

SYMPOSIUM ON FRAMING GLOBAL MIGRATION LAW – PART II

HUMAN MOBILITY AND THE LONGUE DURÉE: THE PREHISTORY OF GLOBAL MIGRATION LAW

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Setting the Context

The long history of human migration sets the stage for a probing engagement with current migration law and the challenges of bringing it into alignment with contemporary needs and rights. If very large scale movements of people are a constant element of life on earth, should we reconsider the migration panic that has gripped political leaders and their publics, and should we reassess the responses that are being advanced? Instead of crisis should we be talking of continuum, instead of restrictions on foreigner entry should we be considering support for human ingenuity and opportunity? Despite its scale, should we consider ways to extend to distress-migration the facilitatory infrastructure we routinely apply to business or service related human mobility?

This short contribution advances the proposition that substantial human mobility is both inevitable and desirable and that historical antecedents illustrate the urgency of devising legal frameworks and tools to legitimate these migration strategies, protect those affected by them as movers or receivers, and avert otherwise predictable and massive human suffering.

To be sure, the rate of contemporary forced migration is substantial: [twenty-four people](#) are forced to leave their home every minute.¹ If this displaced population were a nation, it would be the [twenty-first most populous](#) in the world.² The apparently irresolvable nature of the problem, and its ramifications for the established geopolitical order, provoke a continuing and ongoing sense of anxious panic among policy makers and voters alike, across the political spectrum. Many are wondering what will become of the way of life to which majority populations in the migration destination states have become accustomed. Some are asking how to reconcile a commitment to non-discrimination and respect for human dignity with current migration regimes that depend on a sharp dichotomy between those legally, economically, or socially qualified to embark on safe and regular migration and those not so entitled. The historic September 19, 2016 meeting of the UN General Assembly, specially convened for the first time ever to discuss large movements of people, attempted to answer these broad questions.

At their Summit, the assembled UN member states adopted the [New York Declaration](#) for Refugees and Migrants that called for the establishment of two new Global Compacts, one on refugees and the other on migration.³ The Declaration assumes a clear division between refugee and humanitarian protections which demand

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¹ Volker Türk, [Prospects for Responsibility Sharing in the Refugee Context](#), 4 J. MIGRATION & HUM. SEC. 45 (2016).

² UNHCR, [GLOBAL TRENDS: FORCED MIGRATION IN 2015](#) (2016).

³ UN General Assembly, [New York Declaration for Refugees and Migrants](#), UN Doc. A/71/L.1 (Sept. 13, 2016).

shared global responsibility on the one hand (the domain of the 1951 UN Convention on the Status of Refugees, and of Office of the UN High Commissioner for Refugees (UNHCR)), and other forms of migration management directed at nonhumanitarian migration on the other (the domain of a plethora of disjointed and sometimes conflicting instruments, and of the International Organization for Migration, newly embraced by the United Nations). The Declaration commits the international community to agreement on these two comprehensive compacts by 2018, with a view to improving global collaboration for the assistance of humanitarian migrants while instituting other agreed measures that are safe, regular, and legal for regulating all other forms of migration. In the process UN member states are expected to reconcile national self-interest in protecting their borders and addressing their current migration crises with faithful adherence to their ethical commitments to global solidarity. History, and not just recent history but its *longue durée*, provide a critical interpretative context for evaluating the logic underpinning this approach.

The Longue Durée of Human Mobility

Even a brief historical review demonstrates incontestably that neither migration panics nor the imperative of accommodation to large-scale human movement across long distances are new. Factors driving people to leave their familiar surroundings, whether temporarily or permanently, are remarkably constant over centuries, and a range of mechanisms for responding have followed.

[Genetic and archeological scholarship](#) now confirms the legitimacy of the hyperbolic claim by journalists that an “African Eve” was “the mother of all humanity.”⁴ The evidence (genetic, historical, linguistic, and archeological) shows how the movements of early human groups were determined by a division of labor related to the ability to exploit resources useful for human flourishing. In these early stages of human history, the resources in question were related to two large clusters of natural resources, either those generated by water (lakes, rivers, seas, oceans) or by soil. Humans have continued to be responsive to resource availability over the course of history, with additional variables introduced not just by the advent of new technology (for navigating large distances over land or water or transporting provisions) but also by the consequences of power relations and social movements. Whether these factors render particular migration episodes “forced” or “voluntary” is a matter of baseline and frame of reference. What is clear is that migration is a critical device in the toolkit of available strategies for maximizing well-being and opportunity, whether that scarcity is political safety, environmental sustainability, or wealth generating opportunity.

