

The Role of Law in Temporal Reasoning: An Interview with Annelise Riles

Lucy Welsh¹ 

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Abstract On 17 May 2016 Lucy Welsh interviewed Annelise Riles about her work on the relationship between law and time as part of Welsh’s involvement with the AHRC *Regulating Time* network. Annelise Riles is the Jack G. Clarke Professor of Law in Far East Legal Studies and Professor of Anthropology at Cornell, and is Director of the Clarke Program in East Asian Law and Culture. Her work examines the transnational dimensions of laws, markets and culture across the fields of comparative law, conflict of laws, the anthropology of law, public international law and international financial regulation. Most recently Professor Riles has been examining the nature and meaning of the settlement made on the so-called Comfort Women, and what impact that has for locating events in the past. The Comfort Women were Korean women who were essentially captured and forced to work as sexual slaves for the Japanese army during World War Two. In 2015, Japanese and South Korean ministers agreed a settlement (comprising an apology and financial payment to provide for the women) in what they regarded as an irreversible and final settlement of the issue. Welsh and Riles exchange over their mutual interests in time and routinisation in this interview as they discuss what the story of the Comfort Women has to tell us.

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✉ Lucy Welsh
l.c.welsh@sussex.ac.uk

¹ University of Sussex, Brighton, UK

Introduction

On 17 May 2016 Lucy Welsh interviewed Annelise Riles about her work on the relationship between law and time as part of Welsh's involvement with the AHRC *Regulating Time* network.¹ Annelise Riles is the Jack G. Clarke Professor of Law in Far East Legal Studies and Professor of Anthropology at Cornell, and is Director of the Clarke Program in East Asian Law and Culture. Her work examines the transnational dimensions of laws, markets and culture across the fields of comparative law, conflict of laws, the anthropology of law, public international law and international financial regulation. Most recently Professor Riles has been examining the nature and meaning of the settlement made on the so-called Comfort Women, and what impact that has for locating events in the past (Knop and Riles 2016a). The Comfort Women were Korean women who were essentially captured and forced to work as sexual slaves for the Japanese army during World War Two. In 2015, Japanese and South Korean ministers agreed a settlement (comprising an apology and financial payment to provide for the women) in what they regarded as an irreversible and final settlement of the issue. Riles' work with Knop on the Comfort Women is the focus of this interview (2016a, b).

The *Regulating Time* network is co-ordinated by Dr Emily Grabham (Law, University of Kent) and Dr Sian Beynon-Jones (Sociology, University of York) and its aim is to investigate how law and regulation are shaped by dominant understandings of time. Dr Lucy Welsh (Law, University of Sussex) first became interested in these concepts when she was completing PhD research on efficiency measures used in summary criminal cases. She found that case management forms were used to increase efficient case progression, but that their use had the effect of routinizing court proceedings. The by-product of this routinisation was that, as issues were narrowed to complete tick boxes on standard forms, law was being constructed in routinized ways. This meant that there was a possibility that the individual features of cases (be they important to victims, defendants or society at large) would be lost. Such routinisation also had the effect of limiting the ability of new or novel points to be taken, which meant that the law itself was less likely to be a subject of debate. Consequently, certain issues were unlikely to be litigated and could therefore remain underdeveloped. Welsh and Riles exchange over their mutual interests in time and routinisation in this interview as they discuss what the story of the Comfort Women has to tell us.

The Interview

Lucy Welsh (LW): It seemed to me that the concern is potentially that the stories of the Comfort Women might get lost in the law's desire to fix events in time. Is that a fair understanding of the problem?

¹ *Regulating Time: New Perspectives on Regulation, Law and Temporalities* is an AHRC-funded research network, the aim of which is to investigate how law and regulation are shaped by dominant understandings of time. For more information, see <https://www.kent.ac.uk/law/time/>.

Annelise Riles (AR): We have a complicated relationship with closure. On the one hand we think that the idea that you could make something as enormous an injustice as massive sexual violence, on the scale of thousands of people, just disappear and be over with is absurd. On the other hand, there is a strain of critical theory that thinks that everything is always open and indeterminate and complex and multi variant, which doesn't entirely give voice to the way in which human beings actually want closure at certain points and in certain ways. We just cannot live with absolute indeterminacy and openness. It comes, I think, from my background as an anthropologist and the fact that one of the things that we know about some societies is that form and constraint of forms is actually very important to creativity, to energy and to power. You have to have particular points at which options are not available in one sphere so that other options are available in another sphere. And so, we were also trying to take seriously the idea that there are people in the world who think that certain kinds of closure are actually productive and generative and actually good things for women. So we were reframing a lot of the debate between the governance feminist group, the Janet Halley group, and our group and other, let's say pro prosecution, pro criminalisation feminists. It was in part a debate about this question of closure. We thought that what the Janet Halley group was on about, which was useful, was to take seriously the idea that some of the victims want to see this thing actually come to some kind of an end and they want to move on. They don't want to be victims forever. And so, how could you take that seriously while at the same time not just reducing and saying, 'well, it's over; there has been a resolution and the international law says it's over'? What other positions would there be that would decide that tension seriously? That's what we wanted to do.

