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“Immigration and Democratic Principles: On Carens’s *Ethics of Immigration*”
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Joseph Carens first advanced his case for open borders in 1987, and it has played a defining role in the normative debate on immigration ever since. In one of the most memorable passages, he analogizes citizenship regimes with feudalism:

Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one’s life chances. Like feudal birthright privilege, restrictive citizenship is hard to justify when one thinks about it closely.¹

Carens’s analogy highlights the unfairness implicit in being born a citizen of a wealthy country. Like being born into a wealthy family, citizenship acquired in virtue of birth in the territory of, or to parents who are citizens of, wealthy liberal democratic states is, to borrow a phrase from Rawls, “so arbitrary from a moral point of view” and yet so strongly shapes our prospects in life.² Based on his interpretations of three leading theories of justice, Carens concludes “there is little justification for restricting immigration” (252). While Carens has clarified and deepened his arguments in response to critics over the years, he has been unwavering in his commitment to the contention that

¹ Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics*, vol. 49, no. 2 (1987): p?

² John Rawls, *A Theory of Justice* (Belknap Press, 1971), 72.

open borders is required by justice. So it is no surprise that his recently published book reiterates his case open borders: “in principle, borders should generally be open and people should normally be free to leave their country of origin and settle in another.”³

Carens advances two main arguments for open borders: a global distributive justice argument and a rights-based argument. The former starts from the premise of the equal moral worth of all human beings and assumes not only that justice is global in scope but also that global justice requires global equality of opportunity. The rights-based argument is premised on the claim that freedom of movement is a basic human right. Elsewhere, I argue that justice requires not a policy of open borders but porous borders that privilege those whose basic human rights are at stake, including those fleeing persecution and violence and the world’s poorest individuals.⁴ I want to devote this essay to developing another line of argument focused on the question of who has the right to control immigration into a particular country.

Carens has done more than any other political theorist or philosopher to develop the normative perspective of prospective migrants from within the liberal democratic tradition, but he has not sufficiently engaged with the other side of the argument. That is, what is at stake for the immigrant-receiving country that might justify its claim to control immigration? In particular, he has not sufficiently explored the value of political community and the principle of collective self-determination. We need a broader

³ Joseph Carens, *The Ethics of Immigration* (Oxford University Press, 2013), 225.

⁴ I discuss Carens’s arguments for open borders in my book *Immigration and the Limits of Democracy*.

normative framework for thinking about migration that takes seriously not only the claims of migrants but also the claims of political community.

This essay proceeds in three parts. First, I examine Carens's theory of social membership and its connection to political community. I then discuss Carens's method of "political theory from the ground up" and his interpretation of democratic principles. I conclude with a discussion of the principle of collective self-determination.

Social membership and political community

An open borders immigration policy is radically utopian so one might associate it with a radical cosmopolitan vision of justice. Cosmopolitans hold that all human beings have equal moral worth and are entitled to equal concern and respect. Radical cosmopolitans hold the further assumption that particular human relationships – to family, friends, and compatriots – never provide independent reasons for action or suffice by themselves to generate special responsibilities. Responsibilities to one's associates are justifiable only if they can be justified by reference to the interests of all human beings viewed as moral equals.⁵ Yet Carens explicitly distances himself from cosmopolitans who think "the only thing that really matters is the protection of human rights" (161). Instead, he allows for "membership-specific rights"

⁵ See Samuel Scheffler, "Conceptions of Cosmopolitanism," in *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press, 2001), pp. 115.

to which only members of a political community are entitled in contrast to “general human rights” to which everyone is entitled. As he emphasizes in the book’s conclusion, “Indeed, one of the main messages of this book is that it is possible to reconcile deep respect for the moral claims of belonging with a commitment to open borders. Particularism and universalism are not in such fundamental conflict as people often assume” (293). Carens is a moderate cosmopolitan who allows for open borders *and* belonging, universalism *and* particularism about moral responsibility.

Carens’s particularism is reflected in his theory of social membership, which serves as the grounds for many of the claims he makes in the first part of the book for the inclusion of immigrants. The theory consists of both factual and normative claims. As a factual matter, it “evokes the sense that being a member of society involves a dense network of relationships and associations” (164). It is “something that applies to everyone living in a society, whether they can trace their ancestry back several generations or not” (168). Social membership is not based on ancestry or identity but on residence and time spent living in a place. As a normative matter, it serves as the basis for claiming membership-specific rights. It is “normatively prior to” and “more fundamental” than citizenship in the sense that it “provides the foundation upon which moral claims to citizenship normally rest” (160). So social membership serves as the ground for claiming citizenship and other modes of belonging in the political community, but what grounds social membership itself?

