BEYOND FLEXIBILITY?
LEGAL FORM AND TEMPORAL RATIONALITIES IN UK WORK-LIFE BALANCE LAW

Emily Grabham

University of Kent

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Emily Grabham, University of Kent
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e.grabham@kent.ac.uk

Introduction

In May 2011, in the midst of economic crisis and on the back of a pro-'austerity' platform, the United Kingdom's centre-right Coalition government announced a new consultation on reforming work-life balance law. Entitled *Modern Workplaces*, the consultation was the government's effort to 'create a modern workforce for the modern economy'.[1] It covered four main policy areas: flexible working, flexible parental leave, working time and equal pay. Self-consciously aware of perceived shifts in the gendered arrangements of work and care, the consultation contained extensive proposals to change the administration of maternity and paternity leave, allowing 'mothers' and 'fathers' to share leave between them, extending parental leave (to comply with European Union case-law), and introducing changes to the scope and administration of flexible working, amongst other things. Significantly, in what might appear to be a bold and progressive move, the Coalition government proposed in the *Modern*

[1] BIS press release, 16 May 2011.

Workplaces consultation to expand the availability of the current right to request flexible work, making it available to all employees, regardless of whether they have a care obligation. These proposals are now contained in the Child and Families Bill 2013, which is currently making its way through the UK Parliament.

It might be surprising to some that at a time of redundancies and public sector cuts, work-life balance law allows a wider range of employees to negotiate flexible working patterns. Economic crisis might require more predictable working arrangements. Yet for the past two decades, legal solutions to unpaid care in UK labour law have been strongly connected to the goal of labour market flexibility. Successive governments have argued that by encouraging negotiations at the level of the workplace enables the labour market to better manage fluctuations in demand and changes in business models (Conaghan and Rittich 2005; Ashiagbor 2005). Within the most recent policy statement and debates in Parliament, this ability to withstand fluctuations has been positioned as a strength, and, crucially, as a key means of ensuring economic growth in a time of crisis. *Modern Workplaces*, for example, made strong claims about the efficacy of an extended right to request flexible work in addressing a number of social issues, including the return to work of parents as a result of welfare reform; child poverty; the gender pay gap; the labour market participation of people with disabilities; support for carers; older workers; shared parenting; relationships; and the Big Society (through helping people to 'take a more active role in their community'){BIS, 2011: 33-34}. Amplifying the previous New Labour government's endorsement of flexible work as economic strategy, however, the Coalition government took the step of explicitly linking flexible work with reducing the deficit and achieving economic growth:

> For employees, flexible working allows them to better balance their work life with their family responsibilities. In today's society, both men and women want to find a balance between work, family and caring responsibilities. Flexible working therefore has the potential to increase overall levels of participation in the labour market, and so make a contribution to increasing employment and decreasing benefit dependency and thus ultimately to reducing the deficit and promoting growth. {BIS, 2011: 33-34}

In government policy statements of this type, balance is therefore positioned as contributing to two significant economic policy goals: economic growth and deficit reduction. Within the policy imagination, work-life balance is no longer merely a matter of managing the ways in which gendered relations of care impinge on working time (if it ever was). Instead, these policy conversations locate the sphere of action as the UK labour market and bring with them the idea that flexible working negotiated between responsibilised market actors on the micro level can have beneficial macro effects. Within this paradigm, the market not only has the potential to resolve the care dilemma through negotiation, but it can also, in the process, 'kick start' the economy. Negotiated balance leads to economic growth.

At the heart of present regulatory models and policy concepts is a set of understandings of labour and value, therefore, which have a specific genealogy and a specific horizon of possibility. The dominant policy manifestation of this conceptual matrix is work-life balance, which is underpinned by an attempt to revalue or include women's unpaid work within formal legal and economic models. Yet feminist labour sociologists increasingly argue that women's relationship with work in the formal economy is changing radically, meaning that understandings of how women relate to social reproduction are being reassessed (Sevenhuijsen 2003; McRobbie 2007; Adkins 2008). Furthermore, forms of value-production are emerging in the new economy which challenge ideas of

accumulated and alienated labour that prevailed within models based on industrial capitalism (Adkins 2008). These new forms of forward-looking value creation pose a problem for conceptual models of labour regulation and economic life that assume Fordist arrangements of economic production (Adkins 2009; Waldby and Cooper 2010). What this suggests is that feminists should be prepared to reorient our understandings of how value is created, the role of gender in value-creation, and the temporal orientations involved. We should be more attentive to dimensions of value-creating activities which depart from what we assume from previous economic models.

Such an endeavour involves understanding the temporal implications and conceptual underpinnings of the most influential paradigms, in this case, work-life balance. As a feminist labour lawyer, I am concerned with analysing the technical legal measures in this area for the social relations that they assume and create. Bureaucracies and legislatures use work-life balance concepts, laws and policies as a means of mapping, understanding, and responding to questions of women's involvement in the gendered creation of value. The concept of 'balancing' work and care has become so embedded in labour regulation conversations that it is difficult to think outside of this paradigm, even when critiquing it. Yet even the most mundane details of work-life balance laws and policies present rich material for understanding bureaucratic conceptualisations of gender and value. For example, as a route to balancing 'work' and 'life', the right to request flexible work contains much of interest for a feminist analysis of how legal temporalities are created and sustained. Teasing out the temporal dimensions of policy and legal initiatives around work-life balance, observing their specificities and idiosyncracies, is a useful way of working out how bureaucracies think about gender, value and labour. What does it mean, for example, that a concept of temporal 'balance', or labour market equilibrium, lies

at the heart of bureaucratic and legislative approaches to gendered labour structures? What temporal significance do legal mechanisms such as the right to request flexible work have, as examples of technical solutions to women's labour market participation and the perceived care deficit?

Such an analysis, I will argue, requires understanding the processes of 'sorting' (Latour 1993) through which human and non-human actors create the temporalities that structure legal and policy landscapes. Departing from approaches which purport to analyse 'law and time' as the social effects of legal concepts of time, this approach requires tracing the effects of law or legal mechanisms *as* time. It involves taking the form, content, and rationale of work-life balance laws and processes (such at the right to request flexible work) seriously, in line with recent scholarship in law and anthropology which focuses on the productive effects of documentary practices and bureaucratic rationalities {e.g., Riles, 2006(Jacob and Riles 2007). It also requires acknowledging a role for non-human actors alongside humans, in line with socio-legal approaches which draw on perspectives from actor-network theory (Faulkner, Lange, and Lawless 2012).

