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MIGRATION AND THEORIES OF JUSTICE: A CRITICAL REAPPRAISAL[1]

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Abstract

For decades, the theoretical discussion on justice has been unsuccessfully looking for convincing solutions to the moral problems connected to the persistence of (porous) borders in international politics. These problems are especially striking when one looks at the mismatch between the claims of international migrants and the arguments deployed by several contemporary liberal states in order to justify the rejection of those claims. Critically analysing how the most influential accounts of domestic and global justice deal with the issue of migration, the essay reveals the main weaknesses of the two approaches. It is argued that while theories of justice focusing on domestic justice seem unable to transcend the dichotomous logic of inclusion and exclusion because of their partial and biased interpretation of the phenomenon of migration, theories of global justice offer a multidimensional and well-balanced reading of international migration, but the solutions they propose do not rely on an accurate reading of the impact of global political dynamics on the management of international migration. In order to overcome the weaknesses of both approaches, a new research agenda is needed.

Keywords

Migration, global justice, liberal internationalism, cosmopolitanism.

Resumen

Durante décadas la discusión teórica sobre la justicia ha estado buscando sin éxito soluciones convincentes a los problemas morales relacionados con la persistencia de fronteras (permeables) en la política internacional. Estos problemas son particularmente sorprendentes cuando se observa el desfase entre las reclamaciones de derechos (legales) de los migrantes internacionales y los argumentos esgrimidos por algunos estados liberales contemporáneos para rechazar estas. Analizando de forma crítica cómo las teorías más influyentes de justicia nacional y global afrontan la cuestión de las migraciones, el ensayo destaca los principales puntos débiles de los dos enfoques. Se expone que mientras que las teorías que se concentran en la justicia nacional no parecen ser capaces de trascender la dicotomía lógica inclusión/ exclusión a causa de su interpretación parcial y sesgada del fenómeno de las migraciones, las teorías de justicia global ofrecen una lectura multidimensional y equilibrada de las migraciones internacionales, pero no consiguen proponer soluciones basadas en una lectura adecuada del impacto de las dinámicas de la política global en la gestión local de los migrantes. Para superar las debilidades de las dos visiones es necesario un nuevo programa de investigación.

Palabras clave

Migraciones, justicia global, internacionalismo liberal, cosmopolitismo.

Migration has always been a feature of the life of human communities (Manning, 2013, pp. 1-39; Corti, 2003; Pievani, 2002, pp. 282 ff.); however, only recently it has been conceived as a matter of government, an issue for public policy making. During the last decades, problems related to mass migration phenomena have become more prominent in the political debate as well as in the public discourse of contemporary societies, both in developed and developing countries. Moreover, the need for an effective management of international migration flows led to experiment new forms of cooperation between countries of origin and countries of destination.[2] At the same time, migration has turned into one of the main objects of research for social scientists, who investigate its causes and its effects, focusing not only on the lives of migrants but also on the demographic, cultural, economic and political dynamics of the involved communities.

This essay will carry out a critical analysis of the ongoing discussion on migration in the field of political theory, from the perspective of the theories of justice.[3] After almost fifty years from its start, the theoretical reflection on justice is still struggling with the difficult task of finding convincing solutions to the moral problems connected to the persistence of (porous) borders in international politics as well as to the different and sometimes conflicting interests of the actors involved. Political choices on migration management confront political authorities with nontrivial moral dilemmas, stemming from conflicts to which normative reflections cannot find conclusive answers which can be valid for all contexts. However, the international discussion has contributed to enrich the conceptual framework and to innovate the discursive strategies adopted to address the issue of migration in public debates, shedding light on the political and moral implications of choices that, until recent times, were overshadowed by the inscrutable mechanisms of state sovereignty.

In its first part, the essay will present and discuss the most influential liberal theories focusing on justice/fairness, understood as a virtue of state institutions. These theories present the phenomenon of international migration as a litmus test for the redistributive capacity of liberal societies and as a potential danger for internal cohesion and public order. Because of this partial and biased interpretation, it is argued, liberal theories focusing on domestic justice are unable to transcend the dichotomous logic of inclusion

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2. A recent example is the process of negotiation, drafting and (troubled) ratification of the "Global Compact for Safe, Orderly and Regular Migration", launched in 2016 with the New York Declaration and still ongoing. Although at the Marrakech Intergovernmental Conference held in December 2017 the parties had reached an agreement on the Compact's text, the defection of several governments risks to considerably limit the scope of the document.
3. For a general overview on the start of the debate on social justice, see Campbell (1988), Barry (1991). For an anthological reconstruction focusing especially on global justice, see Pogge and Moellendorf (2001).

and exclusion. In its second part, the essay will analyse the main perspectives on migration formulated within the debate on global justice. Compared to theories of domestic justice, theories of global justice reveal a higher heuristic potential, since they offer a multidimensional and well-balanced reading of international migration and they engage in the search for transformative solutions. However, since they neglect the role of states and the impact of power asymmetries in current processes of migration management, theorists of global justice run the risk of de-responsibilising liberal states. Finally, in the last section, drawing on the main findings of the analysis, some preliminary ideas for a future research agenda will be advanced.

