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# The Deficiencies of Dublin:

## An Analysis of the Dublin System in the European Union

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*On November 24th, 2014 at the European Parliament, Pope Francis cautioned “We cannot allow the Mediterranean to become a vast cemetery” – referring to the perilous journey from North Africa and the Middle East to Europe taken by desperate migrants fleeing bloodshed, poverty, and political chaos. Yet the dangers do not cease once the asylum seekers reach their imagined safe haven at the southern European borders. Instead, these migrants encounter rampant xenophobia, faltering economies, and overwhelmed social systems – an overall precarious situation for human rights. Despite the intent of most migrants to seek asylum elsewhere in the European Union, the Dublin System – the EU’s guiding asylum policy – confines them to these struggling countries by defining a hierarchical set of criteria for determining the Member State responsible for evaluating an asylum application. The primary criterion is the border which is first illegally crossed, rendering the outer-border countries vulnerable to a myriad of asylum applications. The member states of the EU are either unable or unwilling to address the needs of migrants causing human rights to be either consistently violated or simply ignored. In this paper, I conduct a thorough analysis of the Dublin System. I analyze its impacts and implications, arguing that the first-entry criterion confines asylum seekers to southern outer-border countries that are ill-equipped or unwilling to adequately assist and support them. The result threatens human rights and proliferates xenophobic sentiment that is taken advantage of by anti-immigration political parties.*

In June 2015, Hungarian authorities announced plans to build a 109-mile wall along the border with Serbia, claiming that they “cannot afford to wait any longer” for the European Union to resolve the continent’s escalating refugee crisis. Indeed, Hungary has seen more than 57,000 people irregularly cross its borders so far this year, a dramatic increase from the 43,000 who crossed in 2014.<sup>1</sup> Jobbik, the country’s popular far-right party, has capitalized on the mounting xenophobia nurtured by the influx of refugees not only from Serbia, but also from Syria as well. While

Hungary’s actions are drastic, they do touch upon the broader themes of the refugee crisis in Europe – the flourishing of anti-immigrant sentiment and growing impatience with the European Union system. The case of Hungary also demonstrates the breadth of the crisis, as cause for concern has spread from the southern Mediterranean countries throughout Europe. While the origins of the crisis are multi-faceted and deserving of detail, Europe’s asylum policy has been heavily critiqued as a contributor to the failure to adequately manage the influx of refugees. Moreover, critics claim that the policy

not only fails to alleviate the burden incurred by the financial and administrative costs of processing applications and hosting refugees, but in fact forces economic stagnation and flames xenophobia. At the heart of Europe's asylum policy is the Dublin System, a set of criteria established by the Dublin Convention in 1990.

The Dublin Convention of 1990 determined a hierarchical set of criteria for establishing which Member State (MS) of the European Union (EU) would be responsible for examining an asylum application, laying the foundation for the subsequent system that to this day dictates European asylum policy. Although well-intentioned in its inception, its implementation proves that “the mechanism was far from generating equitable results, both for asylum seekers and MS's that happened to be situated along the external borders.”<sup>2</sup> These inequitable processes continue to plague outer-border EU countries, especially those adjoining the Mediterranean Sea, and propagate enduring violations of migrants' human rights. As the Dublin System continues to dominate the EU's asylum policy, it is imperative that its deficiencies are addressed to manage the influx of migrants, respect international human rights standards, and aid the economic recovery of the countries most affected by the Eurozone crisis.

In this paper, I conduct a thorough analysis of the Dublin Regulation. Firstly, I briefly define the components of the legislation. Secondly, I detail the history of the Dublin Regulation to contextualize my analysis by examining the Dublin Convention of 1990 and delineating its ensuing evolutions. Thirdly, I analyze the impacts of the Dublin Regulation, arguing that the first-entry criterion confines asylum seekers to southern outer-border

countries that are ill-equipped to adequately assist and support them. This results in precarious situations for human rights and a proliferation of xenophobic sentiment that is taken advantage of by anti-immigration political parties. Throughout my paper, I utilize examples of Greece's reception of asylum seekers to exemplify the impacts I outline in the previous sections and give testimony to the human rights abuses occurring in the region. To conclude, I highlight a recent development agreed upon at an EU refugee summit in late September – a refugee quota that will distribute 160,000 asylum seekers across Europe over the next two years. While this quota will undoubtedly relieve some pressure on Italy and Greece, I question its potential to resolve enduring human rights violations and dampen xenophobic fears.

