

The Role of Law in Migrant Marginalization in the EU: A Comparative Analysis of Legal Frameworks, Social Exclusion, Mental Anguish

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ABSTRACT

Migration remains a critical issue within the European Union (EU), where legal systems struggle to balance security, integration, and human rights. This study examines inconsistencies in theories, national laws, treaties, and accords that both protect and marginalize migrants. The Dublin Regulation and restrictive asylum policies disproportionately disadvantage refugees despite the EU Charter of Fundamental Rights and the Treaty on the Functioning of the European Union (TFEU) promoting equality. While the European Convention on Human Rights (ECHR) prohibits inhumane treatment, agreements like the EU-Turkey Deal prioritize border control over fundamental rights. The non-refoulement principle, enshrined in the 1951 Refugee Convention and ECHR, is frequently breached. Italy's 2018 Decreto Sicurezza eliminated humanitarian protection, facilitated deportations, and criminalized NGO rescue efforts, leading to illegal pushbacks. Additionally, the Return Directive (2008/115/EC) criminalizes irregular migration, exacerbating social marginalization and restricting access to legal remedies, healthcare, and basic rights. The study incorporates empirical data, such as trends in asylum applications and legal case outcomes, to support its analysis. The rise of far-right governments in Italy, France, Hungary, and Poland has intensified anti-immigrant policies, border militarization, and the criminalization of humanitarian aid. Laws such as France's Immigration Bill, Hungary's "Stop Soros" bill, and Italy's Decreto Sicurezza reinforce exclusionary practices and xenophobia. Migrants face employment restrictions, legal barriers, and increased mental health struggles. This paper argues that the EU must address contradictions in its legal framework, uphold migrant rights, and counter far-right policies through stronger legal protections, social integration measures, and governmental accountability to ensure a more inclusive migration system.

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1. Introduction

Migration has been a defining aspect of human history, shaping civilizations and societies for centuries. Long before modern political borders were established, people moved in search of safety, opportunity, and better living conditions. This study is particularly relevant at a time when migration is becoming more politicised and subject to regulatory restrictions throughout Europe. Scholarly attention is needed to address the urgent legal and moral issues raised by the humanitarian crisis at borders and the decline of refugee safeguards. The journey of a migrant is not a single event but a layered experience that reflects political and legal failures at every stage. It often begins in a home country where life is disrupted by war, poverty, or oppression. Many face direct persecution based on race, religion, politics, or beliefs. The transit phase exposes individuals to dangerous crossings through multiple unsafe regions, only to arrive at European borders where they are met with fences, guards, and uncertainty. A formal asylum application becomes their attempt to access legal stay and protection, yet the process can end in either acceptance and the hope of rebuilding life or rejection, leading to forced return, detention, or indefinite legal chaos as shown in Figure 1.

However, in Modern times, migration has become one of the most important issues, particularly within the European Union (EU), where legal frameworks often struggle to balance national security, human rights, and integration policies. This paper reviews how EU law, despite its rights-based language, can contribute to marginalisation when misused or inconsistently applied, and examines the growing gap between legal obligations and on-the-ground reality. Philosophers and theorists have long debated the moral and legal responsibilities of states towards migrants and refugees. Emer de Vattel, in *The Law of Nations*, emphasised that states, much like individuals, have obligations toward their citizens while maintaining sovereignty over their borders. On the other hand, Immanuel Kant introduced the concept of the right of hospitality, arguing that foreigners should be welcomed unless they pose a threat. This philosophical confusion, echoed in modern debates by thinkers like Joseph Carens and Karl Marx Bosniak (1998), highlights the ongoing tension between the principles of human rights and the importance of state security. Despite legal commitments enshrined in the EU Charter of Fundamental Rights and the European Convention on Human Rights, inconsistencies in migration policies persist across the region.

While some treaties give importance to the protection of asylum seekers, other regulations, such as the Dublin Regulation and the EU-Turkey Deal, have led to restrictive asylum policies that disproportionately burden certain member states and forget fundamental human rights. The rise of far-right politics in Italy, France, Hungary, and Poland has further intensified anti-immigrant sentiment, resulting in harsh border controls, the criminalization of humanitarian aid, and policies that promote exclusion rather than integration. The credibility of the EU's human rights pledges, the social cohesiveness of its member states, and legal coherence within the EU are all at risk. This paper illustrates how legal systems frequently perpetuate inequality and contradict prevailing narratives that place a higher priority on sovereignty than solidarity. The study delves into these contradictions within the EU's legal framework, analyzing how restrictive policies marginalize migrants while violating the core principles of non-refoulement of the 1951 Refugee Convention Article 33. It also takes a closer look at the contradictions within the EU's migration system, examining how laws that claim to promote security often lead to marginalization, social exclusion, and systemic discrimination. It also explores how far-right political movements have influenced migration policies, reinforcing exclusionary practices and criminalizing humanitarian aid. By breaking down the legal, political, and

social aspects of migration governance, this paper argues for a more humane and practical approach one that respects international commitments, strengthens protections, and focuses on meaningful integration rather than exclusion. The challenge for the EU is clear to uphold its own legal commitments and moral responsibilities while addressing security concerns in a way that respects human dignity. Migration is not merely a legal issue it is a human experience that requires policies of compassion and justice.

