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RECEIVED 10 April 2024

ACCEPTED 16 July 2024

PUBLISHED 31 July 2024

## CITATION

Kalisha W (2024) Asylum spaces as spaces of nonrecognition: the ambiguities of welcoming and educating asylum-seeking children in Norway.  
*Front. Educ.* 9:1415522.  
doi: 10.3389/feduc.2024.1415522

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# Asylum spaces as spaces of nonrecognition: the ambiguities of welcoming and educating asylum-seeking children in Norway

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Asylum has historically been a refuge for the persecuted. However, it now faces a fundamental antagonism between asylum and law, which often overlooks the rights of children seeking asylum. This paper explores the historical concept of asylum law from its inception in antiquity and the Roman era and its entanglements with the education of children. It also examines asylum's relevance to current conflicts over the educational rights of asylum-seeking children and how international conventions have neglected these rights. To contextualize the ambiguity of asylum and education, the paper presents a case study of Norway's reception of asylum-seeking children from the 1930s to the present day and how the Norwegian welfare system, which was founded on child rights protection, has struggled with the entry of unaccompanied asylum-seeking children. The paper concludes with reflections on the potential impact of education for these children, considering their encounters as temporary educational moments. This exploration focuses on clarifying historical strands, turning points, and threads rather than taking a subjective historical perspective.

## KEYWORDS

asylum law and education, unaccompanied minors, education as a right, human rights in international law, UNHCR, Norwegian reception of asylum seeking children, human rights and refugee education, reception of unaccompanied minors in Norway

## Introduction

During the ongoing conflict along the Gaza Strip, we encounter an inconsolable Darin Al Bayaa, a 10-year-old girl. Her missing limbs serve as a stark testament to the brutality of war, including the loss of all her family members except her little brother. She recounts what happened to a Norwegian News reporter:

We were playing when the house shook, and then the rocket landed on us. After that, I did not understand what happened. Only my little brother and I were left above the ground. I cannot take it anymore. Every time my little brother asks for Mom, we start crying. We want our dad, mom, and brother back. I cannot stand it anymore. I cannot live without Mom.<sup>1</sup>

<sup>1</sup> See Dagsrevyen, (2023. december. 20). *Flere foreldreløse barn i Gaza*. FN's sikkerhetsråd jobber med å få til en avstemning om våpenhvile. <https://tv.nrk.no/serie/dagsrevyen/202312/NNFA19122023/avspiller>.

On 7 January 2024, a desperate plea echoes across the same channel. A man's voice trembles as he questions the very essence of humanity after searching in the ruins for bodies of missing relatives: "Where are the defenders of human rights? Why does the world remain silent? Children and elderly alike fall victim to violence. Are we not worthy of protection? Are our lives expendable?"<sup>2</sup>

In the shared suffering of Darin and the unidentified man, the lack of immediate solutions that they desire echoes like a chilling chorus in a world ravaged by strife. Darin's outcry and the man's plea coalesce into a communal wail for recognition, or at least empathy and action. Their pain embodies the immediacy of an unheeded call to action, a call to which humanity must respond. It seems that humanity is teetering on the brink; who will heed their call? The man's heartbreaking question ("Where are the defenders of human rights?") resonates with Arendt's question:

Why did the rights designed to protect human beings prove so useless for those who had nothing to rely on but their humanity? Why did those who had no home and no one to turn to first realize that their inherent and inalienable rights were illusory and insignificant? (Arendt, 1958, p. 292).

If one agrees with Arendt, rights are proclaimed within the sovereignty of a state to protect citizens or residents.<sup>3</sup> Asylum seekers, like children coming of age (James and James, 2012; Archard, 2015), exist in a space of not-yet-citizens, in limbo, waiting for a status that confers citizenship rights. The situation is even worse for unaccompanied children. Their status while seeking asylum is unknown, and the legal and political discourses in most host countries do not explicitly grant them rights beyond shelter unless in emergencies like in Norway (Tørrisplass, 2023).<sup>4</sup> Can education still be considered the right of asylum-seeker children? My concern in this paper is not with access but with the contradictions in rights provisions that make child asylum seekers more vulnerable rather than helping them access education. Research around educating newcomers and asylum-seekers in Europe and Norway concentrates on hospitality as a right due to all more generally and has Kantian<sup>5</sup> undertones. As important as this is, it fails to grasp the aporetic nature

of asylum as a concept<sup>6</sup> and the need to see asylum as a right, especially for children seeking<sup>7</sup> it alone.

This paper examines the historical concept of asylum law in antiquity and in the Roman era. I consider its relevance to the current conflicts between asylum and law surrounding the rights of asylum-seeking children to education. This historical analysis helps to grasp the ambiguity of educating children and asylum seekers in antiquity and the Roman era in order to highlight how international conventions on children's rights have overlooked asylum-seeking children and neglected their educational rights. To contextualize the ambiguity of asylum and education, I present the waves of reception to asylum-seeking children in Norway as a case study. This is traced from the 1930s to the present day. The Norwegian welfare system, founded on child rights protection, did not anticipate the entry of asylum-seeking children who pose a challenge to Norway's egalitarian system. The paper concludes with reflections on the potential meaning of education for asylum-seeking children, considering their encounters as temporary educational moments. While this exploration utilizes a historical analysis of concepts, it does not take a historical perspective. Instead, it aims to clarify historical strands, turning points, and threads that have been dropped and picked up.