The borders of justice: migration and political liberalism's deadlock

The Rawlsian definition of justice as "the first virtue of social institutions" was the point of departure for the research of "a method for assigning rights and duties within the fundamental institutions of society" and for deciding upon "the appropriate distribution of benefits and obligations of social cooperation" (De Pascale, 2010, pp. 215-220). A particular public conception of social justice – understood as a mutually beneficial system of cooperation – characterises any well-ordered society, pervades its public institutions and is overall accepted by the majority of its citizens. Usually, accounts of social justice emphasise the redistributive aspects of cooperation; nonetheless, they can combine them with discussions on identity recognition and on corrective solutions meant to improve the fairness of redistributive criteria, especially as far as the respect of differences and the progressive reduction of inequalities of opportunities are concerned.[4] Demands of redressing inequalities in the individual endowments of rights, opportunities or resources formulated on the basis of (abstract and universal) principles of justice are always addressed to some public authority, which should have the power and capacity to answer these demands with redistributive policies and to reform the institutions and the laws of the state whenever they do not reflect the principles of justice (Rawls, 1971; O' Neill, 1996). Another feature of just institutions is the capacity to offer acceptable or reasonable justifications to whomever advances legitimate claims on the distribution of the benefits of social cooperation (Rawls 1993b; Forst 2011).

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4. For a classic (redistributive) account of social justice, see Rawls (1971). On the relationship between redistribution and recognition, see Rawls (1999), Fraser and Honneth (2004). Inspiring recent attempts at redefining the redistribution/recognition nexus can be found in Young (2011), Mazzone (2014).

Since the Rawlsian conception of justice – like the majority of alternative conceptions focusing on the *domestic* or national dimension of justice – relies on the assumptions of society as a (relatively cohesive) closed system and of state sovereignty, it is not surprising that the presence of migrants at the borders or within the liberal society generates a theoretical problem. Their very existence shows the fallacy of the premise of a society territorially bounded by borders and reveals the crisis of the Hobbesian conception of sovereignty, which relies on the idea of the State as a circumscribed space (Di Cesare, 2017, pp. 20-32; Gundogdu, 2015). What is surprising is that the Rawlsian reflection on justice within the State, which revolves on the ideas of fairness and redistribution, overlooks the issue of migration and is blind to the challenges that this phenomenon poses to liberal conceptions of the State and of citizenship, even when the theory of justice as fairness is reformulated in the political-constitutional terms of political liberalism.[5] Until they do not take part into social cooperation, migrants cannot benefit from it unless they violate the criterion of reciprocity; however, even when they enter the cooperative scheme, they are left aside the community of citizens towards which state institutions have redistributive and justificatory obligations. In other words, migrants are alien to the contractualist logic on which social cooperation and its political manifestations are grounded (Rawls 1971; 1993). Migrants show the deadlock or short circuit at the heart of liberal citizenship, because of the coexistence of a full citizenship – where there is reciprocity among cooperating individuals/citizens and between them and the State – and an incomplete citizenship, a limbo or grey zone where immigrants/*metics* participate in economic cooperation but cannot fully benefit from it. For the immigrants at the borders or repatriated the situation is even worse: allegedly they are citizens of their state of origin, but they are unable to match their individual participation in any scheme of cooperation with the enjoyment of citizenship rights. From the perspective of the states of destination, the possible solution to this deadlock is the immediate integration of immigrants within the host political community; however, this solution is not only expensive and difficult to implement, but also problematic with regard to the respect of individual autonomy and of cultural diversity, as the discussion on ideas of "automatic citizenship" clearly shows (Carens, 2013, pp. 19-44; De Schutter & Ypi, 2015).

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5. Rawls (1993, p. 136, n. 4) briefly mentions the right to emigration and he postpones the analysis of immigration to a future research: "Of course, immigration is an important question and must be discussed at some stage. I surmise this is best done in discussing the appropriate relations between peoples, or the law of peoples, which I don't consider in these lectures".

The "deafening silence" of normative political theory about migration issues (Bader, 2005, p. 335) ended only during the 1980s, when the "problem of immigration" was tackled within the discussion on liberal citizenship (Walzer, 1983). The phenomenon of migration as well as its implications for liberal politics, which go beyond redistributive effects, are predominantly seen in negative terms: the interaction between individuals and groups belonging to different cultures is understood as a threat to the survival of those cultures and to the functioning of democratic politics. The point of view of the analysis is that of the (prospective) society of destination and the discussion focuses mostly on immigration, while the issue of emigration is generally overlooked.[6] In his account on complex equality and on the model of the spheres of justice – based on the argument that the primary function of the state is not redistribution, but the protection of citizens from the negative effects of dominance and monopoly, i.e. of those processes of concentration of goods and opportunities relevant for different spheres in the hands of one or a few individuals or groups – Michael Walzer maintains that any community's cultural identity has value because it contributes to the development of individuals' personalities and to the overall cultural richness of mankind. From this perspective, the liberal state ought to defend strong and well-defined cultural identities, especially the (national) identity to which belongs the majority of its population, not only for its intrinsic value but also to protect goals such as societal cohesion, stability of democratic institutions and the functioning of the liberal system of welfare (Walzer, 1983, p. 39). Relying on the analogy of political community as an "exclusive club" grounded on membership and on freedom of association (Greblo, 2015, pp. 31-40), Walzer theorises the moral asymmetry between emigration and immigration: he justifies liberal states' actions aimed at controlling and possibly stopping incoming flows of migrants, but he does not consider justifiable the control and stop of outcoming flows. The (individual) right to the freedom of association and the (collective) right to self-determination – two rights which are closely intertwined – ground the possibility of collectively choosing the form and membership of the community, including or excluding new members on the basis of the community's interests, therefore defining selection criteria for immigrants that favour those people who are more likely to be integrated on the basis of cultural affinity with the national community (Wellman, 2008; Scheffler, 2007). So, a democratic policy of migration management originates from the balance of "political choice and moral constraint" (Walzer, 1983, p. 62). While everybody is entitled the right to exit the