2. Methodology

Using a qualitative research methodology that blends doctrinal legal analysis, critical theoretical reflection, and limited integration of empirical trends, this paper adopts a human-centred approach. It closely examines national policies, treaties, and laws of the European Union, not only to comprehend their language but also to investigate how they directly impact the lives of individuals who are constantly on the go. The paper examines national laws like Italy's security decree, French bill on immigration and legal documents like the European Convention on Human Rights and the Treaty on the Functioning of the European Union to show the glaring discrepancy between what the law says and what migrants actually face. In addition to this legal work, the paper challenges established theories from classical philosophers such as Vattel, Kant, questioning whether their views on borders and sovereignty truly uphold human dignity or if they are just a means of protecting the interests of strong states.

Not only are their opinions mentioned, but they are also contested from an empathetic and equitable standpoint. To support the legal and theoretical discussion, the paper incorporates selected empirical data such as Eurostat statistics on asylum applications primarily to highlight how national enforcement practices and policy shifts affect real world migration trends. These figures are not used for quantitative analysis but to contextualise the legal critique and demonstrate the material effects of legal exclusion. The paper also uses data on European migration trends to connect the legal and philosophical with the practical world. The numbers support the broader context of how legal systems affect real people, even though they cannot fully convey the story.

The paper's use of a blended approach allows it to go beyond legal terms and theory and concentrate on what really matters, the daily lives of migrants and how the law either includes or excludes them. The theorists cited in this paper were chosen with thought to represent the economic, moral, and legal aspects of migration law. Vattel was used to draw attention to the ways in which sovereignty has historically been invoked to defend border control and exclusion.

Kant was brought in to contrast this with the moral need to treat strangers with dignity and the hospitality principle. Carens was selected because he argued that liberal democracies contradict their own ideals by denying non-citizens their rights and that boundaries are ethically arbitrary. Marx was used to study how capitalist systems use legal marginalisation to keep migrants economically valuable but socially invisible, in addition to exploiting their labour. Despite having different methods, these thinkers collectively show how the law frequently fails to defend migrants' human dignity in both theory and practice. The study emphasises how legal exclusion is a persistent problem that keeps changing by fusing historical and modern ideas, which forms the foundation of the research. The theorists in this paper were intentionally selected from both the past and the present to show that the tension between law, power, and human dignity is not new.

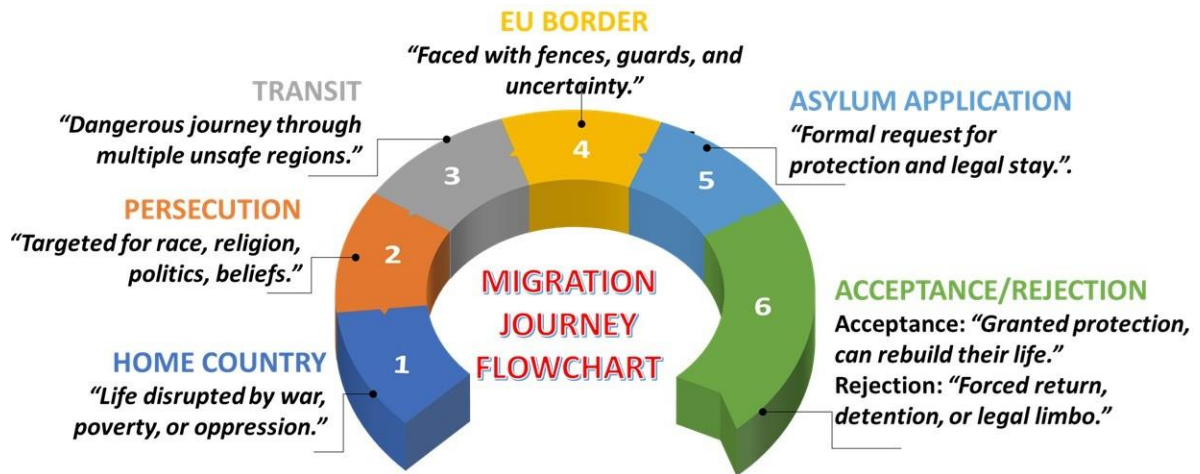


Figure 1: Migration Journey Flowchart

3. Historical Perspectives of Migration

3.1 The Evolution of Refugee Rights and Protection

Migration is as old as human history itself. Long before the terms "refugee" and "migrant" were coined by theorists, politicians, and scholars, people moved across landscapes in search of food, water, shelter, and security. Migration has always been an part of human survival and societal development. The earliest human communities were nomadic, moving in response to environmental changes, resource availability, and social conflicts. In these times, personal rights were not dictated by governments or legal structures Atar, Öztürk, and Enisoğlu (2025) but by the fundamental human need to exist and thrive.