The article begins by setting the scene: introducing some key feminist and sociological debates about work-life balance which have provided the impetus for my current research. The second section outlines perspectives, mainly from law and anthropology, which are proving useful in analysing the form and effects of legal temporalities. In the third section, I attempt to bring these two themes together, analysing legal technicalities of work-life balance in the UK for their temporal orientations. If temporal relations now provide the key ground for feminist theorising (Adkins 2009), our attention should turn to what types of temporality structure legal and policy engagements with women's working lives.

Work-life Balance, Value and the New Economy

Work-life balance is one of a range of measures intended to address the exclusion of women from clock time by stretching that time, using time-use surveys and other mechanisms to map women's unpaid work activities onto legible units of economically productive days, minutes, and hours (Adkins 2009a; Waldby and Cooper 2010). These measures include demands such as wages for housework (Costa and James 1975), which have had extremely useful, if contentious, effects in providing practical articulations of feminist concerns with the normative production of value (Weeks 2011). They also include strategies for a compressed work week, for example (Lung 2010). In another manifestation of time-related activism, the UK's Fawcett Society, a feminist organising group, has held Equal Pay Day on in late October or early November over the past few years, stating that due to the gender pay gap, this is the date in every year on which women should stop working.

Out of a range of time-stretching measures, work life balance initiatives enjoy a relatively high degree of legitimacy. Legislative and policy instruments which encourage women and parents to 'balance' work and care, for example, have been one of the key responses to questions of women's labour market participation in UK labour and discrimination law. Unsurprisingly, however, these initiatives have also been subject to a number of critiques. Despite the potential of work-life balance laws to upset norms of care and work, feminist labour lawyers have argued that these mechanism have instead reasserted gender roles within the family and in work and reified the position of women as the key agents for performing the 'reconciliation' of work and family life (Fudge and Owens 2006).

Legal and policy work-life balance initiatives have operated within an ideological matrix of family, household, and market relationships which is paradigmatically white (Lung 2010; Lewis 2000) middle to high income (Williams), and heteronormative, even as attempts to recognise queer family forms have become apparent on the face of some legislative reforms (Conaghan and Grabham). In promoting 'gender-sharing' or roles for fathers in care, work-life balance can also be positioned amongst policies which increasingly attempt to re-structure normative heterosexuality to maintain a concept of privatised social reproduction (Bedford 2009).

Alongside these critiques is an increasing concern that the paradigms of social reproduction and women's exclusion from the formal labour market on which work-life balance measures rely is becoming outmoded. Not only are women overwhelmingly now in paid employment and increasingly understood to have hyper-economic capacities, but gendered relations in the private sphere are also shifting (McRobbie 2007; Adkins 2009b). Furthermore, strategies for re-valuing time spent on social reproduction only work when the clock time one is aiming to approximate is sufficiently standard across the economic field and across sectors of work. With the restructuring of the economic field, of working practices, and of the dynamics of commoditisation more generally, into less collectivised, more flexibilised and more precarious forms, the clock time of industrial capitalism becomes far less relevant to feminist investigations into labour and value (Adkins 2009b, 4.1). It is the working patterns and conceptual paradigms of Fordist capital accumulation that underpin work-life balance measures and render them questionable (Weeks 2011), just as feminist analyses of reproductive labour in the stem cell industries, for example, are now struggling with post-Fordist configurations of labour and value (Waldby and Cooper 2010). For this reason,

work-life balance measures may be at variance with shifts in the generation of value and the negotiation of time that we find in the ‘new economy'.

What, specifically, might be different about these measures? Adkins argues that work-life balance policies rely on an outdated retroactive model of accumulated labour. She begins by pointing out that within Marx's theory, commodities are made up of congealed, abstracted and/or accumulated labour. The labour which is congealed into the commodity form is specifically labour *time*, measured as time spent in the past. She then argues that in fact there are forms of economic activity now in operation which, instead of relying on ideas of accumulated past labour, in fact rely on an orientation to the future. Her own research into web-designers, as one example, shows that these workers do not expect to be remunerated on the basis of past labour, but instead on future hits generated by their sites. Here, Adkins argues, the value of the commodity is not about the past but instead about a future which is positioned as external to the body of the worker and external to what Adkins calls the ‘dead labour-time of the commodity' (Adkins 2008, 194). Drawing on other examples from her recent research, Adkins proposes that whereas the model of accumulated labour time worked for the industrial capitalism of Marx's time, within current capitalist economies, value can be understood in ways other than as congealed within commodities. Labour, value, and the commodity can, for example, be understood as ‘open and alive' (Adkins 2008, 195).

The challenge for feminists is to understand whether and how new and different forms of value are being gendered and what role women might have in these new value-creating practices. Ironically, as Adkins suggests, women may be enjoying greater access to the labour market just at the moment when the salience of embodied labour power to the creation of value in new economic

forms is waning (Adkins 2008, 198), a view also supported by Catherine Waldby and Melinda Cooper in the context of women's reproductive roles in the regenerative medicine industries (Waldby and Cooper 2010). As a result, feminists might need to think of new ways of framing demands to participate in value-creation. This could well involve challenging the logic of social reproduction that underpins some work-life balance measures. As Adkins puts it:

> ... if, as the empirical materials I have presented seem to suggest, labour may no longer comprise a retroactively organized substance or property accumulated in bodies which can be alienated (albeit with struggle), is a model which assumes that gender is constituted in an uneven distribution of rights to jurisdiction over such a substance or property relevant for the contemporary present? (Adkins 2008, 196)

In other words, a key problem with work life balance initiatives may be the understandings of social reproduction, and the production of value, on which this claim to rights is based. Or to put it another way:

> ... should we not also question the assumption that increasing numbers of women in employment create a crisis of social reproduction, for is this not also to assume that the act of production rests upon unpaid labour which enables and facilitates the alienation of labour power as substance or property? In short, do not arrangements of labour based on futurity demand that such a model of society - where production is understood to be underpinned by and to require social reproduction - be rethought? (Adkins 2008, 197)

Once value-creation and production are understood in a way other than the retroactive accumulation of past labour in the body, and if it can include practices and paradigms in which value resides outside of the body, in the yet-to-come, as Adkins puts it, this challenges not only of many social reproduction arguments but also the logic of work-life balance. This is because the aim of such policies, to enable women to store up and be able to exchange past labour in

the body, is out of step with where and how value is being created in new economic forms. These initiatives are based on a logic of retroactivity when the temporal orientation of value production in new economic practices might not be future- or multi-oriented. One way of putting this is to say that work-life measures are anachronistic - out of time, wrongly aligned, mis-oriented for certain practices of value-creation emerging in the new economy. Another way of approaching this dilemma is to acknowledge, at the very least, that the conceptual parameters of work-life balance have vastly different temporal orientations to practices emerging in the new economy. In other words, the temporalities of work-life balance policies and social practices of value creation might be far more analytically and practically distinct than we would otherwise imagine.