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6. See Ypi (2008) for a discussion on the reconciliation of justice and migration.

community of belonging and the limitation of this right can be only exceptional – it is justifiable in cases of supreme emergency for the survival of the state –, nobody has a right to be admitted to another community: (prospective) migrants undergo the decision of the citizens of the state of destination, who can legitimately choose to admit or to refuse immigrants. However, the right to control immigration is not absolute: it can be limited, under the circumstances envisaged by international law, for refugees and asylum seekers. Both cases can justify only exceptional and temporary limitations to the "right of self-determination in the sphere of membership", since the admission of immigrants to the national community – which, according to Walzer, coincides with the granting of full citizenship – requires the approval of the citizens (*ibidem*). Admitting immigrants to the national community is a crucial and democratic choice, because it opens the doors of citizenship to individuals who belong to different societies of origin but commit themselves to fully integrate within the community of destination in order to become citizens with full rights: a democratic state, according to Walzer, cannot be "half-metic, half-citizen" and among its citizens there cannot be "resident aliens", who can enjoy the benefits of social cooperation (citizenship rights) only partially or conditionally (cfr. Benhabib, 1999; Di Cesare, 2017).

While Walzer does not accept any double standard as far as citizenship rights are concerned, other authors seem to be more open to the possibility of offering *variable geometry endowments of rights* to immigrants, on the basis of their particular claims and of the role they play within the cooperative system of the society of destination. For instance, David Miller elaborates on the Rawlsian conceptual framework and argues that the relationship between the citizens of a liberal state and the immigrants are "quasi-contractual": "each side claims certain rights against the other, and acknowledges certain obligations in turn. These rights and obligations are not to be understood exclusively in legal terms. The quasi-contract I am envisaging will have legal components (…) but it will also include normative requirements that cannot sensibly be cast in legal form" (Miller, 2008, p. 371). Following this line of reasoning, Miller distinguishes three different categories of prospective immigrants who seek admission to the territory of a liberal state: refugees; economic migrants (and foreign students); "particularity claimants", who claim admission *within a particular state* as a reward for a certain service or as a compensation for a present or past experience of suffering for which the state of destination is considered, at least partially, responsible (Miller, 2015; Miller, 2016, p. 77 ff.). For each category of immigrants, Miller envisages differentiated configurations of rights and obligations, conceiving possible solutions of temporary and conditional

admission, grounded on the idea of the existence of a reciprocal advantage between the immigrants aiming to improve their life chances and the citizens of the host societies (Miller, 2016, p. 95). The decision of states to select migrants on the basis of their political-cultural affinity to the *we*, or, as Miller calls it in the framework of his discussion on (collective) self-determination, to the "self" – a group "sufficiently cohesive that one can attribute to it a range of aims and values that the members recognize as part of their collective identity" (Miller, 2016, p. 69) – is legitimate and in accordance with the principles of justice, although states have the obligation to justify their decisions showing that they are based on non-arbitrary reasons, but on reasons which are in line with the legitimate purposes of the state (see also Forst, 2011, pp. 13-42, 79-121; Mazzone, 2017). Like Walzer, Miller considers the cohesion of the national community a crucial element to guarantee the stability of democratic institutions and an acceptable level of welfare for all the citizens who take part to social cooperation (Miller, 1997).

Both Walzer and Miller care about the safeguard of majoritarian cultural identities – or national identities – within democratic societies, whereas communitarian and multiculturalist thinkers argue in favour of the protection – and at times of the active promotion – of minoritarian cultures within democratic communities, heterogeneous social contexts which have emerged as a result of successive migratory waves or of processes of nation building.[7] The liberal state is expected to protect not only the communities' cultural heritage, but also their ways of life and their particular model of social organisation. Moreover, the safeguard of minoritarian cultures through collective rights is complementary to the defence of individual rights: since individual identity is not a given, but it emerges out of relational dynamics, people can fully develop their talents and realise their life projects only if they connect and interact with others within the communities they belong to. To allow individual flourishing, democratic politics cannot disregard the recognition of minorities' cultural specificities; so, according to this line of reasoning, state institutions ought to waive the liberal concept of neutrality, based on the existence of equal rights for all citizens and on the abstract notion of equality of all citizens before the law. Claiming the validity of a right to recognition, or a "right to culture" for national/ethnic minorities and for indigenous peoples (Taylor, 1992; Margalit & Halbertal, 1994), advocates of communitarianism and multiculturalism argue that the state's function is not limited to the safeguard of fundamental rights – framed on the basis of the public concep-

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7. For a reconstruction of the communitarian theoretical model see Henry and Pirni (2006); for a general overview of the debates on multiculturalism, see Lanzillo (2005).

tion of justice which permeates democratic institutions – but it ought to include the protection of endangered cultures. Minoritarian cultures face the challenges brought by globalisation processes, such as cultural homogenisation and hyper-consumerism, which reduce the diversity of the ways of life. One of the possible solutions to the problem of reconciling the recognition of difference with political liberalism is that of "group differentiated rights", legal tools which might complement individual rights in order to achieve three goals: guaranteeing a substantial equality of opportunities for the citizens who belong to cultural minorities, remedying historical injustices and safeguarding cultural diversity (Kymlicka, 1995; 2001; Mitnick, 2006).