This paper employs a literature and policy review (Bowen, 2009) to consolidate previous empirical work on restrictive asylum policies and their impact on migrants (Kalisha and Saevi, 2020; Kalisha, 2021, 2023; Kalisha and Saevi, 2021). These studies highlighted restrictive asylum rhetoric and policies that discourage migration and leave asylum seekers in a state of uncertainty. The current study<sup>8</sup> conducted a two-tier historical analysis of educational, policy, and legal literature, including refugee conventions. The initial discovery phase used keywords like "unaccompanied children seeking asylum" and "legal educational and policy provisions in Europe for asylum-seeking children" on search engines like Google Scholar. Norwegian policy documents were sourced from [www.regjering.no](http://www.regjering.no). Two periods were considered especially for the European contexts: pre- and post-World War Two. The second stage involved scrutinizing articles and documents from antiquity to the present, focusing on migrant reception and education. The study concludes with an in-depth analysis of ambiguities in children's reception and inclusion in legal documents and how this influences current policy frameworks for asylum seekers' reception and education.

## To seek asylum in Europe as an unaccompanied child?

Within European states in the recent past, asylum and refugee law has changed rapidly, becoming more restrictive and deterring

2 See Dagsrevyen, (2024, January, 07) *Vedfyring kan gi farlig luft*. Forbruket av ved har den siste tiden blitt større år for år. Det merkes nå i de store byene. <https://tv.nrk.no/serie/dagsrevyen/202401/NNFA19010724/avspiller>.

3 The word 'proclaimed' is used carefully to show that rights are declared and should be granted in theory but rarely given in practice. However, refugees and asylum seekers exist outside of the state, and the United Nations Higher Commissioner for Refugees (UNHCR) only offers guidelines on the rights due to them, which the state is left to interpret and contextualize in the context of their local realities. For more on the limits and struggles of the UNHCR's reach, see Guild and Moreno-Lax (2013). *Current Challenges for International Refugee Law, With a Focus on EU Policies and EU Co-operation with the UNHCR.*, Kelley and Durieux (2004). UNHCR and Current Challenges in International Refugee Protection. *Refuge*, 22. <https://doi.org/10.25071/1920-7336.21312>.

4 I refer to the legal and political dialogs that have overlooked the asylum concept, failing to define it explicitly and thus denying rights to those within their territories who are neither citizens nor refugees yet. See for example (Arnold, 2018; Oudejans, 2020).

5 For purposes of this paper, the Kantian perspective will not be discussed in detail.

6 Behrman (2018) for example, contends that "there is a fundamental antagonism between asylum and law, which expresses itself as a conflict between focusing on the space of asylum and delineating a refugee subject in fixed terms." (p. xiv).

7 I do not suggest that all unaccompanied children should receive the right to asylum expressly. However there is a need to redefine this concept in law, as it there that other rights are given as Behrman articulates.

8 For purposes of this paper, empirical interviews are omitted in favor of a theoretical analysis.

immigrants (Topolski, 2011; Kohli, 2014; Arnold, 2018). Those who cross borders no longer enjoy the same rights as citizens until their status is clarified or reset (UNHCR, 2023). Is it the human beings themselves or the law that is not working to offer rights due to especially vulnerable unaccompanied asylum-seeking children? Behrman contends that there is a fundamental conflict between “asylum and law, which manifests as a clash between concentrating on the asylum space and defining the refugee subject in fixed terms” (Behrman, 2018, p. xiv).

Of the 14.8 million refugee children globally, by the end of 2023, the United Nations High Commissioner for Refugees (hereafter, UNHCR) predicts that 51 percent will be out of school (UNHCR, 2023). UNHCR provides a comprehensive report of varying enrollment rates in schools and the challenges for refugees in the global South. However, there needs to be more similar statistics from Europe, particularly for asylum-seekers. There is an issue of access to education as a right, as Storen (n.d.) has problematized in the global South, which is solely due to the ambiguity of who bears the moral duty to provide such education. This educational disparity is even more pronounced for asylum-seeking children in the global North. Afsan Khan, the regional director for UNICEF in Europe and Central Asia, once stated:

There are far more push factors that compel children to leave their homes and fewer pull factors that attract them to Europe. However, for those who do aim to come to Europe, the allure is the opportunity to advance their education, find respect for their rights, and progress in life. Once they arrive in Europe, their expectations are unfortunately dashed (UNICEF, 2023).

The right to education is only granted when one’s status is defined. The general principle is that educational access should be for all, but the practice is that asylum seekers have no right to education, and where it is offered, it is temporary and deemed to fail from the start. For instance: In Germany, asylum-seeking children are not admitted to school until assigned a municipality, and there are no educational offers during their stay in reception centers. In Cyprus, they do not attend school while at the reception center due to a lack of educational facilities. In Greece, forced relocations to remote camps disrupt their education mid-year. In Belgium, moving families when they have received a negative decision can interrupt education due to regional language differences, violating the right to education (ECRE, 2023). In Norway, all children have access to education so long as their stay is more than 3 months, according to the Education Act. The problem with asylum seekers is that their stay is unknown.

Below, I briefly discuss the dilemma of starting with the right to hospitality before defining the political right to asylum, as Peters and Besley did in their response to the migration crisis of 2015. This approach oversimplifies the complexities of asylum by beginning with hospitality and concluding with a call to educate asylum-seeking children immediately.

## Political asylum or education first?

Peters and Besley (2015) editorial in *Educational Philosophy and Theory* addresses the European crisis by advocating for cosmopolitan hospitality for asylum seekers. They equate this hospitality with a

political right to asylum, tracing its roots back to the philosophical and legal traditions of Ancient Greece, which envisioned a community united by shared moral values and a universal law that embraced extended hospitality (Peters and Besley, 2015, p. 1372). Their stance echoes the broader view that hospitality is a fundamental human right that should also be granted to refugees and asylum seekers, a sentiment shared by other scholars.<sup>9</sup> However, Peters and Besley (2015) focus remains on the practicality of welcoming refugees and asylum seekers during the crisis, rather than delving into the complexities and dilemmas of asylum and its legal difficulties.

