer.

Before we look at some possible answers—as we will throughout the book—we have to face the fact that these are not easy questions even to ask. Part of the difficulty is that we rarely recognize the “law of time” even when we meet it face-to-face. We know as children that we have to attend school a certain number of hours, a certain number of days, a certain number of years—but unless we meet the truant officer, we may well attribute this necessity to social custom and parental stricture rather than to the law. As adults we are familiar with “time-and-a-half for overtime,” but less familiar with the fact that what constitutes “overtime” is a matter of legal definition. And when have we, when we turn the clock forward to start daylight-saving time, ever thought to ourselves: “Here is the law in action”? Indeed, this appears to be the first book ever written (at least in English) about the general subject of the law of time. But as we shall see, there is a lot of law that has a substantial impact on how we organize and use time: compulsory education law, overtime law, and daylight-saving law—

as well as law about Sunday closing, holidays, being late to work, time zones, and so forth. Once we begin to look for it, we will have no trouble finding a law of time to examine and assess.

However, there is an additional, much larger difficulty that inheres in asking a question like: "How should we, as a society, structure our time?" We do not ordinarily think of societies as constructing time at all. Time, we think, is an unformed, neutral backdrop that is just *there*, in which (or against which) activities take place.

Left to our own devices, we tend to think that time is natural, not social. Yet it is possible that we might not know any such thing as time if there were no social life. Some well-known scholars say the concept of time arises from, and is dependent on, social experience. Others say that our having the concept of time is innate, and that it necessarily precedes experiencing the flow of time. Fortunately, we do not need to take sides in this debate.¹ For what is clear is that even if there is a theoretical sense in which time is not socially dependent, time as we now experience it in fact depends heavily on how our culture organizes and uses it. In practical terms, whether we speak of the "social creation of time" or the "social uses of time," it comes to the same thing. We face time as a frame of our existence that has specific attributes constructed (or at least mediated) by the prior actions and concepts of our civilization.

The impact of socially created concepts can be seen even in the simplest use of time, keeping track of it. The day, for example, may seem to be nothing more than a name for a natural phenomenon caused by the revolution of the earth—nothing more until we ask what the boundaries of the day are. Within our own culture, we in fact have two answers to this question: "from midnight to midnight" when we are trying to be precise, and "from morning through the following night" for more casual purposes.

And both of these differ from the third possibility offered by the Book of Genesis, but not prevalent in our society: "And there was evening and there was morning, one day."²

The point is especially clear with regard to a unit of time that has no celestial referent: the week. We understand that what we call the "work week" refers to specific customs and institutional practices; but in fact the "real week" stands on no different ground. Nothing compels us to have weeks of seven days (other cultures have had different lengths), and indeed nothing compels us to have weeks. Yet as the sociologist Pitirim Sorokin wrote: "Imagine for a moment that the week suddenly disappeared. What a havoc would be created in our time organization, in our behavior, in the co-ordination and synchronization of collective activities and social life, and especially in our time apprehension. . . . We live and feel and plan and wish in 'week' terms."³ What we take to be the "natural" way to think about time is in fact a result of cultural ingenuity.

This conclusion, however, still puts the point too passively. "Cultural ingenuity" does not just happen; it is the culmination of the efforts made by various people in various situations at various points in history to do things for various purposes, even if those purposes sometimes go awry. If we want to think about how we should structure our social time, we need to look at the matter in this positive, creative way. What can we, in our present situation, do with time? What purposes can we further by creating various temporal structures? How will the purposes of some of us fit with, or conflict with, the purposes of others? Once we look at the matter in this way, we will be able to connect the rather abstract idea that time has a socially created structure, with the quite concrete goals that others have sought to achieve, or that we might try to achieve, by organizing in one way or another the laws relating to time.⁴

Again, an example from the simplest use of time—creating the units in which we keep track of it—is instructive. Our understanding of the “hour” as being not merely a subdivision of the day, but a period of fixed duration, dates from the Western development of machines capable of keeping track of fixed durations—that is to say, clocks—in the fourteenth century.⁵ When Japan was “opened” to the West in the nineteenth century, this system encountered the Japanese system of dividing each period of daylight and of darkness into six equal segments—a perhaps more “natural” system which had the consequence of making the Japanese daylight “hours” longer in summer than they were in winter, and nighttime hours the opposite. Subsequently, when the rulers of the Meiji government decided to pursue a policy of economic modernization, they adopted the Western clock as part of their program. They understood, as economic historians of the West would confirm, that having uniform hours was an essential basis for the exact calculation of time that supported Western methods of production.⁶ They made a purposeful choice of which “hour” would be *the* hour.