3.1.1 Pre-Modern Migration and the Role of Faith

Even before formal governance and legal frameworks existed, people derived a sense of belonging and moral guidance from religion and faith. These spiritual and ethical systems mould the concepts of hospitality, sanctuary, and protection, which later influenced formal refugee laws. Ancient societies such as Mesopotamia, Egypt, and Greece recognised asylum in temples and religious institutions like churches Olcese, Cardinali, Madera, Camilleri, and Migliorini (2024), offering protection to those fleeing persecution. This concept of sanctuary in religious traditions, such as Christianity, Islam, and Judaism, provided early forms of refuge. In many ways, faith and morality acted as the first "laws" governing migration and displacement, long before nation-states started developing laws, restrictions, and policies on human movement. Emergence of Migrant and Refugee laws

The Treaty of Westphalia of 1648 was the first to formally recognise state sovereignty, confirming that each state had the right to govern its sovereign territory without external interference. This treaty laid the foundation for the modern international system, where national borders and self-rule became defining principles. However, consolidating power under state sovereignty has always been a double-edged sword. On one hand, it brought stability by ending the devastating Thirty Years' War and allowing diverse European states to coexist peacefully. It enabled rulers to govern with individuality and absolute power, reducing the trouble of external interference and territorial disputes. Yet, this newly founded sovereignty also had its problems.

The Westphalian system strengthened the absolute power of rulers, sometimes at the expense of minority groups and marginalised communities. It made it harder for external

actors to step in when injustice or oppression occurred within state borders, reinforcing the idea that internal problems and conflicts were off-limits to others. Over time, the rigid borders legitimised by the treaty contributed to rising nationalism and territorial conflicts. As colonial powers expanded their reach, the same sovereignty that protected states in Europe was denied to those under colonial rule. The world saw a paradox where sovereignty was selectively applied, often to the detriment of entire populations.

3.1.2 Citizenship and the Politics of Exile in Revolutionary and Napoleonic France

The French Revolution, which was a political confusion for France, led to the creation of a new constitution and the overthrowing of the Directory by Napoleon Bonaparte in 1799. This period was marked by massive displacement, forced migration, and a radical shift in migration laws. Napoleon's coup, known as the 18 Brumaire (1799), ended the chaotic rule of the Directory, and established the Consulate, solidifying his grip on power. Unlike the radical revolutionaries who exiled monarchists and political opponents, Napoleon sought to unify France by reversing many revolutionary migration laws. During the French Revolution, the state imposed strict internal movement controls, requiring passports for travel and expelling aristocrats and people who opposed the new regime. The revolutionaries implemented laws stripping exiles of citizenship and confiscating their properties. Thousands of nobles, religious figures, and political opponents fled to Britain, Austria, and Russia. Napoleon, recognising the need for stability, issued the 1802 General Amnesty, allowing thousands of exiles to return because they swore allegiance to his government. Some even got back their confiscated properties. This move was strategic and aimed at restoring order and consolidating his rule. However, only exiled French citizens were allowed back into the country. The act alone gave meaning to citizenship rights, as it set a precedent that a state should not forcibly expel or prevent the return of its own citizens, even if their previous status had been outlawed.

Though the author does not support the restriction of foreign property and the state's authority to deport foreign nationals, it is argued that Napoleon's actions set a precedent for citizenship and refugee law. Although motivated by political interest and the solidification of power, these policies are understood to have influenced the current framework of national sovereignty and asylum practices. Key Theories: Vattel, Kant, Carens, and Marx on Migration and State Obligations.

3.2 Vattel's Law of Nations and the Legal Foundations of Migrant Exclusion

Early concepts of state sovereignty and international relations were greatly influenced by Emer de Vattel, who is frequently referred to as the father of international law (Mueser (2025)). Vattel stresses a state's sovereign right to govern its borders in his landmark work *The Law of Nations*, but he provides little insight into the moral duties states have to those in need. The question of who the state must defend itself against persists even though sovereignty (Cohen (1996)) is derived from the will of the people who choose their leaders. The majority of asylum-seeking refugees are poor, defenceless people escaping persecution, conflict, and adversity; they are not threats. However, Vattel's framework allows for exclusionary criteria that determine which EU state is included, giving sovereignty precedence over universal human rights. Measures that compromise human dignity. His theories have had consequences that last.

In the 2012 *Arizona v. United States* case (Charles (2012)), for instance, Justice Scalia of the United States invoked Vattel to support his claim that states have an unbreakable right to bar people in order to safeguard their interests. Similarly, in Europe, even though direct

references to Vattel are rare, his ideas continue to shape immigration policies. The balance Vattel outlined between national sovereignty and international duty is reflected in the Dublin Regulation, which establishes which EU state is in charge of reviewing an asylum application. His ideas are frequently brought up in discussions about border security, supporting the state's authority to admit or deny foreigners and defending strict asylum laws. Vattel's theories were revolutionary in the field of international relations, but they are not perfect. In dealing with the contemporary human realities of compelled migration. A strict focus on sovereignty without an equal commitment to human rights leads to systems that exclude rather than protect in a world where millions are displaced by war, persecution, and climate crises.

This highlights a deeper irony: despite the fact that Vattel's own theories don't do much to help those who are fleeing, international law, which he helped create, has grown to be one of the most powerful protectors of refugee rights. His writings serve as a reminder that although the fundamentals of law are significant, they must change and will change to accommodate a world that is changing. Anti-immigration policies that present exclusion as a sovereign right have directly referenced Vattel's legacy. The same idea is used, for instance, by Italy's Decreto Sicurezza, which restricts protections to only those judged legally worthy, thereby rejecting many needy asylum seekers due to stringent documentation requirements. Vattel's belief that a state owes nothing to people outside of its borders unless it so chooses is reflected in these measures. In reality, thousands of migrants are forced into undocumented status, have their temporary permits revoked, and are forced to leave shelters. In situations where the lack of rights is not coincidental but rather legally warranted, legal invisibility turns into a tool of control. Vattel's ideas serve as the theoretical foundation for contemporary legal frameworks that permit exclusion.

