GRASPING LEGAL TIME

Time is one of the most important means for the exercise of power. In migration law, it is used for disciplining and controlling the presence of migrants within a certain territory through the intricate interplay of two overlapping but contradicting understandings of time – human and clock time. This book explores both the success and limitations of the usage of time for the governance of migration. The virtues of legal time can be seen at work in several temporal differentiations in migration law: differentiation based on temporality, deadlines, qualification of time and procedural differentiation. Martijn Stronks contests that, hidden in the usage of legal time in migration law, there is an argument for the inclusion of migrants on the basis of their right to human time. This assertion is based in the finite, irreversible and unstoppable character of human time.

Martijn Stronks is an assistant professor at the Amsterdam Centre for Migration and Refugee Law of the Vrije Universiteit Amsterdam. He studied law and philosophy at the Vrije Universiteit Amsterdam and the University of Cape Town. His main research interests include migration and human rights law, legal philosophy, and time.
CAMBRIDGE ASYLUM AND MIGRATION STUDIES

At no time in modern history have so many people been on the move as at present. Migration facilitates critical social, economic, and humanitarian linkages. But it may also challenge prevailing notions of bounded political communities, of security, and of international law.

The political and legal systems that regulate the transborder movement of persons were largely devised in the mid-twentieth century, and are showing their strains. New challenges have arisen for policymakers, advocates, and decision-makers that require the adaptation and evolution of traditional models to meet emerging imperatives.

Edited by a world leader in refugee law, this new series aims to be a forum for innovative writing on all aspects of the transnational movement of people. It publishes single or coauthored works that may be legal, political, or cross-disciplinary in nature, and will be essential reading for anyone looking to understand one of the most important issues of the twenty-first century.

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GRASPING LEGAL TIME

Temporality and European Migration Law

MARTIJN STRONKS

Vrije Universiteit Amsterdam
This book is dedicated to my old friend Pieter Boeles. Our intergenerational friendship is timeless and, alas, ephemeral – like the central theme of this book.
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SERIES EDITOR’S PREFACE

In this novel study, Martijn Stronks shines a light on the ways in which European migration law operates by examining relevant legal processes through the prism of “time.” Even as he notes that “[t]ime is allegedly the most widely used noun in the English language,” Stronks demands that we critically interrogate this commonplace notion – and specifically that we differentiate between “human time” and “clock time.” His contention is that human time is largely overlooked in migration processes, and that this failure to take account of time as lived experience does a real injustice to migrants.

Much of the book is devoted to explicating what the author refers to as “the slithering character of legal time” – which he argues fails to recognize that human time cannot be stopped, that time traveling in actual human time is not possible, and that there is a dissonance between eternal and mortal time. Stronks then makes the case for decentering the place of legal time and giving more attention to human time, noting the countervailing tendency in European law to insist that durable presence in a state’s territory gives rise to a claim for inclusion. This, then, is the legal toehold that should allow us to take human time more seriously in the migration realm.

Yet, this book is neither a simple critique of the rigidity of legal time nor an unqualified plea for a refocusing of migration law on human time. Stronks rather seeks to shift our attention to the value in law of the notion of “rootedness,” which he sees as embodying an openness to situations not lasting forever and a recognition that there should be a moment in which unlawful presence becomes lawful presence. Grasping Legal Time thus allows the reader to imagine a world in which purportedly meritocratic opportunities for inclusion give way to a more fundamentally humane notion of regularization of status.

James C. Hathaway
Editor, Cambridge Asylum and Migration Studies
ACKNOWLEDGMENT

I have worked more than a quarter of my life on the role of time in migration law – that is, to put it in clock time, ten years. I have had numerous conversations with colleagues and friends about this topic, more than I can recall here. This book has been written in the wake of my doctoral research “Grasping Legal Time” that I defended in 2017 at the Vrije Universiteit Amsterdam, and which was supervised by Hemme Battjes, Ger Groot, and Lieneke Slingenberg. I am very indebted to their guidance and comments in that project, which is the fundament on which this book is written.

In this project I have profited from the conversations, insights, support, and sharp and critical comments from Juan Amaya Castro, Jelle van Baardewijk, Hemme Battjes, Pieter Boeles, Elizabeth Cohen, Pieter van der Kolk, Nanda Oudejans, Marcelle Reneman, Lieneke Slingenberg, Karel Smouter, Thomas Spijkerboer, Wouter Veraart, Janna Wessels, and Kartica van der Zon. Thanks to Thomas Spijkerboer for putting me on the track of the relationship between time and vanitas paintings, and for my mother, Anne Marijke Spijkerboer, for teaching me the theological meaning of this art tradition. I am grateful to Jelle van Baardewijk, who came up with the title Grasping Legal Time, and directed me – in Heideggerian spirit – to the double meaning of the word grasping. The passages in this book on waiting time are based on the research that I have conducted together with Marcelle Reneman, and which has been published in Time & Society. Thanks goes also to students of the Master’s Program International Migration and Refugee Law at the Vrije Universiteit Amsterdam for their comments when I presented the argument in this book, and for students of the course Capita Selecta Migratierecht who took the time to scrutinize my dissertation and provide it with valuable comments. Also the students of the Vrije Universiteit Amsterdam Migration Law Clinic deserve my gratitude. Together we wrote the two expert opinions in the cases before the European Court of Justice of the EU (CJEU) of the Ghanaian mother and Eritrean girl that served as introductions to the first two chapters of this book.

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This book is dedicated to my oldest friend – in the meaning of age, not the duration of our friendship – Pieter Boeles. Pieter guided me when I took my first steps in the field of
migration law more than a decade ago. His influence on the professionalization of Dutch migration law as advocate as well as professor of immigration law at the University of Leiden, and his incessant commitment to the understanding and development of European migration law in the Netherlands can hardly be overstated. His rigorous and original analysis of European and Dutch migration law combined with his glistening writing style have been a great inspiration to me. Pieter – who is almost forty years older than me – showed me that intergenerational friendship is possible; timeless, and ephemeral.
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- European Convention on Human Rights (ECHR)
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- The Dutch “Wortelingswet” [literally translated Rootedness Act], Kamerstukken II 33068, nr. 1