

Work as Key to the Social Question

The Great Social and Economic Transformations and the Subjective Dimension of Work



The Chronicle of Wasted Time:

A Liturgical Challenge to the Commodification of Time in Western Professional Life

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1. Introduction

1. Many American lawyers are very unhappy, particularly lawyers who work in big firms. They may be rich, and getting even richer, but they are miserable, or so they say.
2. Several commentators on the legal profession have turned their attention to this problem, including my former colleague Patrick J. Schiltz, now associate dean of the University of St. Thomas School of Law. They suggest that a major culprit is the sheer amount of time that lawyers must work in order to justify their high salaries. Lawyers, especially those on the partnership track, have little or no time for family, friends, or public service.
3. I agree that amount of time is important. But it is not everything.
 1. Other people have jobs that consume a large amount of time with repetitive, uninteresting tasks that nonetheless require a great deal of attention. Why don't these groups seem to be as unhappy as lawyers?
 1. Harried Pediatrician-- Sixth baby with an ear infection.
 2. Tired Eyes of the Professor-- 75th blue book answer.
 2. I would like to propose a different hypothesis: A neglected but important cause of lawyers' unhappiness is not the amount of time they work, but rather the way in which they understand the time they spend working, which is directly related to the manner in which they are forced to account for it. --the regime of the billable hour

1. I believe that the ethos of the billable hour encourages lawyers to view their own temporal existence in a fundamentally instrumental way that can easily generate alienation from themselves, their families, and the broader social world.
4. What can be done about this?
1. I am not optimistic about supplanting the hegemony of the billable hour, or storming the ramparts.
 2. My immediate prescription is far more modest.
 1. we need to lift up to critical scrutiny the normative notion of time presupposed by the regime of billable hours
 2. we need to encourage lawyers to consider adopting alternative views of time that give them critical distance on the billable hours mentality, as well as some concrete practices that will help them combat its worst abuses.
 3. Where can lawyers explore alternative views of time that are sufficiently well-developed and powerful to combat the hegemony of billable hours?
 1. One possibility is to consider the resources available within various religious traditions, many of which have long experience in dealing with questions of the meaning of human life and of human time
 2. What's a religious tradition? Good question:
 - (1) From a sociological perspective, a religion is understood not as a set of isolated propositions to be understood, accepted or rejected, but as a "comprehensive interpretive scheme, usually embodied in myths or narratives and heavily ritualized, which structures human experience and understanding of self and world."
 - (2) Significantly, in many religious traditions, beliefs about the world do not stand alone, but interlock with corresponding practices of meditation or private prayer, public worship services, and good works. **Key: WE NEED PRACTICE as well as THEORY.**

(3) It is the intertwined and mutually reinforcing nature of these respective systems of belief and practice that give religious traditions their most important weapon in resisting the billable hours mentality.

3. How concretely will this work?

(1) There is no such thing as a "generic" religion." There are only particular religious traditions, which exert particular claims on us.

(2) I will try to show how the view of time in Roman Catholic Christianity offers a powerful alternative to the view of time that is imprisoning American lawyers. I hope others will do the same with religions they know best.

5. Why should we care about lawyers?

1. I believe that the notion of time lived in the legal profession is not fundamentally different from that lived in commodified capitalist culture in general. The harmful features of legal time can be found, maybe in a less exaggerated way, in the lives of many other working people.

2. So my goal is to hold up legal time as an example of the rampant disease of commodified time in its worst form, so that we are better able to identify it and to combat it in its less extreme versions.

2. The Dominance of the Billable Hour

1. Development

1. Until the middle of the twentieth century

1. Composition of a lawyer's bill was more of an art than a science. Bills were sent infrequently (sometimes once a year), often accompanied only by the terse explanation "for professional services rendered."

2. In the 1960's, two factors converged to create the hegemony of the billable hour:

1. the increase in the number of large law firms,

2. the invention of the computer.
3. Gradually it became more and more customary for a client's bill to depend largely, if not exclusively, on a figure derived by multiplying the number of hours each lawyer worked by that lawyer's billing rate. **This is the Billable Hour.**
 - (1) Not all time is billable.