In their discussion, Peters and Besley (2015) highlight the narrative of liberal internationalism, which champions a globalized world supported by the free movement of capital, trade, and people and the granting of asylum to those fleeing persecution (p. 1372). They point out the shortcomings in the EU’s legal frameworks and international refugee and asylum agreements, particularly in the implementation of these frameworks and agreements, due to policy and execution flaws. Nonetheless, I believe Peters’ and Besley’s framing of hospitality as a right within the cosmopolitan context of free movement neglects the essence of the right to asylum, especially in relation to children. Their educational initiatives, while aimed at addressing the crisis faced by refugees and asylum seekers, inadvertently perpetuate a dominant form of cosmopolitanism centered on hospitality. Papastephanou argues that “unfortunately, the right to hospitality seems to exhaust the scope of Western citizens’ responsibilities and potentialities” (Papastephanou, 2017, p. 1341). That is, the West offers a hospitable environment to the newcomer, on its own terms, with a colonial master mentality, forgetting the ripple effects of their actions in the developing world. This paper does not discuss the right to hospitality, nor does it downplay it. However, the interest of this paper is to see the complexities of the right to asylum, which is the doorway to other rights due to children seeking asylum.

EPAT’s response only discusses the political right to asylum in the context of persecution, without considering other extenuating circumstances. For example, it does not address ecological asylum seekers or refugees who are persecuted by their own state and cannot return. The legal and political framing of asylum leaves it open to interpretation by receiving nations. The EPAT editorial suggests that policy measures should be enacted quickly to educate asylum seekers (Devine, 2015). Peters and Besley (2015) argue that education should come after the right to political asylum is granted. However, if asylum-seeking children were viewed as children first in need of education, their right to education would be prioritized.<sup>10</sup> The authors of the EPAT issue prioritize hospitality and citizenship over education. Yet if education would be prioritized it would be seen as an enabling right.

<sup>9</sup> See also Derrida, J. (2000). HOSTIPITALITY. *Angelaki*, 5(3), 3–18. <https://doi.org/10.1080/09697250020034706>, Kalisha (2020b). While We Wait: Unaccompanied Minors in Norway – Or the Hospita(bil)ity for the Other. In T. Strand (Ed.), *Rethinking Ethical-Political Education* (pp. 67–84). Springer International Publishing. [https://doi.org/10.1007/978-3-030-49524-4\\_5](https://doi.org/10.1007/978-3-030-49524-4_5), Ruitenberg (2015). *Unlocking the World: Education in an Ethic of Hospitality*. Taylor & Francis. <https://books.google.no/books?id=3Q8eCwAAQBAJ>.

<sup>10</sup> As it is demonstrated in the Norwegian case, Ukrainian children seeking asylum in Norway are considered children first, meaning their rights as children are secured before their right to asylum is granted.

However, it is important to note that citizenship for children is still a work in progress, as demonstrated below in the historical view of asylum from antiquity.

## A historical view of asylum: did asylum in antiquity neglect asylum-seeking children?

Oudejans (2020) and Den Heijer (2012) discuss the ambiguity of asylum in modern refugee law. Asylum, traditionally seen as “protection granted by one state against another” and a path to citizenship, is often misunderstood as permanent, ignoring its temporary legal nature (Oudejans, 2020, p. 525). The 1951 Refugee Convention defines a refugee as “someone unable to return home due to fear of persecution” (UNHCR, 2011, p. 3) but notably excludes children from its scope. Despite recent legal advancements (Arnold, 2018; Lile, 2021), such as the demand for legal representation of child asylum seekers<sup>11</sup> and the reduction of detention for child asylum seekers,<sup>12</sup> child asylum-seekers often find themselves in legal limbo, lacking guaranteed rights, especially to education.

To grasp the shortcomings of Europe’s asylum system in granting rights to child seekers and its inherent contradictions, it is insightful to examine its evolution with a lack of focus on children. What implications does seeking asylum hold for a child? The term ‘asylum’ traces back to the Greek ‘asulon’ signifying ‘exempt from seizure’ – ‘a’ denotes ‘without’ and ‘sulia’ means ‘liable to be seized’ (Behrman, 2018, p. xvii). Before the third century BC, sanctuaries such as towns and cities were designated as sacred and untouchable (Behrman, 2018, p. 8). These zones served as impartial havens for competing Greek city-states, immune to conflict. They provided refuge to all fleeing persecution. In this period, asylum was primarily about “the privileges or veneration” associated with a place (Behrman, 2018, p. 9). The focus was on defining the asylum space, not the asylum seeker, unlike today’s scenario, where the discourse is charged, and newcomers are labeled as invaders or immigrants (Wagner-Saffray, 2020), even before identifying a place for their refuge.

While commenting on this period, Elena Isayev writes:

There was no interest in categorizing all those on the move under one label. The closest equivalent to “migrant” is *transitor* (literally, one who goes over or is a passer-by), which only appears in Late Antiquity (c. 300–700 CE) (Isayev, 2017, p. 77, emphasis in original)

In the writings of this age, as exemplified in the *Odyssey* and as Derrida (2000) has written extensively on, the stranger or *transitor* or

asylum seeker was to be granted hospitality on an equal basis as the host. Which exposed at great length the “tensions of morality, responsibility, and obligation that lie between the state and individual” (Isayev, 2017, p. 78). Current asylum policies have shifted toward offering protection outside of Europe, with countries like Israel and the United Kingdom forming agreements with nations like Uganda and Rwanda to accommodate their refugees (Bar-Tuvia, 2018; Oudejans, 2020). Those within the Western world advocating for the rights of vulnerable children and women have to consistently present asylum seekers to the public as “helpless victims,” innocent and at risk of death if returned home, in order for them to get “a sympathetic response” (Isayev, 2017, p. 79). A notable aspect of these sanctuaries, as noted by Norman Treehouse, is that during wars, Greek asylums brimmed with supplicants. At the same time, in times of peace, they were often deserted (Treehouse, as cited in Behrman, 2018, p. 11). The space was only meant for protection to all without discrimination during war, albeit temporarily.

