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A Short Essay on Statelessness and Cosmopolitan Citizenship

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I.

According to the *Missing Migrants Project* of the *International Organization for Migration*, 3'139 people died in 2017 while trying to cross the Mediterranean Sea (International Organization for Migration, 2018). Very likely, this year (2018) the terrible situation will not be much better. Among the victims are many children and teenagers. The adults who survive and who, in addition, wish to seek asylum have different options upon the arrival on the shores of the European continent: depending on their country of origin and their personal situation, they may introduce a request for asylum based on their real identity, or they may want to hide it, because for citizen of many states the probability of asylum being granted is very low in most EU member states. Thus, they carry falsified identity papers of another country, of which they claim to be a citizen, hoping that this will raise their chance to be permanently tolerated on the territory of a European state. Or they destroy all their identity papers and refuse to disclose their nationality in order to be more or less sure not to be deported back to their country of departure. Indeed, in these cases the authorities of the arrival state do not know to which country to deport them. In other words: they claim to be stateless (while they are actually just “undocumented”). Even if this is not true, it demonstrates that under rare and very special circumstances statelessness may be a valuable resource.

The same applies to some to the superrich people of the world. In order to avoid income and/or inheritance taxation they sometimes choose to reside in a so-called fiscal offshore paradise, while at the same time getting rid of their original citizenship without adopting a new one. Since for instance the United States of America oblige all their nationals - wherever they live in the world - to declare their wealth and income, and to possibly pay taxes in the

United States, it motivates some to seek “fiscal asylum” based on what may be labeled “fiscal statelessness”.

However, the overwhelming majority of about 12 million stateless people in the world perceive their status not as a privilege or as a chance, but as damnation. According to the 1954 *Convention relating to the Status of Stateless persons*, a stateless person is one « who is not considered as a national by any State under the operation of its law ».” (UNHCR 1954 : Article 1 (1)). There are a variety of reasons which can lead to statelessness: in most situations, it is the result of discrimination. Number of states - such as Latvia for example - define citizenship according to ethnic criteria, which is legal, even according to international law, but may lead to the exclusion of large groups, and thus violates international laws against discrimination. In other cases statelessness is the result of state succession : some people become stateless when their state ceases to exist, or when the territory in which they live falls under the control of another state. This was possible when the Soviet Union collapsed, and also in some cases after the violent disintegration of Yugoslavia and the partition of Ethiopia. It is true that according to the legal definition of a stateless person, only states can have nationals. Therefore, people who are "citizen" of a territory which is diplomatically not recognized by any state or just by one other state (which is for instance the case of the Turkish Republic of Northern Cyprus, or of Puntland) are officially also stateless. These include, for example, inhabitants of occupied territories in which statehood has ceased to exist or has actually never arisen. The Palestinian territories and Western Samoa are prominent examples.

Another example is the conflict of law: a person who does not have either parent entitled to obtain citizenship through *jus sanguinis* may in some cases be stateless at birth if he or she is born in a state that does not recognize *jus soli*. For example, in Canada *jus sanguinis* is only recognized for the first generation of children, not for the second generation. One last possibility is that there are a number of countries in the world that do not grant equal rights to women in the transmission of their nationality. This can lead to statelessness if the father is stateless or otherwise unable to transmit nationality.

The empirical situation is further complicated because the United Nations Higher Commissioner for Refugees (UNHCR) – under its world-wide mandate for the identification, prevention, and reduction of statelessness as well as for the international protection of stateless persons - does not report refugee populations in its statistics on statelessness in order to avoid double counting. It is argued that it would affect the total number of involved persons. Thus, stateless refugees are counted as refugees, not as stateless people. For a similar reason, Palestinian refugees considered under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) are not shown in the UNHCR statelessness table. Instead, they are referred to in a different statistical category in

UNHCR's reporting. All together, we can see that « statelessness is [...] a negative term in that it denotes the personal loss of membership and hence, the incapability to be recognized as member of a political community. In other words, it makes reference to the loss of a political identity. » (Mancheno 2016 : 112). We can possibly add “persons who are *de facto* stateless [but] often *have a nationality* according to the law, but this nationality is not effective or they cannot prove or verify their nationality. *De facto* statelessness can occur when governments withhold the usual benefits of citizenship, such as protection, and assistance, or when persons relinquish the services, benefits, and protection of their country. Put another way, persons who are *de facto* stateless might have legal claim to the benefits of nationality but are not, for a variety of reasons, able to enjoy these benefits. They are, effectively, without a nationality” (Weissbrodt/Collins 2006 : 251-252).

Famously, Hannah Arendt, herself stateless between 1937 and 1951, has argued in 1951 in her opus magnum *The Origins of Totalitarianism* that the stateless person does not have the right to have rights, since with the loss of the nationality there is no legal authority which guarantees even the basic human rights to the stateless person. According to her, “the internment camp [...] was the only ‘country’ the world had to offer the stateless” (Arendt 1951: 1186).

