

## **Immigration, Ethics, and the Hermeneutics of Suspicion:**

### **Methodological Reflections on Joseph Carens' *The Ethics of Immigration***

Joseph Carens' *The Ethics of Immigration* is the most complete and careful statement of a liberal democratic approach to immigration to date, encompassing the case for open borders that he pioneered in the mid-1980s, ethical criteria for admission and for membership, the rights of temporary and irregular migrants, and questions of fair inclusion of immigrant communities within the larger society. It also serves as exemplar for a way of doing political philosophy that Carens defends in a methodological appendix. Carens' methodology grounds his account of how we should view many of the issues surrounding immigration and will no doubt influence future work by others on these topics. An exploration of the limitations of his approach can stimulate other types of theoretical work as well as open up topics that have been insufficiently addressed in normative migration theory.

First, I make an internal criticism of Carens' hermeneutics, suggesting that his account of democratic norms and practices does not emerge from a broad consensus on the norms and practices of democratic cultures. Rather, norms surrounding immigration in contemporary Western democracies are far more contested and ambiguous. Carens does not adequately acknowledge this because he brings to the topic of immigration an implicit liberal political philosophy that allows him to select and organize aspects of liberal democracy favorable to his account.

Second, Carens assumes that democratic norms and practices are accessible to interpretation without investigating their role in sustaining morally objectionable aspects of migration. In contrast, I call for more attention to how power and interest, mediated through structures of gender, race, and class, shape convictions about migration. Seemingly benign and even laudable principles are sometimes implicated in upholding morally problematic practices. This points to the need for a more critical approach to the ethics of immigration.

#### **Carens' Methodology**

Carens attempts to steer his way between an ethics of immigration based on a general theory of justice (298) and a contextual approach that "emerge[s] from some particular historical, cultural, and political context." (299) He rejects the strategy of relying on a general theory of justice because it would limit the persuasiveness of his account to people who accept the theory and agree with his interpretation of it. Furthermore, general theories of justice may not have the resources to adequately address questions of immigration. Though Carens himself championed the contextual approach in earlier work (Carens 2000), he worries that insights may not generalize beyond the particular case investigated (299) and fail to provide the necessary critical distance to assess migration policy.

Instead, Carens bases his approach on democratic principles<sup>1</sup> and practices in “the United States, Canada, Australia, New Zealand, and democratic states in Europe (307).” (He is agnostic about whether the principles and practices apply to other democracies or to non-democratic societies.) He detects a “broad moral consensus” (3) in “the broad moral commitments that underlie and justify contemporary political institutions and policies” (2) in these countries. These moral commitments include the equal moral worth of all human beings, major individual rights and freedoms, equality under the law, fairness, reciprocity, anti-discrimination, and the commitment to democratic rule.

The positing of a broad moral consensus among some states forms the background for Carens’ inquiry. The first part of the book addresses the question “who belongs?” and presupposes the “conventional view” in which “each state is morally entitled to exercise considerable discretionary control over the admission of immigrants” (10). The conventional view allows Carens to enter into dialogue with people who reject open borders on issues such as the determination of citizenship, the inclusion of immigrants into the dominant culture, the regularization of the status of irregular migrants, and the rights of permanent residents, temporary workers, and irregular migrants.

The second part of the book on immigration restrictions uses the resources of the moral consensus to examine and criticize the conventional view. Carens first shows that there are significant limits to state discretion on the admissions of immigrants. He then turns to limitations that states set on their own treatment of refugees and eventually argues that principles of liberty and equality support open borders.

I want to query the “democratic principles” presupposition which forms the basis for three major argumentative strategies. First, when discussing issues such as the rights of permanent residents, Carens does not take an explicit stance on which democratic principles and practices people accept. Rather, he articulates the logic behind the principles and practices for citizens, then argues by analogy. For example, he poses the question of what could justify treating immigrants

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<sup>1</sup> I follow Carens’ terminology of “democratic principles” which he also admits could be called “liberal,” “liberal democratic,” or “republican” principles (2).

differently or why a right such as the right to free movement that is uncontroversial within borders does not extend across borders (237-252). This strategy rests on Aristotle's dictum to treat like cases alike and is relatively uncontroversial: if we are justified in treating immigrants differently, there must be a morally relevant reason for doing so.

Second, Carens draws on democratic principles to construct his theory of social membership (158-169). On his account, people who live within a state acquire social membership and, as time passes, this membership strengthens and generates stronger moral demands. He claims that "the theory is simply an attempt to make the implicit rationale of policies explicit and to connect the rationales of different policies together." (169) This strategy is more controversial, since he is claiming that social membership unifies and explains diverse principles, practices, and intuitions. It competes with alternatives such as Rainer Bauböck's stakeholder account (2007), accounts that base membership on subjection to coercion (Lopez-Guerra 2005), and accounts that rest on affected interest (Goodin 2007).