Overall, migration has received little attention within the academic discussions on communitarianism and multiculturalism, which have focused on cultural minorities that are deeply-rooted within liberal societies, adjusting the argumentative strategies adopted by the advocates of liberal nationalism (Walzer, 1983; Miller, 1997) in order to claim group-differentiated cultural and political rights for minoritarian communities (Kymlicka, 1995). In this perspective, migration management can present risks and opportunities. On the one hand, *emigration* threatens the cohesion and long-term survival of minoritarian communities, because it contributes to the scattering of their members and to the progressive loosening of the bonds that migrants feel toward their culture of origin. On the other hand, when *immigration* is concerned, the picture is more blurred: if immigrants integrate quickly and accept the culture of the (minoritarian) community of destination, they strengthen the community's demographic force and contribute to the safeguard of minoritarian collective rights; conversely, if this does not happen, the arrival of immigrants can constitute a threat for the community's cohesion. Within the communitarian/multiculturalist discourse, there is a striking tension between the insistence on the need for protecting minorities' cultural difference and the widespread neglect of migrants' cultural specificities. This neglect sometimes results in strong minorities – those whose cultural difference is effectively protected in democratic countries – showing assimilationist attitudes towards immigrants (Karim 2006). According to Charles Taylor (1994, p. 13), the fundamental difference between ethnic minorities and immigrant groups lies in the fact that the latter are keener than the former to embrace the dominant culture; moreover, they lack a sense of community, since they are "people who fail to belong to that [dominant] culture only provisionally and are destined to assimilate to it or to see their children assimilate to it in time". Being "rootless" women and men, as Walzer put it, immigrants seem to escape the logic of both the liberal and the communitarian models of citizenship: on the one hand, their otherness with respect

to the dominant as well as the protected minoritarian cultures makes their integration more difficult; on the other hand, their access to citizenship is denied (or hindered) in order to defend a relatively high level of social cohesion, which is considered a crucial requisite for functioning democratic institutions.

However, not all multiculturalist thinkers share this reading of immigration. For instance, Will Kymlicka (2007) includes the groups of immigrants among the minoritarian groups in need of protection, together with national minorities and indigenous populations. Unlike communitarian thinkers, who maintain that neither the State's government nor the communities' autonomous institutions ought to protect immigrants' cultures when these do not coincide (or are not compatible) with the dominant culture or with recognised minoritarian cultures, Kymlicka's "global multiculturalism" – a perspective which originates not only from the theoretical reflection but also from the analysis of concrete practices for managing cultural pluralism –[8] aims at elaborating a new multiculturalist proposal, more aware of the high degree of cultural diversity[9] that characterises contemporary societies. Nowadays, as groups with distinctive cultures tend to be smaller and more fragmented, the risk of a progressive reduction of cultural diversity is more concrete than ever before. Global multiculturalism looks at the relationship among the dominant culture, native minoritarian cultures and immigrant cultures from a different angle, acknowledging *contra* Taylor (1994) that within liberal societies immigrants do not always keep silent and marginalised while waiting for being culturally assimilated by the majority; on the contrary, they often enter the public space, "visibly and proudly" expressing their identity and claiming the recognition of their cultural difference (Kymlicka, 2007, p. 72).[10] Even if Kymlicka is more optimistic than Taylor on the chances of immigrants' successful integration, he does not think that a multicultural state ought to admit within its borders a large number of migrants. Multiculturalists are sceptical towards migration policies, since these normally reflect the interests of parliamentary majorities (and/of governments) and they can constitute a means to change the composition of the *demos*, sometimes to the detriment of national minorities and indigenous groups.

The risks for minorities' rights connected to migration policies are analysed by Margalit and Halbertal (1994, p. 509): "in most cases the majority preserves its homogeneity by enacting immigration and citizenship laws for the state as a whole, which creates

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8. For an analysis of the international dimension of cultural pluralism, see Baccelli (2009).
9. Or, as Steven Vertovec (2007) calls it, "super-diversity".
10. For a comparison of Taylor's and Kymlicka's positions on the issue of immigration, see Sanfilippo (2009).

an unequal situation that needs to be balanced by granting privileges to the minority. Sovereignty, in this sense of control over entry, is not only a monopoly on the legitimate use of violence (…), but also a monopoly on entry to the state and the determination of the status of those entering as tourists, temporary residents, or citizens". One of the clearest examples of this tendency would be the Israeli Law of Return, which, since 1950, has been granting automatic Israeli citizenship to any Jew person willing to move to Israel and to become a resident, regardless of her/his country of origin. Therefore, the new Israeli citizens contribute to strengthen the majority, to the detriment of the Arab minority. In order to protect a "right to culture", governments ought to carefully assess minorities' needs and criticalities and, if the demographic imbalances produced by migration policies endanger the survival of minoritarian cultures, they ought to envisage protective measures, such as preventing immigrants from living in a certain area in order to preserve a minority's cultural homogeneity. Anyway, whenever the survival of a minoritarian community is at stake, the community should be granted some control powers over the entry of immigrants within the states' borders and especially in areas where its members are concentrated (*ibidem*, p. 492).

