Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickening

JESSICA HAMBLY* AND NICK GILL**

This article examines how a politics of speed is manifest in a legal context via a detailed ethnography of the French National Court of Asylum (CNDA). It identifies the temporal, spatial, and organizational ordering techniques that characterize asylum appeals in France and discusses the consequences of these techniques for the way in which the appeal process is experienced by legal decision makers and subjects. It reveals adverse impacts of legal quickening on legal quality, in particular through identifying: ‘cracks’ in the performance of legal roles like lawyer and judge that begin to appear when law is executed rapidly and repetitively; dwindling opportunities to demonstrate and experience respect between parties; and the ‘thinning-out’ of legal process, as heuristics rather than deliberation come to dominate legal reasoning. The article contributes to a burgeoning body of socio-legal literature on law and time by establishing the negative impact of excessive legal quickening on role performance, respect, and legal quality.

INTRODUCTION

One freezing February morning on Rue Cuvier in the Parisian suburb of Montreuil, abandoned placards replace the long queue of people who would normally be waiting to enter the French National Court of Asylum. Posters flap about in the icy wind, bearing slogans such as ‘Dossiers partout; justice nulle part’ (‘Cases everywhere; justice nowhere’) and ‘L’asile, pas l’usine’ (‘Asylum, not a factory’). Inside the court, the waiting rooms, usually bustling

* College of Law, Australian National University, 5 Fellows Road, Acton, ACT 2600, Australia
jessica.hambly@anu.edu.au

** College of Life and Environmental Sciences, University of Exeter, Amory Building, Rennes Drive, Exeter, EX4 4RJ, England
N.M.Gill@exeter.ac.uk

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with appellants, children, supporters, and lawyers, are empty and silent. Along the corridors, the 19 hearing rooms remain closed, with ‘RENVOIE’ (‘ADJOURNED’) scrawled or stamped across the listings sheet on the wall. Messages from the striking lawyers and court staff are taped to the walls, denouncing ‘a jurisdiction governed by politics of numbers and speed’. The court, which might usually hear over 200 asylum appeals on a single day, has been brought to a standstill.

Throughout the passage of the 2018 French law for ‘controlled immigration, an effective right to asylum, and successful integration’ (‘une immigration maîtrisée, un droit d’asile effectif, et une intégration réussie’), historic strike action by lawyers and court workers was accompanied by statements of concern from asylum judges, sharp critique from academics, and protests from a cross-section of civil society and human rights organizations. The ambiguous headline of this legislation – a more effective right to asylum – represents, it is argued, less of a concern for the effective rights of asylum seekers than for an ever-quicker, slicker, more efficient process aimed at deterring asylum claims and tightening up the expulsion regime. A number of new measures aim specifically at compressing the asylum process. For example, people now have only 90 days to file an asylum application after entering French territory, after which their claim is placed in accelerated procedures.1

Appeals to the French National Court of Asylum (Cour Nationale du Droit d’Asile (CNDA)) are made non-suspensive for some cases under accelerated procedures. For all asylum seekers, whether or not in the accelerated procedure, their right to stay on French territory now ceases as soon as the CNDA’s decision is read in public session – that is to say, when it is displayed in the lobby of the court. One of the few measures abandoned at the National Assembly in the face of strong opposition was the reduction in time limit for filing an appeal against a negative first decision, from 30 to 15 days. However, a 15-day limit for legal aid applications effectively enforces the shorter period. Other measures tip the balance of power further in favour of the state – for example, relating to choice of language, and notification of initial decisions, which may now be ‘by any means’, including text, email, or voicemail. Given that many asylum seekers do not have guaranteed access to phones or internet, this may impede access to appeal rights, as the time period for lodging an appeal in case of a negative decision starts to run from when notification was issued. A further controversial aspect of this legislation permits the expansion of video-link appeal hearings between the CNDA and other courts in mainland France, even without the consent of the appellant.2

The French Parliament has adopted a new reform of the law of immigration, asylum, or nationality on average every two or three years since the 1980s. Reforms in 2015 aimed at streamlining and speeding up asylum procedures,

1 The existence of these procedures is itself a mark of the intense political drive to speed up asylum processing.
2 Previously, the use of video hearings was restricted to appeals from overseas territories.
and yet these measures had barely taken effect when the 2018 legislation was introduced, again aiming to quicken the pace of procedures. Such a culture of rapid law making in the domain of asylum and immigration, where new legislation is passed without allowing time for meaningful assessment or evaluation of what has come before, is not unique to France. Nor, for that matter, are the demands placed on the CNDA. In France, as in other states, asylum adjudication is situated within administrative law structures, where tensions between values such as efficiency and economy are precariously balanced with fairness and justice. Asylum appeal jurisdictions are characterized by high-volume caseloads and perceived pressure to adjudicate as quickly and cheaply as possible. However, these administrative pressures rub up against legal procedural guarantees of fair and independent review.

Here, we focus particularly on the influence of increasing legal pace over the performance, experience, and quality of legal practice to argue that legal rights of access to asylum are undermined, and fair procedures compromised, where decision-making structures are overly driven by politics of speed and high-volume processing. We begin by exploring the politics of speed, setting this within the context of recent socio-legal work on law and time. We then present three aspects of speed governance at the CNDA, exploring the temporal, spatial, and organizational devices that structure the speedscape of appeals. From there, we go on to discuss the consequences of legal quickening, analysing the risks to fair and independent decision making of rapid, repetitive adjudication.

LAW AND THE POLITICS OF SPEED

Paul Virilio’s work provides a starting point for thinking about the relationship between politics and speed. Virilio understands dromology (derived from the Greek word ‘dromos’, or ‘racecourse’) as ‘the government of differential motility, of harnessing and mobilizing, incarcerating and accelerating things and people’. Within the framework he develops, speed is a key form of social organization and political control – not some background against which social
relations are played out but rather something that is fundamentally constitutive of them. He offers various general propositions on speed that interest us here.

First, speed changes the essence of the thing that speeds up. For Virilio, pace is so constitutive of space and matter that the two cannot be viewed separately. When something quickens markedly, then, it is not simply the same thing operating at a faster pace. Rather, an ontological rupture occurs – the thing itself morphs and warps. Second, Virilio is at pains to emphasize the violence of speed, to which there are several elements: the hierarchy of speeds (what he calls the ‘order of speeds’, which correlate to certain social privileges – he contrasts ‘drop-outs’ to ‘tourists’, for instance); the limits that a monopolization of speeds of communication can impose; and the opposition that he discerns between speed and space, the latter of which represents ‘the field of freedom and political action’ that decreases in direct proportion to the acceleration of social and industrial relations. Third, Virilio closely associates the speeding-up of social life with a retrenchment of the power of the state, compatible with Elizabeth Cohen’s recent observations concerning time and justice. Specifically, as the state’s power ebbs in relation to its control of space in a globalized world, this precipitates a turn towards temporal regulation. ‘The loss of material space’, he suggests, ‘leads to the government of nothing but time.’