Third, Carens provides an interpretation of the rights to freedom of movement and to equality of opportunity and the commitment to equal moral worth (227-8) to argue for open borders. Though this does not require defending a normative theory of immigration, principles and practices are interpreted differently and many reasonable, well-informed people reject his view that freedom of movement, equality of opportunity, and equal moral worth entail open borders.

Carens' second and third strategies depend on whether we accept his interpretation of the practices and norms of a subset of democratic states. What principled reasons and sources of evidence are available for Carens in responding to people who dispute his interpretation or think that diversity within democratic societies undermines his consensus?

One source of evidence includes positive law, constitutional documents, and the ratification of international covenants and declarations. Carens mobilizes general human rights and basic liberties such as freedom of thought, religion, and speech. He asserts that within liberal democracies "no one, not even the most fervent chauvinist, argues that it would be proper to deny such rights to

noncitizens.” (93) He also mentions that every democratic state gives the children of resident citizens their parents’ citizenship (22), that liberal democracies accept a moral duty to support family unification (186-191), and that they have abandoned ethnic selection criteria (174). He refers to legislation that regulates working conditions and notes that these exist to protect human dignity, solve collective action problems, and to prevent workers from acting against their own interests (115). He also presents as evidence the case of *Plyler v. Doe* in 1982 that confirmed irregular migrant minors’ right to education.

Carens also appeals to policy, practice, and informal norms. He notes that most democratic states “treat their own immigration rules as administrative matters” (131) and that the laws “restricting immigration are a lot more like traffic regulations than like laws prohibiting murder and theft.” (155) He refers to informal norms such as the Millian view that people should be allowed to choose how to live their lives as long as their choices do not harm others, the “principle of non-denigration” (77) that entails that majority and minority groups are committed to civic respect, and the norms of “reciprocity, proportionality, rationality, and fairness.” (162)

Intuitions generated by case studies provide a third source of evidence. We meet Miguel Sanchez, an irregular immigrant married to an American citizen with a six year old son (1), Faiza Silmi who is denied French citizenship because French authorities consider her use of the niqab a rejection of the French value of equality between the sexes (2, 51-3), Milikije Arifi, a thirty year resident of Switzerland of Macedonian origin who was denied Swiss citizenship three times by the town council of her canton despite fluency in German and passing an exam on the history of government of Switzerland (50-1), and Marguerite Grimmond (147-8), an 80 year old irregular migrant in Scotland who came to the country as a young child and learned when she returned from a trip to Australia that she had a week to leave the country. Carens also discusses the Jewish refugees who reached North American in the *St. Louis* in 1939 and were denied asylum and returned to Nazi Germany (192-4) as an exemplar for how we should not treat refugees.

Carens sees himself as making explicit norms that most people in democratic states accept. Is he right to find this democratic consensus? What if immigration within democratic states is much more contested and that illiberal policies and practices are very much part of the mainstream? Notably, Carens largely avoids discussing democracy, understood in terms of voting, interest group politics, efforts at political mobilization, and discussion in the political mainstream. Far right parties, some dedicated to opposing immigration and affiliated with hate groups, have had successes in European politics (Mudde 2012) and influenced policy in Australia. Recently, the European Court of Human Rights upheld the French government's ban of the burqa in public spaces on the grounds that the ban "can be regarded as proportionate to the aim pursued, namely the preservation of the conditions of 'living together' as an element of the 'protection of the rights and freedoms of others.'" (*S.A.S. v. France*) In the United States, anti-immigration organizations such as FAIR, NumbersUSA, and the Center for Immigration Studies are very much part of the dialogue on migration, finding representation in the Republican Party and a voice in the mainstream media. Even if liberal norms allow him to dismiss unambiguously far right view, opinion polls in Europe suggest that the public is "moderately anti-immigrant" (Hampshire 2013: 21-2).

Carens cannot simply dismiss these groups by appealing to democratic norms because they can retort that they too are adopting democratic norms such as the right to self-determination and national identity. The United Kingdom's British National Party, France's Front National, and Tea Party representatives of the United States' Republican Party express views on immigration shared by significant parts of the population – views that have been taken up by the mainstream parties in each of these countries and endorsed in widely reviewed books by respected authors (e.g., Caldwell 2010, Huntington 2004). Immigrants in Europe and North America are frequently depicted in the media as threats to national security and culture, criminals, welfare cheats, and "job stealers". A February 17, 2014 Gallup poll reported that 77% of Americans considered it either extremely important or very important "to halt the flow of illegal immigrants into the U.S." (The widespread

use of the term “illegal immigrants” suggests that most Americans do not understand or accept that violations of immigration law are on par with traffic violations.)

When we turn to practice, the United States has increasingly resorted to the detention of immigrants, often in conditions indistinguishable from prison (Dow 2004). As Carens acknowledges, democratic states unanimously adopt a narrow definition of who counts as a refugee (199-200). They have adopted methods such as carrier sanctions and designated safe countries to prevent refugees from exercising their right to claim asylum – or in the case of Australia, using offshore processing centers to avoid extending asylum seekers their rights guaranteed under Australian law (Amnesty International 2013). States often take measures to make life as unpleasant as possible to people waiting to have their asylum claim processed, ostensibly to convince economic immigrants seeking admission through asylum policy to abandon their claims (Hatton 2011). Finally, the everyday enforcement of immigration law is carried out by bureaucrats who exercise broad discretion, usually with minimal transparency, limited oversight or channels for redress.