3. Changes:

1. When computerized time keeping was introduced in the 1960's, both partners and associates billed an average of 1500 hours annually.
2. To bill this amount of time, a lawyer could take three weeks vacation, eight public holidays, and work nine hours a day, five days a week the remainder of the year.
3. As the years wore on, however, lawyers faced pressure to increase their billable hours. Half of all associates now bill more than 2000 hours per year, a feat which requires them to work ten hours a day, six days a week.

4. Large law firms lead, smaller law firms follow

1. Much depends on billable hour
 - (1) partnership decisions—eight or nine year long track
 - (2) answering clients
 - (3) competitiveness among lawyers—publishing hours

3. Marking Time in Billable Hours

1. Introduction

1. What does it mean to sell a lawyer's services by the hour (or, increasingly, in six-minute increments)? What view of the nature and purpose of time is embedded in the world-view of billable hours? More importantly, what view of the shape of a lawyer's life, of a human life, is fostered by that world-view? I believe it has five characteristics:
 1. Value of a lawyer's time is entirely extrinsic (i.e., that it lies in achieving the purposes of the client and in making money

for the firm);

2. time is a commodity with a readily identifiable monetary value;
3. It presumes that all time is fungible;
4. It suggests that lawyers live their lives in an endless, colorless present.
5. Finally it contributes to the alienation and isolation experienced by many lawyers.

2. While these characteristics are distinct, they also build upon and reinforce each other. I will explore each of them in turn.

2. Time is Instrumentally Valuable, Not Intrinsically Valuable

1. Introduction

1. The value of a lawyer's time—and thus the value of a lawyer's work—is presented as doubly extrinsic to the work itself.
 - (1) A means to achieve the goal set by the client, who generally wants to achieve that goal in as “cost-effective” a manner possible.
 - (2) A means to the goal of the firm, which is increasingly understood as generating profits for the partners.
2. Both of these ways of instrumentalizing a lawyer's work can distort the true nature of the legal profession and alienate the lawyers who are forced to conceive of their vocation solely in these terms.

2. First Extrinsic Goal – Client satisfaction

1. Can we judge the quality of legal services really should be judged according to the single criterion of how well those services succeed in achieving a client's goals?
2. Time spent isn't correlated with success.
 - (1) Client with a novel question pays more.

(2) If clients begin to think of themselves as buying their lawyer's time, they will begin to define a "good" lawyer as a "cost-efficient" lawyer; as one who puts in just enough time to get the desired result. Lawyers will begin to evaluate their own work in the same way. In short, they will become like college students who think success in a pass-fail class means earning no more than a D on the exam; any better grade, they might say, would be a waste of effort.

(1) What about commonly agreed on standards?

(2) One isn't a good lawyer because one's opponent is a worse one.

(3) Winning and losing shouldn't depend primarily on the merits of the lawyer, in any justice system worth having.

3. Second Extrinsic Goal: Making Money for the firm

1. Ignores important obligations to firm that aren't billable:

(1) Cultivating a client base, nurturing younger associates, working out more equitable ways of dividing the work load, and developing a workable family leave policy all contribute to the well-being of the firm, although they cannot be billed to any particular client.

(2) Some of these activities may contribute to profitability in the long-term. Others may not. They do facilitate, however, the creation of a common firm culture. They allow the transmission of the characteristic habits of a good lawyer to the next generation.

2. Ignores obligations to the community

(1) pro bono work, bar association activities performed less

(2) when they are performed, performed with a view to the bottom line: Pro bono work can be seen as a symbolic gesture that can generate good will for the firm if properly publicized, rather than as a

professional responsibility.