The Dublin Regulation is the cornerstone of the Common European Asylum System (CEAS), which is an assemblage of directives and regulations that prescribe the EU's asylum protocol. It is applied in 32 countries – the 28 EU Member States and Norway, Switzerland, Iceland, and Liechtenstein. The Dublin Regulation specifically articulates the criteria and mechanisms for determining the MS responsible for examining an application for asylum lodged by a third-country national.<sup>3</sup> The criteria are in descending precedence: firstly, the presence of a family member with refugee status in a MS; secondly, the existence of a valid residence permit or visa in a MS; thirdly, the frontier of the MS that an asylum applicant has irregularly crossed; fourthly, the MS responsible for controlling the entry of the alien; and finally, the first MS with which the asylum application is lodged.<sup>4</sup> In most cases, it is the third scenario, when an applicant has irregularly crossed an EU border, meaning “the Member State thus

entered shall be responsible for examining the application for international protection.”<sup>5</sup>

Originally established by the Dublin Convention of 1990 in response to a significant increase in asylum applications, the Dublin asylum regime has evolved over time. In September 2003, the Dublin II Regulation replaced the Dublin Convention, and amendments proposed by the European Commission resulted in further reform – the Dublin III Regulation – in July 2013. These developments, in addition to the supplementary mechanism of the European Dactyloscopic program, constitute the Dublin System or the Dublin Regulation; I use the terms interchangeably. Although each stage of the Dublin System has been accompanied by minor modifications, the policy’s essence remains consistent. Thus, in this paper, it is more pragmatic and valuable to analyze the system as a whole. However, to properly evaluate the Dublin Regulation, it is imperative to first closely examine the contexts and intentions of its predecessor, the Dublin Convention of 1990.

In the 1980s, the disintegration of Yugoslavia, the collapse of communism, and chronic violence in North Africa, Iraq, Iran, Afghanistan, and Lebanon spurred migration to Europe in increasing numbers. In fact, “total net migration in the Member States rose from 1.1 million in the 1960s to almost 10 million in the 1990s, reflecting the large influx of immigrants from the rest of the world.”<sup>6</sup> Disorder and bloodshed in these foreign countries motivated people to seek security – both physical and economic – elsewhere, although those who arrived in the EU without refugee status were considered illegal immigrants until they applied for asylum.

As the volume of asylum applications

dramatically increased, administrative competencies were overloaded and resources depleted. In turn, MSs started to unilaterally implement restrictive measures, which led to a race for the most restrictive policies as constraints in one country forced migrants to neighboring countries. The deteriorating situation necessitated a coordinated approach, especially with the recent creation of the single market and the signing of the Schengen Agreement. Thus, in response to this policy incoherence, the EU held the Dublin Convention – or, by its official lengthy name, the Convention Determining the State Responsible for Examining the Applications for Asylum Lodged in one of the Member States of the European Communities – in 1990 to harmonize and streamline its asylum policy. It foremost sought to eliminate the “refugees in orbit” quandary, where asylum seekers are “shuffled from country to country, with all the human drama that this implies.”<sup>7</sup> Secondly, it sought to evade the “asylum shopping” phenomenon, where asylum seekers lodge multiple applications in different countries, congesting administrative systems while attempting to better their chances of asylum approval. By obliging only one MS to examine an application for asylum, the Dublin Convention eliminated the dual dilemmas of “refugees in orbit” and “asylum shopping,” and decreased the exhaustion of state resources involved in the administrative process.