This poses a particular problem for feminist labour lawyers such as myself. Work-life balance has been a seed-bed for feminist perspectives on labour regulation for over three decades {Fudge, forthcoming}. It provides essential perspectives for analysing and responding to the androcentric basis of labour law and policy in a range of contexts. Many feminist labour lawyers find work-life balance to be a problematic response to gendering processes within labour, yet work-life balance has been a fact of life, it has held a certain self-evident truth in the field, and it has provided somewhat of a 'provocation', as Kathi Weeks would put it, to think otherwise about women's participation in the paid labour market (Weeks 2011). For many, feminist scholarship and activism on social reproduction has not been mobilised in effective ways through legal and policy interventions on work-life balance, and it has not sufficiently re-drawn the conceptual paradigms of labour law. Yet building on these critiques are developments in value-creation which, as Adkins and others suggest, require re-engagement with key concepts in feminist approaches to labour regulation. Moving away from, or contextualising,

a retroactive concept of value, however, is a type of challenge for which we might need to develop different analytical tools.

Legal Temporalities

It is at this point that developing fresh perspectives on legal temporalities might help us to understand the character of contemporary work-life balance laws. The purpose of this section, therefore, is to introduce what I consider to be some useful ways of analysing legal temporalities, although my work in this area is ongoing. Cultural theorist Elizabeth Freeman defines as 'temporal mechanisms' those social and political processes which reproduce norms of the family, citizenship, health, and work through the exercise of time (Admin 2005, 57). In more recent scholarship, Freeman has expanded this into a theory of 'chrono-normativity': what she refers to as 'the use of time to organize individual human bodies toward maximum productivity' (Freeman 2011, 3), and also as the ways in which 'genealogies of descent and mundane workings of domestic life interlock through temporal schemes' (Freeman 2011, xxii). Some examples of chrono-normativity might include the supposedly 'normal' timeline of childhood, puberty, courtship, marriage, children, and retirement, from which we all deviate to greater or lesser extent during our lives; or the time of the working day and working week, shaped through contestation over labour rights and pay; or the temporal idea, for queers, of 'coming out', for immigrants, of 'becoming citizens', or for offenders, of 'doing time'. Work-life balance measures, conceived through critical feminist responses to the unequal allocation of undervalued care and the concomitant effects on women of labour market segregation, are temporal mechanisms. They challenge chrono-normativity to the extent that they challenge the hitherto 'male' time of work: a working day facilitated by women's social reproduction. However, if implemented in ways that do not seek to shift the

burden of unpaid care work from women, or if allocated only to some classes of women and not others, or if mobilised in economic circumstances in which care is increasingly privatised through government austerity policies, work-life balance also has the potential to buttress the hetero-normative time of the family, care, gendered career progression and gendered patterns of poverty. In this context, Freeman's definition of chrono-normativity as being about the maximisation of productivity takes on added salience.

In this way, time is mobilised through legal and policy initiatives: time forms part of the conceptual backdrop which shapes practical legal solutions to social problems. For example, the idea of gender *permanence* underpins the Gender Recognition Act 2004 to the extent that when a person makes an application to the Gender Recognition Tribunal, they are required, by law, to make a statutory declaration that they will remain in their acquired gender 'until death' (Grabham 2010). Time fulfils certain legal and political functions, establishing the parameters through which a person might say they have a disability for the purposes of disability rights legislation, or certifying the moment at which a person is understood, in law, to have transitioned from one gender to another. Time-related concepts put limits on what types of law people can use and what people need to do to access rights. Understood as part of the social vernacular, ideas of time have also been at least partially defined through law itself: ideas such as work-life balance are inherently socio-legal concepts.

Temporality is not an inherent feature of the world. As Bruno Latour would put it, temporalising practices are a way of connecting entities and 'filing them away' (Latour 1993, 75). Crucially, if we change the way this connecting and filing happens, then we get a different temporality (ibid). Furthermore, it is entirely possible, and even normal, to have elements from different times mixed up

together: Latour gives the example of using an electric drill (the invention of which is thirty five years old) but also a hammer (hundreds of thousands of years old) in a DIY project. In other words, time is created through exchange and action, not, as modernity would have it, through calendars, flows and progress (ibid). As Latour puts it:

> We have never moved either forward or backward. We have always actively sorted out elements belonging to different times. We can still sort. *It is the sorting that makes the times, not the times that make the sorting*. (Latour 1993, 76)

Or:

> Time is not a general framework but a provisional result of the connection among entities. (Latour 1993, 74)

If time is created through a sorting process, through connections among entities, then part of any analysis should include sorting processes that we choose, for various reasons, to name as legal. And as many will be aware, for scholars working with actor network theory, it is no less important to trace the effects and actions of objects as it is to trace the effects and actions of humans. In one key socio-legal mobilization of these principles, Emilie Cloatre utilized an ANT approach in her study of Trade Related Intellectual Property Agreements (TRIPS) in relation to pharmaceutical patents in Djibouti (Cloatre 2008). This approach helped her to investigate and provide an account for the operation of patent laws within Djibouti on an ongoing basis despite the lack of any formal patent law in the country. In part, and this is abbreviating her argument to a considerable degree, this was down to the fact that patented drugs (objects) imported into Djibouti were, for various reasons, provided by multinational companies in place

of generic drugs. These networks of exchange were stabilized through leaflets and visits by multinational corporations.

