

INTERNATIONAL MIGRATION AS ABSOLUTE NATURAL LAW: AN INQUIRY INTO INTERNATIONAL MIGRATION FROM THE PERSPECTIVE OF LEGAL PHILOSOPHY

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This paper investigates to what extent international migration law is coherent with the concept of migration as a natural human right. Based on the assumption that migration is an inherently human behavior, beneficial to humankind, and therefore natural law, an analysis of the most prominent sources of international migration law is undertaken. The result of the analysis shows that modern international migration law is largely in line with the concept of natural law, and that the criminalization of migration happens on the domestic level, where economic and populist motivations inform policy makers and shape the law.

If there is a concept in political discourse that lacks any negative connotations, it must be freedom.¹ -Sergei Prozorov

International migration represents a broad, multidisciplinary field. To date, an equally broad body of literature on international migration has been produced. International migration mainly entails at least four disciplines: political science, law (domestic and international), economics, and sociology. The political science literature concentrates on the social and political implications of migration in the sending and receiving country. It also takes the approach of defining race, gender, and global wealth disparity as independent variables and points out future challenges for policy makers. The law literature concentrates on issues of the legal status of persons, sovereignty, criminal law, and human rights. Economists have produced considerable migration-related literature informed by research on

1 Sergei Prozorov, *Foucault, Freedom and Sovereignty* (Hampshire: Ashgate Publishing, Ltd., 2013), 1.

international labor markets, international political economy, international trade, and globalization. The underlying assumption of this paper is that migration is an inherently human behavior and that a criminalization thereof, through laws both domestic and international, that impede naturally practiced human mobility, will remain unobserved to some degree.

Therefore, this research paper seeks to investigate the main sources of international migration law and to determine to what extent these conventions on dealing with migration are in line with the notion of migration as a natural human right. With that aim, first an approach of legal philosophy on natural human behavior and absolute natural law will be taken. Section three, then, provides a review of the literature on international migration. Section four will evaluate whether the existing practices of dealing with migration in the political and legal sphere are reconcilable with the natural law approach described in section two. Based on the findings of this evaluation of existing domestic and international legal and policy practices vis-à-vis a law-philosophical derived natural right approach, this paper seeks to promote further discussion and research on the topic in both academia and the policy sphere.

Hypothesis and Methodology

*The discovery of nature or of the fundamental distinction between nature and convention is the necessary condition for the emergence of the idea of natural right.*² -Leo Strauss

This section seeks to conceptualize migration as natural human behavior that is beneficial to humankind. Based on this understanding, this section seeks to justify the assumption that migration therefore represents an action that qualifies as a natural right and falls under the ambit of “absolute natural law.”³ The importance of defining what is “right by nature” vis-à-vis what is right by convention, i.e. positive law, is summarized well by Leo Strauss:

2 Leo Strauss, *Natural Right and History* (Chicago and London: The University of Chicago Press, 1953), 93.

3 Helen Silving, *The Twilight Zone of Positive and Natural Law*, *California Law Review* 484 (1955): 484.

[T]he need for natural right is as evident today as it has been for centuries and even millennia. To reject natural right is tantamount to saying that all right is positive right, and this means that what is right is determined exclusively by the legislators and the courts of the various countries.⁴

The paper takes a legal-philosophical approach; it seeks to postulate a philosophical norm that is assumed to be able to inform law. *Philosophy*, literally *love of wisdom*, is essentially “the quest for the ‘principles’ of all things, and this means primarily the quest for the ‘beginnings’ of all things or for the ‘first things.’”⁵ In this manner, it shall first be investigated to what extent migration is one of these “first things,” i.e. a principle evident since the beginnings of human existence. Indeed the literature suggests that humans did not only migrate from the very beginning, but that in fact migration predates humans:

It is safe to assume that when our ancestors first became fully human they were already migratory, moving about in pursuit of big game. The rapidity with which hunting bands occupied all the continents (except Antarctica) in about 50,000 years attested this propensity. No dominant species had ever spread so far so fast before. Our ancestors broke through climatic and geographical barriers with comparative ease because the invention of clothes and housing allowed them to sustain a tropical microclimate next to their almost hairless skins, no matter what conditions prevailed in the environment at large.⁶

The major motivation for our ancestors, it appears, was the search for food, or survival in the wider sense. Migration from tropical Africa into subtropical and temperate Eurasia was motivated by the search for new hunting grounds, while population growth was limited ca. 8,000 B.C. by a general scarcity of hunting grounds, when “[i]ntelligent humans responded by intensifying their food search; and in many places the possibility of expanding natural populations of edible plants was systemically explored.”⁷ Post-hunting

4 Strauss, *Natural Right*, 2.

5 *Ibid.*, 82.