The Dublin Convention entered into force on the first of September, 1997 – the seven-year delay resulting from major resistance from several national parliaments and other institutions. For example, since Ireland had never been confronted with a significant number of asylum seekers, it had to devise a complete asylum bill before being able to proceed with

the ratification of the Dublin Convention. In the Netherlands, complications arose from the inability of the Dutch government to secure judicial control mechanism under the Dublin Convention.<sup>8</sup>

The Dublin Convention of 1990 sought

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to eliminate the dual dilemmas of “refugees in orbit” and “asylum shopping.” In this regard, its objectives were neither malicious nor misplaced; in fact, its endeavor to swiftly initiate the asylum process to minimize the asylum seeker’s state of uncertainty is remarkable. Unfortunately, the implementation of the Dublin Regulation has produced severe inequitable impacts predominantly affecting southern outer-border countries. The most frequently cited of the Dublin Regulation’s criteria to determine the MS responsible for the examination of an asylum application is country of first-entry, making the outer-borders of the EU vulnerable to relatively overwhelming amounts of asylum seekers. These southern European countries, bordering the Mediterranean, are “on the front lines, forced to deal with a disproportionate number of migrants arriving from North Africa.”<sup>9</sup> However, the southern European countries are still recovering from the Eurozone crisis, a crisis that they are often blamed for

causing. These countries, being the physically closest entryway to Europe from North Africa and the Middle East, are heavily affected because they are the most accessible by irregular crossing. For instance, Greece’s extensive coastlines and easily passible borders make border control almost impossible.

While these countries do not necessarily receive the largest gross quantity of asylum applications, the dire effects of massive migration to these countries are undeniable, particularly in Greece, a country of 11 million that has received nearly all of the irregular migration to the European Union. Until 2007, most of the migration influx was shared between Greece, Italy and Spain, but bilateral treaties – such as Italy’s with Libya and Spain’s with Senegal – have redirected routes towards Greece.<sup>10</sup> However, all these countries, which are also those most affected by the Eurozone crisis, continue to grapple with austerity measures imposed by the International Monetary Fund, the European Commission, and the European Central Bank, amidst massive unemployment and national debt. They are struggling to cope with a surge of irregular migrants and asylum seekers, as their infrastructures and economies are currently compromised. These conditions are culminating in precarious situations where the human rights of migrants are directly or indirectly violated, or simply ignored. These countries are hardly in a state to uphold the economic and social security of their own citizens, proving them incapable of providing adequate shelter, food, housing, and basic needs to arriving asylum seekers.<sup>11</sup> Housing is a particularly acute problem – around 5,000 migrants have been revealed in an estimated 500 abandoned buildings, and more than 2,000 other properties occupied by migrants have been deemed as unfit for human habitation.<sup>12</sup>

Additionally, thwarting migration and preventing migration-associated deaths is not costless; Italy spent €9 million a month on Operation Mare Nostrum, a search-and-rescue effort in the Mediterranean that was launched in 2013 after the drowning of 360 migrants off the coast of Lampedusa, and Greece spent €63 million in 2013 alone to prevent irregular migration – only €3 million of which came from Europe’s border agencies.<sup>13</sup> It is clear that the southern outer-borders of Europe, particularly Greece, do not have the resources to adequately assist and support arriving migrants seeking asylum.

The voyage from North Africa and the Middle East to Europe is fraught with danger. Upon arrival to the EU, asylum seekers confront further insecurities, discrimination, and abuse. So then, why do North Africans and Middle Easterners undertake such a perilous journey to Europe? It is relevant here to briefly expand on the push-and-pull factors that attract asylum seekers to the EU.

There are various motivations for migration, including economic conditions in both the origin and destination country, network connections to facilitate migration, violence in the origin country, and family reunification.<sup>14</sup> To generalize, North African and Middle Eastern asylum seekers risk their lives to reach Europe to escape war, political chaos, and severe poverty. The destructive Syrian Civil War and the bloody rise of the Islamic State are ample motivations to flee to Europe, although many head to Lebanon, Jordan, and Turkey. Elsewhere, the collapse of governmental authority in Libya since the Arab Spring in 2011, violence wrought by Boko Haram in northern Nigeria, and a resurgence of conflict in South Sudan continue to cause people to make their way to European coasts.