3. Time is a Commodity

1. Definition:

1. The key feature of commodification is its connection with market value; it is possible to give a dollar equivalent of the commodified item.
2. An hour of a lawyer's time is directly translatable into a substantial amount of money. It is not unusual for big city firms to bill the time of first-year associates at \$125 per hour; prominent senior partners can charge \$450 or more as an hourly rate

2. Margaret Jane Radin: Contested Commodities

1. Non-commodified goods

- (1) are deemed important (at least in our culture) to the definition of personal identity; they are somehow bound up with the self.
- (2) To allow them to be reduced to their market value also so reduces the dignity and worth of the person whom they define.
- (3) Sexual identity, reproductive capacity, vital organs

2. Incompletely commodified goods

- (1) Market and non-market values coexist simultaneously, if sometimes uneasily.
- (2) Homes v. houses
- (3) Work—can if we're lucky - be incompletely commodified good
 - (1) We earn money (it's a commodity in this sense)
 - (2) But it also forms our self-identity; relations to others (it's not a commodity in this sense)

- (3) workers v. laborers
 - 1) workers– have incomplete commodification
 - 2) laborers-sell their work to support their life; complete commodification of work

3. Lawyers: the worst of both worlds

- (1) workers-- their identities formed by their jobs
- (2) more and more like laborers– instrumental value of legal services
- (3) worse than laborers.
 - (1) Radin does not imply that “laborers” call into question the meaning of the segment of their lives not devoted to work; she simply suggests that this segment is far too small
 - (2) The hegemony of billable hours means that the commodification of a lawyer’s time can seep into other aspects of her life, eroding their intrinsic value as well.
 - (3) Rationalizers rationalize shopping at boutiques rather than TJ Maxx because their time is “worth” more than the money that could be saved by a trek to the discount mall. Slowly but surely, they slip away from the chores and routines that comprise the reassuring rhythms of ordinary life.
 - (4) Far more ominously, they may begin to view their personal relationships in the same market-based way.
 - 1) Making up to children and spouses for missing things with money
 - 2) But the whole idea of “making up” for lost relational opportunities in this manner is premised on the belief that time and money are commensurable. In many areas of life, they are not.

4. Time is Fungible

1. Meaning of fungibility

1. An hour worked on Monday afternoon is treated the same as an hour worked on Friday night; logically speaking, 10:00 p.m. New Year's Eve is no different from 10:00 a.m. Groundhog Day.
 2. The value of every hour of one's life is leveled; no time is inherently sacred, or even special.
 3. A decision to do anything else, at any time, is increasingly perceived as a decision against working in that time.
2. Because all time is potentially available for work, lawyers may begin to believe that they must justify any decision to rule out in advance doing work during any given time period.
 3. Another consequence of the fungibility of billable hours is that it eradicates very real differences between the various tasks that a lawyer can be called upon to perform for a client.
 1. Measures mechanical tasks; not insights.
 2. The value of more mechanical or clerical aspects

5. An Endless Present

1. Meaning

1. A fourth aspect of the perspective on time embedded in the framework of billable hours is its tendency to create the illusion of an endless present.
2. Because all time is at least potentially available for work, legal time includes no fundamental change, no alternating rhythm in life.
3. This illusion is maintained with the help of the artificial environments in which most big-firm lawyers spend their time.
 - (1) They are there all day
 - (2) Perfect little capsules of environment

(3) Time markers of embodiment disappear

(1) comfortable chairs

(2) food delivery services

(3) sleep rooms

2. Implications

1. As a consequence of this disembodied, flattened view of time encouraged by the regime of billable hours, lawyers can begin to see their entire lives as nothing but a monotonous extension.

2. Like commodification, this aspect of billable hours is capable of seeping into all aspects of a lawyer's existence. All their time is I-80 through the great plains. Their days and evenings are identically consumed with work, the seasons change without much notice or effect on their lives.

6. Personal and Social Fragmentation

1. Summary

1. In the world of billable hours, then, time's value is purely instrumental; it is a commodity with an identifiable price; it is fungible, not unique; and it is often experienced by those who live within its purview as an endless, colorless extension. These four features of time in the world of billable hours are not distinct, but build upon and reinforce each other.