6 William H. McNeill, “Human Migration in Historical Perspective,” *Population and Development Review* 10 (1984): 1.

7 *Ibid.*

humans could be divided into sedentary agricultural populations⁸ and, dating from ca. 3,000 B.C., nomadic cultures whose *modus vivendi* was again migratory in nature.

The advent of seafaring and nomadic populations guaranteed a mobile element among the different emerging civilizations. This increased mobility led to “important innovations [which] could and did spread very widely and rapidly whenever the superiority of the new was clearly apparent.”⁹ Hence, human migration is not only an essential part of human nature (it even predates humans), but that migration also substantially contributed to the cultural and technological development of humankind. Going back to the definition of natural right as “what is right by nature,” migration again qualifies; migration turns out to be both natural for, and beneficial to, the human race.

Having evinced human migration as a natural behavior and a natural right, it can be inferred that this human behavior and right should not be limited or sanctioned by conventions. In other words, any positive law that directly or indirectly criminalizes or regulates migration in a manner inhibitive or discriminatory to all or parts of the human population qualifies as a violation of this natural right.

Literature Review

The following section will introduce the phenomenon of migration in existing research in the fields of politics and economics. It will also examine the existing legal sources of international law to determine whether the law actually *does justice* to this notion of natural right or whether it, on the contrary, criminalizes international migration.

As shown above, migration is an inherently human behavior, one that is interwoven with the existence of humankind to an extent that covering every aspect of it clearly transcends the scope of this paper. However, with regard to migration and criminalization thereof, the following subsections will investigate two areas that prominently inform migration law (including criminal law), namely the economic and political sphere, as well as international migration law itself.

8 Early agriculture was still partly migratory, which resulted in travel of not only humans, but also wheat and barley across Europe within only 5,000 years. See McNeill, “Human Migration,” 2.

9 McNeill, “Human Migration,” 2.

The Political Economy of International Migration

International migration from a macroeconomic perspective largely represents one aspect of the global labor market.¹⁰ Thereby migration to some extent facilitates an opportunity for suppliers and demanders of labor to meet in marketplaces all over the world. Generally speaking, international migration can be divided into two main areas, namely legal and illegal migration.¹¹ Both areas, legal and illegal,¹² have developed into extensive networks of industries and economic agents that together facilitate the “migration business.”

Legal migration, for instance, is often welcomed and encouraged among developed nations, since both nations may expect benefits through an exchange of skilled labor, which serves to explain, for instance, the increasing number of flight connections around the globe.¹³ A prominent example of a perfectly legitimate *migration business* is corporate expatriation, which “involves the international movement of professional, managerial and technical staff between company locations world-wide, aided by a set of legal, relocation, counseling and advice institutions.”¹⁴

Illegal migration, conversely, represents an equally well-established business niche. This paper will later address the problem and controversy of the criminalization of migration, but little controversy exists over the illegitimacy of trafficking, which is the business model behind illegal migration. Comparisons with the slave trade in the nineteenth century have been made,¹⁵ which frame the practice as “one of the greatest evils facing the world today.”¹⁶

In reality, however, most illegitimate migration and cases of trafficking are comprised of both legal, or documented, and illegal, or undocumented, passages. For instance, most women who are victims of the illegal sex trade,

10 Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, and J. Edward Taylor, “Theories of International Migration: A Review and Appraisal,” *Population and Development Review* 19 (1993): 432 f.

11 John Salt and Jeremy Stein, “Migration as a Business: The Case of Trafficking,” *International Migration* 35, no. 4 (1997): 469.