To sum up the main findings of the analysis of the contemporary discussion on the domestic dimension of justice conducted so far, three characteristics of the relationship between political liberalism and migration can be highlighted. First, migration is normally conceived in negative terms, as a problem. The democratic State, in order to cope with this problem, needs to exercise its sovereignty through the power to decide over the immigrants' access to its territory as well as over their juridical and political status. Second, claims of recognition and redistribution advanced by immigrants cause a deadlock within liberal conceptions of citizenship, even when we look at communitarian and multiculturalist proposals:[11] even when migrants are allowed to take part in the cooperative system of society, they are denied the full enjoyment of citizenship rights. Third, from the analysis emerges that all the authors considered focus almost exclusively on immigration and overlook emigration. These three points help to explain how liberal conceptions of citizenship are generally biased when they address the issue of migration: the rights to redistribution and recognition of the members of the (national or minoritarian) community are assumed to have moral priority over the rights to redistribution and recognition of migrants.[12] So, the defence of the community requires

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11. For a critique of the rigidity of liberal conceptions of citizenship and of community, which risk to "entrap" political theory and to limit the possibilities for states' institutions to find out original solutions, see Carens (2000, pp. 162 ff.).
12. With redistribution here I mean the state-led distribution of social primary goods aimed at realising a fair equality of opportunities. See Rawls (1971, pp. 90-95, 101 ff.).

to rearticulate the terms of the liberal exclusion/inclusion dilemma, allowing to justify policies aimed at restricting freedoms and denying universal equality, a course of action which turns out to be paradoxical for liberalism.

Migration between hospitality and global justice

The debate on global justice spun off from the broader discussion about the possibilities of expanding the scope of Rawls's theory of justice when cosmopolitan critics proposed to apply the framework of the two principles of justice to the international context (Beitz, 1979; Pogge, 1989; Barry, 1999). Rawls himself considered the possibility to extend the scope of his liberal conception of justice beyond the State; however, at the outset of his last book he acknowledges the impossibility of accomplishing this theoretical endeavour, stating that the Law of Peoples "might be developed out of a liberal idea of justice similar to, but more general than, (…) *justice as fairness*" (Rawls' 1999, p. 3). The contractualist scheme is translated to the international context but it does not originate abstract principles of justice to which international institutions ought to abide; rather, the Law of Peoples defines a code of conduct for the external action of states, establishes guidelines for foreign policy which apply to democratic as well as 'decent' states. Thus, the Rawlsian reflection on justice is fundamentally state-centred and the discussion on matters of fairness and redistribution is hampered in its international declension because of the unsolved tension between ideal and non-ideal theory (Mason, 2010; Jubb, 2012; Valentini, 2012). When it comes to the international dimension of justice, the theoretical *archè* seems to be reasonableness, rather than fairness (Porter, 2012) and this, according to Benhabib (2004), leads to the "betrayal" of Kantian cosmopolitanism and to the surrender to liberal nationalism.[13] The neokantian cosmopolitan alternatives to the Law of Peoples refute the incomplete extension of the mental experiment of the original position within the international context, theorising a truly global contractualist scenario, where the representatives of individuals (under a veil of ignorance) ought to choose the principles of justice that will apply to state as well as to

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13. For a different interpretation on the Rawlsian adherence to the Kantian cosmopolitan model, see Macedo (2004). Since with "liberal nationalism" I mean theoretical accounts which adopt a thicker conception of sovereignty than that adopted by Rawls, it seems to me that "liberal internationalism" can better define the Rawlsian approach to the issues related to the states' actions in world politics. Liberal nationalists and liberal internationalists share a statist approach to politics, while a majority of cosmopolitans rejects statism, with some noticeable exceptions (Valentini, 2011; Ypi, 2012). For a review of the alternative conceptions of international society, see Mapel and Nardin (1999); for a detailed discussion of liberal internationalism, see Jahn (2013).

international institutions (Pogge, 1989; Bocchiola, 2013). The bulk of the proposal is to theorise a global redistributive framework, matching moral cosmopolitanism – i.e., the assumption of equal moral worth for all human beings –[14] with an egalitarian *political* conception of justice having a global scope (Brock, 2013). Advocates of cosmopolitanism maintain the necessity to formulate a global principle of difference in order to guarantee the fair equality of opportunities as well as the progressive reduction of socioeconomic inequalities even beyond the state.