Time is now a familiar topic of study among scholars of migration in various disciplines including geography, anthropology, and sociology. Attention has been paid, for example, to the importance of pace in the technological maintenance of borders, the processing of claims, and the production of migration-related legislation. Technologically, borders rely upon swift detection and communication of border infringements, creating reliance on equipment such as millimetric movement sensors as well as biometric indicators such as face, eye, and fingerprint recognition software. Conceptualizing borders in terms of ‘catching’ clandestine immigrants in particular entails a geographical imagination that pitches the agility and speed of the state or its contracted agents against that of the would-be migrant. Migrants within legal systems are also governed via speed. Western governments are fixated on processing times for claims of citizenship or refugee protection, and often see the rapid processing of cases, and the

8 See also M. Valverde, Chronotopes of Law: Jurisdiction, Scale and Governance (2015).
9 Virilio, op. cit., n. 6, pp. 136–152.
10 E. Cohen, The Political Value of Time: Citizenship, Duration and Democratic Justice (2018).
11 Virilio, op. cit., n. 6, p. 156.
12 H. Van Houtum, ‘The Geopolitics of Borders and Boundaries’ (2005) 10 Geopolitics 672.
13 L. Martin, “Catch and Remove”: Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice’ (2012) 17 Geopolitics 312.
deportations that this can facilitate, as an important form of deterrence.\(^\text{14}\) Furthermore, legislation governing migration in various countries has been characterized by ‘policy churn’ – frequent legislative change that increases the complexity of legislation while simultaneously reducing the accountability of those who administer it.\(^\text{15}\)

On the other hand, scholars in these same disciplines have also recognized the importance of slowness and waiting in the governance of migrants. They point towards the painful state of limbo that waiting can induce in people with undetermined immigration status, the wastage of human lives that occurs in camps that ‘warehouse’ millions of people forced to wait for legal certainty or an opportunity to move onwards safely, and the ‘time hurdles’ endemic to full national citizenship or community membership in many countries.\(^\text{16}\) In camps and other ambiguous, liminal places, ‘illegality’ is characterized by a certain sort of temporal heaviness: illegal migrants appear ‘as people without a past or future, stuck in an endless, anxious present’.\(^\text{17}\)

While migration scholars have shown a sustained interest in time, and an appetite for engaging in its politics, some argue that theories of justice have been slower to take account of time in the fundamental ways that a serious attention to the politics of speed demands.\(^\text{18}\) For Cohen, while ‘time is bound deeply and inextricably to the exercise of power’, durational time has not received the attention that it deserves within political theories of legitimacy and justice, pointing to the need for much clearer awareness of both ‘temporal justice’ and ‘temporal injustice’.\(^\text{19}\) Key to developing such awareness is being prepared to challenge ‘the legitimate power of the state to command the time of its subjects and set a political schedule’ since it is this power, in particular, that ‘is not generally contested’.\(^\text{20}\)

Alongside the dearth of scholars working on time within the tradition of theories of justice, there have until recently also been relatively few scholars working at the interface of law, politics, and time.\(^\text{21}\) Carol Greenhouse’s examination of the role that law plays in the construction of time is an

\(^{14}\) S. Cwerner, ‘Faster, Faster, and Faster: The Time Politics of Asylum in the UK’ (2004) 13 Time & Society 71.

\(^{15}\) N. Gill, Nothing Personal: Geographies of Governing and Activism in the British Asylum System (2016); F. Hess, Spinning Wheels: The Politics of Urban School Reform (1999).

\(^{16}\) M. Griffiths, ‘Out of Time: The Temporal Uncertainties of Refused Asylum Seekers and Immigration Detainees’ (2014) 40 J. of Ethnic and Migration Studies 1191.

\(^{17}\) R. Andersson, ‘Time and the Migrant Other’ (2014) 116 Am. Anthropologist 795, at 805.

\(^{18}\) Cohen, op. cit., n. 10.

\(^{19}\) Id., pp. 2–4.

\(^{20}\) Id., p. 4.

\(^{21}\) Significant exceptions include: D. Engel, ‘Law, Time, and Community’ (1987) 21 Law & Society Rev. 605; R. French, ‘Time in Law’ (2001) 72 University of Colorado Law Rev. 663; R. Tur, ‘Time and Law’ (2002) 22 Oxford J. of Legal Studies 463; L. Khan, ‘Temporality of Law’ (2009) 40 McGeorge Law Rev. 55; R. Mawani, ‘The Times of Law’ (2015) 40 Law & Social Enquiry 253.
important example of early work on temporality and governance, however. In her book, Greenhouse establishes the ways in which – through a set of techniques including time limits, commencement dates, and eligibility periods – law is not passive with respect to time, but actually creates and orders it. In particular, the state claims, controls, and shapes time through the workings of law. She explains:

Time arises not from the ethnographic ground on which it is played out, but from the temporal assumptions embedded in specific state practices – bureaucratic administration, taxation and the regulation of economic life, and through a variety of executive, legislative and judicial powers.

In this sense, time is always social time: it emerges, is built, and is contested through power, authority, relationships, politics, and, as part of all of these, legal systems. Greenhouse concludes that the very notion of political community in the United States during the 1960s, 1970s, and 1980s was contingent upon the temporal interventions of the state at that time.

This seminal intervention lays the groundwork for more recent socio-legal studies that examine the relationship between law and time, particularly from critical legal, feminist, or post- or anti-colonial perspectives. Emily Grabham’s analysis of what she calls ‘legal times’, for example, emphasizes the materiality that both constitutes and limits the law as such. She proposes a renewed focus on objects in the study of law, arguing that omitting them from legal enquiry ‘leads to an overestimation of law’s power in the abstract … while underestimating its immediacy, specificity and concreteness in human relations’. Such an approach can be situated within the broader material turn in the social sciences that emphasizes the importance of things, matter, and processes of embodiment. Bruno Latour’s ethnography of the Conseil d’Etat in Paris, for example, strongly emphasizes the material construction of the law by giving files centre stage. The ethnographer, he suggests, must substitute the grand talk about Law, Justice and Norms with a meticulous inquiry about files – grey, beige or yellow, thin or thick, easy or complex, old or

22 C. Greenhouse, A Moment’s Notice: Time Politics across Culture (1996).
23 Id., p. 73.
24 Valverde, op. cit., n. 8.
25 J. Conaghan, ‘Time to Dream: Flexibility, Families and Working Time’ in Precarious Work, Women and the New Economy, The Challenge to Legal Norms, eds R. Owens and J. Fudge (2006) 101; J. Chryssostalis and M. Drakopoulou, ‘History, Law, Space and Time’ (2013) 38 Aus. Feminist Law J 1.
26 S. Keenan, ‘Smoke, Curtains and Mirrors: The Production of Race through Time and Title Registration’ (2017) 28 Law and Critique 87; R. Mawani, ‘Law as Temporality: Colonial Politics and Indian Settlers’ 4 Univ. of California Irvine Law Rev. 65.
27 E. Grabham, Brewing Legal Times: Things, Form and the Enactment of Law (2016).
28 Id., p. 457.
29 E. Cloatre and D. Cowan, ‘Legalities and Materialities’ in Routledge Handbook of Law and Theory, ed. A. Philippopoulos-Mihalopoulos (2018) 433.
new – and to see where they lead him … Jurists always speak of texts, but rarely of their materiality. It is to this materiality that we must apply ourselves.30

Central to this materialist approach is not only a prescription to attend to the physical infrastructure of social life, but also the suggestion that materiality and material culture are formative of the social.31 Beynon-Jones and Grabham’s edited book Law and Time positions law as central to this dialectic.32 Their vision of legal times puts aside what they refer to as ‘container notions of time’ in order to foreground the co-produced entanglements of time and justice, with far-reaching implications. In her distinctly political analysis, Grabham states that

if we understand that our legal actions, arguments, documents and so on have temporalizing effects and do not merely exist ‘in time’, we can also understand those temporalities, things and effects as inherently political because they are world-making and not merely passive.33

From the regulation of the sub-prime mortgage crisis and investigations into historical instances of child abuse, to ‘time-related legal technicalities [such as] qualifying periods’ that deny access to rights on the basis of nothing more than temporality and delay, law produces time that is politically laden and inflected.34 Given the role of law in the acceleration of social life on the state’s terms, such scholarship argues for a heightened awareness of the law’s role in ‘social and political processes of temporal ordering’.35

While this article both endorses and aims to contribute towards interest in the temporalities of law, this is not to underestimate the difficulties inherent to such an endeavour. Marianna Valverde describes the disparateness of interests in law and time along two axes: a disciplinary axis spanning legal geography, sociology, and socio-legal studies, and a theoretical–empirical axis that reflects the diversity in levels of abstraction and degrees of integration of social theory in different approaches to law and time.36

