



# LUND UNIVERSITY

## Sustainable Migration Haunting European Law

Loxa, Alezini

*Published in:*  
Through the Kaleidoscope of Sustainability

2025

*Document Version:*  
Peer reviewed version (aka post-print)

[Link to publication](#)

*Citation for published version (APA):*  
Loxa, A. (2025). Sustainable Migration Haunting European Law. In M. Gunneflo (Ed.), *Through the Kaleidoscope of Sustainability: 25 Essays* Lund University (Media-Tryck).

*Total number of authors:*  
1

*Creative Commons License:*  
Unspecified

### General rights

Unless other specific re-use rights are stated the following general rights apply:  
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: <https://creativecommons.org/licenses/>

### Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117  
221 00 Lund  
+46 46-222 00 00

## **Sustainable Migration Haunting European Law**

Alezini Loxa\*

From the migration ‘crisis’ of 2015–2016 onwards, sustainable migration has appeared in EU policy discourse as the new main goal for the future.<sup>1</sup> On a first reading, the term sustainable migration carries a positive connotation. After all, who would be against sustainable migration? The catch in answering this question, however, lies in the fact that nobody knows what sustainable migration is. The term sustainable migration has no clear meaning, no generally accepted definition and the concept does not create any binding legal obligations for international migration in general and for EU migration specifically.<sup>2</sup>

This is why I consider sustainable migration as a specter that is haunting European law. The figure of the specter is inspired by Derrida and it is taken to connote a thing that shapes the present as permeated by an elsewhere, but in a way that is elusive.<sup>3</sup> The figure of the specter in the work of Derrida points to the need for historical work as a means to understand the implications of the past to the present.<sup>4</sup> Such historical work needs to be focused on the traces or effects of the past to the present, rather than in a search for an absolute origin or for a deterministic history.<sup>5</sup> The specter itself does not have an objective history, yet it operates as a force with effects in how we can imagine our future.<sup>6</sup> While the specter disrupts the linearity and causality of time, it does not abolish the division of past, present and future.<sup>7</sup> Rather, as Brown suggests, it indicates the way in which the future is always populated with certain possibilities which constrain it and which all come from the past.<sup>8</sup> In Brown’s words the figure of the specter indicates that ‘the future is haunted before we make and enter it’.<sup>9</sup>

In my work, I have traced sustainable migration in a longer past of European migration law. In so doing, I have revealed the limitations and constraints that sustainable migration has for future

---

\* Post-Doctoral Research Fellow in EU Law, Faculty of Law, Lund University, Sweden, alezini.loxa@jur.lu.se. This is a pre-copyedited, author-produced version of a chapter for publication following peer review. The final version will be available at Markus Gunneflo (ed), *Through the Kaleidoscope of Sustainability, 25 Essays* (Lund University, Agenda 2030 Graduate School 2025).

<sup>1</sup> Maarten den Heijer, Jorrit Rijpma, and Thomas Spijkerboer, “Coercion, Prohibition, and Great Expectations: The Continuing Failure of the Common European Asylum System,” *Common Market Law Review* 53 (2016): 607–42; Alezini Loxa, “An EU Sustainable Migration: Institutional Discourse and Migration Politics,” *JCMS: Journal of Common Market Studies* 63, no. 1:143–59.

<sup>2</sup> On proposed definitions, see Marta Bivand Erdal et al., “Defining Sustainable Migration,” EMN Norway Occasional Papers (PRIO Paper, 2018); Alexander Betts and Paul Collier, “Sustainable Migration: A Framework for Responding to Movement from Poor to Rich Countries,” EMN Norway Occasional Papers, 2018; For a critique of sustainable migration, see Elspeth Guild, “The UN Global Compact for Safe, Orderly and Regular Migration: To What Extent Are Human Rights and Sustainable Development Mutually Compatible in the Field of Migration?,” *International Journal of Law in Context* 16, no. 3: 239–52; Loxa, “An EU Sustainable Migration.”

