
Book Review

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Grasping Legal Time: Temporality and European Migration Law

by: Martijn Stronks

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In his book *Grasping Legal Time: Temporality and European Migration Law*, Martijn Stronks takes the reader on a journey through time.¹ Based on the theory of temporal governance, the book meticulously explores the question of how time is (and should be) used to control migrants in current European migration law. The author introduces the concept of *jus temporis* to discuss the value of human time (as opposed to clock time), convincingly demonstrating that it does not occupy the place it should, according to its intrinsic value and importance. With its innovative mix of case law and legal-philosophical arguments, the book makes a valuable contribution to legal debates on temporal governance in European migration law.

After an overview over cases, treaties and directives referred to within the book, the introductory chapter starts with an illustrative example of how time is used in migration law. A Ghanaian received a so-called Chavez-Vilchez permit in the Netherlands, because her son, a citizen of the Netherlands, would otherwise be deprived of his rights connected with his EU citizenship. According to the arguments by the Dutch Authorities, the permit is based on the child's minority and dependence on the mother and therefore cannot be permanent. The author describes such residency permits, considering the fact, that minority usually amounts to 18 years, as 'permanently temporary'. Referring to Melanie Griffiths concept of temporal governance the author then argues that there is an almost endless number of ways to exert control over migrants through time. Among those are the temporariness of residency permits as such or waiting periods when switching to 'stronger' residency permits. Temporal governance leads to a shift of frontiers inwards, meaning that they are no longer exclusively drawn at state's geographical borders, an argument that Ayelet Shachar and Bridget Anderson have put forward.

The first chapter, titled *Virtues of Legal Time*, shows how exactly time is manipulatively used within current European migration law. Clock time gets a lot of stage time, while references to human time remain obscure. The use of the former as a policy instrument is ideally suited for use in legal systems, being predictable, precise, and easy to handle. An example is the connection between the length of sentences for criminal convictions and status deprivation. To initiate a stricter migration policy with a high public profile, the level of the conviction necessary can simply be reduced.

However, it is not always that simple, as the assessment of a stay as temporary vs. non-temporary within the Long-Term Resident Directive of the European Union shows. Using standardised clock time, we can easily determine the duration of the stay. Similarly, it would be straightforward to say that a stay was temporary if the person concerned has left the country again. If the person is still in the country, however, recourse to human time, the time of a certain person with a past, present and future, is unavoidable. The author refers here to Rainer Bauböck and a complex interplay of three elements – subjectively desired, collectively expected, and legally prescribed. Current migration law is tending towards a reasonable expectation of the future, hence a constructed expectation of the future, instead of using exclusively subjective criteria to assess the stay of migrants. Clock time alone is therefore not sufficient to carry out the qualification. Instead, the qualification of a stay as being temporary necessarily requires a prognosis of the future. This prognosis can only be carried out based on a reference to human time. Categorisation with the purpose of controlling the stay of migrants therefore depends on temporal differentiations, manipulative interplays between clock time and human time. Four forms of temporal differentiations are outlined within the book – those based on temporality and those based on deadlines, differentiations by qualification of time, and procedural differentiations. The chapter concludes with a reference to Pierre Bourdieu and his thesis of waiting as submission. The author shows that the opposite poles of waiting and of sudden haste, for example when deporting migrants, are used as techniques of temporal governance, limiting the access to justice.

The following section is dedicated to the imperfections of legal time. Whether and why these constitute vices in the moral sense, as the title suggests, is reserved for the next chapter. As an introduction the author states, following Henri Bergson, that time is primarily perceived spatially. Individual moments thus become tangible by means of a timeline, based on which all moments can be placed in relation to each other on a continuum. In legal decisions, a bird's eye view is taken, an external perspective to assess those individual moments in the lives of individuals. Or in the words of the author (p.41): “At that moment, the relevant past and future must be made present to enable the legal assessment on which the decision is based.” The author criticises the fact that this freezes the continuous human process and thereby negates human mortality. Another imperfection is the use of time as a proxy. In the case law of the ECtHR on Art 8 ECHR for example, time is used as a proxy for social ties. The author calls this material and individual time because time is only relevant as one of many criteria and ties still must be explicitly examined. A counterexample is the use of time as a proxy for social membership within the framework of the Long-Term Residence Directive. By requiring a legal and continuous stay of five years, the directive uses clock time criteria. The author therefore refers to this as the use of formal and general time, in which time has a general meaning and the material conditions of the individual case are no longer assessed at all. Both systems, the use of time as a proxy for ties and for social membership, fail to capture the full picture.

After this short intermezzo on the use of time as proxy the author turns back to human transience. Referring to Martin Heidegger and his critique of time, three characteristics of human time are identified, which simultaneously represent three problems of legal time. The first is that human time cannot be stopped. The author illustrates this with reference to the ECtHR proceedings in the Paposhvili case. The seriously ill applicant died during the proceedings, which shows very strikingly that human life is always progressing and cannot be stopped. The second problem is the (im)possibility of time travel. Human time

cannot be travelled, but clock time can. The example of the declarative determination of refugee status makes it clear that clock time can be travelled in legal proceedings, e.g., through the pre-dating of residence permits. Human time, however, cannot be travelled, it has a clear arrow of time. The fact that the residency permit is pre-dated does not change the fact that human time has already expired during this period. Finally, mortal human time and eternity can never encounter each other. The author argues based on the examples of life imprisonment and the temporary exclusion from refugee status for serious crimes that it is unjust to equate eternal time with human time. Legal time should keep open the possibility of reviewing life imprisonment or exclusion from time to time to see how the situation develops after the passage of time, precisely because it is unclear how long the duration really will be, because human time is not infinite. The impossibility of making human processes completely tangible and the dichotomy between mortality and temporal infinity are, all in all, the imperfections of legal time. Therefore, legal time is Janus-faced, a characteristic that can never be eliminated.