When the Romans succeeded the Greeks, they Latinized ‘asulia’ to ‘asylum,’ a term absent in their vocabulary (Behrman, 2018). For Romans, an asylum was a space within the ‘polis’ where civil law was inapplicable (p. 16), a ‘non-law’ refuge for fugitives. Unlike the Greeks, who had asylums between cities, Romans had them within, where their law did not necessarily apply. Greek asylum-seekers had to appeal to the community through “representatives and intermediaries,” complicating the duty of hospitality. As non-citizens, they pleaded with the state for acceptance, as depicted in Aeschylus’s Greek Tragedy *The Suppliant Women* (Bakewell, 2013). By the First Century AD, asylum was legally abolished as the “legal paradigm could not accommodate the existence of spaces beyond the authority of state and law” (p. 112). The Romans found the concept of guilt-free asylum within the ‘polis’ unacceptable. Asylum seekers then could only seek protection near religious institutions offering asylum. Despite being open to all, seekers had to be within church sanctuaries, surrender, confess sins, and be supervised by the abbot or church father (Peters and Besley, 2015).

In the Christian era, St. Augustine, described by Ducloux as the asylum theorist, designated the church as an asylum space (Rigsby, 1996). He dismissed Roman law’s categorization of asylum seekers as deserving or undeserving, asserting the church’s openness to all (Behrman, 2018). Although church premises were not schools, bishops ran ecclesiastical schools for church workers (Alison, 2021). Church fathers like Tertullian, Cyprian, Augustine of Hippo, and John Chrysostom taught various subjects, particularly child upbringing (Mvumbi, 2013). Chrysostom emphasized parents’ sacred duty to instill virtues and piety in their children, equating neglect to a form of murder (p. 1). This reflects Plato’s concept of *paideia*. Plato posited that we inherently possess ideas of the Good, the True, and the Beautiful. He viewed learning as a process of recalling these innate ideas, with teachers tasked to evoke the inherent goodness in each child, a “treasury of culture” (Uden, 2018, p. 391).

Bakke (2005) posits that “Christianity introduced new anthropological viewpoints, a new ethical evaluation, and new ideas for upbringing” (p. 286). He establishes an anthropological foundation for ethics and pedagogical approaches to child-rearing. He contrasts early Christian and Graeco-Roman practices, concluding that Christianity acknowledged children as individuals. Unlike the Graeco-Roman perception of children as irrational and childish, Christianity portrayed them as a positive example for adults (Bakke, 2005, p. 54).

11 While Norway has long provided legal representation for unaccompanied minors, countries like Lithuania and Slovakia have recently amended their laws to ensure Ukrainian unaccompanied minors receive legal representation during asylum interviews. 5.6.2. Legal representation for asylum-seeking children | European Union Agency for Asylum (europa.eu).

12 Controversially, EU leaders agreed to lower the minimum age of child asylum seekers subject to proposed new border procedures from 12 to 6 years. EU leaders agree controversial plan to detain child asylum seekers - InfoMigrants.

Here, children find meaning, even though this meaning is rooted in families responsible for their upbringing and education.

Roman law is often described as the “epitome of objectification of children in law as it provided for the right of the father to not only give life to his child but to take it away” (Arnold, 2018, p. 18). Viewing children in this manner underestimates their agency, treating them as parental properties. This perspective aligns with the characterization of children as merely being in a developmental state and requiring help. This developmentalism characterization has been used by notable scholars like Jean-Jacques Rousseau, John Locke, and Immanuel Kant to describe children, forming the basis of children’s rights movements and education from the late seventeenth to the late twentieth century.

The space of asylum, as it is theorized in antiquity, is a temporal space that did not allow for schooling as it is presently known. Children in this period are seen as the property of their parents. As Uden notes, “the virtuous Greek and Roman child of the second century... embodied not the future but the past, symbolizing a fantasy of continuity, not change” (Uden, 2018). This, as other historians have noted (Alison, 2021), created the space for the education system where a child started “literacy learning at home with an elementary teacher or parents or grammarians assistant before grammar and rhetoric” (p. 998). It is also important to note, as Alison mentions, that education in the second to fifth century CE “provide[d] the language and more through which a social and political elite recognized its members” (Kaster 1988 as cited in Alison, 2021, p. 999). In this era, a deliberate effort is made to preserve traditional cultural values, especially those of the elite in the empire, through education. Even though there exists an effort here to reject a past which is encumbered by wars and conquest, there is also a desire to share values that are worth passing on to those from elite families. The educational interest in this era is at a civic level in order to advance a form of stability (Uden, 2018). The teachers in antiquity were mainly slaves, housewives, midwives, and nurses. For the elite, there was a preference to have Greek slave teachers so that the child is not “contaminated by foreigners” (Uden, 2018, p. 390). Additionally, the “*paedagogues* should not be prisoners of war or foreigners. The foreigner here is not the asylum seeker but one that resides lawfully as those conquered and or slaves.