In Cloatre's analysis, the circulation of objects helped to create legal legitimacies and legal practices absent formal law itself. My investigation into legal networks aims to trace the ways in which legal *temporalities* are co-constructed between human and non-human legal actors. Engaging with the theories outlined so far, therefore, my approach to analysing law and time focuses on the sorting processes that create legal temporalities and temporal mechanisms. This approach also acknowledges the possibility that non-human actors, objects, and legal technicalities, can be just as important as human actors in creating legal ontologies of time. What could such an approach look like? I provide two short illustrations before moving on to analyse the temporalities of work-life balance laws in the next section.

The Conseil d'État: A Modulated Suspension of Certainty

The first example can be found in Latour's own ethnographic research in the French Conseil d'État, although he does not explicitly address the question of legal temporalities. In the Conseil, as Latour puts it, legal processes are pushed forward when the *conseillers* switch their attention from one text to another within a file or when they conclude a case and put a dossier back in its file. Through Latour's analysis, it becomes possible to see the file in the Conseil as at once a standardised legal object, no different in form to any other file, and also as a container for other legal objects: dossiers and reports. Files allow detachment to take place, and a particular attitude to, or creation of, legal fact as something that must be disposed of to arrive at the relevant legal principle. The more the case proceeds up the hierarchy of *conseillers*, Latour notes, the more the file is dealt with by people who have no knowledge of it (Latour 2004, 88). The act of

passing the file to the next stage freights it with new significance and alters its purpose.

Latour remarks that legal processes within the Conseil produce a sort of homeostasis, a sense of everything being covered 'completely and seamlessly', unlike scientific processes which leave voids (Latour 2004, 114). Homeostasis evokes the ability to maintain a constant through the adjustment of other features of a system. Arguably the temporal horizon of homeostasis does particular work within Latour's analysis. Legal processes, and hence *conseillers*, labour under an obligation to ensure legal predictability (or securite juridique). To some, predictability might imply a progressive or consolidating temporal narrative: certainty filters in through the ambience in the Conseil, is strengthened through legal process, and then finally established in the act of judgment. A lack of certainty gives way to a relative sufficiency. But this is not how Latour describes it. In fact, on Latour's analysis, legal predictability happens through the fabrication of doubt and distancing - in other words, through the strategic *avoidance* of certainty. It happens through the journeys that files make as they progress through the Conseil; it happens through the gradual jettisoning of facts and strengthening of legal principle, *conseillers*' distancing attitudes to files, and through the interchangeability of *conseillers* themselves.

The *commissaire du gouvernement* reviews the course of the case so far before tethering the legal principles at issue in the case to two centuries worth of administrative law and presenting his innovations as a new expression of existing principles. And since the *commissaire* merely prompts and does not pass final judgment, he need not hurry. In fact, he must suspend certainty in order for the correct legal process to ensue. This suspension does not put the legal process off-

course and does not threaten the parameters of legal judgment (unlike *uncertainty*, which might have different effects). Latour's own wording gestures to this - avoiding certainty is like seeing it, but not acting, not just yet. But once the commissaire has concluded his comments, it is necessary to bring things to an end. And this shift in tempo is not merely a possibility but an obligation.

Latour describes the process through the Conseil of a case as epitomising what would, in common sense terms, be defined as the 'slowness of law' (Latour 2004, 94). Yet, as he points out, these distancing procedures are required so as to ensure that the law 'has doubted properly' (Latour 2004, 94). Having suspended certainty, and indeed actively fabricated doubt, a curious completeness takes over law: homeostasis, a type of all-encompassing, self-adjusting, temporality (Latour 2004, 113), produced through a multitude of adjustments and changes in pace. From the present (post-judgment) vantage point, the legal principle confirmed through proceedings at the Conseil is as it has always been, despite the fact that the entire process was pursued through means of a graduated suspension of certainty.

In this analysis, the particular time of the legal proceedings in the Conseil is produced as predictable, as always having existed, but through a specific range of techniques, which invite, put off or suspend judgment, or (in the case of doubt), which allow a particular 'hexis' or bodily disposition to generate knowledge effects. Latour describes a scene in which law relies on fluctuating tempos: indeed the speed of the final judgment is required by justice. But it is also worth tracing the role of objects here. Arguably this varying tempo cannot be achieved in the Conseil without the passing to and fro, lingering over, and, alternatively, the speedy disposition of files. Latour's previous theories about time and sorting are all the more relevant here: the sorting creates the time, not the

other way around. Files create this particular form of legal time because they are uniform, numerous, and because they seal off their own legal scenarios from unwieldy facts.

It is consistent with Latour's approach that he should observe, here, the significance of non-human actors. But it is all the more useful, for my purposes, that the opening, processing, and closing of files should instantiate and conclude legal proceedings. Although Latour does not state this, it would be very difficult, if not impossible, for a case to exist without a file. The box file, in this account, is the case. But more than that, the pace at which the file progresses through the legal system produces legal time.

Japanese Financial Regulation: 'Real Time' and 'Placeholders'

The second example can be found in Annelise Riles's ethnography of Japanese derivatives markets and legal regulatory structures in the late 1990s and 2000s. Riles addresses Friedrich Hayek's influential critique of bureaucratic planning and his valorisation of private ordering. Her analysis addresses the question of 'how legal reason deals with the future, and about the temporal dimensions of legal knowledge of the market' (Riles 2011, 159). In brief, Hayek suggests that economic planning is misaligned with real-time developments in financial markets. As Riles argues, Hayek's argument is fundamentally temporal: anticipatory bureaucratic planning cannot keep up with the market but, by contrast, private property rules, acting shortly after the fact, are able to minutely adjust to market fluctuations (Riles 2011, 157–58). Riles's critique hones in on Hayek's lack of attention to what he suggests are the relative temporal strengths of private property rules. She analyses two relevant examples of Japanese legal technologies aimed at managing risk in derivatives markets: the real-time gross settlement payment system (RTGS) used by the Bank of Japan as an example of a

bureaucratic strategy, and the use of collateral by parties to swap transactions as an example of a private law strategy. Risk is understood here as a legal and temporal matter, connected with market actors' knowledge about the future and their use of legal techniques to manage or react to this knowledge. All of this takes place in a context heavily influence by the socio-technical creation of 'real time' or up-to-the-moment market changes and hedge-able financial futures.