I have to confess to uncertainty about Carens's answer to this question. In explaining why social membership matters morally, he says what is at stake is "a person's ability to maintain and develop a rich and highly particular set of human ties" (164). This sounds like a general human rights claim based on the basic human interest in forming and sustaining relationships wherever we happen to be, but Carens explicitly distinguishes himself from radical cosmopolitans who think that protecting human rights is the only thing that matters. Perhaps he means to focus on the significance of the actual location of our richest relationships. As Carens puts it, "Most people do develop deep and rich networks of relationships in *the place where they live*, and this normal pattern of human life is what makes sense of the idea of social membership" (168, emphasis added). Yet, the place where we live, the sites where we develop our richest relationships, tend to be local settings - our homes, schools, workplaces, neighborhoods, and cities.

I think Carens's theory of social membership is grounded in a theory of political community. Indeed, it has to be - it is the political community, not a social group or network, to which immigrants seek inclusion in the range of cases Carens discusses in the first part of the book. His theory of social membership presupposes the value and moral relevance of the *political community*. We need to know more about Carens's conception of political community to understand why we should give moral weight to an immigrant's claims of membership and belonging to it. What is special about

the relationship among members of a political community as opposed to other kinds of community? There are at least two distinctive features of the relationship among members of a political community: it is typically not voluntary and it involves shared subjection to the coercive power of the state. These two features raise the familiar question of the legitimacy of political authority. Linking the question of political legitimacy to Carens's discussion of immigration gives us a way to justify political community as the ground of social membership: it is not only that noncitizen migrants have "rich networks of relationships in the place where they live" (social membership claim) but also that they are subject to the coercive power of the state under which they live (political legitimacy claim).⁶ Linking social membership and political community in this way provides a more convincing basis for the claims of migrants that Carens argues for in the first part of the book – the claims are addressed to and owed by the political communities where they live.

Interpreting democratic principles

The method Carens adopts in the first part of the book reminds me of the approach Michael Walzer takes in his 1983 book, *Spheres of Justice*. Walzer's way of doing philosophy was not to seek "an objective and universal standpoint" but "to interpret to one's fellow citizens the world of

⁶ See Sarah Song, "The Significance of Territorial Presence and the Rights of Immigrants," in *Migration in Political Theory: The Ethics of Movement and Membership*, eds. Sarah Fine and Lea Ypi (Oxford University Press, forthcoming).

meanings that we share.”⁷ Similarly, Carens looks to our shared understandings of “democratic principles” that are reflected in “contemporary political institutions and policies throughout North America and Europe” (2). He provides some examples of democratic principles, including “that all human beings are of equal moral worth, that disagreements should normally be resolved through the principle of majority rule, that we have a duty to respect the rights and freedoms of individuals, that legitimate government depends upon consent of the governed, that all citizens should be equal under the law, that coercion should only be exercised in accordance with the rule of law, that people should not be subject to discrimination on the basis of characteristics like race, religion, or gender” (2).

As Carens’s list suggests, the content of “democratic principles” in North America and Western Europe is rich and pluralistic. It is also contested and conflicting. He says these core principles could be called “liberal” or “liberal democratic” or “republican” instead of “democratic, but Carens relies more on certain principles over others in the course of his book. In particular, the principles of moral equality and individual rights and freedoms serve as important premises in his arguments for the inclusion of noncitizens in the first part of the book and in his case for open borders in the second part. This emphasis reflects Carens’ underlying endorsement of *liberal* commitments

⁷ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983), xiv.

over certain core *democratic* principles, such as political equality and collective self-determination.

The principle of collective self-determination

The principle of self-determination is a fundamental democratic principle that plays a minor role in Carens's book. He briefly discusses the idea but what he says is conflicting. In the introduction, he says "it may be plausible to argue, from a moral perspective, that states should enjoy wide latitude in setting their immigration and citizenship policies" (8), but then he argues that "discretionary control over immigration is incompatible with fundamental democratic principles" (10). Toward the end of the book, after analyzing different arguments against open borders, Carens concludes:

there are no compelling arguments against open borders at the level of principle. There are some contingent and self-limiting arguments that justify restrictions on immigration under certain circumstances but no arguments that justify the discretionary control over immigration that states now exercise and that the conventional view endorses (287).

Here Carens elides two questions that need to be distinguished. The first is about the content of immigration policy: what sort of immigration policy does justice require? His answer is open borders. The other question is whether the state's control over immigration can be justified. His considered answer seems to be no. Perhaps part of why Carens rejects the possibility of

any compelling justification for the state's right to control immigration is because he views it as an *absolute* right. If we concede that the state has the right, what is to stop them from exercising absolute control? But an absolute right to control or no right at all are not the only options.

I believe a compelling argument can be developed for the political community's *pro tanto* right to control immigration, based on the idea of collective self-determination. In contrast to *conclusory* reasons for action, which require us to act regardless of other considerations in play, *pro tanto* reasons are "genuine reasons for action," but they do not necessarily override competing reasons that may also be in play.⁸ So, to say I have the right of freedom of movement is not to say I have an absolute right of free movement. For example, my freedom to move about typically stops at the tip of your nose and the border of your private land, unless I can make the case that there is a basic human interest that will be served by my interfering with your body or property. Similarly, to say that the state has a *pro tanto* right to control immigration recognizes it has genuine and compelling reasons for controlling immigration, but they must be weighed against competing considerations. I will say more about this below.