Despite the often horrendous and degrading experiences the asylum seekers go through reaching and staying in Europe, many see it as a better alternative to their North African and Middle Eastern homes. As conditions in Greece and Italy worsen, some migrants admit regret in their decision to move, for it was not one taken lightly; Mohammad Sharouf, a Syrian who fled the security forces of President Bashar al-Assad, explains, “In Syria, I had my fiancée, my family and friends. I had my whole life there. Do you think, had I a choice, I would have left?”<sup>15</sup>

In this paper, I shall refer to people escaping the violence and chaos of North Africa and the Middle East as asylum seekers due to the potentiality or realization of their formal application, while my usage of migrants refers to the general movement of people and its various categories. I include potentiality because many people initially choose to withhold an asylum application or evade documentation because they do not want to be restricted to their first country of entry. Although some may consider them illegal or undocumented instead of asylum seeking, I want to acknowledge their intention and desire to be granted asylum or protected status somewhere within the EU, regardless if their application is eventually approved or denied. This usage is concurrent with that of the United Nations Refugee Agency, who defines an asylum seeker as someone who says they are a refugee, but whose claims have not yet been definitively evaluated.

Before I delve further into the impacts of the Dublin Regulation, it is imperative to clarify that asylum seekers are not to blame for any overwhelmed European economy or social system. They are fleeing countries fraught with bloodshed and instability, undertaking

perilous journeys to obtain basic human rights of security and safety. More often than not, the asylum seeker's first country of entry is not their desired final location, but the Dublin System forces them to remain in countries with faltering economies and social systems, despite the maladies this inflicts on both them and Europeans. This understanding is indispensable to my analysis.

The influx of asylum seekers has not only placed further strain on southern European economies, but has incited acute xenophobia, aiding the ascendance of far-right anti-immigrant political parties. As governments tend to respond to negative public perceptions by introducing populist regulations and policies intended to restrict the flow of migrants, migration policies in the immediate future are at risk of being narrowed.<sup>16</sup> At the moment, xenophobic sentiments are not exclusionary, encompassing the categories of legal migrants, asylum seekers, refugees, and, depending on who one asks, illegal/undocumented/irregular migrants. Foreigners are seen as economic burdens, job-stealers, criminals, unsanitary and untrustworthy. Unfortunately, these sentiments are being politicized and affecting balances of power through elections.

For instance, the immigration debate weighed heavily in the elections for the European Parliament in May 2014, bolstering the political fortunes of extreme rightist parties in Britain, Denmark, France and Hungary. In particular, Marine Le Pen, the leader of France's National Front, has frequented the media spotlight, primarily due to her ambitious promise to cut the annual number of immigrants to 10,000, down from 200,000.<sup>17</sup> In Greece, the rise of the Neo-Nazi party Golden Dawn has made headlines with their serving of bread to the

needy – on the condition that they can present a Greek nationality ID card. This anti-immigrant sentiment is not novel; the growth of xenophobia is widely seen as dating back to 2004, when the EU admitted ten countries from Central and Eastern Europe. However, it is culminating in violent physical attacks against legal migrants, asylum seekers, and undocumented migrants – the extremists make no distinction.

In summary, the most pressing and potent impact of the Dublin Regulation is its uneven distribution of asylum applicants to the outer-border countries, straining

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already overwhelmed economies and social systems, which in turn promotes xenophobic sentiments that politicize in parties with anti-immigration platforms. This toxic cocktail leads to precarious situations for asylum seekers' human rights. When there is a lack of housing the criminalization of migrants is prolonged, degrading holdings in detention centers. For instance, Greece's land border with Turkey has been undergoing a humanitarian crisis since 2010 because of “overcrowded detention centers, appalling hygiene and living conditions for asylum seekers, and human rights violations perpetrated by Greek authorities.”<sup>18</sup> Doctors Without Borders, an independent medical aid organization, reports that Greek detention

centers systemically violate the asylum seekers' rights by holding them in overcrowded, insanitary facilities that lack access to consistent or adequate medical assistance.<sup>19</sup> It has also been observed that "many migrants survive in appalling conditions in the heart of Athens, transforming parts of the historic centre into a dangerous and insanitary ghetto," conditions that doctors and officials have described as a "public health time bomb."