12 An assessment of the legality of migration will be provided later. For now, the perspective of the reviewed political economic literature is assumed.

13 Douglas S. Massey, “International Migration at the Dawn of the Twenty-First Century: The Role of the State,” *Population and Development Review* 25, no. 2 (1999): 308 f.

14 Salt and Stein, “Migration,” 469.

15 “Evil of the New Slave Trade,” *The Observer*, January 12, 1997.

16 Salt and Stein, “Migration,” 470.

i.e. trafficking,¹⁷ enter the country of destination legally.¹⁸

The motivation for the majority of modern migration in a globalized world can be explained by neoclassical economics—individuals seeking to assure their economic well-being by offering labor on an international market. In the neoclassical economics approach, traditionally the sending country profits most from this movement, as migrants seek to sell their labor in economies more advanced than their own in order to profit from international wage differentials.¹⁹ But higher incomes are not the only economic motivation behind migration. Another motivation, proposed by new economics of labor migration (NELM), is a risk management strategy of sorts, which households in sending countries apply to overcome market failures at home:

In developing countries, markets (or government substitutes) for insurance, futures, capital, credit, and retirement are rudimentary or nonexistent, and households turn to international migration to compensate for these deficits. By sending members abroad to work, households diversify their labor portfolios to control risks stemming from unemployment, crop failures, or commodity price fluctuations.²⁰

In order to understand immigration policy, however, one has to look at the receiving country and investigate which groups in the receiving country perceive migrants positively or negatively. There can basically be three interest groups identified: workers, capitalists and landowners. Workers naturally want high wages and thus politically organize into interest groups that pressure politicians to limit the supply of labor. Capitalists favor an

17 The Victims of Trafficking and Violence Protection Act (TVPA) defines “severe forms of trafficking” as:

- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See Office of the Under Secretary of State for Democracy and Global Affairs and Bureau of Public Affairs, *Trafficking in Persons Report* (Washington: U.S. Department of State, 2008).

18 Salt and Stein, 470. For more details and numbers on legitimate and illegitimate migration, see Hania Zlotnik, “Trends of International Migration since 1965: What Existing Data Reveal,” *International Migration* 37 (1999) and Massey, “Theories of International Migration,” 431-466.

19 Massey, “International Migration,” 304 f.

20 *Ibid.*, 305.

expansion of the labor supply to be able to reduce wages and keep labor markets more flexible. Capitalists are joined by landowners in political engagement to pressure politicians for more relaxed enforcement of immigration restrictions as they hope for increasing rents.²¹ In fact, there exists a negative correlation between economic growth and the number of deportations. “As a country’s economy goes through the business cycle, its policy mix shifts, with economic downturns giving greater leverage to workers and economic expansions benefiting capitalists and landowners.”²²

In summary, international migration today has to be understood as but one aspect of an international labor market, as well as but one aspect of a globalized world as a whole. International migration is comprised of a legal, or documented, and illegal, or undocumented, sphere, and often an individual’s migration is at times perfectly legal and at other times not. In large part, the sending country benefits more from migration according to both the neoclassical economy model and the NELM model. With regard to migration policy in the receiving country, which will be explained in more detail in the next section, migration benefits certain groups and discriminates against others.

Politics and the Criminalization of International Migration

The above section introduced the political economy of migration. Migration represents an issue that may be welcomed by some and feared by others within the same country. These often emotionally charged debates eventually inform the policy-making process, which, as will be shown, often results in penalization and over-criminalization. The underlying question to be answered is why and to what extent nations criminalize migration through law, both domestic and international.