2. Implications

1. Among the most disturbing consequences lawyers suffer from living under the regime of billable hours are personal fragmentation and social isolation, as lawyers find themselves increasingly alienated from themselves, from other attorneys, from their families, and from the broader community.

2. Doesn't encourage introspection necessary to create an integrated identity.

(1) First, introspection does not reliably produce demonstrable results. Although lawyers regularly bill for the time they spend reading and thinking about

legal issues, the use of that time is justified by its direct contribution to a tangible product for the client: a memo, a contract, a brief, or even effective representation in a series of negotiations.

(2) Second, from the perspective of the billable hours mentality, introspection is not sufficiently directed toward the future. From the perspective of the view of time embedded in billable hours, the past is essentially dead; it has disappeared into unreality unless it has a specific causal role to play with respect to some possible future event. If held hostage to this view of time, a lawyer's self-understanding can easily be reduced to a narrow, concentrated ray of energy, entirely focused on achieving results for a stream of clients extending endlessly into the future and relegated to a disappearing past as soon as the bill is settled.

3. Finally, many lawyers are also isolated from their families and the broader community, for a different set of reasons.

(1) Not just they work too hard.

(2) The very fact that their notion of time is flattened out and instrumentalized makes them less able to participate vicariously in the events that they are unable to attend themselves. For most people, the rhythm of daily, weekly, monthly, and yearly life is important.

(1) return to school

(2) winter holidays

(3) The longer that a lawyer lives a life that is dominated by an instrumental understanding of time's value, the more distant she will feel from persons, institutions, and traditions of belief and practice accustomed to viewing and valuing time differently.

4. A Catholic Christian View of Time

1. Introduction

1. Philosophers and anthropologists have proposed many different ways of defining “religion.” For those who advocate a “cultural-linguistic” approach, religious belief is essentially communal; individuals (particularly children) come to belief through a process of socialization into a community of believers. This process inculcates complex patterns of response to the events and situations believers are likely to encounter, which call not only for particular actions, but also for particular feelings and sensibilities.
2. The Catholic Christian tradition of belief and worship holds out the possibility of inculcating a different, and less alienating view of time on each of the points discussed above.

2. Time has Intrinsic Value

1. Medium of Salvation

1. In fact it is seen as the medium through which God chose to work out his relationship to humanity through Jesus Christ, who is affirmed to be both fully human and fully divine.
2. God did not script every human action in a distant time long before the dawn of creation; the unfolding history of the world is not a third-rate play with actors (or puppets) voicing old and tired lines
3. Something genuinely new happened when Jesus walked the earth, that offered the possibility of hope.

2. Borne up by Eternity

1. Eternity is not properly understood as a very, very long extension of time. Nor is it rightly construed as an annihilation of time.
2. Eternity is best described poetically as the fullness of time, as carrying its true meaning without distortion. According to the theologian Hans Urs von Balthasar, the in-breaking relationship of eternity to earthly time is best revealed by the forty days that Christians believe Jesus walked among the disciples after the resurrection; those days belong to both eternal time and earthly time. He walks among them, eats among them, even jokes with them; they recognize him as the man they have always known. Yet all is different; he has conquered sin, vanquished suffering and death.

3. Not Commodifiable

1. Is meaning cannot be translated without remainder into an equivalent market price. A commodity per se has no intrinsic value; its worth is determined by how well it satisfies the pre-existing desires of its consumers –clients and law firms
2. In contrast, Catholic theological and liturgical sensibilities do not encourage believers to assess the value of time in terms of its ability to contribute to the satisfaction of the desires they happen to formulate. Instead, they encourage believers to repent, to reconstitute their desires and to restructure their days in order to accept God's continuing invitation to experience and understand the real meaning of time as inscribed in the life of Jesus Christ.

3. Sunday Mass:

1. A continuing invitation to understand time's real meaning is embedded in the celebration of Sunday Eucharist, which was for over a century the only liturgical rite celebrated by the early Church. Every seven days, Catholic Christians affirm both the meaning of the course of human time, and the possibility of breaking through it to eternity.