In the sphere of public or state regulation, the Bank of Japan's real-time gross settlement payment system (RTGS), which moves funds from one bank to another, evidences a significant shift in technocratic approaches to the market. Unlike the previous system, through which banks settled up what they owed each other at a defined point each day, under the RTGS, each transaction is settled in full immediately. One of the reasons for the shift in approach was that under the previous system, a failure of one bank to meet its obligations to pay would have a knock-on effect on other banks and threaten systemic failure. The design and implementation of RTGS, therefore, was a result of bureaucrats' anxiety to predict and eliminate future problems. In turn, temporal challenges in regulating financial flows and anticipating problems led to the undermining of the state's legitimacy in this field (Riles 2011, 161).

In the area of private law, Riles's focus is on swap transactions. Swaps are agreements to exchange an asset at a future date; they are, as Riles puts it, a 'temporally stretched' form of market exchange (Riles 2011, 163). Uncertainty (for example, the threat that one party will go bankrupt) is managed here through the posting of collateral - cash or bonds - with the other party, to be held until the swap date. If a party fails to fulfil their side of the swap, the collateral is kept. The interesting area for analysis here is the 'meantime': the period of time during which the parties to the swap are mutually interconnected through

collateral. Unlike Hayek's argument that this type of private law mechanism 'solves' uncertainty, Riles demonstrates that the layers of embededness that ensue when collateral is posted makes private law no more effective in and of itself than bureaucratic action in resolving temporal dilemmas.

The question remains how exactly private law governs. Here Riles turns to the difficulties experienced in Japan over the question of rehypothecation, or the ability of the pledgee to use the collateral up until the date of the swap. In United States law, rehypothecation rights had been legislated, meaning that pledgees could use the collateral. No such legislation existed in Japan. Yet the standard form documentation of the International Swaps and Derivatives Association (ISDA) contained a clause simply allowing the pledgee to use the collateral. Riles terms this apparently simple technical solution a 'placeholder' - a means through which both parties can act as if the pledgee already has rights which are not yet legislated in the domestic law of a given state, such as Japan:

> ... one of the interesting features of the placeholder is where it puts our attention - on the provisionally settled present, and on the near future. The assumption is that all we can really know at the moment is this near future. We will leave final outcomes to unfold as they may. (Riles 2011, 169)

In this way, the ISDA document works in and with time, highlighting the key role of documents, as material artefacts in creating and sustaining temporalities (Riles 2011, 175). In a manner very unlike approaches imagining the present as open-ended, the placeholder treats the key ambiguity as if it is already resolved (Riles 2011, 176). Similarly, it is not concerned with developing a secure solution to a risk; it merely holds that the dilemma has been resolved for now. Placeholders are 'private constitutional moments' (Riles 2011, 177) because they create and require that a certain group is held, for the duration, by an 'as if'. In this way,

Riles argues that she has provided a detailed account of what Hayek alludes to as the temporality of private ordering. But this temporality does not have the inherent power to resolve uncertainty that he grants it in his argument. Instead, as Riles puts it, 'Hayek's private law is more fuse box than engine' (Riles 2011, 177).

In these two examples, temporal rationalities, created through 'sorting processes' by the interactions of humans, objects, legal technicalities, and bureaucratic rationalities, have significant social and legal effects. This analytic perspective has considerable potential for helping to prise apart the tangled policy goals, normative commitments, and temporal presuppositions of contemporary work-life balance law. In particular, as the next section demonstrates, the role of the most mundane and obvious legal rationalities is significant in setting the parameters for dominant temporal outlooks on women's work and social reproduction.

The Legal Temporalities of Work-Life Balance

Work-life balance and flexibility provided two routes for successive New Labour governments in the 1990s and 2000s to address the perceived tensions brought about by women's increased entry into paid work (Conaghan 2004). But what was for New Labour a means of resolving a gendered work dilemma and contributing to labour market flexibility has become, for the Coalition, one of a number of strategies for achieving growth. I have already mentioned the policy connections between balance, flexible work, and economic growth made in the *Modern Workplaces* consultation in 2011 (see above). Similarly, in the Parliamentary debates around the Children and Families Bill, government ministers seem to be adopting the idea of flexible work as economic strategy.

Edward Timpson, Parliamentary Under Secretary of State for Children and Families, for example, put it as follows during the second reading of the Bill on 25 February 2013:

> We believe that supporting strong families and introducing flexible working practices is key to achieving business and economic growth. A new system of shared parental leave will support business by creating a more motivated, flexible and talented work force. Flexible working will also help widen the pool of talent in the labour market, helping to drive growth.[2]

These comments are indicative of a broader conceptual shift within social policy underway since the Conservative-Liberal Democrat Coalition came into power in 2010. Following a thirteen year period of Labour government, characterised by centre-left, social democratic 'Third Way' policies of social inclusion and labour market flexibility, which ushered in a range of 'neo-liberal' approaches to labour regulation, Coalition policies have recently re-asserted values of fiscal and social conservatism. Social policy initiatives, in particular, have been influenced by the Conservative party's 'Big Society' umbrella concept, a centre-right commitment to shrinking the role of central government, empowering local communities, and responsibilising citizens to 'mend our broken society'.

Coming as they have done in the midst of wide-ranging cuts in public services, redundancies, and changes to the welfare benefits system, work-life balance reforms, unsurprisingly, have inspired considerable scepticism amongst feminists. Flexible work mechanisms remain extremely hard for those in precarious work or on low incomes to access (Grabham and Smith 2010) and the retention of onerous eligibility requirements has put the new expanded right to request flexible work out of the reach of many working in non-standard arrangements.

[2] Hansard, 25 February 2013, column 49.

Proposals for sharing maternity and paternity leave, whilst apparently encouraging a shift in the gendered burden of care currently assumed by women, nevertheless operate with a foundational assumption of heteronormative conjugality that many will find problematic. Similarly, stretching the right to request flexible work to all employees arguably represents a shift away from a structural understanding of gendered inequalities, if such an understanding has ever been manifest on the face of UK employment equality legislation in the first place (which is debatable).