3.3 Immanuel Kant's Perpetual Peace and the Moral Limits of State Sovereignty in Migration

Immanuel Kant introduced the right to hospitality, arguing that foreigners should not be treated as enemies on foreign soil. According to his view, states should allow temporary refuge unless migrants pose a clear and direct threat. However, when considering individual property rights, an interesting contradiction arises. A state's sovereign power comes from its people, with the promise to protect their rights, including external borders, personal safety, and property ownership. Individuals acquire land through their labour, investment, and effort, adding value to it over time Kant (1983).

But what happens when a private property owner wants to invite foreigners onto their land to work, live, or simply as guests? If sovereignty also exists to protect property rights, then does the state truly have the authority to dictate whom a citizen can host on their land? Restricting this could be seen as an overreach of government power, interfering with personal freedoms and the fundamental right to use one's property as one sees fit. At the same time, the state has a legitimate interest in controlling immigration for national security, economic stability, and public order. Open and unrestricted movement of foreigners, even on private land, could pose challenges related to law enforcement, taxation, and social services.

This raises a crucial question: Where does the line between state sovereignty and individual liberty lie? If a government can override private property rights in the name of immigration control, does that set a precedent for broader state intervention in personal affairs? It is argued here that Kant's approach lacks a clear definition of enforcement and leaves too much discretion to the state, like Vattel's law of nations. Kant's Perpetual Peace

lacks a clear definition of the moral obligations to admit people in distress. Although Kant promotes moral hospitality, he ultimately believes that the state should establish and uphold it. This is seen in contemporary Europe, where private hospitality practices, such as residents hosting migrants or volunteers offering temporary housing, are occasionally prohibited or criminalised.

Housing unauthorised migrants in France can lead to prosecution, which goes against Kant's belief that moral asylum should be allowed until it is obviously destructive. Instead of sympathy, migrants who seek temporary safety are often viewed with suspicion, detained, or removed. These legal procedures imply that the state has replaced Kant's ethical philosophy with bureaucratic control, all the while claiming sovereignty.

3.4 The Case for Open Borders: Carens and Migration Ethics

Carens directly questions whether the state has any moral right to exclude at all. In his seminal work, *Aliens and Citizens*, Joseph Carens makes the case that borders should be kept mostly open because he believes that migration restrictions are fundamentally unjust. He cites Cohen's (1996) theories, much like the feudal privileges that formerly limited freedom of movement. He highlights that everyone must have access to human rights and fundamental freedoms and that governments have a moral duty to welcome people from all backgrounds, especially those who are less fortunate. According to Carens, this obligation surpasses nationality and citizenship and reflects values that are still reflected in the Treaty on European Union and the Treaty on the Functioning of the European Union.

Crucially, Carens also addresses property rights, claiming that a citizen in a free society has the individual right to host a visitor from another country, and that this private choice shouldn't be influenced by the government. This draws attention to an even deeper point: if private property rights permit the individual welcome of foreigners, then the state's more general right to bar entry at the national level is called into question. The case of *Cédric Herrou v. France* (2021), in which a French farmer was arrested for providing humanitarian shelter to migrants on his private property, illustrates this tension. Herrou won his case when the European Court of Human Rights declared that punishing such moral behaviour went against fundamental freedoms. This case strengthens Carens's contention that when the state's power to exclude is superseded by a citizen's individual right to behave compassionately, it loses its moral legitimacy.

This paper agrees with Carens and argues that while the state's foremost duty is to protect its citizens, this obligation does not justify interfering with private property or personal autonomy. Citizens must remain free to invite whomever they wish into their homes, and such decisions, grounded in privacy and ownership, should not be obstructed by the state. Critics of Carens's plan counter that having open borders might actually cause instability. Due to economic desperation, a large number of refugees might be willing to work for extremely low wages if states lifted all restrictions on migration. Native workers may be displaced, unemployment may rise, and the economy may be strained, especially on social services like welfare, healthcare, and education.

Increased social tension, strained public resources, and political instability could result from the pressure that follows. Critics also indicate that if migration goes entirely unchecked, there may be security threats. Carens bases his arguments on liberal egalitarianism, specifically referencing John Rawls's *Theory of Justice* and the original position theory (Pogge (2007)), which holds that people would choose a system that prioritises openness and fairness if they were ignorant of their birthplace. Despite the

moral appeal of this theory, states may face significant internal difficulties if it is put into practice. Therefore, this paper argues that a controlled and equitable migration system that prioritises the most vulnerable, like children and the elderly, would better balance the ideals of open borders, even though it does not entirely reject Carens's theory of justice with the practical requirements of governance.