As some scholars have pointed out (Benhabib, 2004, p. 1769; Bader, 2005), neither Rawls's liberal internationalism nor Beitz and Pogge's accounts of cosmopolitanism have assigned a crucial role to the issue of migration. This is less surprising for liberal internationalism, since the Rawlsian reflection focuses on liberal foreign policy, while migration management is traditionally understood as a matter of internal politics, or at least it has been so conceived until the 1990s, before the clear-cut distinction between the domestic and external dimensions of sovereignty started to be challenged by political theorists as well as by policy-makers. Like liberal nationalists, Rawls sees immigration as a "problem",[15] whose roots lie in the societies of origin of migrants, and he maintains that in an International Society where the Law of Peoples were respected, immigration would disappear: "immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic Utopia" (Rawls, 1999, p. 9). This argument is problematic and it can be easily refuted if one considers the empirical evidence about the ongoing migration flows as well as the main findings of historical research on international migrations (Mavroudi & Nagel, 2016; Corti, 2011): within the current international context, migrants do not always move from non-liberal and underdeveloped countries to liberal and developed countries; moreover, the phenomenon of migration precedes and accompanies any process of state-building. Rawls outlines four main causes of immigration – first, "the persecution of religious and ethnic minorities, the denial of their human rights"; second, political oppression; third, hunger and extreme poverty; fourth, demographic pressure related to the persistence of unjust social relations (Rawls, 1999, p. 9) – but he does not consider the systemic factors from which the causes of immigration derive. So, he neglects to investigate how migration is affected by the consequences produced by colonialism and by neo-colonial forms of domination in

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14. While moral cosmopolitanism is a shared assumption for all the liberal theories of domestic and global justice under scrutiny, the positions on its political implications and especially on the obligations for states vary widely.

15. I think that the term "immigration" used by Rawls is misleading – since he refers to the choice of individuals to leave a certain country, he should rather use "emigration" or *exit*. This terminological imprecision shows that his perspective coincides with that of the citizens of the host society.

non-Western societies; also, he does not investigate the implications of the persistence of power asymmetries between countries of the Global North and of the Global South that have created and preserved the current international system with its economic and political dynamics (Ronzoni, 2009; Moore, 2016). In Rawls's opinion, each people is responsible for its socio-economic and political organisation, which is realised through the state's institutions; therefore, the governments of the countries of origin of migrants ought to solve the "problem" of migration by removing the incentives for prospective emigrants, working to make their society just, reforming its institutions and its political culture[16] and protecting its natural resources. As far as the host societies are concerned, Rawls maintains that, in order to keep its society well-ordered, "a people has at least a qualified right to limit immigration", but he does not expand on the justification and qualifications to this right – overall, he seems to agree with the arguments developed by Walzer (1983) based on the principles of democratic autonomy and of freedom of association – and he omits to discuss the problem of the clash between the liberal peoples' right to limit immigration and the immigrants' individual rights to pursue their life plans (Rawls, 1999, p. 39, n. 48).

Some of the objections to the arguments for (relatively) closed borders have been formulated by Joseph Carens (1987) in his well-known defence of open borders: relying on the idea that freedom of movement is fundamental for all human beings, he argues that the rights stemming from citizenship cannot justify any limitation of this freedom. Moreover, borders are morally problematic: "like feudal barriers to mobility, they protect unjust privilege" (Carens, 1987, p. 270) derived from injustices and arbitrary decisions undertaken in the past. The "right to exclude" foreigners, according to Carens, is not justifiable on the basis of a collective property right to land – as it is for libertarians (Nozick, 1974; Blake & Risse, 2009) – because a minimal state could not act coercively to impede access to land while retaining its legitimacy; at the same time, this right cannot be justified if one follows the strategy of moral reasoning to the core (i.e. the respect of the moral equality of all human beings) depicted in Rawls's theory of justice (Carens, 1987, pp. 255-262). Also, Carens rejects both utilitarian and communitarian arguments for justifying the right to exclude – the former because of the difficulty to assign more weight to the preferences of compatriots vis-à-vis those of strangers in the calculus for maximising public utility; the latter because, for the sake

16. According to Rawls, the political culture of a people – which includes its conception of justice – is a crucial element during the transition from a disadvantaged society to a decent society; for this reason, liberal peoples ought to respect the political autonomy of non-liberal peoples, provided that their governments guarantee the respect of fundamental human rights (Rawls, 1999, p. 117).

of protecting cultural particularism, they forget a pillar of Western culture, that is, liberalism, together with its assumption of universal moral equality and its "tendency to expand (…) the requirements of equal treatment" (*ibidem*, pp. 268-269).

Although recently the discussion about borders has overcome the simplistic dichotomy openness/closure and the idea of the porousness of borders has gained popularity (Benhabib, 1999; Carens, 2013; Miller, 2016), two crucial problems are still in need of solution: how much permeable states' borders ought to be and which criteria might be used to discriminate between those who are permitted and those who are denied the right to enter a certain state's territory. For this reason, recent contributions have focused on the classification of migrants aimed at envisaging the differentiated actions that states have to adopt towards them: refugees, resident aliens, guest workers, irregular migrants (Carens, 2013; Miller, 2016; Di Cesare, 2017; Song, 2018). Generally, these contributions present the perspective of the host society and they focus on the moment of migrants' admission at the borders; recently, however, some authors drew attention to the concrete examples of borders' contestation and resistance against coercion put in place by migrants, often allied with citizens of the host societies. So far, the normative implications of these practices have not been investigated thoroughly;[17] however, this is a critical aspect which needs to be scrutinised in order to contribute to the redefinition of the concept of hospitality, juxtaposing to the (political) rights and duties of democratic citizenship the (moral) rights and duties which derive from the fact of belonging to humankind.