Asylum in this period does not categorize the child or see them specifically as part of asylum seekers. Children are seen as part of the family that comes with them. Their unique circumstances and vulnerabilities must be taken care of by their caregivers. Education is hierarchical, as Alison (2021) describes it; therefore, the right to have it is limited. When it comes to the right to express themselves, Rancière remarks that it

had been enough not to hear what came out of the mouths of the majority of human beings – slaves, women, workers, colonized peoples, etc. – as language and instead to hear only cries of hunger, rage, or hysteria in order to deny them the quality of being political animals (Rancière, 2004, p. 4).

Rancière identifies a trait in ancient Rome where foreigners were labeled as incapable of intelligent speech and, thus, not considered equal to other humans. He notes that in Ancient Rome, “their speech could not be heard. They possessed only a sort of bellowing which was a sign of need and not a manifestation of intelligence.” (p. 5). The society did not foresee the inclusion of those lacking a common

language and intelligence. Thus, the right to enter the polis and enjoy the privileges of citizenship was an illusion. Despite the asylum space being temporal and defined prior to the subjects, the prevailing attitude was one of exclusion until one could speak intelligibly and be part of a community of speaking humans.

## Asylum and the child in international conventions

The historical perspective of asylum reveals its conflict with law and education. The education of the Roman and Greek eras, being less institutionalized, can be excused,<sup>13</sup> yet it lays the ground to see the issues that asylum continues. To grasp asylum’s dilemmas, we must study how the concept of the asylum-seeking child was formed, often neglecting their educational rights.

The US proposed the inclusion of unaccompanied minors in the 1951 Convention Relating to the Status of Refugees, A ‘minor’ was defined as an individual who is,

sixteen years or under who is a war orphan, or whose parents have disappeared, who is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality, and who has not acquired another nationality (Arnold, 2018, p. 81).

Despite the convention drafters rejecting unaccompanied minors due to a conflict between child protection and state responsibilities, minors continued to seek asylum, as seen in the Norwegian case below. The relevance of child asylum seekers became a contentious issue after World War II because this type of migration was unimaginable. In the recent past, the UNHCR handbook and the Convention on the Rights of the Child, known for prioritizing children’s best interests and including both citizens and non-citizens, have been used to guide decisions. However, (Søvig, 2019) demonstrates that state interests often override children’s best interests, challenging the child’s right to participate in asylum procedures that could lead to educational opportunities.

The 1924 Geneva Declaration of the Rights of the Child, after World War I, recognized certain rights for children but lacked enforceability and a comprehensive framework. Children’s roles as refugees or asylum-seekers were often overlooked historically. Later documents, like the 1948 UN Declaration of Human Rights and the Convention on the Rights of the Child, affirmed all children’s educational rights. These instruments did not explicitly deny children the rights given to ‘all members of the human family’ or refugees, possibly due to a hesitance to confer rights upon children. The potential impact of defining children’s rights on family dynamics has been a longstanding concern in children’s rights discourse.

The 1951 Refugee Convention defines a refugee as “someone with a well-founded fear of being persecuted for reasons of race, religion,

<sup>13</sup> I have intentionally moved from the Middle Ages to the nineteenth century, a period in Europe when foundational theories, like those of Locke, Rousseau, and Kant, shaped the concept of children’s educational rights. Arendt also extensively discussed this in her work, *The Origins of Arendt* (1973).

nationality, membership of a particular social group or political opinion" (UNHCR, 2011, p. 3). This definition establishes who qualifies as a refugee and the conditions under which protection can be withdrawn, as determined by the UNHCR's durable solutions: repatriation, resettlement, or local integration. The underlying assumption is the protection of adult refugees within the context of state relations (Oudejans, 2020). Prior to the convention, asylum was a political right granted exceptionally by states to those fleeing persecution, and Arendt characterized the right of asylum as "the symbol par excellence of the rights of Man" (Arendt, 1973, p. 293). It was the sole right that afforded residency to individuals who were stateless and did not fit the 1951 refugee definition or the 1967 protocol that "removed the geographical and time-based restrictions of the 1951 convention" (Storen, n.d.). Without this right, Arendt concludes that refugees are reduced to "the abstract nakedness of being human and nothing but human" (Arendt, 1973, p. 301). Although not explicitly defined in either convention, "states and academics alike have consistently interpreted legal obligations under the 1951 Convention in terms of protection rather than asylum" (Oudejans, 2020, p. 527).

Oudejans (2020) suggests that states conflate both the traditional definition of asylum, which "refers to the sovereign right of a state not to extradite a foreigner at the request of his state of origin that urgently wants him back for unlawful or unfair punishment" (Morgenstern, 1949, p. 330 as cited in Oudejans, 2020, p. 527), and a modern concept of asylum that "understands asylum as the right of the individual not to be returned to persecution" (Walzer, 1983, p. 50 cited in Oudejans, 2020, p. 527). The dilemma here is the understanding of the state's responsibility to protect another state's citizens. With this understanding and the leeway granted in international conventions to contextualize conventions according to their local understanding, interests trounce protection, leaving the vulnerable child asylum-seeker alone or stateless. So long as protection concerning citizenship deems children as still developmentally incapable of making decisions, the state can only consider them worthy of asylum in the company of their parents. Children seeking asylum alone, for example, become legally ambiguous – they are not anticipated by law and cannot fit within the existing legal frameworks.