Recent research on the correlation of global mobility and penal order from Europe²³ shows that increasing criminalization, and therefore increased incarceration of foreigners, is in first instance rooted in increased global mobility and in the rise of state coercion. However, as the reviewed literature unanimously suggests, the agenda of applying penal law to respond to increased immigration is anything but an obvious one and has to

21 Ibid., 307.

22 Ibid.

23 Vanessa Barker, “Global Mobility and Penal Order: Criminalizing Migration, a View from Europe,” *Sociology Compass* 6, no. 2 (2012): 113-121.

be seen as a choice, not a necessity, made by policy and lawmakers. Like in many other areas of the polity, an over-criminalization of migration is taking place where the degree of penalty is by no means related to the damage, if there is any at all, caused to society. As Gene Healy explains:

[I]t is the troubling phenomenon of continually adding new crimes or more severe punishments to the penal code, criminalizing, recriminalizing, and overcriminalizing all forms of conduct, much of it innocuous, to the point of erasing the line between tolerable and unacceptable behavior.²⁴

Vanessa Barker from Stockholm University identifies four main approaches that seek to explain this increasing reliance on criminalization and penalization of migration by the policy community:

- (1) Globalization of punitiveness with a focus on how existential insecurity drives demands for harsh and broad penal sanctioning;
- (2) Political economy with its emphasis on how the structure of the labor market creates vulnerable and criminalized populations;
- (3) Enemy penology with its focus on how racism underpins the criminalization of foreigners;
- (4) State governance with its emphasis on how state sovereignty is being reaffirmed and citizenship is being reconfigured by the criminalization and exclusion of others.²⁵

Miller²⁶ and Chacón²⁷ take a similar approach in concluding that governments have increasingly shifted from handling migration in the civil sphere to regulating migration through the criminal (domestic) justice system. The reason for this may be found in public sentiment, evidenced in points (1) and (3). Immigration is repeatedly among the top three issues identified as

24 Gene Healy, *Go Directly to Jail: The Criminalization of Almost Everything* (Washington, D.C.: Cato Institute, 2004), 1.

25 Barker, "Global Mobility," 114.

26 Teresa A. Miller, "A New Look at Neo-Liberal Economic Policies and the Criminalization of Undocumented Migration," *Southern Methodist University Law Review* 61 (2008): 171-186.

27 Jennifer M. Chacón, *Managing Migration through Crime*, Columbia Law Review Sidebar 109 (2009): 135-148.

the most important problems facing various countries. In the United States for instance, public opinion on undocumented migration has drastically worsened in the face of so-called 'illegal aliens.' Illegal immigrants in the US are linked to all kinds of societal woes, such as higher taxes, urban street gangs, terrorism, a weak economy, and the lack of rule of law altogether. Some 70 percent of US citizens are reported to believe that the undocumented population weakens the economy through use of public services.²⁸

With regard to points (2) and (4), one may further elaborate that politicians in developed countries, influenced by the pressures from the populace to control immigration described above, use rather symbolic policy instruments to "create an appearance of control."²⁹ Whether policies such as vigorous border enforcement, bureaucratic harassment of aliens, or restriction of immigrants' access to social services are effective at all becomes secondary to the genuine political purpose of producing tangible and concrete "action" to be seen by voters. "Forceful restrictive actions enable otherwise encumbered public officials to appear decisive, tough, and engaged in combating the rising tide of immigration."³⁰ Another somewhat narcissistic end that harsh immigration laws serve is that of exposing the migrant as someone "begging for access," thus being prepared to undergo hardships and even break the law to get to that particular country. "These proceedings make possible the exposé of the receiving country as desirable, powerful and prosperous; and give the state the opportunity to display the last bastion of sovereign powers—the power to grant entry, and to punish and expel those who are not allowed in."³¹

One can conclude that criminalization of migration, a much discussed topic in recent literature, is a policy choice by governments aiming at pacifying parts of the populace. It is also a means to display decisiveness in the face of what is perceived to be a 'crisis,' and furthermore, gives the populace of the respective nation the corroboration of living in a desirable place.

28 Miller, "Neo-Liberal," 172.

29 Massey, "International Migration," 314.

30 Ibid.

31 Ana Aliverti, "Making People Criminal: The Role of the Criminal Law in Immigration Enforcement," *Theoretical Criminology* (2012): 11.