(1) Represents the central event of the Christian faith

4. In the Sunday Eucharist, the normal relationship of time and eternity is overturned. The eternal significance of that unique event, which truly transpired in one particular place and time, allows its presence to overflow into other times and other

1. For the early Christians, Sunday was not originally a day of rest, it was a workday. It was also the first feast; they were forbidden to kneel on Sunday because it is the day of their Lord's resurrection. For them, the most unfathomably terrible and joyous mystery of the cosmos regularly took place on an ordinary day, in a house-church, in the midst of ordinary life.

(1) Eternity breaking into day to day life, sanctifying it.

4. Uniqueness and Mystery

1. Time is not fungible–Liturgical Calendar

1. The liturgical year begins with Advent, a time of waiting, followed by Christmastime, which encompasses both Jesus's

birth and the commemoration of his revelation to the world on the feast of Epiphany. Then follows a season of Ordinary Time, in which the earthly life of Jesus is chronicled and celebrated in the context of the Sunday Eucharist. Next comes Ash Wednesday and Lent, a penitential season preparing believers for Holy Week's "real time" commemoration of the events celebrated each Sunday. Eastertime follows; it is a celebratory period of fifty days punctuated by the feast Christ's ascension and closed by the celebration of the gift of the Holy Spirit to the Church at Pentecost. Then again comes a long season of Ordinary Time, during which the Church sees itself as sustained by the Spirit. The liturgical year ends with the feast of Christ the King, which emphasizes the "cosmic and universal" character of Christ's reign.

2. Unlike billable hours, time as qualified by the liturgical year is not freely exchangeable; Catholic Christians ought not to fast on the birthday of Christ, nor feast on Good Friday.

(1) Reminds us of the uniqueness of opportunities presented to us.

2. Time as Mystery

1. By definition, something fungible cannot be mysterious; in every important way its meaning must be transparent, so we can evaluate it.

2. Conversely, something mysterious cannot be fungible. Its meaning cannot be neatly summarized, but is necessarily multivalent; its impact upon those perceiving it at any particular moment is always partly apparent and partly occluded. To Catholic Christians, the fundamental mystery of the universe, the depth of its meaning, is the very reality of God, which we cannot know fully.

3. The liturgical life of the church marks the mystery of every day life in its sacraments.

(1) In fact, in the Patristic period, the Latin terms "mysterium" and "sacramentum" were used nearly interchangeably,

(2) baptism –introduction of young people into the community

- (3) penance– acquisition of moral responsibility
- (4) confirmation–acceptance of the responsibility of adulthood
- (5) priesthood or marriage– two great vocational responsibilities
- (6) sacrament of the sick–illness and death.

3. Encourages believers to see the very same mystery that undergirds the sacraments is also understood to support the more mundane moments of human existence, imbuing them with a depth of life and significance that also saves them from fungibility.

5. An Integrative Spiral

1. Not an endless extension. Not lawyers on a treadmill with no way out.

2. Catholic Christian time includes a strong cyclical component; it taps into and reinforces the recurring rhythms of human life in particular, as well as the natural ecosystem in general. In particular, the rhythm of the liturgical calendar orders the time of a believer, calling attention to markers of cosmic significance within

1. Alternation between fast and feast days..

2. Unintended consequence of reducing the number of feast days is the inability to enjoy leisure.

(1) Most believers have forgotten the meaning of play, of joy. They cannot abide in a happy moment without worrying about the next moment's work. Their leisure consists of short bursts of frenetic activity or exhausted idleness designed to enable them to work even harder.

(2) But as the monk and theologian Lluís Duch observes, this definition of leisure has nothing to do with an authentic feast, which for him includes "tranquillity, as opposed to the greedy intranquillity of everyday life." So feasts are characterized by human encounters devoted not to greater work effort, but to feeling, intuiting the unity, fullness, and beauty of reality, beyond the apparent chaos and distortion of everyday.