Carens (2013, pp. 227 ff.) has recently argued that, under normal conditions, democratic states ought to favour a policy of open borders for three main (interrelated) reasons. First, this would permit them to respect the freedom of movement, which is "a prerequisite to many other freedoms" – because of the importance of guaranteeing freedom of movement to secure individual autonomy, only exceptional, temporary and justified exceptions to the general rule of open borders are admissible. Second, by allowing individuals to move freely, democratic states would favour the realisation of the ideal of equality of opportunity. Third, thanks to the enhanced opportunities deriving to individuals and groups from the enjoyment of the freedom of movement, democratic states would contribute to the progressive reduction of political, social and economic inequalities. Like other cosmopolitan authors (Abizadeh, 2008; Kukathas, 2017), Carens questions the democratic legitimacy of coercive actions aimed at preventing migrants

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17. Among the works which have tackled this issue, see Cabrera (2008); Cole (2014); King (2016); Yong (2018); Sager (2018).

to access a state's territory; moreover, he highlights the importance of providing an acceptable justification (Forst, 2011) to migrants whenever they are denied the access to the state's territory – an issue that, as has been mentioned before, has recently received attention also by non-cosmopolitan theorists (Carens, 2013, p. 255; Miller, 2016; Song, 2018; Yong, 2018).

The issue of the responsibility of the (non-)host state towards the migrants at the border appears particularly relevant for political theorists: in such a situation, migrants experience a condition of vulnerability which is partly caused by decisions and actions undertaken by officials and representatives of the citizens of the (non-)host state. These decisions and actions contribute to hamper migrants in the realisation of their life plans and to limit their opportunities (Straehle, 2016). Investigating further these aspects of the relationship between migrants and host states might be a fruitful strategy to revive and enrich the current debate on migration, shedding light on the interstitial space of the border (Galli, 2001; Corigliano, 2018), where the language of rights that is used in the discursive construction of the inside/outside dimensions risks to be supplanted by securitarian and militarist practices (Mendoza, 2017; Parekh, 2017). Another promising perspective for looking at the phenomenon of migration from a political theory perspective requires to acknowledge the specific experiences of migrants, which lead them "beyond citizenship" (Di Cesare, 2017, pp. 231-235) or turn them into cosmopolitan activists advocating a "cosmopolitan citizenship" (Cabrera, 2008). Among the challenges that migration pose to liberal accounts of citizenship, there is the provocative idea of "mandatory citizenship", a legal device for restoring the balance of duties and rights between citizens of the host countries and immigrants: the latter would contribute to the functioning of the welfare state as soon as they entered the country and they would simultaneously become citizens of the host state with full rights (De Schutter & Ypi, 2015).

The defence of the right to migrate has many advocates among cosmopolitan authors. Some of them argue that, since the right to immigrate is the necessary and "symmetrical" completion of the right to emigrate, it should be included in the list of fundamental human rights. This would be the moral, non-absolute right of any human being to enter the territory of a foreign state and to reside therein for as long as one likes; like the right to emigrate, the right to immigrate is grounded on the (personal and political) interest of any person "in making important personal decisions and engaging in politics, free from state restrictions on the range of options available to them" (Oberman, 2016, p. 52). Theoretical positions in favour of the asymmetry between the right to emigrate and the (non-)right to immigrate are not rare, among

liberal nationalists and internationalists, but also among cosmopolitans (Blake, 2013; Nida-Rümelin, 2018). Moreover, the same right to emigrate is no longer considered uninfringable, but for the first time it is critically scrutinised. On the one hand, by leaving her/his country the migrant does not break completely the moral relationship with his fellow citizens of the country of origin, but rather he transforms it in the set of rights and duties that Rainer Bauböck (2009), in his analysis of the reconfiguration of citizenship within the European Union, calls "external citizenship". This new form of citizenship embraces different elements, such as the right to transmit the citizenship of the state of origin to one's own children, the right to go back to the state of origin, the right/duty to vote as a citizen living abroad, the duty to do the military service, the duty to pay taxes. On the other hand, the discussion on global justice has showed that migrants as well as host countries have some obligations towards the citizens of the countries of origin, especially with respect to the problems caused by the phenomenon of *brain drain* (Sager, 2014; Brock & Blake, 2015; Shachar, 2016; Kollar, 2016), that is the massive emigration of talented and skilled workers that reduces the human capital of many developing countries, with dramatic effects for fundamental sectors like healthcare and education. During the last years, several political theorists have included within the framework of global justice the new category of environmental refugees (or climate change migrants), whose decision to leave the countries of origins is determined by adverse ecological conditions which worsen the quality of life of local communities (Kovner, 2017; Pellegrino, 2018; Pongiglione & Sala, 2018). A different but often related problem that has been framed from an original cosmopolitan/neo-Marxian perspective is the transnational dimension of the dynamics of exploitation of economic migrants and guest workers (Ottonelli & Torresi, 2012; Miller, 2016, p. 69 ff.): through the theoretical categories of injustice and dominion, it is possible to consider under a new light the relationship between citizens of the host society and immigrants, opening up spaces for the creation and for the strengthening of an inclusive and empowering sense of solidarity among all workers, irrespective of their countries of origin (Ypi, 2016; Ypi, 2018).[18]