Nevertheless, for its part, the field of socio-legal studies seems ripe for such a development, with various strands of work pointing towards the importance of attending to not only law’s time, but also its pace and rhythm. As has been observed, ‘[t]he temporal dimension of legal processes is a constant,

30 B. Latour, The Making of Law: An Ethnography of the Conseil d’Etat (2010) 71.
31 M. Bille et al. (eds), An Anthropology of Absence: Materializations of Transcendence and Loss (2010).
32 S. Beynon-Jones and E. Grabham (eds), Law and Time (2019).
33 Grabham, op. cit., n. 27, p. 15.
34 E. Grabham, ‘Time and Technique: The Legal Lives of the 26-Week Qualifying Period’ (2017) 45 Economy and Society 379, at 382. See also Beynon-Jones and Grabham (eds), op. cit., n. 32.
35 Beynon-Jones and Grabham (eds), op. cit., n. 32, p. 2.
36 Valverde, op. cit, n. 8. See also A. Philippopoulos-Mihalopoulos, ‘Spatial Justice: Law and the Geography of Withdrawal’ (2010) 6 Int. J. of Law in Context 1.
but often unexamined, factor’.37 Studying law through the ‘heterogeneity’ and ‘admixture’ at play in everyday legal processes and practices can advance our understandings of time and law.38 While there has long been an awareness of the importance of taking time (and being seen to take the time) to deliberate, to perceptions of fairness, subsequent work has emphasized the effects of repetition and routine on juridical approaches to the law, especially in the lower courts.39 In situations of time scarcity, the imperative to reach a decision threatens to encroach upon the quality of the decision itself:

Trial transcripts and court records reveal that judges and legal actors are driven by time-based constraints: how many witnesses will we get through today; how long a lunch break does the jury need; how many days do we have set down for this trial?40

Under such conditions, judges can tend to rely increasingly upon heuristics – psychological shortcuts that abstract and simplify complex decisions on the basis of rules of thumb. This can fundamentally alter the role of the judge, providing ‘a corrective to the view that judging involves conscious use of expertise and skill’.41 Judges thereby become increasingly concerned with managing time constraints, but must nevertheless maintain a demeanour that is consistent with plaintiffs’ expectations of how considered the law should (appear to) be.42

The sort of tension that exists, particularly in administrative justice, between the imperative to be efficient and work rapidly through multiple cases on the one hand, and the imperative to be considered, deliberative, and just on the other (and to be seen to be so), has been identified as a key outcome of austerity politics.43 When legal systems are under-resourced, bureaucratic logics of efficiency and targets threaten to overwhelm the ability of judges to be empathetic and listen carefully to cases – even assuming that their desire to do so persists in a bureaucratic environment.44 It is partly for reasons of resource constraints that in-person court and tribunal hearings are

37 E. Cunliffe in E. Grabham et al., ‘Exploring Relationships between Time, Law and Social Ordering: A Curated Conversation’ (2018) 8 feminists@law.
38 M’charek in Grabham et al., id.
39 See, for example, T. Tyler, ‘What Is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures’ (1988) 22 Law & Society Rev. 103; R. Moorhead and D. Cowan (eds) ‘Special Issue: Judgecraft’ (2007) 16 Social & Legal Studies; S. Roach Anleu and K. Mack, Performing Judicial Authority in the Lower Courts (2017).
40 E. Cunliffe in Grabham et al., op. cit., n. 37.
41 D. Cowan and E. Hitchings, “‘Pretty Boring Stuff’: District Judges and Housing Possession Proceedings’ (2007) 16 Social & Legal Studies 363.
42 K. Mack and S. Roach Anleu, ‘Performing Impartiality: Judicial Demeanour and Legitimacy’ (2010) 35 Law and Social Inquiry 137.
43 R. Thomas and J. Tomlinson, ‘Mapping Current Issues in Administrative Justice: Austerity and the “More Bureaucratic Rationality” Approach’ (2017) 39 J. of Social Welfare and Family Law 380.
44 Roach Anleu and Mack, op. cit., n. 39.
becoming scarcer, with alternative, cheaper forms of dispute resolution acting as substitutes. While some have argued that these alternatives make the law more accessible, other socio-legal scholars and anthropologists of the law have long-held reservations about their development, including their erosion of the degree of formality necessary to level the playing field between individuals and corporations or the state, and their inability to minimize prejudices, which tend to manifest more acutely in informal situations. Latour’s landmark investigations into the nature of law as a form of truth telling emphasized precisely the ability of legal processes to enable deceleration and deliberation in the face of uncertainty. ‘[T]his slowness, this heaviness and these continuous hesitations precisely form the primary material of justice’, he suggests. When legal systems experience resource constraints that manifest in temporal pressures, this therefore can and should be seen to threaten the very nature of legal justice itself.

METHODOLOGY

This article draws on ethnographic data collected between February and July 2018. More than just another method, ethnography involves a direct and sustained encounter with research subjects, sometimes via multiple methodologies. Legal ethnographic method, in particular, is distinctive in its ability to cast legal concepts and processes in a new light, and in so doing challenge legal blind spots and habits of thought: ‘a legal anthropological perspective challenges conventional, doctrinal approaches to law that present it as a concept, universal across time and space.’ Ethnography’s innately ‘anti-hegemonic’ character enables it to detect and represent the ‘anarchic atmosphere’ of social systems by peering beneath the projected, but often synthetic, veneer of order that such systems, including legal ones, portray.

During this period, the field researcher observed over 40 hearing days (‘audiences’) corresponding to over 150 individual cases (‘affaires’). Data in the form of detailed handwritten notes, diaries, and sketches were collected throughout observations. In addition, pro forma data were collected, recording

45 U. Mattei and L. Nader, Plunder: When the Rule of Law Is Illegal (2008); R. Delgado et al., ‘Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution’ (1985) Wisconsin Law Rev. 1359.
46 Latour, op. cit., n. 30.
47 Id., p. 91.
48 N. Gill, ‘Conclusion’ in Asylum Determination in Europe, eds N. Gill and A. Good (2019) 307.
49 F. Benda-Beckmann et al., ‘Introduction: The Power of Law’ in The Power of Law in a Transnational World: Anthropological Enquiries, eds F. Benda-Beckmann et al. (2009) 3.
50 J. Blommaert, ‘Language, Asylum and the National Order’ (2009) 50 Current Anthropology 415, at 438; J. Flood, ‘Socio-Legal Ethnography’ in Theory and Method in Socio-Legal Research, eds R. Banakar and M. Travers (2005) 33, at 34.
basic features of the hearings such as the actors present and the nature of the claim, as well as a timesheet for each audience. The researcher arrived at the court between 8.30 and 9 am and, as far as possible, observed a single hearing room throughout its working day. Hearing rooms were selected day by day, with the broad aim of observing a variety of different judicial and court staff workgroups, physical spaces, and appellant profiles. The effect of strikes meant that for a proportion of the research period, the court was operating at well below its usual pace. On some days, only two or three of the 13 cases listed would proceed. Rather than being a barrier to data collection, however, the circumstances afforded us ideal conditions for comparison, as we were able to observe the court functioning with a reduced caseload and compare it to when it was working at full speed.

While appeal hearings in France are public by default, and observers are very common at the court, the right to have a hearing behind closed doors ("huis clos") is "de plein droit", or "as of right", meaning that the judge will grant a request by the appellant to be heard in private. Closed-door hearings were not uncommon, especially for women appellants and families, and in these circumstances the researcher left the hearing and observed other open courtrooms, or sat in one of the waiting rooms to await the next case. During this waiting time, the researcher was able to gather ethnographic data through observing everyday life around the court and informal conversations with court staff and visitors.