However, at the heart of Coalition rhetoric and motivating the new, extended, right to request flexible work is an assertion about growth which requires us to think carefully about the temporal underpinnings of work-life balance laws. Specifically, the Coalition government's rationale appears to be that flexibilising working relations, allowing employees some lee-way in determining their own working hours and working arrangements, brings talented people into workplaces, creates opportunities, promotes economic activity and assists in the creation of growth in the new economy. The logic of such a move is neatly aligned with market-oriented approaches to labour regulation, in which rational market actors negotiate their own optimum terms and conditions. This idea of the market is also infused with an understanding of social reproduction which positions the resolution of the care dilemma as a key means of promoting economic growth. Within such a paradigm, as Adkins suggests, the logic of retroactivity is certainly evident: women's participation in value-creating practices is facilitated so that they can accumulate and exchange labour and contribute to a growing economy. In this way, the motivating logic of the *Modern Workplaces* consultation blends concepts of retroactive value found in Fordist conceptions of labour with neo-liberal market ideals to create a particular strand of sociotechnical temporality: the idea of balance as a solution.

De Goede has shown how the sociotechnical concept of 'real time', central to finance capitalism, became possible partly through the development of the Dow Jones index, which helped to produce ideas of instantaneous adaptive change and hedgeable futures (Goede 2005). A similar genealogy of work-life balance might trace the interaction of feminist conceptions of social reproduction, time-use surveys, sex discrimination laws and policies, and new theories of management such as TQM (total quality management) which valorise organisational adaptability and worker responsibilisation (Amoore 2004), to create motivating social policy goals of equilibrium and adaptation. The confabulated logic of work-life balance, a result of many different influences, seems to be driven by a fundamental assumption that the constructed tensions of imbalance or dis-equilibrium can be resolved. If Hayek's private law is, as Riles argues, something akin to a fuse box, then work-life balance policies, created, as they are, through private law and legislated rights, are more of a double-entry book-keeping system, a system for reckoning temporal credits and debits, a means of resolution.

This type of resolution rests on a perceived equivalence between different forms and uses of time that at least allows them to be measurable on the same scale, so that time spent on social reproduction is analogous to time spent in paid employment. Feminists have long argued that time spent on care or domestic work is equally valuable to time spent in the formal economy. Work-life balance policy, as a sociotechnical device, is one logical extension of this argument: if time that has been excluded is to be included in some way, then it must be analogised. As the foreword to the *Modern Workplaces* consultation put it:

> We want to create a society where work and family complement one another. One where employers have the flexibility and certainty to recruit and retain the skilled labour they need to develop their businesses. And one where employees no longer have to choose between a rewarding career and a fulfilling home life. (BIS 2011, 2)

The horizon of this kind of temporality is not so much a hedgeable future, constructed through notions of risk, which creates a forward concept of time and then stretches into it, but an expanded concept of a reckonable present which stretches outwards and maintains an assumed equilibrium through analogised temporal modes. If 'real time' requires instantaneous change, then work-life balance requires adaptive negotiation.

The point at which this analysis has to engage with law is the point at which we assess the significance of legal technique and legal form to such a paradigm. Within the legal and policy sphere in the UK since the early to mid-1990s, work-life balance has been mobilised by the idea of empowering employees to negotiate flexible working with their employers through private law mechanisms drawing on principles governing employment contracts. The current right to request flexible working in the UK's Employment Rights Act 1996 (ERA) allows certain employees with responsibility for a child's upbringing, or with other care responsibilities, to make a request to alter their working schedule. Under sections 80F-I of the ERA, employees have the right to request, but not receive as such, a change in their terms and conditions such as a change in working hours, time of work, or place of work.

It is important not to ignore the generative functions of legal techniques such as the right to request. Since it has been in place, the right has created new means of sorting time within the context of employment relations in the UK, and arguably it has also created new gendered relations in the workplace. Sara Jain has

argued that typewriters contributed to a process of heterosexualisation of workplace relations in the twentieth century (Jain 2006), and I am in the process of fieldwork which aims to assess whether and how documentary practices associated with the right to request have created new gendered and heteronormalised social patterns at work, and new genres of temporality. In the meantime, however, the form of UK law concerning work-life balance is itself a rich source of information about regulatory understandings of gender, value, and time.

In her analysis of the introduction of the new RTGS system in Japan, Riles refers to bureaucrats' hopes that a system based on 'real time' transactions would responsibilise banks, leaving a new order to emerge based on 'market practice' (Riles 2011). The idea was that the new technology would encourage banks to control their risk-taking practices. This was a specifically bureaucratic vision or hope, which relied on bureaucrats' ability to see the banking system as a whole. Similarly, successive groups of bureaucrats in the UK's Department of Business, Innovation and Skills have created a system of delegated negotiations between employers and employees in the right to request, through which actions of autonomous and self-interested market participants are seen to create beneficial or self-correcting economic effects at the level of the labour market as a whole. I use the term 'delegated' because the right to request flexible work does not amount to a direct right granted by legislation to receive a flexible working arrangement as such. It depends on a further step, the request, which mobilises a private law process in which the role of the employer is central. In the context of parental leave, a different legal entitlement, the Coalition government has raised the goal of the 'state getting out of the way' (BIS 2011, 2), a clearing away of bureaucratic involvement so that privatised social actors can resolve workplace

and care tension on their own, and it is arguable that a similar logic has long structured the arm's length nature of the right to request itself.

Riles terms the shift from the designated time net settlement system (DTNS) to real time gross settlement (RTGS) in the Japanese banking system a form of 'de-regulation as transformation' (Riles 2011, 147), through which bureaucratic involvements shifts register rather than disappear. In fact, as Riles puts it, a more appropriate way of thinking about deregulation in the context of RTGS might be 'unwinding': the creation of responsible market actors as a way of managing risk. As Riles puts it:

> Unwinding is by definition movement in place rather than movement forward. It is a response to a situation in which one is too close, too tightly bound up with the thing one is trying to engage with, to make sense of it. (Riles 2011, 148)

The right to request flexible work itself evidences a similar wish to dis-entangle bureaucratic involvement, or keep it apart from a market which is perceived to have self-regulating functions. However, it does so in quite a different way in an obviously quite distinct legal landscape. This is a context in which the legal technique, the right to request flexible work, is in theory not needed at all to achieve the negotiation which forms the key aspect of the socio-technical strategy. On the usual principles of contract law governing employment relationships in the UK, an employee would not need a right to commence negotiations about flexible work in the first place. Contracts are always potentially negotiable and variable. Any person wishing to vary their terms and conditions - for example their working hours - would not necessarily have to resort to the legal route provided in the Employment Rights Act 1996 to do so. In this way, the new right did not conjure a sphere for self-regulating action in the same way as the RTGS system did in the context of the Japanese banking system. From

a legal perspective, that sphere already existed in the form of relations occasioned by the employment contract.