Over time, with the improvement of “water’s edge technology,”⁵ human migration expanded between as well as within continents, leading eventually to settlement across the entire globe. Even sixty thousand years ago, a range of motivations, overlapping and differently combined, propelled these large scale and extensive movements. Though in reality migration very rarely falls squarely within just one “pure” category, these migration modalities provide a relevant backdrop for current discussions about the feasibility and desirability of different forms of migration management and legal architecture.

Historian Patrick Manning points out: “Migration of whole communities was usually a migration of desperation rather than hope Refugees driven by drought or conquest.”⁶ The exodus from Syria, with columns of families pushing wheelchairs, carrying babies, and pulling straggling toddlers, exemplifies this (only those too old or ill are left behind). The same is true for the mass departure of South Sudanese fleeing from their homes both within and [across borders](#).⁷ In these situations, obstacles to mobility—physical or political—abutting as they do the human

⁴ PATRICK MANNING, [MIGRATION IN WORLD HISTORY](#) 19 (2d ed. 2013).

⁵ *Id.* at 33.

⁶ *Id.*

⁷ See [South Sudan Situation: Uganda](#), UNHCR (May 31, 2017).

instinct for survival, create diversions rather than return for those with the strength and ingenuity to carry on. This explains why Greece and Mexico have recently become settlement rather than transit states for migrants blocked from their northerly onward journeys.

Another more proactive mode of migration is colonization, the phenomenon that generated many of the dramatic global inequalities propelling migration today. Past campaigns of colonization, sometimes spanning centuries, have alternated with periods of more limited cross community migration and consolidation. Though the era of new aggressive and pervasive land colonization is now over, political, economic, and cultural colonization persist, as the Palestinians, Uighurs, and Kurds can attest. These forms of “optimistic” migration generate their own forms of distress migration as a consequence.

Neither solely refugee flight nor colonization, though related to and on occasion overlapping with both, is immigration driven by the immigrants’ evaluation of relative disparities in the quality of life expected between source and destination countries or regions. Until restrictive application of the prerogatives of state sovereignty and border control systematically hampered population flows, only natural or political emergencies, including those driven by religious intolerance or racial hatred, interfered with the more or less voluntary ebb and flow of human migratory movements, in multiple directions and to widely different regions. In our time, these disparities have been increasingly consolidated into a sharp a “North-South” dichotomy. In 1995, the average annual per capita Gross National Product of low income countries was US\$380 compared to US\$23,090 in high income countries, stark evidence of what [Anthony Richmond](#) has called a form of “global apartheid.”⁸ Added to these long-term strategies are circular or short-term forms of migration, also a constant over the *longue durée* for the effective realization of time limited human goals.

Over the centuries, the early patterns of human migration—disaster, conquest, commerce, and opportunity fueled—developed further, creating broader and denser connections that built on existing networks. The first millennium AD witnessed the growing popularity of large scale religious pilgrimages (most notably the Hajj from the Seventh Century AD onwards), and of conquest by warriors moving on horseback (including Arabs, Turks, and Mongols) or via sea born vessels (the Viking and Norse invaders most dramatically in Europe, Arabs and Persians in the Far East). To this was added rapidly growing commercial travel along increasingly well-established trade routes over land and sea. Like today, “in selecting among the many paths for their journeys, migrants relied on the communities they encountered at each stage, and on the linkages of their accumulated patterns of commerce and political alliance.”⁹ Human movement brought changes in population composition, the mingling of peoples from different continents, and continual interaction between languages, cultures, and traditions.

As globalization spread across the early modern world, no region remained isolated or intact, no sizeable territory populated by a single unchanging tribe or people. Over four centuries, starting in the mid-Sixteenth Century, somewhere between ten and twenty-eight million Africans were forced into slavery across continents by European, American, and Middle Eastern traders; other forms of forced migration compelled very sizeable populations of indentured laborers from India, China, and elsewhere (including [forcibly exiled convicts](#),¹⁰ and indigent or orphaned children) to work in far flung places, from the railways in Uganda to the sugar plantations in the Caribbean—exploitation-fuelled migration (what we now call trafficking) on a massive scale. At the same time, and rapidly escalating from the mid-Nineteenth Century until the advent of fascism in Europe, millions chose to leave home to improve their quality of life and future prospects. This dramatic mobility spanned the globe. Massive human migration—the dramatic Nineteenth Century rate increasing even further in the

⁸ ANTHONY H. RICHMOND, [GLOBAL APARTHEID: REFUGEES, RACISM AND THE NEW WORLD ORDER](#) (1994).