When do these imperfections become vices in the moral sense? The third chapter aims to answer this question and develops 'jus temporis or the immigrant's right to human time' on this basis. In other words, the author explores the boundary between skilful manipulation and unjust manipulation of time in the context of temporal governance. The core thesis is that temporal governance is legally limited by jus temporis, the right to human time. As in the previous chapters, the author uses examples to illustrate the main arguments. This time with that of a Dutchman who spent well over 50 years of his life in Canada, starting as an infant. He was deported to the Netherlands due to multiple convictions without ever having set foot in the country. According to the author, this demonstrates the weaknesses of the existing concepts of jus nexi and jus domicilii, neither of which can provide strong arguments against the deportation of long-term resident migrants who disturb public order by committing multiple crimes. The author therefore proposes jus temporis, a concept based on the idea that human time is significant, that human time matters. On the one hand, the concept is already applied in current migration law of the European Union, on the other hand, it should be increasingly applied, according to the author.

Rootedness serves as the basis of the concept and must be strictly distinguished from integration. Integration is to be interpreted as qualified time, while rootedness is inclusion through mere lapse of human time spent within a certain territory. The time spent has a very specific arrow, which is accompanied by a stronger residence law argument – the passing of time alone can serve as an argument for the inclusion of long-term resident migrants under residence law. However, time in this respect must not be understood as clock time, but the argument refers to human time, acknowledging the fact that the time spent is irreversible and finite. The longer the stay, the stronger the demand. Jus temporis should, on a material level, not evaluate human time in the sense of a meritocratic test, but rather consider the value of individual human time. At a formal level, jus temporis should be translated into a time limit, after which it should no longer be possible to exclude migrants from the right of residence.

The author then discusses different aspects related to jus temporis, already being at work within migration law in the EU. Countdown deadlines, on the one hand, are interpreted as limiting the possibilities of temporal governance thereby respecting the transience of human time. The various countdown deadlines within the Dublin Regulation serve as a well-known example. Migrants in a state of endless temporariness,

on the other hand, are a good example of unjust temporary governance. *Jus temporis* requires an end to this temporariness through the creation of opportunities to acquire residence permits as well as a time limit on the loss of residence permits. And finally, many mechanisms already exist in the regularisation of irregularly staying migrants that express *jus temporis*, for example the possibility of obtaining a residence permit on the grounds of Art 8 ECHR. Summarising the chapter, the author draws the conclusion that human time limits permanent exclusion. It is unfair to conceptualise legal time in such a way that the value of transient, irreversible, and unstoppable human time is not properly considered: “forgetting the normative value of human time, that is the vanity of legal time” (p.96). *Jus temporis* can serve as a counter-design that respects the intrinsic value of human time.

In summary, the book demonstrates that borders can no longer be understood exclusively as local borders, but more and more as temporal borders within the framework of temporal governance. The sovereign can turn the clockwork, regulate the speed and create different temporal regimes. The use of time within the legal system of migration law is Janus-faced. It is precisely the difference between the infinity of time and human transience that makes legal time so fruitful for the control of migrants. The sovereign skilfully uses the spaces between clock time and human time. Human time must be distinguished from legal time because it has a direction, is finite and cannot be stopped. This is also the intrinsic value of human time, which is widely neglected in current temporal governance. The author therefore proposes the concept of *jus temporis* to limit temporal governance, which consists of the future possibility of obtaining better residence permits and the impossibility of deportation. Or as the author puts it on p.102: “Temporal governance finds its ultimate limitation in the normative value of human time. Migration law that neglects the value of human time is vain.”

The book achieves to keep its readers fascinated and interested despite the abstract topic through analytical precision, a solid legal and legal-philosophical foundation, as well as practical and memorable examples from current and past migration law and jurisprudence. Sometimes, however, the author fails to make a clear distinction between what is, i.e., what can be observed in the current legal system, and what should be, e.g., would be desired in a moral sense. In other words, the boundaries between legal doctrine and legal policy/philosophical arguments are sometimes blurred. Putting this aside, the book starts with an example from case law and keeps coming back to case law and legal norms from the past and present, which is precisely the way to turn an abstract legal-philosophical topic into a tangible one. In addition, it is the foundation of diverse literature that makes the book so worth reading. Be it Griffiths’s concept of temporal governance, Heidegger’s critique of time, Bourdieu’s thesis on waiting as submission, or Bauböck’s account on temporary stays, to name only a few examples – the author manages to combine relevant sources from different centuries, disciplines, and contexts into a coherent body of work. Due to its exciting combination of case law and legal-philosophical arguments, the book is sure to have many readers, in migration law and beyond.

Notes

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