In this sense, the right to request creates no new legal route for employees wishing to negotiate flexible work. Instead, it is a legal technical solution which overlays an existing contractual right in private law to vary working conditions. As such, it re-packages already-existing principles of employment law into a new, semi-regulated procedure. It does not seem to evidence unwinding, as such, because there was no stronger legal or bureaucratic entanglement in women's working relations around flexible work before the right was introduced. If anything, this is the regulatory intensification of the private law principles that would normally structure the legal regulation of employment in any case. The right leaves the usual contractual employment relations intact, but provides remedies in tort if employers stray too far from the bounds of acceptable business reasoning, and a process for asserting this new hybrid through Employment Tribunals.

As such the right could evidence a weak bureaucratic trust in private law itself. If a route already exists in the form of the employment contract itself, why legislate at all? Sections 80F-I of the ERA, on this approach, duplicate and enhance normal contractual principles, but within a framework of legislated rights. This could evidence some belief on the part of bureaucrats that the current legal paradigm needs patching up with a different type of legal mechanism. Yet more likely, creating a right over an already-existing legal relationship which could achieve the same outcome also has a performative and pragmatic function, instantiating a bureaucratic commitment to achieving ‘balance'.

No particular temporal standards, as such, have been set by this hybrid legal arrangement; instead, the framework provides a space for individuated arrangements. Yet the process created by the mechanism has specific, and quite rigid, temporal qualities. It begins with an employee filling in a flexible working request form (or similar document) and submitting it to their employer. The employer must then call a meeting within twenty eight days to discuss the form, and they must make a decision about the request within fourteen days of the meeting. Employers can refuse requests only for business reasons outlined in the ERA, for example, if the new working pattern would adversely affect quality and performance; impose extra costs which would damage the business; affect the business's ability to meet customer demand; if the employee would not have any work to do during the suggested working hours, and so on. If the employer refuses a request on incorrect facts, or for a reason that is not listed in section 80G ERA, the employee can make a complaint to an Employment Tribunal for reconsideration of the original application or compensation.

The logic of the first part of this process encourages something akin to the modulated suspension of certainty that we saw in Latour's analysis of the Conseil D'État, characterised through time periods, the exchange of documents, and the apparent open-minded deliberation of the employer. However, according to the ERA, the employer must then make a decision within fourteen days of the meeting. At this stage of legal proceedings, that decision is final. It either results in an entirely new contract or the reassertion of the old contract. In fact, once the new contract exists, the dilemmas that motivated the negotiations under the old contract have become impossible to mobilise legally. This is definitely not flexibility in the normal sense of the word. The ERA only provides flexibility to shift to a new permanent working regime, and no guarantee, on the face of it, to shift back or shift again when required. This technical legal mechanism can only be

exercised once every twelve months. As such, the employer's deliberation, the employee's submission to time periods and form-filling, and the all-encompassing time of the new contract all contribute to an understanding of the flexible work request as inaugurating a type of staged legal homeostasis, through which working arrangements can, at maximum, be re-negotiated every twelve months but with no guarantee that requested changes will be agreed and with the proviso that newly-negotiated arrangements may be with the employee for the remainder of their time with this employer.

In this context, what does it mean that in new Coalition proposals, the right to request is being extended to all employees? Such a de-gendering of the right could fit in with ideas of gender sharing which are becoming more influential in social policy circles, and certainly the *Modern Workplaces* consultation emphasised the role of fathers at several points. However, it is possible that extending the right to all employees also fits with a logic of de-regulation. By doing away with some of the conditions on who can claim, in effect by universalising it to a certain degree (although it is still not available to many precarious workers), the right becomes easier to administer. This fits with other Coalition proposals around flexible work which emphasise efficiency and 'common sense', for example the proposal to replace the current statutory procedure with a duty on employers to process requests in a reasonable manner and within a reasonable period of time. Comments by Jo Swinson (Parliamentary Under Secretary of State for Women and Equality) during debate in the House of Commons on the Children and Families Bill comments reveal some of the reasons that contributed to such a move:

> I was rather horrified when, having arrived in the Department and asked what the procedure was, I was shown a flow chart featuring eight separate steps with periods of

> 28 or 14 days elapsing between them, the total amounting to 84 days. Far too much bureaucracy was involved in what should be a straightforward and simple set of discussions between employers and employees. We are replacing that with two pages of common-sense, straightforward guidance, so that everyone will know where they stand.[3]

These more recent moves seem to tally more closely with a process of deregulation as transformation, evidencing a discursive shift, in this case, in which a 'light touch' form of regulation is re-positioned as an administrative quagmire, before being streamlined and made available to a 'universal' class of legal subjects: all employees. Some commentators may be concerned at the apparent down-grading of the procedures surrounding the right to request from their legislated position to statutory guidance, yet this most recent shift represents merely another change in form for a strange and contradictory legal temporal mechanism: a right where no right is needed, for a form of flexibility which leads to a new permanent working arrangement.

Concluding Remarks

Work-life balance laws and policies, themselves embedded in mutating networks of gender, labour, and value, have a range of contradictory logics and significant social effects. In the context of the insistent demands of generations of feminists, for example through wages for housework demands, some might argue that the stultifying effects of aiming for 'balance' have ensnared utopian feminist visions of re-valuing social reproduction into restrictive practices of negotiation and exclusion. Those women who find their way through increasingly complex

[3] Hansard, 25 February 2013, columns 131-132.

eligibility requirements to claim the right to request flexible work in UK law, for example, are met with onerous processes of form-filling, negotiation, and time periods, raising concern over the transformative potential of work-life balance laws. Certainly, my own approach over recent years has become increasingly critical of ideas of 'balance' within feminist or other social policy initiatives.