⁹ MANNING, [supra note 4](#), at 106.

¹⁰ ROBERT HUGHES, [THE FATAL SHORE: THE EPIC OF AUSTRALIA’S FOUNDING](#) (1986).

Twentieth Century—continued early patterns of movement across communities, fueled by disaster (natural or human related), or by the quest for opportunity, whether accompanied by permanent resettlement or more short-term and circular migration.

As large population movements of community members occurred, so new diasporas were generated spanning both space and time. Migration, by vastly increasing the connections and cohabitations of different groups over centuries of movement and interchange, thus contributed to the exponential multiplication of identities and affiliations. But migration also, eventually, contributed, along with many other factors, to the pressures to constitute nations and within them nationals with a distinct identity determined by that nationhood. These developments, by the mid-Nineteenth Century, were also associated with the development of a notion of “race” associated with racism and a hierarchical ranking of races. Groups long subjected to discrimination on the basis of their skin color or religion, such as the Roma and the Jews, became increasingly stigmatized as members of inferior or degenerate races.

By the end of the Nineteenth Century and the beginning of the Twentieth, accelerating formation of nation states combined with proliferation of eugenicist notions of racial superiority and inferiority to generate aggressive forms of nationalism. Under nation-state regimes, and with, by the 1880s, the introduction of citizenship and passport legislation, entry regulations became far more restrictive. To belong, migrants and resident minorities had to change cultures, and surrender aspects of their premigration ways of life in order to assimilate. As these changes took shape so too did the antecedents to the harsh forms of immigration control in force today.

The Normalcy of Crisis in Recent Migration History

Few people living today have direct recollection of the massive population movements of the early- and mid-Twentieth Century—the 1940s alone gave rise to three huge waves of forced migration: the forcible displacement of seven to nine million Europeans by the Nazis in the early 1940s, of seven-hundred thousand (or approximately 85 percent) of the Palestinian Arab population by occupiers and settlers in modern Israel in the late 1940s, and of up to fourteen million people by the Partition of British India and the creation of independent India and Pakistan. Many do however recall more recent massive displacements of people, displacements which also place the current migration and refugee “crisis” in perspective.

Just four decades ago, during the 1970s, extremely large scale population displacements occurred in several regions across the globe. A dramatic instance was the early 1970s displacement of roughly ten million people as a result of the civil war in Pakistan, a conflict that eventually gave birth to Bangladesh. Nation birth is always accompanied by displacement and often by the traumatic generation of refugee flows and this case proved no exception. Between April and December 1971 approximately [one-hundred thousand people per day](#) fled into India, leading India to construct (with help from UNHCR and the International Committee of the Red Cross) 330 refugee camps.¹¹ Approximately 6.8 million refugees lived in those camps and another three million were accommodated by Indian host families across the country. All refugees were registered by the Indian authorities as they crossed the border, and were given “an entry document, a special food ration for their inland journey and anti-cholera and smallpox injections.”¹² The scale of this displacement and its impact on one country alone makes current European and North American migration panics seem exaggerated at best.

Shortly thereafter, in the mid-1970s, upheavals in South East Asia following the end of the Cold War fuelled the Vietnam war and the establishment of communist regimes led to refugee movements of over three million people fleeing Laos, Cambodia, and Vietnam. Approximately eight-hundred thousand so-called boat people fled to

¹¹ UNHCR, [STATE OF THE WORLD'S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION](#) 61 (2000).

¹² *Id.* at 66.