Even though the hearings are public, we notified the court before embarking on the fieldwork and carefully considered the question of whether to ask for the consent of the appellants. We felt that approaching appellants with paperwork to sign on the day of their hearing might add to their levels of stress at an already stressful time. Consequently, though we had consent forms as well as methods to collect verbal consent prepared, we allowed our judgement in the context of each hearing to dictate whether or not it was appropriate to approach the appellants. Usually this meant that we did not, but where possible we gave out leaflets describing our research in multiple languages for appellants, and other actors involved in hearings, to consider in their own time.51

ASYLUM APPEALS IN FRANCE

The CNDA is responsible for examining appeals against decisions made by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Operating under the highest French administrative court (the Conseil d’Etat, or Council of State) since 2009, it is a centralized jurisdiction located in the Parisian suburb of Montreuil, devoted uniquely to the

51 The leaflets also included explanations on how to withdraw from the study and links to our project website.
determination of protection claims. Appeals are heard by either a single judge or a panel of three judges. Appellants are entitled to state-funded legal representation, with legal aid awarded in over 96 per cent of cases.

In panel hearings, three judges sit on a slightly raised platform: the President (a member of the Conseil d’Etat, or other specified judicial offices) with, to their left, a judge (‘assesseur’) nominated by the UNHCR, and, to their right, another assesseur nominated by the Vice President of the Conseil d’Etat. To the right of the panel, also on the platform but at a right angle to the judges, sits the ‘rapporteur’, an independent agent of the court tasked with studying the appeal file and preparing a report prior to the day of the hearing. On the other side of the room, facing the rapporteur, sits the secretary. On ground level, a long bench mirrors that of the judges. The appellant sits at the centre of the bench, with the interpreter to their left and the lawyer to their right.

The caseload of the CNDA has increased significantly from 22,676 appeals registered in 2007, to 39,986 in 2016, 53,581 in 2017, and 58,671 in 2018. The number of decisions delivered fell slightly from 47,814 in 2017 to 47,314 in 2018, but nevertheless represents a large increase on the 20,240 decisions handed down in 2009. In direct response to the perceived need to ‘speed up’ the rate of decision making in order to keep up with the volume of appeals registered, the 2015 reforms introduced new accelerated procedures whereby, instead of being heard by a panel of three decision makers (‘formation collégiale’) within five months of registration, appeals may be heard by a single judge within five weeks. The reforms also increased possibilities for decisions taken by ‘ordonnance’ – that is, by a single judge with no hearing. Since the reforms took effect, the number of decisions taken under the regular procedure by a judicial panel reduced to under 50 per cent, with around a third of decisions taken by ordonnance.

The initial triage is of considerable significance to appeal procedures and outcomes. The difference in recognition rates between panel judgements and single judges is substantial, with some form of protection awarded in around one third of panel decisions, but under a fifth of decisions taken by a single judge.

52 This contrasts with other systems such as the United Kingdom and Germany in two respects: (1) it is centralized (one court) as opposed to decentralized (multiple courts); and (2) it does not hear other immigration/nationality/visa cases.
53 CNDA, Cour Nationale du Droit d’Asile: Rapport d’Activité 2018 (2018) <http://www.cnda.fr/content/download/153729/1556582/version/6/file/RA2018-FINAL-internet.pdf>.
54 For more description, see R. Gibb, ‘Communicative Practices and Contexts of Interaction in the Refugee Status Determination Process in France’ in Asylum Determination in Europe, eds N. Gill and A. Good (2019) 155.
55 CNDA, op. cit, n. 53, p. 3. These represent the most recent figures available to us at the time of publication.
56 Id., p. 5.
Almost all decisions taken by *ordonnance* are refusals. The shift from panel judgements to single-judge hearings and *ordonnance* decisions represents a move towards concentration of work in smaller ‘decisional units’.

Previous research shows the value of multi-member panels in refugee adjudication, given significant divergences between individual judges. The relationship between consistency and the number and size of decisional units is found in the way in which larger groups may ‘diffuse (the) effects of personal values and subjective biases’. Panels provide a levelling function, helping to moderate the effect of ‘extreme’ judges (those who are seen as ‘refusers’ or ‘granters’). This levelling exists not only in numerical terms; judges also act as a check on each other through deliberation, discussion, and persuasion. Naturally, differences persist between panels and sections of the court, and a panel is no guarantee of a ‘good’ or ‘consistent’ decision. Nevertheless, the scaling-back of judicial panels in French refugee determination represents more of a concern for faster, efficient procedures than for high-quality, thorough decision making.

Evidently, the CNDA is a jurisdiction under pressure, characterized by its increasingly high caseload. Even before the most recent reforms, the court was described as operating at an ‘infernal speed’. The unprecedented strikes by various court actors disrupted the work rate of the court and illuminated the widely felt disquiet over the place of a ‘logique comptable’ (‘accounting logic’), or a ‘politique du chiffre’ (‘politics of numbers’, or, as we interpret this, target culture), in asylum decision making. At the peak of the strikes in February and March 2018, it was estimated that only around 30 per cent of appeals went ahead owing largely to the combined effect of strike action from court workers and refugee lawyers. The *rapporteurs*’ strike was framed primarily in terms of unsatisfactory working conditions and resistance to performance targets, yet these concerns are inextricably linked to fears about the quality of decision making in the face of such pressures, and warnings of the dire consequences for asylum appellants of having their claims dealt with by overworked and underpaid agents. Strikers questioned the legitimacy of tight timelines and budgets in the context of asylum appeals, which involve vulnerable appellants, complex legal and evidential issues, unstable country...

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57 In 2017, judicial panels awarded some form of protection in 28 per cent of decisions, with single judges doing so in 17 per cent decisions. In 2018, protection grants increased to 32 per cent before a panel, and 19.4 per cent when heard by single judges. See id., p. 6.

58 ‘Decisional units’ are the person or group responsible for deciding a single case, as per S. Legomsky, ‘Learning to Live with Unequal Justice: Asylum and the Limits to Consistency’ in *Refugee Roulette*, eds J. Ramji-Nogales et al. (2009) 255.

59 J. Ramji-Nogales et al. (eds), *Refugee Roulette* (2009).

60 Legomsky, op. cit., n. 58, p. 258.

61 Collectif d’Universitaires, ‘Tribune d’Universitaires Spécialistes de l’Asile: Non à une Procedure d’Asile au Rabais’ (2018) Dalloz Actualité <https://www.dalloz-actualite.fr/chronique/tribune-d-universitaires-specialistes-de-l-asile-non-une-procedure-d-asile-au-rabais#.WrDJCjJLHIX>.
conditions, language barriers, and potentially terrible consequences of getting decisions wrong. The strikes brought the court almost to a standstill in February and March, with the majority of appeals adjourned and appellants waiting to be rescheduled. It is worth acknowledging here that procedures may also be critiqued where they are too slow, resulting in excessive waiting times and situations of limbo. However, the disruption caused by strike action was seen as a necessary sacrifice to resist the privileging of case-management targets and protection of state finances over the rights of asylum appellants.

ADMINISTRATIVE CONVENIENCE AND TECHNOLOGIES OF SPEED GOVERNANCE

Our focus here lies on how speed conditions the quality of appeals at the CNDA. In addition to the evolution of formal appeal procedures set out above, our ethnography reveals how efforts to accelerate treatment of appeals directly impacts the substantive quality of review. In this section, we focus on particular instances of temporal, spatial, and organizational ordering at the CNDA. We present examples of how the hearing day is designed to prioritize fast-flowing administration, how the physical space in which appeals are heard is constructed in such a way as to regulate movement, and how the organizational structure of the court and its personnel contribute to the slick passage of appeals.