## The ambiguous reception of asylum-seeking children

To contextualize the ambiguity in defining children as part of rights-holders and asylum seekers in international legal instruments, I examine the reception of unaccompanied minors from the 1930s to the early 2000s in four epochs,<sup>14</sup> as categorized by Eide (2005, 2007) in Norway. These periods include the arrival of Jewish minors in the 1930s, Hungarian children in the 1950s, Tibetans in the 1960s, and a wider group termed "others" from the 1980s. A recent fifth addition is the influx of Ukrainian refugees. This latest period is compared with the Hungarian reception due to their similarities. Notably, four of these periods saw minors arriving in Norway in organized groups, invited by local organizations. Despite having ultimate authority, the state often distanced itself from direct involvement, particularly with Jewish and Tibetan youths.

From the 1930s to 1960s, a selective approach was taken toward receiving minors. Initially, Jewish teenagers were accepted by the Nansen group, provided they returned after 3 years (Eide, 2007, p. 47). The era was marked by skepticism toward unaccompanied Jewish children, especially during World War II (Brochmann and Hagelund, 2012). Norwegian politicians believed children "without parents were the worst to care for than those with parents" (Eide, 2007, p. 48). Welcoming them meant isolating them due to a perceived ghetto-ized living, thus protecting them from rising antisemitism. Their stay was predetermined, and they were institutionalized in Jewish children's homes under the Nansen group's care (Eide, 2005). Education was primarily offered by the welcoming faith-based organization. This mirrors Sweden's approach to Jewish and Finnish unaccompanied youths in the 1930s (Djampour, 2018).

After World War II, a contrasting situation arose when Hungarian unaccompanied youths, who shared a history of "fighting against occupation and oppression just like Norwegians fought against Germans" (Eide, 2005, p. 146), were welcomed. Unlike previous instances, these Hungarian youths were integrated into foster homes and provided with educational opportunities to learn Norwegian. The notion of temporary permits was dismissed as they were "welcome to stay as long as they want" (Eide, 2005, p. 144). The engagement of the Young Christians with A mission (KFUM) and the welcoming attitude toward assimilation, along with the indefinite duration of their stay, marked a distinct approach toward unaccompanied youths from Western backgrounds. Historically, during and before World War II, "no one came to Norway from outside Northern Europe" (Brochmann and Hagelund, 2012, p. 149), a stark contrast to Sweden's more diverse immigrant population due to its colonial history. While this context does not justify the prevailing attitudes, it sheds light on the challenges of accepting "others" without an established policy framework. Remarkably, the Hungarian unaccompanied minors are welcome first as children and not as refugees or asylum seekers. This means that all rights due to native children were accorded to them, including education. This consideration is seen in the Norwegian government's refusal to return 120 children to Hungary upon request from the Hungarian government. The state thought that the Hungarian government could not be trusted to care for such children and could only be returned when and if their parents deemed it safe; in fact, Eide (2005) notes that their names were anonymized. This suggests a concern for protecting genuine asylum seekers. These young people were not seen as refugees or asylum-seekers but, first of all, as children.

Similarly, in 1964, Tibetan youths faced the same reception as Jewish youths had earlier. Their journeys to Norway were not predetermined as they were with Hungarian youths. They were selected through a lottery system from India or Nepal and came to Norway through the Tibetan help group founded by Crown Prince Peter of Greece and Denmark. Their stay was limited and contractual, restricted to 4 years, with education focused on the "Tibetan language and religion, while little emphasis was placed on teaching them [the] Norwegian language" (Eide, 2005, p. 90). This education aimed to preserve their cultural identity and help them upon return. Those who returned reported an ambivalent reception. Their education could not help since it did not meet the contextual realities in the camps in India. Those that remained were in a moral dilemma, both with a guilty conscience and an inability to integrate into Norway since their stay was coined on return politics.

During the 1950s to the late 1960s, distinct political discourses shaped the reception of unaccompanied minors and other refugees in

<sup>14</sup> Part of this is explored in Kalisha (2021). For purposes of this paper the fifth epoch is added and is discussed in detail below.

the Nordic countries (Hagelund, 2003). This era coincided with significant welfare reforms which emphasized normalization and the standardization of refugee policies across Europe, particularly in the aftermath of World War II, including the Refugee Convention of 1951 and the Refugee Protocol of 1967. Normalization in Norway primarily targeted individuals with mental or other disabilities (Bengt, 1994/1969), but it had not yet extended to encompass newcomers – specifically refugees and asylum seekers. Participation in the welfare system was contingent upon legal residency, often tied to the duration of residence and employment requirements. Despite this, a substantial portion of the population fell within this framework (Brochmann and Hagelund, 2012). Immigrants with legal status were expected to contribute to the welfare state's sustainability (Touzenis, 2006).

Simultaneously, there were no established asylum or refugee policies to guide the welfare system's response to newcomers or to educate them. The booming economy and oil industry led to labor migrants receiving permits almost automatically, granting them rights equivalent to citizens, including family reunification (Brochmann and Hagelund, 2012). However, this normalization of migrant workers still marginalized their access to certain welfare rights, such as housing and education, due to language difficulties.

Providing unaccompanied minors residing in the state with basic rights, such as education, depended on their legal status. The challenge was to navigate the intersection of welfare demands, legal status, and the unique needs of unaccompanied asylum seekers. The welfare system's selective approach to different groups of unaccompanied asylum-seekers and its requirements made legal status a prerequisite for residency. During times of political indecision, unaccompanied teenagers faced difficulties accessing certain rights, such as education. This made their reception and asylum-seeking process more ambiguous due to uncertainty, temporality, and varying ideological perspectives.