Malaysia, Indonesia, Thailand, Hong Kong, and elsewhere in the region; an estimated [four-hundred thousand perished](#) during their journeys.¹³ Massive continuing outpourings of refugees from Vietnam to other Southeast Asian countries led the five member states of the Association of Southeast Asian Nations to threaten border closure and insist that Vietnam prevent out-migration. Neither strategy—border closure or blocking exit—worked, a forerunner of future repeated failures on both counts. Eventually the UN Secretary General was able to broker a deal where Vietnam blocked “illegal” or unauthorized exits and instead undertook to promote forms of orderly departure. Simultaneously, third countries agreed to accept a greater shared responsibility for the desperate forced migrants pouring out of their countries by significantly increasing their refugee resettlement rates. By 1979, Indonesia and the Philippines were accepting twenty-five thousand refugee resettlements per month and, further afield, Western countries including the United States, Australia, France, and Canada, accepted well over half a million refugees between 1979 and 1982.¹⁴

By the late-1980s however, there was still no end in sight to the exodus of Vietnamese refugees. But attitudes towards refugee resettlement in the region were changing as governments, fueled by domestic pressure and the absence of workable international agreements, demonstrated that they were no longer amenable to the sustained responsibility sharing of a decade earlier. By 1987 Thailand began intercepting and refouling Vietnamese “boat people” and Western countries similarly classified fleeing Vietnamese as “economic migrants” rather than bona fide refugees. This was the precipitating context leading to the Comprehensive Plan of Action, introduced in 1989 to encourage repatriation of Vietnamese and reduce resettlement numbers for the benefit of Western countries. But refugee flight from the communist regimes in Southeast Asia continued nonetheless, compelling new collaborative measures. Eventually the Vietnamese authorities agreed to establish an Orderly Departure Program, protecting those leaving from perilous and undercover sea journeys and restoring more regular asylum procedures. The United States eventually resettled one million Vietnamese refugees.

Finally, yet another massive population displacement was precipitated at the end of the 1970s, the cataclysmic disruption of Afghanistan first fueled by the Soviet Cold War invasion, but exacerbated by the rise of the Taliban, the U.S. invasion following the World Trade Center bombings of September 2001, and catastrophic environmental disaster fuelled by drought. These factors led to unimaginable devastation and disruption, including the flight of nearly one third of the country’s twenty-six million citizens. By the beginning of this century over eight million people had fled Afghanistan, the vast majority hosted in just two remarkably hospitable neighboring countries, Pakistan and Iran.

Despite some cessations of hostilities and refugee returns, by 2013 over [seven million Afghan refugees](#) reportedly remain displaced outside their country.¹⁵ Afghans are still among the most frequent asylum applicants in the European Union and among desperate residents in harsh settings such as the closed camps of Lesbos and the heavily policed sites in Northern France where distress migrants congregate in search of a safer and better life. But persistent discrimination and harassment, particularly in long standing sites of refuge in the now weary and increasingly intolerant neighboring countries, are forcing many—an estimated 1.5 million according to UNHCR—to [return to their war-torn country](#), including whole generations brought up in exile.¹⁶ The devastating impact of prolonged conflict and a failure to systematically address its human impact will scar Afghan generations to come. It sets a bleak precedent for the possible outcome of the Syrian civil war on both country, surrounding area and population.

¹³ Joshua Lipps, [Vietnam’s Boat People Mark Anniversary with Return to Refugee Camps](#), RADIO FREE ASIA (Sept. 4, 2015).

¹⁴ UNHCR, [supra note 11](#), at 86.

¹⁵ [More than seven million refugees displaced in 2012 – UN](#), BBC NEWS (June 19, 2013).

¹⁶ Rod Nordland, [Afghanistan Itself Is Now Taking in the Most Afghan Refugees](#), N.Y. TIMES (Nov. 4, 2016).

Migration History Lessons

Large-scale migration has a long history. The recurrence of devastating loss of life and human suffering, as a result of failures to actively protect vulnerable populations and associated vigorous measures to restrict migration, stand out as a takeaway from this essay's short chronicle of historical migration. So does the pervasive human instinct to craft strategies for survival and self-betterment in the face of adversity or opportunity, strategies that have encompassed very large scale migration over vast distances. This long history dwarfs our current "crisis," refuting the panic that distorts today's public discourse and political response. The often perverse impact of migration containment strategies and the multiple spillovers they have generated illustrate the complexity of the migration management project, and the stakes involved in rigidly applying dichotomous or other simplifying categories to vulnerable populations on the move. The boundaries between despair filled and hope fueled migration are elusive and changing, and not a sound basis for categorizing protective need or prospective human potential. Global migration demands scaled responses, not binary ones. If the two new Global Compacts build on some of the lessons from this tortuous past history of migration to put human mobility at the service of reducing global inequality and promoting human opportunity and invention, they will succeed—because they will curb the main harms that flow from current migration irregularities.