Our contention that appeals are structured disproportionately around administrative convenience, at the expense of individual fairness and justice, is unpacked through examination of these three techniques. Later in the article, we extend our argument to analyse how these ordering devices can detract from thorough consideration of individual appeals, and highlight the associated risks to the quality of fair and independent decision making.

1. The temporal architecture

Speed is central to the governance of cases as soon as a person receives a rejection from OFPRA. The one-month deadline for appealing a first rejection is, in practice, negated by the two-week deadline for legal aid applications. Following the 2015 reforms, the court filters appeals into either a five-month or a five-week track, denoting the time that the court has, in theory, to make a determination. In 2016, the first year that this triage model was in operation, one third of decisions (11,427) were taken under the five-week model. In 2017, this went up to 40 per cent (21,600).62 Appeals under either track may either proceed to oral hearing or be rejected by *ordonnance* (on the papers).

62 CNDA, *Cour Nationale du Droit d’Asile: Rapport d’Activité 2017* (2017) <http://www.cnda.fr/rapport-annuel-2017/index.html>, p. 4.
will be before a single judge or a judicial panel of three. For single-judge procedures, judgements are handed down just one week after the hearing, as opposed to three weeks for panels.

The structure of a day at court is formulaic and repetitive. At 8.30 am, the court opens and people begin filtering through the doors. Lawyers, interpreters, and other staff are waived through security while appellants and observers must pass through the scanners. As 9 am approaches, the waiting rooms get busier and noisier. Lawyers and secretaries attempt to find appellants; judges pass through with paper cups of machine coffee; *rapporteurs* carry stacks of distinctive pink files. At 9 am, the first hearings are ready to start. The public gallery begins to fill up with appellants and observers. Hearing-room doors remain open; they are only ever shut during the deliberation, or when a closed-door hearing is requested by the appellant and approved by the President. The secretary is usually the first to speak: when everyone appears ready, they open the hearing, saying ‘I call the case of [X] represented by [Y] interpreted by [Z]’, or sometimes simply ‘This is the case of [X]’. The President then signals to the *rapporteur*, who reads aloud their detailed report, outlining the facts and history of the case, and making recommendations for matters to be pursued in the hearing. After five to ten minutes, the report reading finishes with a standard phrase (‘And it is in this state that the appeal comes before the court’). The President gestures, often using only a nod of the head, to the interpreter to relay the report to the appellant. This takes around two minutes, considerably less time than the initial presentation. Only after this does the President offer a cursory ‘Bonjour’ and welcome to the appellant. Immediately afterwards, either the President or one of the other judges launches into detailed questions about the history and basis for the protection claim. Each judge engages in approximately ten minutes of questioning, before the President says, simply, ‘Maitre?’ – an invitation for the lawyer (assuming there is one) to stand and offer some observations. The lawyer finishes after a few minutes by asking the court to accord refugee status to their client, or failing that, subsidiary protection. The final words are spoken by the President, on average 40 minutes after the hearing begins: ‘The case is put to deliberation and will be out on [date].’ With that, the lawyer and appellant gather their belongings and leave the room. The next appellant and lawyer move to the bench and take their seats as the secretary is announcing their appeal. If, as is often the case, this appellant speaks the same language as the previous one, the interpreter remains seated and the formula begins again.

An *audience* describes a full hearing day in one of the 19 hearing rooms at the court. The cycle outlined above is repeated up to 13 times, for the 13 *affaires* (individual appeals) listed in each *audience*. The very concept of an *audience* is thus centred on the hosts (judges, *rapporteurs*, and the court itself) rather than on individual appellants. The *audience* is divided into blocks of three or four *affaires*, so appellants and lawyers are given a rough guideline of when their appeal will be heard, and to allow for co-ordination of interpreters.
The first three appeals of the day are listed at 9 am, then three at 10.30 am. In theory there is a lunch break between 12 noon and 2 pm, after which a further three appeals are listed, and finally, at 3.30 pm, four more appeals.

Each time block of the *audience* usually comprises appeals from the same country of origin. So, for example, at 9 am there might be three Sudanese appeals, then three appeals from Ivory Coast, then three from Angola, followed by four from the Democratic Republic of Congo. As an organizational technique, this may facilitate slicker passage between appeals; for example, if there is a common language requested, one interpreter may stay throughout the block. Moreover, judges and *rapporteurs* are tasked with evaluating country conditions in four different states as opposed to 13.

The method of timetabling at the CNDA affords an average of 40 minutes for each appeal hearing. However, many appeals take well under 40 minutes, particularly those where either the appellant or the lawyer is not present, which may be over within five minutes. The precise organization of the day is coordinated by the secretary and President (or single judge). Previously, cases continued long into the evening, sometimes as late as 10 pm, until an internal circular imposed a 7 pm limit. After each block of three or four appeals, the judge(s) and *rapporteur* retreat behind closed doors to deliberate and make their decisions. While outcomes may be decided on the day, the determination is not communicated to the appellant until three weeks later (or one week in the case of a single-judge hearing), when the result is displayed on the wall of a specially designated room at the court. A reasoned decision, written by the *rapporteur* and signed off by the President, is simultaneously sent to the appellant.

In practice, attempts to impose strict timelines are constrained by the availability of resources and actors. In 2017–2018, appeals under the five-month model took on average just over eight months, with five-week appeals taking almost four and a half months. Furthermore, increased time pressure is directly linked to workload and worsening conditions of work for decision makers, court staff, and lawyers. This in turn, we argue below, impacts the quality of justice being dispensed.

2. Regulating space and movement

Spatial organization plays a key role in constructing the speedscape of appeals and facilitating efficient passage through the appeals architecture. Linda Mulcahy has demonstrated how the use of space in courts reveals the ‘ideologies underpinning judicial process and power dynamics in the

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63 The effect of the strike in some cases was actually to lengthen the time given to the appeal: because so many of the appeals were unable to proceed, judges were able to spend more time on the few that did go ahead. Where such appeals were observed, judges warned the researcher that this was not representative of the normal court tempo.

64 CNDA, op. cit., n. 53.
trial’. She draws attention to ‘[t]he sophisticated forms of segregation and surveillance employed [that] allow things to be arranged in such a way that the exercise of power is not added on from the outside but is subtly present in ways which increase its efficiency’. Given the importance attached to speed in the asylum politics of Western developed countries it is essential to consider both the ways in which the spaces of the court express the ideology of speed, and the ways in which the organizational layout of the court explicitly expedites the throughput of cases. The spatial arrangement of the court, in other words, is a key component of ‘conveyor-belt justice’ and the generation of a factory mentality.

Certain techniques govern the physical passage of bodies through appeals by regulating circulation, space, and movement at the court. On an average day, approximately 700 people pass through the doors of the CNDA. The layout of courtrooms, waiting rooms, staircases, and back offices, as well as the use of technology such as video conferencing and CCTV, contribute to the funnelling of people and cases through the appeals system. A key way in which space is used as a streamlining technique concerns the allocation of particular positions for actors around the building. In each of the three waiting rooms, chairs are arranged in blocks with a sign on the wall above corresponding to the hearing room number. This enables secretaries and lawyers to find the right people quickly without having to tour the court reading out names. Appellants are assigned a numbered hearing room on their summons. This cannot be changed easily, as was observed when a large family arrived for their hearing in one of the smallest rooms, in which they, their lawyers, and interpreters barely fitted. Rather than swap to one of the larger empty rooms opposite, the security guards brought additional chairs and rearranged the furniture in the tiny room, saying it was ‘administratively too complicated’ to change. To move rooms at late notice is to disrupt the bureaucratic flow of the appeal.

Another way in which spatial organization becomes a technology of speed is through controlling the movement of people at the court. Once in the building, appellants – unlike judges and lawyers – are forbidden from standing or loitering in corridors, on staircases, or in the other public spaces. Instead, they are steered to the waiting rooms or hearing rooms. Constant CCTV surveillance and the strategic positioning of security personnel throughout the building ensure fervent policing of movement. Part of the rationale here is to keep noise levels low in common areas so as not to disrupt hearings or distract participants.