Moreover, stringent border controls make it more likely that people are forced to take greater risks to migrate.<sup>20</sup> In the European case, this usually transpires in dangerous voyages across the Mediterranean in pathetic dinghies packed with people. The media is saturated with headlines such as "500 Migrants Feared Dead after Boat Sinks in Mediterranean," "Migrant Boat Capsizes Leaves 27 Dead," and "Deadliest Year for Migrants Crossing the Mediterranean." William Lacy Swing, the Director-General of the International Organization for Migration, explains that "limited opportunities for safe and regular migration drive would-be migrants into the hands of smugglers, feeding an unscrupulous trade that threatens the lives of desperate people," adding that "undocumented migrants are not criminals. They are human beings in need of protection and assistance and deserving respect."<sup>21</sup> The flimsy boats used to traverse the Mediterranean are usually overcrowded, lack minimal safety requirements, and are without sufficient food and water provisions for the voyage. Sometimes, smugglers stuff migrants in the hull of the boat, where they die from suffocation. With over 3,000 fatalities within the first nine months of 2014, Europe is now designated the most dangerous destination for irregular migrants, with deaths concentrated in the Mediterranean.<sup>22</sup>

Another impact of the Dublin Regulation that endangers human rights is the creation of the Eurodac, in 2003. Europa, a website that provides summaries of EU legislation, defines Eurodac as "a system for comparing fingerprints of asylum seekers and some categories of illegal immigrants," although it is typically used to track the latter. Eurodac's main objective is to facilitate the application of the Dublin Regulation, by determining the MS responsible for examining an asylum application through documentation of first irregular entry – in theory so that the asylum process can timely begin. However, Eurodac is prompting self-mutilation among migrants who want to evade documentation. Migrants are burning their fingertips with hot metal rods, using razors to slice off skin, and using superglue and even acid to disfigure skin patterns.<sup>23</sup> An Eritrean 27-year-old in Italy attempting to reach Britain disclosed – "I burn my fingers because then the police will not be able to work out who I am [...] I have to heat up a metal rod in the fire until it is very hot – then I grip it hard so my fingertips burn off. I have to do this every month because my fingertips grow back. This is the only way to remove my history and create a better future somewhere else."<sup>24</sup> North African males, particularly those with criminal records, have the highest levels of self-mutilation.

Eurodac also creates perverse incentives for countries to soften their border control – by not fingerprinting migrants – so that the country will not be held accountable for the asylum seeker. For example, in 2013 German officials accused Italians of giving money to asylum seekers so that they could travel to Germany.<sup>25</sup> While evading documentation may allow some asylum seekers to continue to their final destination, usually the richer

north, it places them outside any legal, social or economic protection and assistance, furthering opportunities for exploitation or negligence of their human rights. This “collaboration” with the police discourages asylum seekers to report any acts of violence, especially if the police are the perpetrators. However, this lack of accountability increases the likelihood of police brutality and discrimination, as many asylum seekers in Greece have recounted.

These impacts are a consequence of the Dublin Regulation’s first entry criterion. Forcing already economically struggling countries like Greece and Italy to bear the brunt of irregular crossing into the EU is at the same time unfair and overwhelming. This is resulting in xenophobic rhetoric that is being exploited by far-right political parties. This furthers the vulnerability of migrants’ human rights, as these countries are ill-equipped and sometimes even unwilling, due to discrimination, criminalization, and xenophobia to assist and support them.

The consequences of the Dublin System have constrained asylum seekers in southern European countries ill-equipped or unwilling to provide adequate support and assistance. This leads to precarious situations for human rights, and hinders the ability of governments to support both European citizens and asylum seekers. Moreover, a vast majority of asylum applications are turned down.<sup>26</sup> Hovering at around one percent, Greece has the lowest positive-decision rate in the processing of asylum applications in Europe.

On November 24th, 2014 at the European Parliament, Pope Francis cautioned “We cannot allow the Mediterranean to become a vast cemetery,” adding that the EU’s failure to find an effective response to the flow of desperate

migrants had caused individual countries to adopt independent measures “which fail to take into account the dignity of immigrants and thus contribute to slave labor and continuing social tensions.”<sup>28</sup> It is clear through my analysis that the Dublin System’s criteria for determining the Member State responsible for an asylum

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application have dramatic consequences for the outer-border countries of the EU and the asylum seekers themselves. Due to the Dublin Regulation’s criterion of first-entry, these countries are often singlehandedly forced to manage the influx of asylum seekers. Their inability or unwillingness to do so produces unfavorable situations for human rights. Thus, the Dublin Regulation, as the cornerstone of the CEAS, must be reexamined and altered accordingly.