With shifting arrangements of value-production emerging in the new economy, it becomes more important to analyse the assumptions and internal logic of key policy paradigms, such as work-life balance, which purport to improve women's working lives and which arguably rely on outmoded understandings of economic life. This article has been an attempt to crack open the temporal assumptions in one sphere in particular, the legal sphere, which continues to circulate powerful scripts about the goal of 'balancing' work and family. The picture that emerges is confusing, involving a range of temporal mechanisms - retroactivity, legalised homeostasis, flexibility through permanence, for example, many of which contradict each other and all of which are linked to other policy concerns. Yet by looking closely at legal technicalities, we can discern much about the conceptual logic that affects many of us through influential regulatory strategies.

Adkins, Lisa. 2008. "From Retroactivation to Futurity: The End of the Sexual Contract?" *Nordic Journal of Feminist and Gender Research* 16 (3): 182–201.

——. 2009a. "Sociological Futures: From Clock Time to Event Time." *Sociological Research Online* 14 (4). doi:10.5153/sro.1976. http://www.socresonline.org.uk/14/4/8.html.

——. 2009b. “Feminism After Measure.” *Feminist Theory* 10 (3) (December 1): 323–339. doi:10.1177/1464700109343255.
Amoore, Louise. 2004. “Risk, Reward and Discipline at Work.” *Economy and Society* 33 (2): 174–196. doi:10.1080/0308514041000167711.
Ashiagbor, Diamond. 2005. “Promoting Precariousness? The Response of EU Employment Policies to Precarious Work.” In *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, edited by Judy Fudge and Rosemary Owens. Oxford: Haart Publishing. http://eprints.soas.ac.uk/10493/.
Bedford, Kate. 2009. *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank*. U of Minnesota Press.
BIS. 2011. “Consultation on Modern Workplaces”. Consultation. Department for Business, Innovation & Skills, HM Government.
Cloatre, Emilie. 2008. “Trips and Pharmaceutical Patents in Djibouti: An ANT Analysis of Socio-Legal Objects.” *Social & Legal Studies* 17 (2) (June 1): 263–281. doi:10.1177/0964663908090882.
Conaghan, Joanne. 2004. “Women, Work, and Family: A British Revolution?” In *Labour Law in an Era of Globalization*, 53–74.
Conaghan, Joanne, and Emily Grabham. “Sexuality and the Citizen Carer.” *Northern Ireland Legal Quarterly* 58: 325–342.
Conaghan, Joanne, and Kerry Rittich, ed. 2005. *Labour Law, Work, and Family: Critical and Comparative Perspectives*. OUP Oxford.
Costa, Mariarosa Dalla, and Selma James. 1975. *The Power of Women and the Subversion of the Community*. Falling Wall Press Ltd.
Faulkner, Alex, Bettina Lange, and Christopher Lawless. 2012. “Introduction: Material Worlds: Intersections of Law, Science, Technology, and Society.” *Journal of Law and Society* 39 (1): 1–19. doi:10.1111/j.1467-6478.2012.00567.x.
Freeman, Elizabeth. 2005. “Time Binds, or, Erotohistoriography.” *Social Text* (Issue 84-85). http://www.socialtextjournal.org/journal/issue84-85/time-binds-or-erotohistoriography.php.
Freeman, Elizabeth. 2011. *Time Binds: Queer Temporalities, Queer Histories*. Duke University Press.
Fudge, Judy, and Rosemary J. Owens. 2006. *Precarious Work, Women And the New Economy: The Challenge to Legal Norms*. Hart Publishing Limited.
Goede, Marieke de. 2005. *Virtue, Fortune, and Faith: A Genealogy of Finance*. 1st ed. University Of Minnesota Press.
Grabham, Emily. 2010. “Governing Permanence: Trans Subjects, Time, and the Gender Recognition Act.” *Social & Legal Studies* 19 (1) (March 1): 107–126.

Grabham, Emily, and Jenny Smith. 2010. “From Social Security to Individual Responsibility (Part Two): Writing Off Poor Women’s Work in the Welfare Reform Act 2009.” *Journal of Social Welfare and Family Law* 32 (1): 81–93. doi:10.1080/09649069.2010.484226.

Jacob, Marie Andrée, and Annelise Riles. 2007. “The New Bureaucracies of Virtue: Introduction.” *PoLAR: Political and Legal Anthropology Review* 30 (2): 181–191. doi:10.1525/pol.2007.30.2.181.

Jain, Sara S. Lochlann. 2006. *Injury: The Politics of Product Design and Safety Law in the United States*. Princeton University Press.

Latour, Bruno. 1993. *We Have Never Been Modern*. Translated by Catherine Porter. Harvard University Press.

——. 2004. “Scientific Objects and Legal Objectivity.” In *Law, Anthropology, and the Constitution of the Social*, 73–114. Cambridge Studies in Law and Society. Cambridge University Press. http://dx.doi.org/10.1017/CBO9780511493751.

Lewis, Gail. 2000. “Black Women’s Employment and the British Economy.” In *Feminism and Race*. Oxford University Press.

Lung, Shirley. 2010. “The Four-Day Work Week: But What About Ms. Coke, Ms. Upton, and Ms. Blankenship?” SSRN Scholarly Paper ID 1652180. Rochester, NY: Social Science Research Network. http://papers.ssrn.com/abstract=1652180.

McRobbie, Angela. 2007. “Top Girls? Young Women and the Post-feminist Sexual Contract.” *Cultural Studies* 21 (4) (July): 718–737.

Riles, Annelise. 2011. *Collateral Knowledge: Legal Reasoning in the Global Financial Markets*. University Of Chicago Press.

Sevenhuijsen, Selma. 2003. “The Place of Care The Relevance of the Feminist Ethic of Care for Social Policy.” *Feminist Theory* 4 (2) (August 1): 179–197. doi:10.1177/14647001030042006.

Waldby, Catherine, and Melinda Cooper. 2010. “From Reproductive Work to Regenerative Labour The Female Body and the Stem Cell Industries.” *Feminist Theory* 11 (1) (April 1): 3–22. doi:10.1177/1464700109355210.

Weeks, Kathi. 2011. *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries*. Duke University Press.

Williams, Lucy. “Poor Women’s Work Experiences: Gaps in the ‘Work/Family’ Discussion.” In *Labour Law, Work, and Family*, 195–216. Oxford University Press.