3.5 Marx on Capitalism, Labour, and Displacement

Karl Marx claims in *The Communist Manifesto* that economic systems and capitalist exploitation, where migrants are exploited as cheap labor and frequently used as scapegoats for larger political conflicts, determine migration. Economically speaking, migration serves as a source of inexpensive labor. Instead of being accepted for humanitarian reasons, refugees are absorbed into industries that require low-paying, physically taxing labor. Refugees fill these positions out of necessity after locals frequently reject them because of the difficult working conditions and low pay. This arrangement is advantageous to capitalist systems because it maximizes profit while minimizing labor costs, frequently at the price of fundamental human dignity. Numerous refugees are housed in cramped camps, endure cruel living conditions, and lack labor rights Zizek (2019). By paying refugees covertly, evading taxes, and omitting any employment records, some employers commit wage theft. In addition to abusing the workers, this practice removes their legal

existence, rendering them immune to social protections and labour laws. As Marx argued, the law continues to be biased in favor of capital today due to migration and refugee crises. The labour laws pertaining to migrants and refugees are vague in many nations. They are underpaid, vulnerable to exploitation, and lack enforceable rights or protections because the system does not acknowledge their status. Such exploitation boosts market activity and profits, but it also strengthens a system and increases inequality, where ethical duty is given less importance than financial benefit. Marx further asserts that, under capitalism, the state promotes the goals of the wealthy elite. Migration policies are meant to guarantee a constant flow of exploitable labour for the advantage of economic elites rather than to protect migrants Marx and Engels (1973). These policies intentionally ignore the underlying reasons for displacement and instead work to preserve class separation and stop solidarity between native and migrant labourers. From Marx's perspective, a socialist system would destroy these divisions by encouraging international worker unity and free movement, therefore dismantling the frameworks enabling ongoing labour exploitation.

However, while Marx's theory accurately exposes the economic manipulation of migrant labour, it overlooks other dimensions of forced migration. His focus on class conflict does not fully account for the cultural, legal, or psychological suffering that refugees endure. Issues such as xenophobia, institutional discrimination, and the long-term mental toll of displacement are largely absent from his analysis. Although economic systems undeniably shape migration, the lived experiences of refugees involve more than exploitation—they also reflect complex legal barriers and social exclusion that require a broader framework than Marx provides. Marx's description of exploitation is not hypothetical. The caporalato system, a type of gang-managed labour where labourers receive a few euros per day for hours of backbreaking farm work, is how thousands of migrant workers, primarily from Sub-Saharan Africa and South Asia, are employed unofficially in Italy's agricultural industry. These migrants are frequently denied access to healthcare and unions, living in poor conditions and lacking proper documentation. Prosecutors in Italy have recognised this as modern-day slavery, but there is still little enforcement. Marx's assertion that the

legal system shields capital while making oppressed labour invisible is reflected in this reality.

3.6 Legal Framework Governing Migration in the EU

3.6.1 TFEU and TEU: Between Legal Commitment and Political Disobedience

The previous sections have addressed the history and evolution of migration and the various theories and theorists who debated about migration. The following section discusses the current migration and refugee laws governing modern times. The problem with the legal framework in the European Union is that, though the TEU and TFEU (Kaczorowska-Ireland (2016)) are legally binding on states, they are seldom followed when reviewing asylum applications. Most states in the EU give a generic answer to reject an application which is "Threat to state Sovereignty" or "threat to its borders" but the EU legal framework still prevails. The European Union's legal character is based on the TEU and TFEU, which are more than just policy instruments. The dignity, freedom, and fundamental rights of all people, not just EU citizens, are intended to be protected by these accords. They are based on the idea that the law needs to support a shared commitment to justice, empower individuals, and restrict the power of the state.

Ignoring these standards compromises the basic legal principles upon which the Union was established. Below are key articles of the Treaty of the European Union and the Treaty on the Functioning of the European Union relating to Migration and Asylum: Article 67 TFEU: This article emphasises that the EU shall constitute an area of freedom, security, and justice, ensuring the absence of internal border controls for persons and developing a common policy on asylum, immigration, and external border control, founded on solidarity among member states. Article 78 TFEU: It mandates the establishment of a common European asylum system, ensuring compliance with the principle of non-refoulement and guaranteeing that asylum applicants are treated fairly. This article serves as the legal basis for the EU's asylum policies and directives.

Article 79 TFEU: Focuses on developing a common immigration policy aimed at ensuring efficient management of migration flows, fair treatment of third-country nationals residing legally in member states, and preventing unauthorised immigration and human trafficking. Article 80 TFEU: Highlights the principle of solidarity and fair sharing of responsibility among member states concerning policies on border checks, asylum, and immigration. It implies that both financial and operational burdens should be equitably distributed. National regulations like France's new Immigration Bill and Italy's Decreto Sicurezza have caused a great deal of conflict in spite of these explicit requirements. For instance, the Italian decree violated Article 78's principles of fair treatment and non-refoulement by outlawing humanitarian protection status and making the actions of non-governmental organisations performing marine rescues illegal. Additionally, it limited asylum seekers' access to civil registration, which the Italian Constitutional Court ruled was illegal (No. 186/2022) and against both Italian and EU law. In violation of Article 80's solidarity concept and Article 79's need for equitable treatment of lawful residents, France's Immigration Bill has come under fire for limiting appeals, expediting deportations, and imposing stringent new conditions for legal residence.