What grounds the state's right to control immigration is the right of collective self-determination. If we apply Carens's "ground up" method to this principle, we find that it is a fundamental principle reflected in UN charters and covenants. The first article of the UN Charter, signed in 1945,

⁸ Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), 116-7.

declares self-determination to be a fundamental right of all peoples.⁹ The idea of a universal right of self-determination is further enunciated in the International Covenant on Civil and Political Rights: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹⁰ Collective self-determination has an internal and external dimension. Internally, collective self-determination is the idea of popular sovereignty – that a group of people ought to have independent political control over significant aspects of its common life. We can find its external dimension expressed in international law where it used to be viewed as applying only to specific territories – first, the defeated European powers and later, the overseas trust territories and colonies – and it was understood primarily as a right of secession. The idea of collective self-determination has evolved in international law to be understood as a right of all peoples to participate in processes of collective governance.¹¹

What grounds the principle of self-determination itself? One strategy of justification begins with the premise that is central to Carens’s case for open borders – the moral equality of persons – and seeks to derive the value of collective self-determination from it. This strategy anticipates the objection that collective self-determination is inherently incompatible with respecting human rights and responds that self-determination can be derived from the

⁹ Charter of the United Nations, Article 1, June 26, 1945.

¹⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966.

¹¹ Thomas M. Franck, “Emerging Right to Democratic Governance,” *American Journal of International Law*, vol. 86 (1992), 54-5.

premise that all persons *qua* persons should be treated with equal concern and respect. This approach is rooted in value individualism: that individual human beings have intrinsic value and that collective entities like the state derive their value from their contributions to the lives of individuals. One might argue that the right of self-determination should be added to the list of basic human rights on the grounds that it is required to respect the moral equality of persons, for one of two reasons. The first is offered by proponents of a human right to democracy: respecting the moral equality of persons requires recognizing a right to democratic self-governance. The claim here is that moral equality requires that all persons be regarded as equal participants in significant political decisions to which they are subject. A second reason starts from the premise of the moral equality of all persons but offers an instrumental argument for recognizing a legal right to democracy in international law: democratic governance is so instrumentally valuable for the protection of human rights that it ought to be required for any government to be considered legitimate.

While I share the value individualism underlying these moral equality arguments, they fail to capture something fundamental about the right of self-determination: it is an irreducibly *collective* right. The right of self-determination is irreducibly collective in at least two senses. First, the agent is a collective agent – “we the people” – that is not reducible to the mere aggregation of individual members of a political community. Second, the freedom of self-determination is a collective freedom. This is what Rousseau

called “moral liberty” or “obedience to the law one has prescribed for oneself.” Moral liberty “alone makes man truly the master of himself” and it is only possible “in the civil state.”¹² Rousseau adds another dimension to our understanding of the value of political community: it is only through political community that collective self-determination is possible. The challenge is to provide an account of the relationship of the collective and its individual members such that we can say we have a collective agent that also respects the freedom and equality of individuals.¹³

My point here is that there *is* a compelling argument for the state’s *pro tanto* right to control immigration that is based on the principle of collective self-determination. Recognizing such a right is not to say that there should be ‘closed borders’ instead of ‘open borders’ but rather that members of the political community have the right to shape the terms of membership and belonging within constraints, which are themselves defined by democratic principles. We can appeal to the sorts of considerations that Carens himself raises in the first part of the book to develop an account of the constraints on state regulation of borders. In contrast with Carens who moves in the second part of his book to reject the presupposition of legitimate state control over immigration, I think we can defend the state’s right to control immigration while also arguing that the right should be exercised in ways that allow for the admission of refugees and others fleeing violence and war, family

¹² Rousseau, *Social Contract*, Book I, Chapter VIII, 151.

¹³ I draw on Rousseau to address this challenge in Sarah Song, *Immigration and the Limits of Democracy*.

reunification policies, the legalization of irregular migrants, and other policies that Carens defends in the first part of the book.

I greatly admire the clarity, rigor, and wide-ranging scope of Carens's book. And given how controversial and complicated a topic immigration is, I also admire how he wrote the book not only for a scholarly audience but also for "ordinary men and women in North America and Europe who think of themselves as people who believe in democracy and individual rights and who want to understand the challenges posed by immigration into their societies" (3). I think the first part of Carens's book is a model of democratic persuasion. In addressing ordinary men and women in North America and Europe, he implicitly accords a kind of standing to 'we the people' in democratic political communities as having the power to shape the future of their communities. If we take seriously the principle of collective self-determination, we are able to see that this power is not merely a convention but a legitimate power of 'we the people.'