65 L. Mulcahy, ‘Architects of Justice: The Politics of Courtroom Design’ (2007) 16 Social & Legal Studies 383, at 398.
66 Id., p. 399.
67 Burridge and Gill, op. cit., n. 5; G. Robinson, ‘Delivering McJustice? The Probation Factory at the Magistrates’ Court’ (2018) 19 Criminology & Criminal Justice 605.
68 CNDA, op. cit., n. 62, p. 16.
Judges and staff based at the court have different options for entering and circulating within the building complex, whereas appellants and lawyers must enter and leave through the sliding doors of the public entrance. As Paul Rock noted in his famous study of the Crown Court in Wood Green in London, ‘Moral and social control [is] built into the physical structure of the court itself’.69 For Rock, this revolved around the ‘division of moral labour’ between civilians and various types of professionals.70 The former could be emotional and erratic, Rock suggested, while the latter can be depended upon to remain impassive. This moral hierarchy gave rise to material segregation and containment of the unpredictable civilians in public, securitized areas of the court, while allowing professionals to access the backstage areas. Rock’s study demonstrated the translation from organizational concerns to physical space that he found to be characteristic of the court, and emphasized the constraint or freedom to circulate that becomes associated with status in court spaces. Our research similarly illustrates the close interconnection between court spaces and positions within a court hierarchy, as well as the differential application of mobility requirements to different groups.

3. Organizational design

A third instance of the politics of speed at the CNDA lies in the division of court work between actors to facilitate maximal efficiency in appeal processing.

Each hearing room has a secretary responsible for the flow of the audience and ensuring that appeals run smoothly one after the other. This is a mobile and interactive role; they are constantly moving in and out of hearing rooms with their clipboards and updating the listings displayed by the door of their room. Secretaries play a key organizational role insofar as they must keep a tight command over the presence and availability of parties, including appellants, lawyers, and interpreters. The latter two groups may have engagements in other courtrooms on the same day, so it is up to secretaries to co-ordinate this. Poor organization frustrates judges, who occasionally remind secretaries of their responsibility in ensuring a smooth transition between cases.

What often seems like the main event for appellants and observers – the cross-examination on the day of the hearing – is but a small part of the whole passage of the asylum appeal through the court. Lawyers play a critical role in improving chances of a successful claim through their pre-hearing preparations and submission of the written documents,71 but their role in the

69 P. Rock, ‘Witnesses and Space at a Crown Court’ (1991) 31 The Brit. J. of Criminology 266, at 274.
70 Id., p. 272.
71 Unrepresented appellants, it has been shown, are less likely to be successful than those who are represented, even if the representation is not of high quality. For more see: D.
hearing itself appears relatively minimal under the tight schedule of the court. Usually the lawyer does not speak until the final few minutes of the appeal, when invited by the judge to offer observations. Furthermore, while judges lead the cross-examination, their role in preparing and directing the issues for inquiry is impacted by the involvement of other actors, notably *rapporteurs* and interpreters.

Following initial triage, appeals are allocated to one of the 250 *rapporteurs* employed at the CNDA. *Rapporteurs* examine all documentation provided by parties to the appeal, as well as the legal and geopolitical aspects of claims, and prepare an independent report to be presented on the day of the hearing. *Rapporteurs* participate in two to three full hearing days per month, each of which requires preparation of 13 files, totalling around 350 cases a year. This workload allows approximately half a working day for each file, with little room to deviate for complex cases. The report typically starts with an overview of facts and history, before moving on to analyse the claim against relevant legal provisions and country information, distilling issues relating to law, facts, and credibility, and directing the judge(s) to areas of the claim requiring further investigation. The report almost always calls for greater precision and more concrete explanations, and suggests questions to the judges.

As a time-saving device, the role of the *rapporteur* may be seen as facilitating in-depth consideration of appeals while alleviating pressure on judges, since pertinent issues are highlighted and refined in advance of the hearing. While in theory the idea of an independent presentation and assessment of an appeal seems an attractive feature of asylum adjudication, purported objectivity may be misleading, and the *rapporteur’s* report represents another way in which a case is filtered and shaped before it is laid before the decision maker. Moreover, our ethnography revealed that only in very few cases do judges appear to follow the questions proposed by the *rapporteur*, which leads us to query the purpose and desirability of shifting the investigatory load.

The use of interpreters generally slows the pace of hearings. Appellants who speak French in addition to their first language may choose to be heard in the latter, as it is crucial that they are able to participate in intricate and nuanced discussions of persecution. In hearings where this was observed, on a number of occasions either the judge(s) or the interpreter took advantage of the appellant’s knowledge of French by asking simply ‘Have you understood?’, or, rather than waiting for interpretation, allowing the appellant to answer...
directly in French. These shortcuts quickened the pace of the hearing, yet jeopardized the appellant’s ability to participate as fully as they might in their first language.

In summary, the organizational design of the work and the physical fabric of the CNDA reflects the imperative for efficiency. Certainly, the observable organization of the CNDA in accordance with the demands of administrative convenience is neat: sharp, well-defined blocks of time allocated to specialized tasks, functional specialization of actors, and a brisk, productive rhythm of hearings. At the same time, the charges that theorists have levelled at bureaucracy regarding its impersonalism, its inflexibility, the myopia of its functionaries, the ignorance that accompanies its imposition, and the prioritization of quantitative targets and metrics over the quality of work conducted must be considered in this environment.\(^{72}\)

\section*{CONSEQUENCES OF LEGAL QUICKENING}

The organizational advantages of the dromological devices outlined above come with a number of associated risks. These risks, we argue, are inherent to the temporal, spatial, and organizational facets of legal quickening that we have set out. Our argument resonates with work that has begun to explicate the close interrelations between power and the governance of legal time and sheds light on the practical consequences of this interrelation for marginalized court users.\(^{73}\)

Below, we focus on three ‘cracks’ in legal roles and procedures that come with increased speed and quantitative pressure: routinization and the thinning-out of legal deliberation; rushing through procedures that may be crucial to effective participation by appellants; and the reduction in opportunities for experiencing respect between participants in court processes.

\subsection*{1. Routines and predictability}

The effects of repetition and velocity on human psychology were articulated in Georg Simmel’s writings on the consequences of the pace of modern urban life for human relationships. The sheer volume of novelties that the modern city presents to the senses, Simmel argued, is capable of dulling them to the experience and appreciation of newness and difference. He describes the consequent listlessness and indifference that arises under conditions of extreme and repeated exposure to difference as

\(^{72}\) M. Weber, \textit{From Max Weber: Essays in Sociology} (1946); Z. Bauman, \textit{Modernity and the Holocaust} (1989); D. Graeber, \textit{The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy} (2015).

\(^{73}\) For example, Grabham, op. cit., n. 27.
The blasé attitude results first from the rapidly changing and closely compressed contrasting stimulations of the nerves. It agitates the nerves to their strongest reactivity for such a long time that they finally cease to react at all. An incapacity thus emerges to react to new sensations with the appropriate energy.74

This listlessness is accompanied, Simmel argues, by a second consequence of the over-exposure to novelty in modern life: a failure in discernment, or what he calls ‘the blunting of discrimination’. He continues:

This does not mean that the objects are not perceived, as is the case with the half-wit, but rather that the meaning and differing values of things, and thereby the things themselves, are experienced as insubstantial. They appear to the blasé person in an evenly flat and gray tone; no one object deserves preference over any other … All things float with equal specific gravity in the constantly moving stream.75

Applied to asylum determination, Simmel’s insights on ‘quantitative intensification’ highlight the predicament of the ‘repeat players’ involved in the hearings, including the rapporteurs, judges, and lawyers.76 The sheer velocity and volume of the work that they undertake threatens their capacity to approach each individual case on its merits and remain sensitive to its peculiarities.