The coherence of EU legislation is questioned by both national systems, which causes legal fragmentation throughout the Union. The European Court of Human Rights ruled in *N.D. and N.T. v. Spain* (2017) (ECHR, 2020) that automatic border pushbacks without appropriate asylum procedures violate international law, echoing the procedural

fairness required by Article 78 TFEU. This case serves as a pertinent precedent supporting these concerns. These instances demonstrate how national laws selectively ignore the obligations outlined in the TFEU and TEU in favour of political expediency, despite the fact that these treaties provide a strong legal foundation for the fair and equitable treatment of migrants and refugees. The rights promised by these treaties will remain largely theoretical unless the European Union ensures their uniform application across all member states. Failure to do so undermines confidence in EU law and leaves thousands of displaced individuals in a state of legal and social uncertainty.

3.6.2 Evaluating CEAS: Legal Standards and Practical Challenges

The Common European Asylum System (CEAS) is the EU's effort to create a fair and consistent approach to handling asylum claims across all member states. Since its establishment in 1999 Costello and Mouzourakis (2016), its goal has been to ensure that no matter where an asylum seeker applies, they are treated with the same rights, dignity, and fairness. By harmonising policies, the CEAS promotes cooperation among EU countries, preventing discrepancies in how asylum applications are processed and ensuring that protection is granted based on clear, unified standards Wagner et al. (2016). Though CEAS has the same legislative purpose, its practical implementation differs greatly.

Depending on the country in which they arrive, member states frequently interpret or apply these guidelines differently, which results in systemic inconsistencies and unequal treatment for asylum seekers. The EU's pledge of justice and protection is directly jeopardised by this discrepancy between law and reality. Key Components of the CEAS: Asylum Procedures Directive. This sets out common rules for how asylum applications should be processed and what rights applicants have throughout the process. The aim is to ensure fairness and efficiency Battjes (2018), so decisions are made based on clear and transparent procedures rather than political or administrative differences between countries. In actual reality, procedural guarantees are frequently disregarded.

Certain nations expedite denials by citing ambiguous national security justifications, depriving applicants of the chance to appeal or obtain legal assistance. This goes against the intent of the directive and exposes a large number of asylum seekers to unlawful deportation. Reception Conditions Directive Seeking asylum is a long and often difficult process, so this directive ensures that applicants have basic human necessities housing, food, healthcare, and even access to employment opportunities—while their applications are under review. The idea is to guarantee dignified living conditions rather than leaving people in limbo without support. Reception standards differ widely across the EU. In frontline states like Greece and Bulgaria, camps remain overcrowded, poorly resourced, and in violation of basic health and safety norms. Many applicants go months without proper access to healthcare or shelter.

This variation contradicts the directive's fundamental aim and fosters humanitarian crises within EU borders. Qualification Directive: Not everyone who applies for asylum is automatically granted protection. This directive clearly states the criteria for who qualifies and what kind of protection they are entitled to. It also ensures that those who do receive protection have access to fundamental rights, education, healthcare, and work opportunities. Yet, states frequently create national categories that limit protection and cause confusion, or they apply these criteria strictly. Some offer "subsidiary protection," but not all of the privileges that come with being a refugee. Others put registered refugees in legal limbo and postpone their path to stability and dignity by denying them access to integration programmes or legal residency. Dublin Regulation. With so many different entry points into the EU, this rule decides which country is responsible for reviewing an

asylum application. Usually, it's the first EU country where the asylum seeker arrives. This is meant to prevent people from submitting multiple applications in different countries and to ensure a more organised system. Eurodac Regulation. Since many asylum seekers arrive without official documents, this regulation established a fingerprint database to help identify individuals and prevent fraud or duplicate applications. It plays a crucial role in enforcing the Dublin Regulation by making it easier to track where a person first applied for asylum. Although intended to boost efficiency, Eurodac has also sparked worries about privacy violations, criminalising asylum seekers, and using biometric data in ways that betray confidence. Many people view fingerprinting as a surveillance tactic rather than a safeguard, particularly when it leads to forced returns to dangerous states. Dublin Regulation and Its Burden on Border States.

The Dublin Regulation determines which EU member state is responsible for processing an asylum application. Its core principle is that the first EU country an asylum seeker enters is usually responsible for handling their claim Maani (2018). The regulation is intended to prevent "asylum shopping," where individuals apply in multiple countries, and to streamline the process by reducing duplicate applications. It also includes family reunification provisions, allowing asylum seekers to join relatives already living in another EU country Von Braun (2017). The EU-Turkey Deal, signed in March 2016, was introduced in response to the 2015 refugee crisis, when over a million people sought asylum in Europe. The agreement was designed to reduce irregular migration from Turkey to Greece by returning asylum seekers who arrived on the Greek islands after March 20, 2016.

In return, Turkey received €6 billion in financial aid, and negotiations began for visa liberalization for Turkish citizens. The deal also established a "one-for-one" scheme Idriz (2018), under which, for every Syrian refugee returned to Turkey, the EU would resettle another Syrian refugee directly from Turkey. Additionally, the EU committed to revitalizing Turkey's accession talks to join the European Union. The Return Directive (2008/115/EC) sets EU-wide standards for the deportation of third-country nationals who are residing irregularly within the EU. It establishes a voluntary return period of 7 to 30 days before enforced removal and allows detention for up to six months, which can be extended to 18 months in exceptional circumstances. The directive also imposes a re-entry ban of up to five years for those who refuse to leave voluntarily. Despite its focus on facilitating deportations, the directive upholds fundamental rights, ensuring that migrants are not subjected to physical or mental abuse and that their dignity is respected. It reinforces humanitarian principles, including non-refoulement, meaning that individuals cannot be returned to a country where they may face persecution or harm.