Overall, recently the discussion on migration in the field of political theory has clearly gone beyond the Kantian concept of universal hospitality and has attempted, with changing fortunes, to get rid of two problematic features of the early reflections on global justice – "methodological nationalism" (Sager, 2016) and the rigid and

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18. For a discussion focused on the issue of solidarity within an international context marked by mobility and uncertainty, see Žižek (2017).

simplistic dichotomy open borders/closed borders – which had limited its diagnostic and normative potential, overshadowing relevant issues such as emigration, migrants' experiences of/at the border, strategies for integration, while focusing almost exclusively on the impact of migrants on the host countries and neglecting their impact on the countries of origin. However, as Alex Sager (2018) points out, theories of global justice are still looking for new conceptual categories suitable for investigating the contemporary reality of migration. The "epistemic and semantic task" that political theory needs to fulfil has already been launched, also thanks to heuristic resources developed in other disciplinary fields of social science – the so-called *mobility turn*, the analytical level of transnationalism, the critical study of borders, the gender perspective, the category of vulnerability and the unveiling of the practices of collective resistance (Faist, 2013; Vertovec, 2009; Loretoni, 2014; King, 2018). The efforts for producing multidimensional studies of the complex phenomenon of migration and for including the perspectives of migrants into theoretical accounts are promising steps forward for the current discussion; nevertheless, sometimes theories focusing on the global dimension of justice risk to outlook the role of host states for the management of migration flows.

Looking for a new theoretical approach to migration

This article has explored the discussion on migration which has stemmed from the normative debate on (domestic and global) justice articulated by political theorists since the 1970s. The analysis has embraced both dimensions of migration – immigration and emigration – and has adopted a critical and comparative approach in order to highlight the advantages and the shortcomings of contemporary liberal theories, transcending the schematic and simplistic distinction between defenders of closed borders and advocates of open borders. From the examination has emerged that the theoretical positions are much more nuanced than the dichotomic alternative openness/closure suggests; furthermore, during the last years the debate has been focusing on specific aspects concerning the existing dynamics of migration as well as the moral and political relationship that these dynamics originate between migrants, citizens of the societies of origin and citizens of the host societies. Two especially relevant examples of the new topics which have lately broadened the scope of the debate include the problem of brain drain and the condition of migrants at the border, suspended between two states' jurisdictions and facing the gap or the precarious balance between two systems of rights and

duties. In both cases, migrants are at the same time the archetypes of global citizens and potentially stateless people, who become aware of the vulnerability deriving from the uncertainty about the effective protection and enjoyment of fundamental rights.

On the one hand, theories of justice which concentrate exclusively on the domestic dimension tend to overlook the dimension of emigration and to see immigrants mainly as a "problem", that is, a serious threat for the internal cohesion of society, for the stability of a system of welfare and for public order. The solutions advocated to cope with the challenges of immigration are meant to impact on the liberal state, on its institutions – *in primis* its conception of citizenship – as well as on its policies, aiming at redefining the potential of social inclusion of a just society. On the other hand, the discussion on the global dimension of justice undertaken by cosmopolitan thinkers, challenges the definition of migration as a problem, highlights its structural character and reveals its potentially positive effects for global socio-economic dynamics. However, sometimes cosmopolitans' demands for a global system of redistribution appear to lose their strength and, while they emphasise the agency of migrants and they uncover the needs and criticalities of migrants' societies of origin, they risk to overlook the responsibilities of liberal states for the management of migration as well as for the reform of the current unfair global system.

To conclude the analysis conducted throughout the article, some possible avenues for future research can be recommended. Given the structural nature of international migration and its latest developments – for instance, even if in the past migration flows were mainly movements from underdeveloped countries in the Global South to developed countries in the Global North, nowadays South-South and North-North flows are becoming more and more common. At the same time, migrants appear to be very diverse one from the other and they tend to escape the categories established by international and humanitarian law. In order to understand this new situation and to envisage suitable philosophical-political interpretations, researchers should focus on the variety of possible configurations of moral and political relationship, combining the attention for the role of national and international institutions and including in their theoretical accounts the point of view of migrants, in order to substantiate the Kantian ideal of universal hospitality. For the realisation of this task, it is necessary to reconsider the issue of migration with an open mind, overcoming the rigid divide between alternative analytical perspectives and the dichotomous theoretical positions that they have originated (statism/cosmopolitanism, closed borders/open borders). The main goal ahead is thus to combine theoretical reflection and empirical knowledge, developing a transnational

perspective and leaving aside the state-centrism that has characterised political theory so far. Decisions and policies aimed at managing migration flows should be grounded on a cosmopolitan conception of global justice capable of taking into consideration the needs of migrants and of the citizens of the societies affected by the effects of migration, while promoting liberty and equality for all the citizens of the world. To do so, however, it is crucial to be aware of the fact of the persistence and resilience of the State within the global political arena, which retains its role as a political agent capable of protecting individual rights both for its citizens and for foreigners. The most promising way to explore for undertaking this theoretical journey is to develop the conceptual resources necessary to turn the liberal state into an agent of cosmopolitan justice, rather than to leave it behind or to consider it only as an obstacle to its realisation.

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