However, this is not correct anymore, as at least international law has considerably developed in this field over the last decades. In 1954, the United Nations adopted the above mentioned *Convention relating to the Status of Stateless Persons*. It set out a number of rights that stateless persons should enjoy. The convention became the foundation for an international protection regime for stateless persons. It is, however, rather disappointing that today only 86 states – not even half of all existing states - are party to the convention. Thus, the reality of statelessness continues to be very tough for stateless people.

In what follows it will be tried to demonstrate that the diverse situations of stateless people may be conceptualized as not even reaching the *minimum* level of cosmopolitan citizenship rights in the Kantian sense (which is far below the level of rights provided by national citizenship), and that not only a world-wide ban on the denaturalization of citizen by their state should become an ethical and legal norm, but also the systematic attribution of nationality to all stateless persons in the world.

II.

Immanuel Kant has been one of the first major philosophers since the ancient Greek who extensively conceptualized cosmopolitanism. Kant’s cosmopolitan law *stricto sensu* is outlined in the third Definitive Article of *Perpetual Peace* (Kant 1795) and §62 of the

Metaphysics of Morals (Kant 1797). While the first Definitive Article of *Perpetual Peace* and §51 of the *Doctrine of Right* deal with the internal, constitutional form of the state, claiming that it should be republican in order to make it as peaceful as possible (the axiom of so-called “Democratic Peace”), the second Definitive Article of *Perpetual Peace* and §§53-61 of the *Doctrine of Right* aim to lay out the normative foundations of the relations between states, including just war principles and the ultimate *telos* of a worldwide *foedus pacificum* (Giesen 1992: 166-167). Significantly, the question of cosmopolitan citizenship is dealt with in the third Definitive Article of *Perpetual Peace* and §62 of the *Doctrine of Right*, both devoted to the cosmopolitan law (i.e., the relations between domestic individuals on the one hand, and foreign peoples [*Völker*] and foreign individuals on the other).

It should be underlined that the very base of the cosmopolitan law is, thus, the regulation of connections between individuals and peoples, not between states. The reason seems rather obvious: we should, indeed, not forget that the number of states in the international system of the second half of the eighteenth century was rather limited, as most parts of the world were either not yet “discovered” by the Europeans (for instance inner Africa) or else colonized by them. The validity of the second Definitive Article is hence confined mainly to the relations among European states, while the *ius cosmopolitanicum* becomes a construction based on individuals and peoples. Thus, if we want to clarify the status of the cosmopolitan citizen, the focus must be exclusively on the third Definitive Article of *Perpetual Peace* and on §62 of the *Metaphysics of Morals*. However, it must be underlined that Kant’s cosmopolitan citizenship is a *minimum* level of rights for any person in the world. Many recent philosophers, including Jacques Derrida, have tried to develop a more generous status of hospitality for foreigners arriving on state territory. Kant’s concept of cosmopolitan citizenship is taken here only in order to check if statelessness can meet its requirements.

Kant chooses a historical argumentation: his starting point is the arrival of one single individual on the territory of a foreign people (*Volk*). According to Kant, a people is, ethically speaking, always *already* sovereign, even if, from the point of view of positive law and power politics, the state has not (yet) been created. He declares: “Nature wisely separates peoples, which the will of any state ... would be to unite by ruse and violence...” (Kant 1795, 368). An additional argument that the ultimate (ethical) sovereignty is embedded in the people, not in the state, lies in the fact that the issue is tackled in the last Definitive Article of *Perpetual Peace* and the first paragraph of the *Doctrine of Right*, both explicitly presented as the final achievements of the two works. State sovereignty merely derives from the original sovereignty of the people. Such an interpretation of Kant’s thought avoids, thus, today’s common divide between globalists (Beitz, Pogge, etc.) and communitarians (Walzer, Taylor, etc.) by introducing the concept of people – rather than of state - as the key to cosmopolitan law.

The earth being a “*globus terraqueus*” that territorially cannot be extended, no people has *a priori* more rights than any other to live on a specific part of the planet’s surface. Since there is a “*Gemeinschaft des Bodens*” (community of the [earth’s] land), which is not a community of possession (*communio*), each people must respect the others’ sovereignty over the land (Kant 1797, 352 [§62]).

Kant strongly believed that it should be permissible for an individual to initiate a first contact with individuals of a foreign people: it is “the right of a stranger not to be treated as an enemy when he arrives in the land of another [people]” (Kant 1795, 358). However, once the contact is established, the situation changes: after having offered sociality (*Gesellschaft*) to the people they are visiting, the “incomers” can be sent away and further contact can be declined, except if this would lead to their “fall” (*Untergang*). Here Kant introduces a special clause for political and religious refugees, probably having in mind the fate of the many Huguenots in East Prussia of his time. Visitors enjoy the cosmopolitan right to stay as long as they are threatened in their home country and as long as they behave peacefully. Otherwise, hospitality, the very base of Kant’s cosmopolitan law, does not imply the right to be a permanent guest (*Gastrecht*). In addition to asylum, there are two other scenarios: first, the right of an individual not to be treated malevolently upon arrival and to *offer* his sociality (an offer that can be refused); second, the right to commerce, as strictly confined to the establishment of intercommunications for trade purposes (for instance, in ports such as the former Königsberg). This liberal bias was certainly influenced by his best friend, the English trader Joseph Green, but possibly even more by the Scottish moral philosopher Adam Smith, founder of modern economics and father of the liberal metaphor of the “invisible hand”, who published *The Wealth of Nations* just 19 years before Kant wrote his *Perpetual Peace*. Kant claims: “In this way distant parts of the world can come into peaceable relations with each other, and these are finally publicly established by law. Thus the human race can gradually be brought closer and closer to a constitution establishing world citizenship.” (Kant 1795, 358)