In 2014, Cecilia Malmstrom, the EU Commissioner for Home Affairs, proposed the idea of a “distribution key,” in which Member States with few asylum seekers, like Poland, would take more of them.<sup>29</sup> If distribution was accorded in proportion to population or capacity, the system would be more equitable and would relieve pressure from the southern Mediterranean countries, bolstering their ability to recover from the lingering effects of the Eurozone crisis. In a similar vein, the aforementioned quota system agreed upon in late September 2015 will



aid in the more equitable distribution of asylum applications. While this achievement is not to be completely undermined, it is doubtful that quotas will swiftly and singlehandedly resolve the many facets of the refugee crisis, especially since the plan unfolds over a period of two years while refugees arrive daily on European coasts. Although major players like Germany, Sweden, France, Italy and Spain support the quota system, several Central European countries are openly against the measure, raising concerns that refugees will be placed in questionable safety circumstances, vulnerable to violence and discrimination. Opponents of the quotas also argue that refugees will leave an assigned country if it is not their desired final destination, which renders the quotas obsolete. This critique is also levied against the current Dublin System. Moreover, the imposition of EU legislation often sparks Euroscepticism and incompletion, which would dangerously coincide with the continued rise of the far-right. Essentially, while the implementation of the quota system is a likely boon, additional measures are needed, and sustained discussion of potential solutions is imperative.

Transfer tactics and quotas will not be enough to adequately address the xenophobic rhetoric that is exploited by anti-immigrant parties. Combatting xenophobia requires movements toward a public discourse that is self-conscious about the merits of pluralism, the value of equality and the hazards of prejudice.<sup>30</sup> Additionally, more sufficient economic and social support from the EU is necessary to accommodate the current asylum seekers in southern Europe, the police must be held accountable for discrimination and brutality, and the EU must fulfill its promise to contribute in search-and-rescue operations

in the Mediterranean. My critique presented in this paper is not unheard of and does not fall on deaf ears. There are many critiques of the Dublin System circulating in academia and the media, especially concerning human rights. Hopefully, these will be enough to inspire change that better secures the inalienable, universal human rights of asylum seekers, refugees, undocumented migrants, and the like. ♦

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<sup>2</sup> Ingrid Boccardi, *Europe and Refugees: Towards an EU Asylum Policy* (The Hague: Kluwer Law International, 2002).

<sup>3</sup> Matiada Ngalikpima and Maria Hennessy, *Dublin II Regulation: Lives on Hold* (Brussels: European Council on Refugees and Exiles, 2013).

<sup>4</sup> Agnes Hurwitz, "The 1990 Dublin Convention: A Comprehensive Assessment," *International Journal of Refugee Law* 11, no. 4 (1999): 646-77, 652.

<sup>5</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council, *Official Journal of the European Union*, Brussels, June 26, 2013.

<sup>6</sup> Philippe Wanner, "Migration Trends in Europe" (Working Paper no. 7, Council of Europe, 2002), 4.

<sup>7</sup> Boccardi, 42.

<sup>8</sup> *Ibid.*, 56.

<sup>9</sup> Lauren Moses, "Europe's Migration Crisis," *The New York Times*, August 31, 2014, <http://www.nytimes.com/2014/09/01/opinion/europemigration-crisis.html>.

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- <sup>16</sup> Ian Goldin and Geoffrey Cameron, *Exceptional People: How Migration Shaped Our World and Will Define Our Future*, (Princeton: Princeton University Press, 2011), 162.
- <sup>17</sup> Frederick Lorenz and Edward J. Erickson. *Strategic Water: Iraq and Security Planning in the Euphrates-Tigris Basin*. Quantico: Marine Corps University Press, 2013. Accessed May 19, 2014, 13.
- <sup>18</sup> Alan Cowell and Dan Bilefsky, “European Agency Reports Surge in Illegal Migration, Fueling a Debate,” *The New York Times*, May 30, 2014, <http://www.nytimes.com/2014/05/31/world/europe/european-border-agency-reports-surge-in-illegal-migration.html>.
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- <sup>21</sup> Goldin and Cameron, 206.
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- <sup>27</sup> Goldin and Cameron, 152.
- <sup>28</sup> Kasimis.
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- <sup>30</sup> “Europe’s Huddled Masses.”
- <sup>31</sup> Goldin and Cameron, 280.

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