3.7 The Rise of Far-Right Politics and Anti-Immigration Policies

The rise of far right politics across Europe has created serious challenges for international and European Union law, especially in how migrants and refugees are treated. Far right ideologies have reshaped national immigration policies in countries like Italy, Hungary, and France, where laws such as Italy's Decreto Sicurezza Focareta (1995), Hungary's Stop Soros bill, and France's restrictive immigration bill have narrowed legal pathways and weakened protections. These measures are rooted in the belief that migrants threaten national identity and economic stability.

In Italy, Prime Minister Giorgia Meloni's government introduced a proposal in 2023 requiring all employment contracts to be written in Italian, with penalties for non-compliance, effectively excluding many migrant workers Marchetti and Palumbo (2021).

Discrimination also affects the Roma community, who continue to face exclusion from housing and public services despite formal protections. Hungary's law criminalised helping asylum seekers, targeting NGOs and legal workers, while France expanded detention powers and tightened visa regulations. These laws are justified by narratives that blame migrants for job shortages and strain on public services, creating fear and public support for exclusionary reforms. The conflict is not only about border control but about the legal systems that decide who is worthy of protection. Refugees are often kept in overcrowded camps and subjected to long delays in asylum processing, not due to lack of capacity Guiraudon (2001) but as part of deliberate deterrence strategies.

While EU member states are legally bound to uphold human rights, their actions increasingly prioritise control over compassion. Critics have compared Meloni's governance to fascist-era ideologies, warning that such legal reforms revive nationalist thinking under the appearance of order. Historically, during the colonial period, migration was welcomed to build new communities, even amid cruel systems of slavery and forced labour. Despite the injustice, migration contributed to the formation of multiethnic societies. Today, modern governments appear to focus not on building inclusive societies but on protecting their own power, portraying migrants as threats instead of recognising their humanity. This shift highlights a growing legal and moral crisis, where state policies reject the very principles of dignity, fairness, and protection that international law was designed to uphold.

4. Data Analysis

Between January and August 2024, the number of first-time asylum applicants steadily declined Oleksiewicz (2024). As shown in Figure 2 In September 2024, the number rose to 75,755. The earlier decline aligned with the introduction of far-right policies such as Italy's Decreto Sicurezza and France's immigration bill, which imposed strict controls on asylum access. Public backlash demanded more humane treatment of asylum seekers. In response, governments did not repeal these laws but chose to stop actively enforcing them. The laws remain legally valid, but authorities deliberately avoid applying them. Asylum seekers now exist in a constant state of legal uncertainty technically illegal under the law, yet not immediately targeted. They live with the threat that enforcement could resume at any moment. This unresolved legal status now prevails across several EU countries. The rise in asylum applications in September 2024 reflects this pause in enforcement without the removal of the laws themselves.

5. The Legal and Human Impact of Migration Policy

While these laws exist, far-right policies disregard human rights and fundamental rights. Human rights are personal, meant for the well-being of each individual. There is a certain privacy and dignity attached to being human. These rights are natural and must be respected by every individual. Fundamental rights are the basic standards of living that must be guaranteed to every person or group. Together, human rights and fundamental rights are the bare rights given to every person from birth. Far-right policies attempt to convert these rights into law. The problem with making a right into law is that a law is a standard process, temporary in nature, and can be revoked, altered, or made stricter.

A right, however, exists from birth and is embedded in our human existence. Far-right policies strip refugees of these basic rights. Refugees are sent to camps while their asylum applications are processed. These camps are in inhumane conditions. Many suffer from

diseases. The food is stale and barely edible. Animals in zoos live in better conditions. Asylum procedures are lengthy with uncertain outcomes. During this time, refugees are not given the right to work. If allowed, it does not match the basic pay of the country. This results in labour exploitation and blackmail. Refugees are not guided on how to file asylum applications. Legal support is absent. They are left without direction, like blindfolded individuals. The CEAS system exists for protection but is not implemented properly. The main part of the asylum application is to prove that the person faces a threat of persecution or harm if sent back to their home country. If this is established, the non-refoulement clause applies.

