

A RIGHT TO MIGRATE? ON THE VIRTUE OF PRODUCTIVE DISHARMONY

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ABSTRACT · In this paper, I will provide an interpretation of Kant's Cosmopolitan Right in light of the current debate on migration in political philosophy. I will argue that his account is in productive disharmony with the current debate that has often been framed as being divided into accounts arguing either for *open* or for *closed borders*. Kant, however, neither argues along the lines of so-called open borders-theorists, nor does he argue in favor of closed borders. His account allows for a high degree of cross-border freedom of movement and provides the argumentative resources for unconditional refugee protection. However, he does not presuppose a right to migrate, as many open-borders theorists would. The disharmony of his arguments with the current debate is, however, a productive one, because taking it into account provides us with new perspectives on migration that go beyond the dichotomy of open and closed borders.

KEYWORDS · Cosmopolitan Right; Cosmopolitan Law; Hospitality; Refugees; Right to Migrate; *Untergang*, *Weltbürgerrecht*.

1. INTRODUCTION

MIGRATION, in many ways, has always been a reality of human life and always a topic of philosophy. Though not at the center of philosophical arguments, immigration, emigration, and their ethical implications are discussed in quite a number of philosophical texts: Plato, for instance, talks about possible reasons for migrating in *Nomoi*, Seneca does so too in *Ad Helviam matrem*. Augustine discusses duties to give refuge and asylum in *De Civitate Dei* and Aquinas is concerned with the question of how one should treat strangers in the *Summa Theologiae*. For early modern and modern contract theorists, emigration and immigration raise a number of difficult theoretical issues concerning the question of who is bound by the social contract – and to what extent. One could go on.

After the so-called refugee crisis in Europe 2015/2016, academic philosophy in Continental Europe (re-)discovered migration and the philosophical questions it raises: For example, questions about rights and duties, about identity and sovereignty. This rediscovery resulted in a number of publications on migration, our duties to refugees and asylum seekers, as well as on the (supposed) right of states to decide who they are going to admit to their territory and on what grounds people can be excluded.¹ This more recent debate on migration triggered by the events in 2015/2016

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¹ See for instance: *Welche und wie viele Flüchtlinge sollen wir aufnehmen? Philosophische Essays*, hrsg. von T. Grundman, A. Stephan, Stuttgart, Reclam, 2016; C. NEUHÄUSER, *Das Recht auf Einwanderung aus moralstrategischer Perspektive. Ein Plädoyer für eine Ethik der Integration*, «Zeitschrift für Praktische Philosophie», II, 2, 2015, pp. 397-408; E. ÖZMEN, *Warum eigentlich Werte? Gedanken zur „Flüchtlingskrise“*, «Zeitschrift für Praktische Philosophie», II, 2, 2015, pp. 349-360; D. DI CESARE, *Stranieri residenti. Una filosofia della migrazione*,