International Legal Sources on International Migration

*The fundamental question [which international, undocumented migration] poses concerns the ability of the state to control who has access to its territory and identity.*³² -John Salt and Jeremy Stein

Migration, as it has been shown, is a natural human behavior that predates humans. Logically then, migration predates the arrival of nation states and international law in the seventeenth century. The above section sheds light on some of the domestic considerations that policy makers have taken in the face of immigration, including criminalization of immigration and therefore making immigrants “illegals” as a measure of controlling migration. In large part, domestic laws tend to criminalize rather than protect migrants with the aim to preserve domestic values, or to give in to domestic pressure groups that are concerned about decreasing wages, etc. Migration, however, is also subject to the international sphere. This section will therefore look at sources of international law that focus on migration between states and investigate to what extent these laws meet the standards of absolute natural law as described in section two.

The Universal Declaration of Human Rights, to begin with, comprises several articles that are applicable to the status and treatment of refugees. Article 2 defines the universality and inclusiveness of the declaration. It is noteworthy that the Article clearly states that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs.” This statement is of special significance for refugees who often originate from failed states, contested territory, and/or do not have documents (passport/visa) supposedly necessary for their passage. Articles 5 and 9 frame mistreatment (torture, punishment) and detention as illegal. Article 13 can be called the central manifestation of the absolute natural law of migration defined in section two, as it states that everyone may move freely both within any country and between any country. Articles 14 and 15 govern the rights to enjoy asylum (from persecution), as well as to have and change one’s nationality.

The Convention Relative to the Protection of Civilian Persons in Time of War³³ furthermore governs the duties that participants of an international

³² Salt and Stein, “Migrant,” 469.

³³ “Convention Relative to the Protection of Civilian Persons in Time of War,” August 12, 1949, *United Nations Treaty Series*, 75 U.N.T.S 287.

conflict have with regard to any civilian (including members of armed forces who have laid down their arms) “caught in-between.” With regard to the right of movement of people, the convention dictates in Article 26 that family members dispersed owing to the conflict should be able to meet. Article 35 rules that all civilians are entitled to leave the territory at the outset and during conflict. Article 49 states that forcible transfers or deportations are prohibited unless the guarantee of security of the population demands evacuation.

The International Covenant on Civil and Political Rights³⁴ adds to the Universal Declaration of Human Rights the right of free choice of residence. However, in paragraph 3, restrictions are made to these rights, which enable states to deny the right of free movement if they “are provided by law, necessary to protect national security, public order... public health or morals or the rights and freedoms of others.” Article 13 similarly states that individuals may be expelled from a country if “in accordance with law,” unless “reasons of national security otherwise require.” Since these restrictions and reasons of national security are not and cannot be further defined, it is obvious that states are given much leeway of interpretation with regard to their domestic law.

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families³⁵ again builds on the Universal Declaration of Human Rights and adds to it, in the sense that it defines the term migrant worker and family, and that it explicitly grants human rights to migrant workers and their families with regard to the specific situation of migrant workers. It has to be noted that the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families is signed by a relatively small number of non-OECD states. Virtually every article of the convention is concerned with international migration, since it has as its subject migrant workers and their rights in their native and foreign countries. Articles with special significance to migration, legal status, and movement are Article 8 (free movement of migrant workers and their families provided public order is not endangered), Article 24 (equal recognition before the law of all migrant workers and their families everywhere), Article 29 (rights to name, registration, and nationality of children of migrant workers), and Article 55 (employed migrant workers

34 “International Covenant on Civil and Political Rights,” December 16, 1966, 999 U.N.T.S. 171.

35 “International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families,” December 18, 1990, 2220 U.N.T.S. 93.

have right to equal treatment with employed nationals).

The Convention Relating to the State of Refugees³⁶ does, after defining what constitutes a refugee, describe rights and duties of refugees, such as the duty to conform to the country's laws and regulations (Article 2) or the right to treatment at least as favorable as that is accorded to nationals. With regard to the free movement of people, the following articles are significant: Article 26 (right to free choice of residence and movement to all refugees legally in a territory), Article 27 (provision of identification papers to refugees who do not possess valid travel documents), Article 28 (issuance of travel documents for international travels), and Article 34 (if possible facilitate assimilation and naturalization processes for refugees).

There obviously do exist more legal sources governing international migration. The above compiled excerpts seek to give an overview of the existing international laws.³⁷ Not included in the above overview are legal sources that specify only certain areas of the globe and are not generalizable to other regions, such as legal sources from the Council of Europe instruments, the European Union provisions governing the freedom of movement for citizens and their dependents, the Schengen Agreement, the European Union's asylum policy, and other treaties that only govern regional migration like the Inter-American Convention on Territorial Asylum or the Treaty Establishing the Economic Community of West African States.