## The era of integration

During the 1980s and 1990s, Norway experienced an influx of immigrants, including both asylum-seekers and refugees. Prior to this period, the country primarily received quota refugees with direct resettlement plans through the UNHCR (Brochmann and Hagelund, 2012). However, the Cold War context and conflicts in Vietnam, Iraq, and Somalia introduced a new wave of immigrants and refugees arriving spontaneously by boats, busses, and planes. These asylum seekers, categorized explicitly as such, posed a unique challenge to the welfare state. While the welfare system had started to accommodate various immigrant groups, "it is precisely this type of immigration that welfare state premises can least govern" (Brochmann and Hagelund, 2012, p. 117). The political identity of an asylum-seeker was a subject of ongoing political discourse in Norway and Western Europe since the 1970s (Vitus and Lidén, 2010), gaining further prominence during this period.

Being labeled an asylum-seeker evoked mixed reactions. Their arrival was uncertain, limiting the welfare system's ability to effectively address the needs of both genuine and vulnerable refugees (Brochmann and Hagelund, 2012). Although the welfare policies lacked clarity on managing newcomers, glimpses of how asylum policies should be formulated—such as reception conditions, rights, and integration—began to emerge (Hagelund, 2003). During this

time, asylum-seekers were categorized as either needy or not and defining what constituted "needy" remained a recurring political issue during regional and national elections in Norway.

The concept of being an asylum-seeker carried significant weight during this period. To qualify, individuals had to demonstrate their worthiness for asylum, as they did not neatly fit the established definition of quota refugees. Quota refugees were meticulously vetted and approved based on well-documented fear of persecution, often having lived in refugee camps. Their motivations for travel were reasonably understood.

The prevalent practice from the 1980s until the turn of the millennium was to grant residence permits to unaccompanied minors if their caregivers remained untraceable (Stang, 2012). The integration in this period coincided with a decentralized model that integrated all children in the unitary school (Haug et al., 1999). This decentralization solidified the normalization-through-integration approach, significantly impacting how unaccompanied minors were received. In schools, the "foreigner" category was widely used, and education was adapted to their needs as foreigners by targeting them for "tuition in courses for Norwegian as a second language (Seeberg and Goździak, 2016, p. 1). Schools that admitted them received extra resources for this adaptation.

## More restrictive policies

The early 2000s to 2007 marked a more restrictive policy shift due to higher numbers of unaccompanied minors seeking asylum in Norway (UDI, 2004; UDI, 2010). This shift coincided with developments in the EU, such as enhanced joint border control (Bigo, 2014), and more restrictive asylum practices, including the issuance of temporary residence permits until the age of 18, followed by repatriation, as observed also in England and Belgium (Derluyn and Broekaert, 2008; Kohli, 2014). Age assessments became compulsory in practice to determine unaccompanied minors over 15 years of age. Those arriving in Norway were divided according to age from 2007, placing those under the age of 15 under the child services and those between 16 and 18 under the Department of Immigration. For the first time, temporary permits were issued in Norway in 2007 to those who were unsuccessful in their asylum applications.<sup>15</sup>

Temporary permit holders were part of a pilot education program.<sup>16</sup> Unaccompanied minors aged 16–18 were often negatively categorized as anchor children, economic migrants, or adults posing

<sup>15</sup> Temporary permits were issued to allow the unaccompanied minors to be returned as adults when they turned 18. In this period, a pilot project was established to give them some skills to use upon their return.

<sup>16</sup> This is further cemented in law in 2016, when the reasonableness clause that allowed unaccompanied minors to apply for asylum on humanitarian grounds because of experiencing torture or trauma was repealed (See Søvig, 2019). It gave Norway the possibility to return unaccompanied minors as internally displaced children in their home countries. However, this would have been in contravention to the principle of non-refoulement. Therefore, temporary non-renewable permits were issued to unaccompanied minors especially from Afghanistan in October of 2015 and most of them were returned in October and November of 2017, when they turned 18.

as children. They could join upper secondary schools, but education is not mandatory at this level (Kalisha, 2020a). Municipalities could admit these minors if vacancies existed. In some areas, voluntary organizations provided education for these asylum-seeking minors. School attendance was a key integration indicator, emphasizing education's role in their integration process (Kalisha and Sævi, 2021).

## Proximity and the redefinition of asylum rights?

The recent arrival of refugees and asylum seekers from Ukraine marks the fifth wave of asylum seekers to Norway. According to Näre et al. (2022), the number of Ukrainian refugees received in some European countries by the end of 2022 has surpassed the number received in 2015, which was considered the European migration crisis. Although the UNHCR has described this wave as potentially the most significant European refugee crisis of this century (UNHCR, 2022), it has not been officially labeled as a migration crisis. This may be due to the European Commission's prompt response in offering Temporary Protection Directive (TPD) status to all Ukrainian asylum seekers. Member states activate the Temporary Protection Directive (TPD) in response to a mass influx of refugees. It allows for the rapid processing of asylum applications, granting access to work and study opportunities in those countries. Ukrainian asylum-seekers with TPDs are subject to different asylum procedures than other asylum-seekers (Hernes et al., 2022). Ukrainians are not subject to visa restrictions in Europe under the Schengen visa agreements and are exempt from the rules of the Dublin Convention, unlike refugees from outside Europe.<sup>17</sup>