Why do we, as turn-of-the-millennium Americans, do what we do with time? Probably the purpose that comes first to mind is not so different from that of the Meiji elite: we create time units so that we can count time accurately, and we count time so that we can know how much time is being spent. Time is a resource, a commodity to be directed to this use or that. The reason to put a form on time is so that we can allocate it in a planned and rational fashion. This view of time is embedded deep in our culture; it is, for example, the way of looking at things that underlies the analogy “time is money.”

But even from the point of view simply of economic efficiency, a little thought will show that we need other structures of time beyond those used to measure it out. In addition to “counting

time,” we need to be able to “tell time”—that is, we need to place people and events in temporal relation with each other, so that we can coordinate what they do. Indeed, the careful coordination of the time of many individuals, so that their efforts are either synchronous or carefully sequenced, is a hallmark of production in modern societies. This point is most graphically typified by the assembly line, where lock-step physicality enforces lock-step temporality. Even in less obviously regimented jobs, and even with modern technology that allows a bit more freedom to “time-shift” tasks, the basic truth remains that the efficient functioning of our economy depends on a high degree of temporal coordination.

This is also true in endeavors other than business. Just as coordination is basic for production, once production has become a highly social matter, so too is it needed for the conduct of cultural life, civic life, and schooling, when those activities are carried out through substantial institutions. These institutions have to organize time to produce social capital just as businesses have to organize time to produce economic capital. And of course coordination is central to family life as well—and much more difficult to achieve for the modern family, which also participates in these other institutional frameworks.

The concepts that allow us to allocate time (our units of time) and to coordinate activities in time (the ways in which we “tell time”) are only part of the story—for there are yet two more ways in which our society constructs time. Many of our time concepts (such as “Monday”) repeat, and repeat with regularity. By making use of these concepts we establish rhythms which give to activities as diverse as going to church and going to work a predictable form and shape. Finally, we have some time concepts (for example, Thanksgiving Day) which are used to differentiate periods of time having distinctive qualitative features. Just as we arrange our physical surroundings so that certain spaces, such as parks, have special meanings in relation to other,

contrasting spaces, so we can arrange our time so that certain times, such as holidays in contrast with working days, have a meaningful texture as well.

To put the matter more succinctly, when we as a society deal with time, we can construct time and use temporal concepts in at least four different ways: we can allocate time; we can coordinate activities in time (either synchronizing or sequencing); we can create rhythms through time; and we can create meaningful textures of time.⁷

Not only can we construct time in these many ways, but in fact we have done so and continue to do so. It is too simple to suggest, as some scholars have, that the modern history of time consists of an ongoing destruction of all situational features of time in favor of a purely abstract, commodified entity.⁸ Rather, the history of time, taken from the rise of modern market societies and industrial production roughly two centuries ago, exhibits a progressive reorganization of time on several dimensions, rather than its mere abstraction. It is this history—to be discussed more fully in later chapters—that brought us the time zones and work weeks and school years that still set the parameters of our lives. And it is these structures that are being challenged by the developments of what some call the postmodern age in which we live.

Because we can purposefully construct time along multiple dimensions, the goals that we have when we think about shaping time are more complex than they might at first seem. Indeed, we can easily mistake what we want to do. We tend to think first, and often exclusively, of time as a quantity. “There’s not enough time” or “If I only had more time”: these are the ways in which we voice our grievances. But our real problems may not be matters of allocation at all.⁹

Consider, for example, the modern complaint: “There’s no time anymore to sit down to dinner as a family.” This might mean that father and mother, sister and brother, or some of them, only