The sources of international law are largely in line with the apprehension of migration as a natural right, as defined in section two, which guarantees free movement to anyone, anywhere, with the same rights and duties as the resident population. Throughout the second half of the twentieth century, under the guidance of and through the United Nations, a growing international human rights regime has been established. The growing body of law texts, however, does not represent an increase of rights for migrating people; indeed, the Universal Declaration of Human Rights already provided the widest set of rights. Additional legal sources either specified situations of application or made reservations of the law with regard to domestic law, national security, public order, and health, or the freedom of others.

36 "Convention Relating to the Status of Refugees," July 28, 1951, 189 U.N.T.S. 150.

37 For an inclusive collection of all legal sources that prescribe international migration law, Richard Plendner, who compiled all basic documents on internal migration law, is an excellent source. See Richard Plendner, *Basic Documents on International Migration Law* (Leiden: Martinus Nijhoff Publishers, 2007).

Absolute Natural Law and International Law: An Evaluation

The difference between citizens and non-citizens is not natural but conventional. Therefore, all citizens are, in fact, “made” and not “born.” It is convention that arbitrarily cuts off one segment of the human race and sets it off against the rest.³⁸ -Leo Strauss

As the above literature review indicates, today’s international migration has to be understood in the context of a globalized economy, where goods and services, thanks to technological advances, have become highly mobile and flexible. The principle of migration as a natural human behavior applies, whether humans sought food and new hunting grounds a few thousand years ago, or whether humans seek higher wages, economic and political stability, or security, including food security. The literature makes a distinction between legal and illegal, or documented and undocumented, migration. This distinction, however, appears arbitrary to the legal philosopher, as Leo Strauss aptly points out:

Law reveals itself as something self-contradictory. On the one hand, it claims to be something essentially good or noble: it is the law that saves the cities and everything else. On the other hand, the law presents itself as the common opinion or decision of the city, i.e., of the multitude of citizens. As such, it is by no means essentially good or noble. It may very well be the work of folly and baseness. There is certainly no reason to assume that the makers of laws are as a rule wiser than “you and I”; why, then, should “you and I” submit to their decision? The mere fact that the same laws which were solemnly enacted by the city are repealed by the same city with equal solemnity would seem to show the doubtful character of the wisdom that went into their making.³⁹

The scope of this paper forbids a detailed investigation into the domestic criminal law of a representative number of countries, but as section 3.2 shows, many states have domestic incentives, both economic and political, not only to control, but also to decrease immigration. While the political will to either increase or decrease migration is essentially a matter of policy, the

38 Strauss, *Natural Right*, 104.

39 *Ibid.*, 101.

practice of criminalizing migration as a legal answer to a political problem is questionable. The problem lies in the lack of criminal intent, or lack of *harm* or *offense*, which is proposed by Schonschek,⁴⁰ among others, as necessary to justify criminalization and use of the penal code.⁴¹

The practice of criminalizing immigration, or “crimmigration,”⁴² then is not only contradictory to absolute natural law, but also contorts domestic criminal law in the way that it does not itself constitute a criminal offense, which would justify the hindrance of movement, let alone incarceration of migrating people, be they foreigners or not. Based on the analysis in section 3.3, it becomes clear that the sources of international law concerning international migration, most notably the Convention Relating to the Status of Refugees, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Convention Relative to the Protection of Civilian Persons in Time of War, do in large part fall in line with the notion of migration as natural human behavior and therefore absolute natural law. These legal sources do prescribe a set of rights to people regardless of their origin, ethnically and nationally, wherever they are located. The foundation on which most of international migration law builds is Article 13 of the Universal Declaration of Human Rights, which, without ambiguity, states that everyone has the right to freedom of movement within and across borders. Further, basic principles are proposed by Article 9, which rules arbitrary arrest, detention, or exile illegal, and Article 14, which grants everyone the right to seek asylum from political persecution. The majority of ensuing legal sources on international migration law constitute either an amendment, specification, or reservation of these basic principles.