For all the cases that exceed these three fundamental but strictly limited rights of cosmopolitan citizenship -asylum, visits, trade - Kant makes it very clear that a “special beneficent agreement” (*besonderer wohlthätiger Vertrag*) has to be arranged between the two equal parties (Kant 1795, 358), defining the conditions of residency (*ius incolatus*) (Kant 1797, 353 [§62]). In the absence of such an accord the residency of a foreigner is a moral wrong. However, we should bear in mind that put in their historical context Kant’s rules were actually supposed to be a critique of colonialism (Giesen 2010): according to him the European colonial powers had no right whatsoever to impose their presence upon the peoples of Africa, America and Asia.

III.

Contrary to common understanding it is obvious that the stateless person is still a member of one or several peoples (*Völker*) in the Kantian understanding (but not of any state). This means that he or she participates only indirectly in the community of the land (*Gemeinschaft des Bodens*). He or she does not have any rights attached to citizenship, and, of course, does not enjoy formal law protection from its people, since the latter is not able to grant any. However, there may be other sort of protection of such a community. While such a human being benefits from the human rights in countries guaranteeing them (including social and economic rights provided through granted residency), this is not the case in all others. Nor does he or she enjoy any diplomatic protection which can actually be quite far reaching for nationals living or travelling in foreign states.

It is by far not sure that the stateless person is able - as Immanuel Kant requires for the cosmopolitan citizen - to offer at least its sociality to the people they are approaching. Indeed, since the 1914-1916 era, a passport is generally required in order to *possibly* enter a foreign country, except for asylum request (Dumitru 2016). The documents issued to stateless people by UNHCR do not provide any similar legal situation. In the age of heavily restricted migration, passport control seems nowadays to be a natural prerogative of the state. Therefore, statelessness neither meets the first mentioned Kantian criteria to be a cosmopolitan citizen, nor the third one (trade).

At the same time, the last Kantian minimum standard – political asylum – can be met. Indeed, stateless people may ask for protection to any given country (we should not forget that to them *all* states are foreign), if sending them away would lead to their “fall” (*Untergang*). As mentioned above, statelessness may even provide an advantage, as it is not possible to send them back to their home country since they don’t have one. The same is true for illegal entry into a country.

All together, the status of a stateless person meets only one of the three Kantian criteria for the minimum standard of the cosmopolitan citizen. It is way below and must be raised to *at least* that minimum level of protection. In addition, a world-wide ban on the denaturalization of citizen by their state should become an ethical and legal norm, but also the systematic attribution of nationality to all stateless persons in the world.

Unfortunately, in the last years the historical movement goes rather the other way. The Trump administration ruling the United States of America has organized a special Citizenship and Immigration Services Task Force which aims at denaturalizing U.S. citizens. It is the first

effort of mass denaturalizing contemplated since the McCarthy era. In a recent contribution to the *Washington Post*, Michael Anton, who is a former national security official, even proposed to get rid of birthright citizenship: “It falls, then, to Trump. An executive order could specify to federal agencies that the children of noncitizens are not citizens.” (Anton 2018). This means that U.S. citizenship could be revoked by a simple executive order. President Donald Trump himself suggested on CNN television network something quite similar (CNN 2015). For the time being, it is only possible for someone to lose his or her U.S. citizenship if it can be shown that he or she acquired it fraudulently (as demonstrated in the famous Demjanjuk case). Today, the Trump administration aims at deporting people for offenses or crimes they committed before they became citizens but did not disclose on their application forms. In some other Western countries similar efforts are envisioned.

One of the most famous of the *anonymous* fiction writers, B. Traven (alias Ret Marut and/or Otto Feige ?), himself stateless for many years, draw maybe a better picture of statelessness than any academic philosopher. The plot of his novel *Das Totenschiff* (Traven 1926) takes place after World War I and describes the predicament of merchant seamen who lack documentation of any citizenship which leads to the fact that they cannot find legal residence or employment in any nation. The narrator is Gerard Gales, a sailor who claims to be from New Orleans, and who is stranded in Antwerp, Belgium, without passport or other legal papers. Since he is unable to prove his identity or his eligibility for employment, Gales is repeatedly arrested and deported from one country to the next. Finally, he manages to find work on the *Yorikke*, the dangerous and decrepit ship of the book title (translated into English as *The Death Ship*), where undocumented workers from all over the world are treated as expendable slaves. That definitely is an highly interesting plot when compared to today’s migrants crossing the Mediterranean Sea on extremely dangerous boats and under severe weather conditions: dying by the thousands and, if not, often treated as cheap labor force upon arrival.

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