<sup>3</sup> Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (Hoboken: Routledge, 1994); Wendy Brown, *Politics Out of History* (Princeton: Princeton University Press, 2001), 144.

<sup>4</sup> See Brown, *Politics Out of History*, 146.

<sup>5</sup> Brown, 146.

<sup>6</sup> Brown, 150.

<sup>7</sup> Brown, 150.

<sup>8</sup> Brown, 150.

<sup>9</sup> Brown, 150.

law making. To put it in another way, I have investigated the way in which sustainable migration is haunting European law. To do that, I examined how the economic and social pillars of sustainability have affected the attribution, extension and limitation of rights for EU and non-EU migrants from the 1950s to the present.<sup>10</sup> The historical investigation revealed that sustainable migration can be traced back to the origins of EU law and it has a very concrete expression. It means the protection of all those migrants whose work is urgently needed for the development of the EU and the exclusion of the vulnerable, the precarious, and all those that cannot access EU territory to begin with.

Despite the recent appearance of sustainability as a goal for EU migration policy, the balancing of economic and social considerations has historically haunted EU law and has shaped a legal system with very specific characteristics. These are the attribution of rights to migrants due to their contribution to growth, the limitation of their rights due to perceived risks to growth (without due consideration of whether such risks are evidence based or not), an emphasis on work-related rights as means to social progress without a broader conception of the human being behind the economic actor, and the incorporation of clauses to guarantee that there is always a safety valve to stop migration in case of threats to the economy.

These characteristics point to inherent limitations in the way migrants' rights are construed at EU level which relate to the undue emphasis on growth and the notion of rights as equal opportunities. These limitations reveal the inherent constraints of an EU sustainable migration that are haunting the practical possibilities of a future. At the same time these limitations have not guaranteed a just system, as those that are most vulnerable are not deemed worthy of protection. But how could we imagine a more just EU migration law? To Derrida, justice is the 'practice of responsible relations between generations'.<sup>11</sup> Brown interprets this as meaning that '[j]ustice concerns not only our debt to the past but also the past's legacy in the present'.<sup>12</sup>

The legacy of sustainable migration to the present of European law and the way in which it constrains our future clear. However, understanding how the past figures in the present also opens the stage for a battle over the future.<sup>13</sup> Such battle needs to be based on things other than law, and this is because justice in legal terms repeats the fundamentals of the current order.<sup>14</sup> A key force that would have to be conjured to overcome the current limitations would be the reconsideration of economic growth as the reason behind the attribution, extension and limitation of rights.

Maintaining the focus on migration for economic growth can only get us so far, especially in times when the prevalent climate catastrophe points to the limit and finite nature of resources. At such times, 'disposability becomes a more, not less, likely experience'.<sup>15</sup> In order to overcome this, we need to be able to renegotiate the position of economic ordering in EU law as well as the position of migrants in view of their human rights and the place of social policy at times of an untenable aspiration of growth. If we want sustainable migration to deliver

---

<sup>10</sup> For a detailed analysis see Alezini Loxa, *Sustainability and EU Migration Law, Tracing the History of a Contemporary Concept*, Accepted/In press, (Cambridge: Cambridge University Press, 2025).

<sup>11</sup> Derrida, *Specters of Marx*, xxviii; Brown, *Politics Out of History*, 147.

<sup>12</sup> Brown, *Politics Out of History*, 147.

<sup>13</sup> Brown, 151.

<sup>14</sup> Derrida, *Specters of Marx*, 32.

<sup>15</sup> Gargi Bhattacharyya, *Rethinking Racial Capitalism: Questions of Reproduction and Survival*, Cultural Studies and Marxism (Lanham: Rowman & Littlefield Publishers, 2018), 123.

a better future for EU migration policy, what is needed is a break from the past, rather than a continuity which the concept encapsulates.