One can conclude that today’s international migration law is essentially congruent with the natural law of migration. Criminalization of migration happens largely on the domestic level. The main flaw of international law is that later amendments and specifications⁴³ include vaguely defined reservations that give states the freedom to make exceptions to international

40 Jonathan Schonschek, *On Criminalization: an Essay in the Philosophy of Criminal Law* (New York: Springer Science & Business Media, 1994), 64.

41 Healy, *Go Directly*, 6ff.

42 The term “crimmigration,” a coinage of the words criminalization of migration, represents an increased interest and research of the phenomenon. See Juliet P. Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, *American University Law Review* 56 (2006): 367.

43 For example, post-1948 *Universal Declaration of Human Rights*.

law if, for instance, national security or public order is endangered.

Conclusion

Upon the above analysis, several conclusions can be drawn. Most notable is the finding that, with regard to migration, modern international law does represent the needs proposed by natural law. Today, migration is as much a measure to guarantee the survival of the human race as it was several thousand years ago. As history shows, migration is not only natural for but beneficial to the human race, as it spreads knowledge and innovation around the globe. Arguably this role is decreased in times of digital communication, but nonetheless the mobility of people on the planet is prevalent. Proof of this is the increasing number of flight connections all over the globe. To limit migration, an inherently natural behavior, thus constitutes only violation of an absolute natural law, it also discriminates against humankind.

Modern migration has evolved from the sheer expansion of hunting grounds to households' strategies of diversifying income portfolios and countering the economic and political shortcomings of their home countries. Today's migration literature understands migration as a natural function in a globalized labor market, congruent with the principle of natural right and human behavior.

The problem with today's migration flows is that some of them are being criminalized while others are not. This makes documented passage possible for some and forces others to resort to undocumented passage. This discrimination is often based merely on the country of origin or the passport a person holds. While international migration law is largely in line with the notion of migration as a natural right, it is apparent that on the domestic level migration is often regulated through the justice system instead of being handled in the civil sphere. In order to understand this arguable "malpractice" of managing migration through criminalization, one has to look at different interest groups in the receiving countries. As the working classes, naturally the biggest group in most countries, are interested in high wages, they seek to limit the supply of labor. Policy and lawmakers then respond to this "democratic" pressure and along the way carry out populist political agendas that pacify the masses. Often, immigration policies neither serve the economy nor the people, but merely the politicians in drawing an image of toughness and control. With this background in mind, the majority of domestic immigration policies can be identified as failures.

International migration law, conversely, has been found to correspond with the absolute natural law of migration. The core of the international legal sources with regard to migration is Article 13 of the UN Universal Declaration of Human Rights, as it unambiguously states that everyone has the right to freedom of movement and residence within and beyond the borders of all states. In a way, Article 13 is therefore an adaptation of the absolute natural law of migration to the emergence of nation states, stating clearly that the sovereign borders of nation states may have a multitude of functions, but that keeping people from moving freely is not one of them.

Since 1948, when the Universal Declaration of Human Rights was enacted, plenty of laws concerning international migration have been passed. The large majority of these, however, represent either a specification or reservation of the rights that have been pronounced in 1948. One can assume that both reservations and specifications serve their purpose, but at the same time it has to be noted that more international laws on international migration did not equal more rights for international migrants.

Finally, it is hoped that the above review and analysis may promote further discussion and in-depth analysis on the practices of managing increasing migration flows in our modern world. The migrants from Syria and other Middle Eastern and North African crisis regions are making use of their right to freely move. Any institutionally created obstacle to their passage constitutes a violation of natural and conventional international law. The defiance of this fact and even criminalization of migration has forced Syrian refugees, as undocumented migrants from a war-torn crisis region, onto rubber dinghies by the millions, and into death through drowning by the thousands, where an observation of the law would have made a conventional travel on airplanes and ferries possible for the majority of refugees. With this perspective as a concluding remark, the final hope is that this paper may serve as a primer for further researching and developing the argument of international migration as a human right and natural law, so that it may serve to inform the current debates on the refugee crises around the world. **Y**