LW: It seemed to me that perhaps sequencing was a way to do that; to unpack the layers of these problems, rather than try to create a closure for the whole thing in one set of circumstances.

AR: Exactly. And the thing about it that's great is that sequencing is a temporal move. It's not about a substantive resolution which says we will have closure/we won't have closure. It says we will have this kind of closure at this moment and then at that moment we will have that kind of closure... There is always a possibility for more openness and more closure, but it's at particular moments. It feels like a certain kind of closure of certain activities involved. So, for example, if you have a lawsuit brought by one particular victim against one particular perpetrator and there is an end point to that law suit. Either she wins or she loses or settles. As to that issue with that person, it's over and then you can move onto the other issues. But there is something quite generative about that particular momentary type of closure.

LW: So it's about trying to avoid the law's tendency to reduce issues to a singular point of time?

AR: We thought sequencing was completely different from the way that international law tries to deal with this, which is to say we are going to aggregate everything, historicise it and then say, at this moment in history this issue is over.

LW: Do you think there is an inherent tension then between the state's desire to reduce something down to that singular point in time, and the group—in this

particular circumstance the Comfort Women—need to have it not reduced to that singular incident? Is there a tension between those two points?

AR: That's where... with the paper we've encountered a lot of friendly push back from feminists. They said it seems like you don't really trust the state, but we actually believe in the state, and it seems like there is going to be no resolution without the state at the centre, and it was a state based violence. How can you think that private law could handle some of this? How could you think that techniques of law, particularly outside the state context, could resolve it? We are not trying to say that the state is irrelevant, but we still think that states, by their nature, aggregate and disenfranchise, in a way. The record of the states here is not particularly gloried on either side, not just for the Japanese state but also the Korean state, and frankly also the United States. Its involvement in this whole matter is pushing for the sort of resolution that will make the issues disappear based on the idea that there would be a place in which individual women or groups of women could exercise their agency. Of course, we have to remember, private law is part of the state. It engages with the state. You have to go through state organisations to operate it, but it engages laterally. We think that that would sort of jiggle things up and create some room for some kinds of subject positions, which the state based in international law just doesn't want to hear about it.

LW: This is where I thought I could perhaps engage you on the issue of domestic case handling. It seemed to me that it was partly a loss of faith in the ability of domestic law to appropriately recognise the problems that meant that perhaps international law was seen as a more fluid arena to go to. I thought that that might be because domestic law seems to be even more focused on this point of closure, because it tends to involve private individuals except obviously, in a criminal case, it's the state versus the individual. I just was thinking about the different politics involved. So, particularly in England, how the demand for efficiency builds in that singularity into the process. There is a desire for cases to be reduced to their singular features in order for them to be litigated in an efficient manner. It would seem to me that there was a possibility for international law to pull out some of those issues, because it didn't have that agenda to be efficient or to save money or anything like that. Going to international law meant that things could be taken more broadly.

AR: I think that's interesting. It's true that you don't hear much talk about that sort of efficiency and the cost of the litigation process and so on in the international arena. I suppose in this particular case the possibility of a purely domestic case is not on the table, because the defendants are at one place and the victims are from twelve different places, but the defendants are transnational... It's so transnational that no state can claim to have complete control of it. It's interesting that you think that... It's that language of cost benefits and efficiency and so on, which isn't really so prevalent in the international arena.

LW: I think that perhaps, because domestic law involves issues of cost and efficiency, domestic law is even more powerful than international law in its desire to reduce things to a singular point in time. I looked at it in terms of documents and looked at how the case management forms in criminal cases do restrict the ability to unpack the issues. I think it is about putting events 'in a box' - that was one of the phrases that you used. Demands for efficiency mean it becomes about reducing a

multi-faceted issue to a narrow technical one. And so, I thought that you can draw some comparison between all courts' desire to close things to singular points in time, but this is situated against the disenfranchised person's need to have issues unpacked. I just wondered what you thought about that.

AR: Yes... I think one of the things that I like about domestic private law is that at least when it comes to the difference between, say, private and international conflicts of law versus public and international law is that judges in the private law version of transnational cases, which are complex, have a very temporally delineated and sometimes quite self-deprecating understanding of what their power actually is and what the scope of what they are doing actually is. They are quite open to say, for example, 'I am going to act. I am going to apply the law of Zimbabwe. But who am I? Do I really know what the laws of Zimbabwe are? Perhaps not'. There is a sense that the whole exercise has a dimension to it. It's very prevalent in the minds of the judges, and they are also aware that when they are calling for closure, it's closure that adds to this particular issue and not other issues and it adds to these particular parties and not other parties and so forth. Whereas, when you get judges or negotiators or treaty makers at the international level, they have got this quite grandiose view of themselves and sort of making history and solving problems and really representing the unrepresentable and all that kind of stuff. That's where I sort of, I do feel quite a bit of sympathy with what Janet Halley and so on are trying to do when they talk about feminist governance in the sense that there seems to be a really kind of muscular, robust power grab going on there, which isn't necessarily always good for all victims.