The opportunity for appellants to have their cases heard on their own merits assumes that judges approach each individual case with a fresh mind. However, the block booking system at the CNDA, along with the high number of cases packed into each hearing day, accentuates the kind of routinization and bureaucratization inherent in lower-level judicial decision making. Timetabling techniques designed to make procedures less onerous for court workers and judges result in repetitive working practices and blurring between individual appeals.

The repetitive routine threatens the performative force of the hearing. A hearing can be said to reach its dramatic peak when the lawyer stands and takes the final opportunity to convince the judge(s) of their client’s credible claim for protection. The lawyer, dressed in black robes with fur trim representing membership of their local bar, is the only character in costume and the only character to stand while speaking. Lawyers often perform their speeches using theatrical devices to emphasize aspects of their clients’ claims, such as varying their volume, banging on the bench, jabbing fingers, or leaving rhetorical questions hanging in the air. However, given the regularity with which judges see these performances, up to 13 times a day, and often from the same lawyers from the small pool of repeat players working at

74 G. Simmel, The Metropolis and Mental Life (1950) 409–424.
75 Id.
76 Though some appellants might have observed earlier asylum appeals from the public gallery, they will not have seen many in comparison to these actors. See also: Gill, op. cit., n. 15.
the court, the dramatic effect is dampened; advocacy techniques become mechanical, and anticipated as part of the routine.  

Occasionally, tempers fray under these conditions. At one point during our observations, a lawyer stopped mid-way through an impassioned summary to the judge to ask if the *rapporteur* was even listening. Our fieldnotes read:

> [The rapporteur] had been typing at her laptop. She stopped typing, looked at [the lawyer], and said ‘I am listening!’ The lawyer became very angry. The judge was annoyed with the lawyer for having a go at the rapporteur. But the lawyer continued on, saying ‘I just find this really poor. I’ve got the impression that it’s all pre-judged, you’ve already made your minds up anyway...’ The judge tried to reason with him, saying ‘If we ask him all these questions, it’s because we are trying to actually judge the case...’ The lawyer replied (in a very rude tone) ‘OK, if you say so’.

For interpreters, sitting through three or more cases in a row is difficult, intense, and tiring work. Similarly for judges and *rapporteurs*, sitting through multiple cases from the same country of origin causes fatigue, not only in terms of physical tiredness but also in the sense that they feel they have ‘heard it all before’. One President was heard saying to his fellow panellists before a hearing ‘Normally we reject 80 per cent of these kind of cases’. Some judges cross-referred to other cases by asking appellants ‘Did you hear what I asked earlier?’ even when appeals were not linked in any way other than a shared country of origin. Here we see how, under tight time constraints, decision makers rely upon heuristics. These are ‘simple, efficient rules that help decision makers to reach a decision but that abstract markedly from the complexity of that decision by focusing on one aspect of it and giving less attention to other aspects’. In the presence of acute time pressure, single misplaced words or ill-considered gestures can exert disproportionate influence if they activate the triggers that decision makers have chosen to employ in order to simplify their work.

Of course, judges inevitably import prior knowledge and experience to their work. Nonetheless, the risk of overly reductive typification – being too quick to categorize cases and overlooking key individual elements – makes fair and independent decision making more difficult where procedures are built around rapidity and administrative efficiency. As noted by Lord Dyson in his 2015 decision condemning the so-called Detained Fast Track (DFT) in the

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77 S. Laacher, *Croire à l’Incroyable: Un Sociologue à la Cour Nationale du Droit d’Asile* (2018).
78 C. Kobelinsky, ‘Judging Intimacies at the French Court of Asylum’ (2015) 38 *Political and Legal Anthropology Rev.* 338; C. Kobelinsky, ‘A Matter of Value: Exploring What Underlies Adjudication in the French Court of Asylum’ (2014) 11 *Migration Letters*; D. Fassin and C. Kobelinsky, ‘How Asylum Claims Are Adjudicated: The Institution as a Moral Agent’ (2012) 53 *Revue Francaise de Sociologie* 444.
79 Gill, op. cit., n. 48.
80 Id., p. 313.
United Kingdom, ‘justice and fairness should not be sacrificed on the altar of speed and efficiency’.  

2. Rushed rituals

Ritual forms an important part of the symbolism of the court, which underpins the gravity and seriousness of the proceedings. Without symbolism and gravity, hearings can become overly informal, which can breed inconsistency and unconscious bias. An important part of the ritual of appeal hearings is the introduction, yet judges are highly variable in the thoroughness of their introductions; some outline in detail their role and the processes of the court, while others choose not to do so. Over the course of our observations at the CNDA, we became concerned that time pressure eroded the rituals of the court both in the introduction and during the proceedings.

The reading aloud of the rapporteur’s report forms part of the hearing ritual. However, we frequently observed this treated as a formality to get through as quickly as possible, rather than as a performance to be heard and understood. Speech was extremely fast and at low volume with barely any pauses or intonation. Combined with the noise coming from public spaces of the court, it was often inaudible from the public seats. This raises questions about the purpose of this public reading. Judges are often shuffling through papers, looking at laptops and phones, occasionally having whispered discussions, but rarely appear tuned in to the reading. They may already have read and discussed the report prior to the hearing, in which case, for them, the public reading becomes somewhat obsolete. If an appellant is represented, the lawyer is often seen noting things down throughout the reading, as a reminder, perhaps, of what to revisit in their observations at the end of the hearing. However, lawyers generally are not permitted to speak before or during the cross-examination, so they cannot offer advice to clients on the basis of what has been presented in the report.

Arguably, then, those who may benefit most from hearing the rapporteur’s report are appellants themselves. The report can provide an indication about why their claim was rejected and highlight opportunities for addressing the gaps and weaknesses. However, there exist a number of barriers that prevent appellants from taking full advantage of the information given in the report, not least the problem of fast-paced, low-volume speech. In most cases,
the appellant is assisted by an interpreter. In such circumstances, after the *rapporteur* has finished reading, the President passes to the interpreter to give a summary of the analysis. This places significant responsibility on the interpreter to have listened, understood, distilled, and be in a position to recall the relevant aspects of the report. In only one hearing did we observe the President request ‘A little slower, please, to give the interpreter a chance’. Our ethnography demonstrated a tendency for *rapporteurs* to ‘rattle through their report at lightning speed’, with a general unwillingness of judges to intervene. This is unsurprising given time pressures. Some *rapporteurs* issued direct instructions to interpreters about which part of the report ought to be precisely translated. However, this practice varied between *rapporteurs*, and even when directions were given, this was often misunderstood or not followed by interpreters.

On several occasions, judges appeared visibly annoyed when interpreters seemed to be taking too long relaying the report – for example, staring hard at the interpreter, raising their eyebrows, looking around the room and at the clock, and/or making facial expressions and gestures to other members of the panel indicating that they wanted to get on with the hearing. In one hearing, during the interpretation of the report, the President and *rapporteur* exchanged confused, concerned glances. The President said, in a hushed but annoyed voice, ‘She shouldn’t be interpreting all of this!’ The *rapporteur* whispered back ‘Well, I did specify what should be translated…’ When the interpreter paused, the President asked ‘Have you finished, Madame interpreter?’ She confirmed ‘Yes, that’s all from me.’ The President then reminded her ‘You need to limit your translation, not go over all the facts. He knows these. Just the material analysis, like the *rapporteur* told you.’ Along with the significant difference in average time between the *rapporteur*’s reading and the interpretation, we may surmise that much of the report is literally lost in translation.