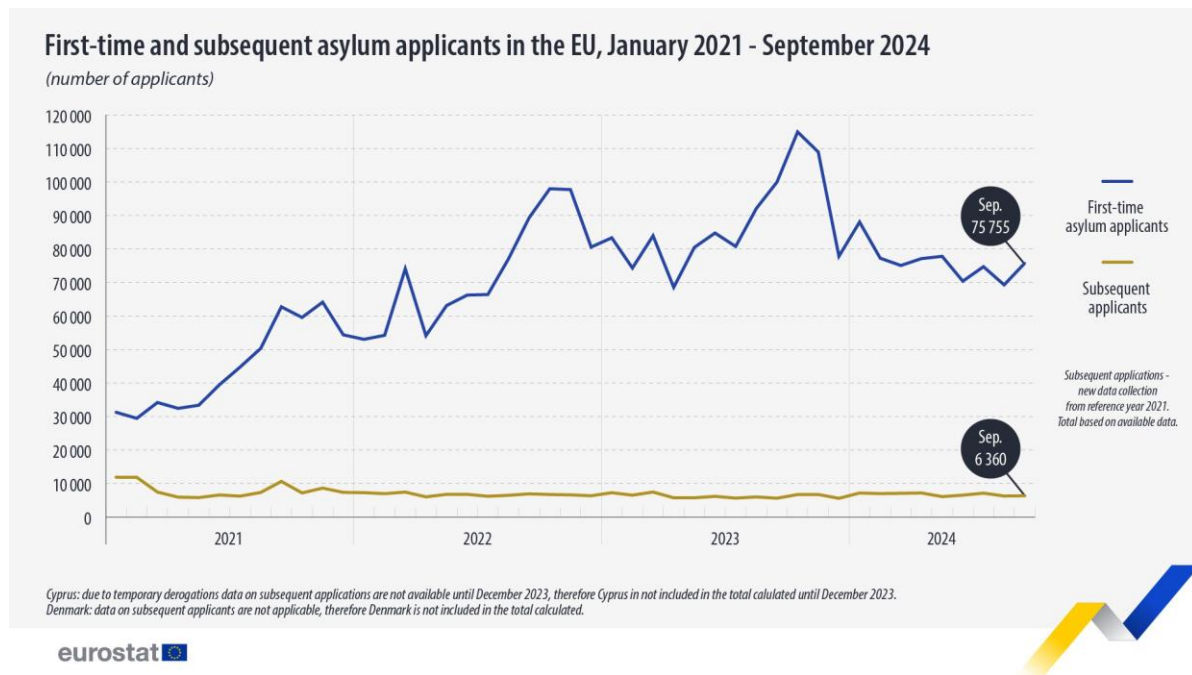


Figure 2. Asylum applications in September 2024 Source: Eurostat Statistics 2024 Graph)

The host country does not investigate the threat properly. Refugees are treated by border officials as aliens and threats to national security. With this bias, they are labeled as national threats without any proper evidence. These policies destroy refugee' lives and take away their basic rights. If the asylum application is rejected, the person has the right to appeal, but no information is provided on how to do so. Legal processes are difficult. Even when NGOs try to help, they are threatened or blacklisted. Some NGOs have been fined up to 10000 Euros. In the Binder and Others v. Greece case, Seán Binder, a German aid worker, was arrested in 2018 with Sarah Mardini and others from the Emergency Response Centre International for helping asylum seekers in Lesbos.

They were charged with espionage, smuggling, and being part of a criminal group. Their work involved monitoring refugee landings and giving humanitarian and legal support. Binder spent over 100 days in jail before the espionage charges were dropped in 2023 due to errors. Other charges are still pending, with a possible prison time of 25 years. Binder took the case to the European Court of Human Rights, claiming violations of his right to a fair trial and freedom of association. This shows how NGOs face increasing pressure in the EU for helping refugees. This case shows a clash between EU law and national law. When did helping someone become a crime? The Asylum Procedures Directive clearly allows legal aid and help to be given to asylum seekers. Greece still used national security to charge Seán for helping. This is a direct violation of human rights through the misuse of law.

6. Conclusion

This paper began with a historical view of migration, exploring past and present theories and laws. One truth remains constant. Regardless of how theorists, old or new, debate the idea of open or closed borders or how scholars write about refugee rights, the lived reality of refugees does not change. Their suffering continues. This suffering is created by laws, rules, and policies enforced by states that are meant to protect human life and uphold human rights. Some argue that states must only protect their own citizens. This paper rejects that by affirming, “All are equal under the rule of law.” But in reality, the law is often a mask worn by injustice. The historical approach adopted in this paper stems from the belief that during ancient times and the colonial era, though there were many problems such as killing and slavery, society was more inclusive. There was no rigid legal system in place, yet the rate of acceptance of foreigners was higher. From the perspective of legal sociology, law is viewed from both a human and historical standpoint. Laws are rules and regulations, but what power do they hold without people, without human interaction and society? Without the former and the latter, they are just words on a piece of paper that hold no real value.

What we should learn from history is not just how laws were created, but how inclusivity and acceptability allowed communities to form even amidst injustice. Refugees risk their lives crossing seas in fragile boats to reach Europe. Many believe the journey is the most dangerous part, but the true danger begins once they arrive. Professor Joseph Carens wrote, “Borders have guards and guards have guns.” His words reflect the harsh truth. Refugees are human beings entitled to basic rights, rights that do not need to be given but are felt, lived, and born with. This paper does not oppose the existence of law. It opposes the illusion that the law brings. The greatest threat is not the law that is enforced but the one that is ignored. Enforced laws are visible. People react, adapt, protest, or work around them. Unenforced laws are hidden, unpredictable, and dangerous. Refugees live in this uncertainty. Faith gives hope. But too much hope leads to blind trust. The human mind is driven by emotion. Hope keeps many refugees going, even when the law does not protect them. But they know one day that law may be enforced. When that day comes, they will be deported, charged, or labeled illegal. Until then, they wait in hope, caught in a silence created by law.

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