European nations' public and political discourse has largely revolved around the notion that Ukrainian refugees merit "protection due to their European, Christian identity, and the fact that many are women and children... they are seen as patriotic individuals who intend to return to Ukraine post-conflict" (referenced from Muhonen in Näre et al., 2022). This perspective implicitly contrasts with other asylum-seekers who may not wish to return to their homelands. Comparable attitudes akin to those witnessed with Hungarian refugees were evident in the reception and provision of educational access to Ukrainian refugees in Norway. By the beginning of 2024, Norway had processed 73,200 (Tyldum et al., 2023) protection applications from Ukrainian refugees. Of this, 378 unaccompanied minors had been settled in Norway by January 2023 (Kirkeberg and Lunde, 2023). The consensus on their acceptance is broadly positive among both politicians and the public, with statements such as "Ukraine is close to us both geographically and politically" reflecting a shared understanding that the war unfolds in "our backyard" or "the heart of Europe." Ukrainians are regarded as "our neighbors," with an emphasis on Ukraine's Western, liberal, and democratic societal values, aligning with "our values" (Mogstad and Larsen, 2022), and the Ukrainians represent the most educated group of refugees to ever arrive in Norway (Hernes et al., 2022). The narrative underscores a shared confrontation with a common threat and adversary. Some

online remarks, including those from anonymous commentators, echo a perspective that prioritizes support for genuine refugees from the region, such as those fleeing the crisis in Ukraine (Mogstad and Larsen, 2022). Meanwhile, migrants from other regions with less clear refugee status may be viewed differently, receiving comparatively lower priority due to the specific circumstances at hand.

Norway's Temporary *Integration Act (2022)* for Ukrainian refugees aims to accelerate their integration and improve their access to education.<sup>18</sup> The Act focuses on changing and adjusting legal provisions related to education, among other sectors of society. Ukrainian refugees in Norway have the same economic rights as other permanent refugees, including access to welfare benefits, schools, and health services (Tyldum et al., 2023). Children arriving from Ukraine are classified as children rather than as asylum seekers or refugees. Under the amended *Integration Act (2022)*, Ukrainian nationals have 6 months in an introduction program, to learn the Norwegian language and society.<sup>19</sup> Unaccompanied minors are treated as they were in 2007, with child welfare services providing care for those under 15 in foster homes.<sup>20</sup> Unaccompanied minors aged 16–18 are processed in reception centers and offered municipal settlement options. Municipalities are required to provide educational opportunities to all Ukrainian children with disabilities. Additionally, all unaccompanied teenagers of ages 16–18 have the right to attend high school.<sup>21</sup> The Ministry of Education has funded the translation of learning materials and the development of apps for course material translation in all courses they are involved in.<sup>22</sup>

## Education – a trial arena?

The unnamed man asked: "Where are the defenders of human rights?" This question remains unanswered. A historical examination of asylum and law reveals a misunderstood concept, used selectively. Ancient asylum was available to all, but children's education was tied to their parents'. European definitions of asylum excluded unaccompanied minors. This prevented the inclusion of asylum seekers such as Jewish and Tibetan minors in the rights of humanity. It is evident that when asylum-seeking children from Western countries, such as Hungary and Ukraine, arrived, they were initially recognized as human beings with the right to belong and receive an education, with the potential to become citizens.

<sup>18</sup> Norway expeditiously changed the integration Act in, 2022 that allowed for easy reception and integration of Ukrainian newcomers immediately after the European Council activated the TPD. The Act covers many sections of integration, but for the purposes of this paper, I focus on educational integration.

<sup>19</sup> The initial 6 months can be extended for another 6 months. Other refugees have a 12 month period in the program, which can be extended only with the municipality's approval. This program applies to adults aged 18–55 who hold valid residency permits.

<sup>20</sup> See the discussions on their reception in the same period.

<sup>21</sup> Although legally they have a right to attend high school, it is not mandatory. This offer is only to this group. The rest of the other asylum-seeking minors, have to wait for the county governor to offer such opportunities.

<sup>22</sup> <https://www.udir.no/laring-og-trivsel/opplaring-ukrainske-barn-unge/laremidler-oversatt-til-ukrainsk/#a184511>.

<sup>17</sup> The Dublin Convention provides a mechanism for the control of asylum seekers who apply for asylum in only one EU country at a time. (Djampour, 2018).



Asylum-seeking is a comprehensive human journey. Children, particularly from outside Europe, face uncertainty, with their humanity being their only right (Arendt, 1973). Topolski interprets Arendt, stating rights “without roots were legally, ethically, and politically useless” (Topolski, 2011, p. 171). The right to have rights is realized by belonging to a community. Its absence equates to losing rights guarantors, especially for unaccompanied asylum-seeking children. Such displacement leads to a “double throw” – they are born, establish identity through education, then uprooted to start anew (Parker, n.d.). This loss and “double throw” represents the existential condition of the asylum-seeking child. Education as schooling, therefore, must be more than just “a place to be,” but a structure in everyday life, especially for those “with a heavy mental load” (Pastoor, 2015, p. 250). Could education be seen as encounters between asylum-seekers and educators?

Arendt (1994) encourages us to “reconcile ourselves with reality” (p. 307) and “try to be at home in the world” (p. 308). She believes reality emerges through encounters with others (Morgan, 2016, p. 174) interprets Arendt’s view as encounters with others not only constituting reality but also enabling political engagement and shared space renewal. These encounters reveal differences, making educators aware of challenges and the potential of differences to unite or divide us.

A pedagogical encounter, as Bollnow terms it (Friesen and Koerrenz, 2017), exists between another’s crisis and their potential to change. This challenging moment allows adults to be interrupted or questioned, not about recognition, but about passive listening to the child’s address. A blind spot may obscure the vision of the asylum-seeking child in front of me due to cultural and social experiences. However, one might look again at the blind spot, creating an “opening, a possibility” for a gaze (Nancy, 1991, p. 13). This does not guarantee finding anything but offers the opportunity to see and to have a dialog

with the other. Going beyond pre-planned ideas in class and therapy sessions may open a new perspective. As caregivers for asylum seekers, it may be the only chance for the child to meet someone who sees them beyond their status.

## Author contributions

WK: Conceptualization, Writing – original draft.

## Funding

The author(s) declare that no financial support was received for the research, authorship, and/or publication of this article.

## Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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