LW: There seems to be a constant struggle between any state's desire to use the law to shut something down to a particular point in time as against the individual's need to have more than just a singular point in time recognised. That seems to be the common theme of struggle to me. I don't know if that's how you interpreted it or...

AR: No, absolutely. That's right.

LW: For my work I looked at the documents and looked at the forms and how that's being used to narrow down the issues into this singular point so as not to take up too much of the court's time and to get it resolved and get it dealt with. But that might similarly ignore the victim's need to have particular things dealt with or the defendant's need to have particular issues dealt with. But there is an overarching state desire to kind of limit issues so that we can just deal with it, rather than have that sequential approach to dealing with things stage by stage. It seemed that, potentially more just outcomes overall might be obtained by allowing each group to have those issues unpacked. Do you think that that realistically is ever going to be completely possible given the competing agendas involved in any case?

AR: If we are talking about Comfort Women specifically, there is a line of activism that says, forget the courts, let's talk about this in the public arena. Let's talk about it through art, through theatre, through film and through all these things. And that's been incredibly powerful. Part of the reason it's been powerful is that there is this whole genre of magical realism novels that has been written in Japan... There is something about that that really describes people's experience of this thing in the present. You are actually caught up in the past in some way that you don't even recognise. Christine Chinkin was one of the judges on the NGO Tokyo

Women's Tribunal and she told me that young feminist activists in Japan, women in their 20s, would say to her, 'I can't deal with domestic violence until I solve the Comfort Women problem. I can't.' And she found that so hard to understand—it was something about the temporality of the events being both in the past but it's in the present. It's mixed up in some way. I think a lot of people think that that experience can only be apprehended outside the law; that's it's only the arts and so on that can really capture that. But what's interesting about the Women's International War Crimes Tribunal is that they really took a legal form and tried to capture that note of the past and present through mimicking a legal court. It wasn't a real court, but it had all the trappings of legal process. Somehow they thought that the aesthetics of law themselves could allow you to capture those issues. They could have been writing novels and other things, and maybe they were doing that too. I understand what you are saying about the fact that documents can be totally reductive... On the other hand, in the book *Documents* you were mentioning, there are some examples like Adam Reed's chapter on the prisons in Papua New Guinea (Reed 2006), in which he talks about how these prisoners themselves take these incredibly reductive forms that are supposed to be describing who they are as individuals—what could be worse than that? It's just like Foucault's dream in terms of the worst possible example of the reduction of a prisoner to nothing. And they actually mimic this form and fill it out in these really creative ways. Find ways of turning, actually making that constraint of form really generative. I always thought that there is another side to this stuff. There's another story to tell also about the potentialities of the practice and not just the reductive quality.

LW: I think that's a really good kind of counterbalance to focusing on purely legal perspectives. I think it is important to recognise that there is that potentiality for people to voice their past or their present in other ways.

AR: I think... it probably depends on the lawyer. Some are just exhausted and sick of it and cynical and tired of it and just say 'whatever I'm just going to fill in the form'. But I find there are a lot of lawyers who are incredibly creative about dealing with these simple bureaucratic processes and they know how to fill it out so there's this back story about how you do it, and there's a back story about how to read how someone else fills it out and writes it. It becomes this sort of game that has many layers to it and many dimensions. That is what I found kind of interesting about bureaucracy in the documents.

LW: It's obviously something that I'd like to develop and I'd like to do a bit more work on how those forms are used. I think this idea of reduction of things to singular points or singular issues is quite significant in law. I thought it was incredibly interesting to look at law, temporal frameworks and how law tries to frame problems and the potential effects this has on marginalising other voices.

AR: I think that's the thing that I really took away from anthropology was a new appreciation of how much more interesting the law is than we think it is. And how much more weird stuff it does with time, really than what we assume. To me it makes it always interesting and surprising and so while it is productive it puts issues aside which we need to cultivate more and appreciate.

Concluding Remarks by Lucy Welsh

It became clear from our discussion that there exists a tension between the law's desire—need, almost—to set things in the past and create closure for particular incidents, and individual or group needs to have their voices heard at different times and in different places. Pure legal process has the potential to reduce multi-layered issues to single conclusions, and could mean that important aspects of particular problems are relegated to the past without ever being fully addressed. That said, there is also a need for closure; people want to be able to 'draw a line' under incidents and move forward. This demonstrates that there is also great potential for the law to be used in creative ways to make sure that the 'right stories' are told at 'the right time'. While there is a danger involved in reducing individual needs to particular legal points of closure, there is also danger involved in seeing law as the sole driver of time and the only arena in which closure might be achieved. Riles and Knop's work (2016a, b) alerts us to not only the reductive nature of law, but also its potential to create different ways of examining a multitude of problems.

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