3. The Catholic view of time acknowledges the possibility of empowerment and self-determination.
 1. Unlike the mundane fatalism experienced by associates who believe themselves to have no options, the Church's view of time maintains that *chronos* (the span of time running from creation to final judgment) is regularly punctuated by *kairos* (a moment of decision or a turning point). Not only do moments of *kairos* involve change, they can sometimes involve a total reversal of direction.
 - (1) St. Paul on the road to Damascus
4. Third, and most importantly, in a Catholic Christian perspective human time is not a purposeless extension; instead, it is teleologically ordered toward a goal – the full instantiation of the kingdom of God
 1. Second, the teleological aspect of Catholic Christian time orders both its cyclical and its decisional aspects in ways that allow persons to understand their own lives, no matter how complicated, in an integrated way.
 2. The fact that the liturgical calendar is cyclical helps prevent human beings from experiencing time in their own lives as simply an endless extension, as the unrolling of a ball of twine. Christmas 1990, Christmas 1995, Christmas 2000; believers, they are led to reflect upon the shape of their lives at similar markers in years past. How have they changed, how have they stayed the same?

6. Personal and Social Integration

1. Unlike the notion of time presupposed by billable hours, Catholic Christianity views time as intrinsically, not merely instrumentally valuable; it is not a commodity satisfying our pre-existing desires but a mystery that critiques and transforms them, it is not fungible, but unique, and not an endless, purposeless extension but a spiral that gathers in the past even as it moves toward an eschatological future that is best evoked by the metaphor of the kingdom of God. All of these factors work together to create a view of time that encourages self-integration rather than fragmentation and emphasizes life in community rather than isolation.
2. Community extends backward and forward in time.

1. Balthasar: all human actions impinge upon the possibilities open to persons not yet born. "All of our destinies are interwoven; and until the last of us has lived, the significance of the first cannot be finally clear."

3. Communion of Saints

1. Catholics believe that the ecclesial community, formed around Christ, transcends the barriers imposed by time.

2. Through the communion of saints, believers now living are joined with a vast array of persons, known and unknown, male and female, of all races, nations cultures, and walks of life, who have been transformed by divine grace. Together, this "cloud of witnesses" manifests the universal scope of God's love for humanity.

3. Within that great "cloud of witnesses" of the saints who have lived in previous ages, individuals living today can find particular role models and exemplars who confronted challenges analogous to those that face them. Friendships can be forged between the living and the dead, commonalities can be discovered which transcend differences.

- (1) A feminist theologian can find a friend in Thomas Aquinas, a political activist can discover a mentor in Joan of Arc. from many places, eras and walks of life.

- (2) It calls upon them to draw upon the fellowship and support offered by communion of saints, in order to reach out in solidarity to the vulnerable persons at the margins of society.

5. Conclusion

1. What can I hope to accomplish by comparing the two views of time?

1. To law firms (and other businesses), I would say:

1. I am not suggesting that law students transfer en mass to divinity school. Law is an honorable, and necessary profession.

2. I not suggesting that law firms install bells to mark the liturgical hours in the manner of medieval monasteries. We cannot go back to old ways, we must discover new ones.

3. Rather, by drawing upon one alternative perspective, I have tried to demonstrate, rather than merely assert, that it is possible to understand “normal” responses to the pressures of time in a very different way than that presupposed by billable hours, depending upon one’s background presuppositions. That is the first step toward challenging the hegemony of billable hours, in their own lives and in the legal culture more generally.
2. To pastors and theologians I would say:
 1. The most significant problem facing people today pertains to lack of meaning. Why do their lives mean anything? How can they reflect that meaning in the patterns of everyday life? At its most basic level, these questions pertain to the meaning of the hours and minutes of an individual human life, lived in community.
 2. The Church has not only a richly textured theoretical understanding of the nature and purpose of human life, it also offers a set of practices that can make that understanding concrete in the lives of those who take advantage of them. The liturgical and theological vision of the Church helps us honor time’s meaning without being trapped by it, since we are called to eternal life.
 3. We must find ways of making the meaning of time—which is, after all, the meaning of life—more accessible to those imprisoned in other, more impoverished views. This is a key aspect of evangelization in a postmodern era.