After the report, it is rare for the appellant to be given a chance to comment. In one hearing, the President paused to ask ‘Have you understood? Do you have any questions?’ The appellant replied, through the interpreter, ‘I have not understood everything the lady said’. The President responded to the interpreter ‘Well, if he hasn’t understood, then it’s because you have not translated!’ The interpreter protested, saying that he had given the essential elements of the report, and that the appellant simply had not understood. With that, the President said ‘OK! Well, we are going to ask him some questions anyway’, before proceeding immediately on with the examination.

Sometimes, cases perceived as particularly long or difficult were seen as posing a problem for the tight schedule:

> In the waiting room, the secretary comes over to the waiting area for Room 4 and tells a man who is sitting alone with a backpack on his lap ‘Monsieur, you can go home. Your case isn’t going ahead today. Your lawyer only just arrived and your case is going to be really long, so the judge won’t hear it today.’ The man asks ‘I can’t have another lawyer?’ He seems disappointed and also a bit

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shocked and annoyed. The secretary tells him it is not possible to have another lawyer. He will have to wait for another court date.

The President in this case seemed keen to dispose quickly of this appeal, insofar as he wanted to strike it off his list that day, which meant, paradoxically, that the appellant would be stuck longer in the system. In the end, this courtroom heard only seven of the 13 cases listed that day. The President rarely took the lead on questioning appellants, preferring to let the other judges ask questions. He also tended to pass over to the secretary or rapporteur to explain aspects of the hearing to appellants. He insisted on a two-hour lunch break, and, after re-convening in the afternoon, became increasingly agitated – in one case shouting back at a lawyer who tried to suggest that her client’s hearing might take some time because the appellant had difficulty hearing and expressing himself:

-President: (shouting) ‘Do you think I don’t read my files!?’
-Lawyer: ‘I am just doing my job…’
-President: (shouting, and even angrier) ‘I am the police of this audience! If you want to argue, go away and read your code! I will give you the floor at the end, like with all other lawyers!’

This President seemed the embodiment of a time-pressed logic: driven by a desire to make his hearing room function like clockwork, with minimal scope for deviation from the idealized, mechanical vision of working through the list. Other judges displayed greater tolerance of interruptions to the strict schedule, but these examples were limited, and even then the judges seemed to remain acutely aware that time was ticking on.

3. Reduced respect

In this section, we argue that the time pressures on legal decision making in the CNDA also reduced the respect shown to, or at least experienced by, appellants. For example, we observed various instances of judges multi-tasking, not paying attention and asking for things to be repeated, becoming impatient, shaking their heads, looking at their watches, rubbing their eyes, and looking annoyed when answers took too long. We also observed judges not probing issues that were identified as central to appeals by rapporteurs and lawyers, moving on quickly (with a dismissive ‘D’accord, d’accord’ or ‘Oui, oui’ while motioning to move forwards) or cutting off the interpreter.

For instance, one judge, sitting alone, often spoke over the interpreter, starting his next question before she finished interpreting, or talking to the rapporteur or the lawyer:

He mutters under his breath, making remarks on the responses – for example, ‘Voilà, just as I thought’. Even while the appellant is responding to the interpreter, the judge is talking to the lawyer. At one point, the interpreter and appellant stop talking. It is as if they don’t understand whether the judge is talking to them, or about them, or whether he wants them to continue or stop to
let him speak … [The judge] looks really annoyed, exasperated. He is sighing, muttering, spinning in his chair … He seems visibly annoyed and frustrated.

In many instances, no introductory welcome speech was provided, and there were no opportunities for the appellant to say anything at the end. Very occasionally, the judge asked ‘Do you have anything to add?’ Appellants’ replies were often heartfelt pleas; for example, one man, on the verge of tears, said ‘My life was in danger. That is why I left everything and everyone – my wife, my family, my land.’ In another appeal, our fieldnotes record:

[The appellant] speaks and pleads directly to the judge. She is very upset, crying a lot, wiping her eyes, and gasping for breath: ‘I never would have imagined I’d find myself in France and I’d find myself here due to persecution. Three years later, I still have no idea what is happening and what will happen to me. I have no contact or news from my loved ones…’ (she continues to cry).

Another appellant, upset but resigned, said ‘I really tried to tell the truth. Now it is up to you. I cannot add anything more.’ Typically, after this, there was little to no response from the judge – simply a cool gesture to move on with proceedings, without even looking at the appellant. The juxtaposition between the appellants’ supplicant begging and pleading, or their discussion of extremely violent, traumatic events, and the judges’ brusque and efficient style was striking.

DISCUSSION AND CONCLUSION

The French asylum appeal system is characterized by the high number of asylum appeal hearings dealt with by judges on a single day and the short length of time accorded to each. Evidence from previous social psychology studies of judging suggests a relationship between time taken and accuracy. Judges with higher caseloads have been found to be more likely to make inaccurate decisions, as they rely less on deliberative reasoning and careful processing of information and more on their gut feeling and intuition. Asylum cases are ‘highly fact intensive and depend upon presentation and consideration of numerous details and documents [which] can take no small amount of time’. British immigration judges do not generally hear more than two asylum appeals each day. The high stakes involved with getting decisions wrong make it vital that time is spent going over testimony, multiple times if necessary, to ensure that details have been interpreted as accurately as possible. However, our work shows that where asylum appeals are built around administrative convenience, the routineness and predictability of hearings

85 Ramji-Nogales et al. (eds), op. cit., n. 59, p. 108, citing C. Guthrie et al., ‘Blinking on the Bench: How Judges Decide Cases’ (2007) 93 Cornell Law Rev. 1.
86 Id., p. 125, citing Immigration Litigation Reduction Hearing before the S. Comm. on the Judiciary, 109th Cong. 5–7 (2006) (statement of Hon. John M. Walker, Jr., C.J., US Court of Appeals for the Second Circuit).
undermine the force of the arguments made, as repetition erodes the power of ritual and performance. Furthermore, our research indicates that the rituals that promote the gravity and accessibility of the hearing become rushed and diluted, and that even the most basic forms of respect are compromised. All in all, our evidence suggests that fairness and due consideration are threatened under excessively tight time constraints.

The disturbing creep of performance-target cultures in asylum adjudication can be seen across multiple jurisdictions (for example, United Kingdom Home Office targets and quotas for United States immigration judges), representing a threat to fair and independent decision making. Efficiency and timeliness are not undesirable characteristics of an asylum system, but they should not come at the expense of upholding fairness, dignity, respect, and humanity. Moreover, rushed procedures are actually counter-productive, because the mistakes and oversights made as a result trap people in the system for longer, and more time is spent appealing inaccurate decisions.

Administrative justice is an area of law where speed and temporality take centre stage, owing to the volume of cases and the pressing nature of its role in facilitating, or blocking, state action. What emerges from the portrait of the tension between administrative efficiency and fair, properly considered, and respectful processes that we have painted in this article is the acute power imbalances between the state and the individual in administrative jurisdictions. These are all the more pronounced in situations in which the individual is a non-citizen and disadvantaged in countless other ways. Generally, we observe that when the asylum seeker is required to meet a deadline, then the balance of forces produces pressure to shorten it, but when the state is required to complete a task, then there are longer deadlines, more leeway, more delay, and fewer meaningful sanctions for missing the deadline. This imbalance illustrates the point that legal times are a key component of state power – perhaps increasingly so, given the state’s purported weakened control over territory in the current era.

It is also worth noting that the discourse of ‘crisis’, such as that surrounding the ‘refugee crisis’ of 2015–2016, feeds into the pressure on the state and legal systems to process claims quickly. The rhetoric of crisis with respect to asylum seekers in Europe is questionable: many thousands of asylum seekers had died trying to reach safety before the ‘crisis’ and have done so since, not only in Europe but also elsewhere globally. In this context, the supposed failure of the state to process asylum claims quickly enough has produced a raft of measures aimed at quickening procedures, in France and elsewhere. State ‘failure’ is thus productive of state power in the context of asylum determination in Europe.