In sum, the democratic states that Carens discusses display considerable ambivalence in their legal and moral commitments to immigrants and refugees. One way he can respond is that his interpretation of democratic principles is more reflective and more consistent than the views we find expressed in the public sphere. This strategy may succeed when his opponents make logical mistakes or appeal to unambiguously illiberal norms. For example, in the case of Milikije Arifi, the longtime Swiss resident who was denied citizenship despite speaking German fluently and demonstrating knowledge of Switzerland’s history and government, Carens fairly claims that the stance “that a state is morally free to do whatever it wants in granting or withholding citizenship” (51) cannot be reconciled “with a commitment to democratic principles.” (51) Nonetheless, the limitations of this strategy are apparent on the next page where Carens writes, “it is not morally permissible for a democratic state to make access to citizenship contingent upon what a person thinks or believes” and this “is true even when what is in their hearts and minds is antagonistic to

democracy.” (52) This claim depends on a particular understanding of liberty that is not supported by a democratic consensus.

What Carens has provided is not a synthesis of the moral principles that members of democratic states endorse, but rather an account of the moral principles he thinks they *ought to* endorse if they were more careful, consistent, reflective, and empathetic. His interpretations are very much influenced by his immersion in the tradition of political philosophy emerging from John Rawls’ *Theory of Justice* (312). Carens’ philosophy is not only liberal, but arguably liberal egalitarian (a position he explicitly defends in earlier work) (Carens 1992). Though he does not apply a liberal egalitarian *theory* to the ethics of immigration, he relies on an interpretation of liberal egalitarian convictions and principles. In Rawlsian terminology, his accomplishment is to use something like wide reflective equilibrium to put forward a compelling account of the ethics of immigration. There is much to be said for Rawlsian liberal egalitarianism as a philosophical orientation, but it is not the consensus philosophy of Western democracies. Carens has articulated a formidable account of the ethics of immigration, but he is more reliant on a general liberal egalitarian theory than he admits.

### **Hierarchy, Dominance, and the Hermeneutics of Suspicion**

So far I have been proceeding on Carens’ assumption that the meaning and function of democratic principles and practices is transparent. On Carens’ account democratic states are committed to liberty, equality, and other norms but their citizens do not always grasp what these commitments entail. Once Carens has elucidated the implications of democratic commitments, then it is simply a matter of people changing policies and practices to accord with principles they already accept. I want to explore a somewhat more critical approach. What if instead democratic principles are implicated in morally suspect practices (Leiter 2006)?

In his appendix, Carens invites readers to consider other approaches and their strengths and limitations. He admits that “[t]he pursuit of precision and clarity can create the illusion of certitude and obscure the ways in which our knowledge depends upon our leaving things out or taking things

for granted (313).” In this section, I want to draw attention to how Carens’ approach omits, minimizes, or distorts issues in the ethics of immigration.

Though Carens mentions the possible legitimacy of other approaches, he does not give much indication of what they might be. One clue occurs in his citations of Linda Bosniak’s *The Citizen and the Alien* and Bonnie Honig’s *Democracy and the Foreigner* as exemplars of approaches that

seek that highlight contradictions rather than resolve them, to embrace ambiguities rather than clarify them, and to take as their primary focus whatever is left out in conventional discussions. They aim to be critical but they resist the impulse to evaluate and prescribe (313).

This does not cohere with my understanding of Bosniak and Honig’s books. In my view, they attempt to clarify ambiguity and do not so much seek what is left out of conventional discussion as argue that conventional discussion misunderstands citizenship and foreignness. On their account, borders are more porous and overlapping than mainstream philosophers admit and defined not only by norms and laws, but also by narratives and myths. Foreigners have a complex status of existing outside of as well as inside and between communities. As Bosniak puts it, “Aliens are liminal characters, subjects of contrasting and sometimes competing citizenship worlds.” (Bosniak 2006: 140) They do not attempt to resist the impulse to evaluate and prescribe, but rather consider the normative implications too complex to recommend straightforward prescriptions.

Bosniak and Honig’s work reinforces the worry that no democratic consensus is available. Not only do individuals or groups within a territory disagree about immigration, but consensus is impossible because democratic thought on immigration in a world of nation-states exhibits inherent tensions. I want to suggest that Carens’ appeal to democratic consensus may serve a more disturbing function of diverting our attention from problematic aspects of immigration policy.

Suspicion of overtly moral language is found in many traditions, including the political realist tradition in international relations, the Marxist tradition, radical feminist thought, and critical

race theory. We should not accept reductive versions of this approach that asserts that morality is *simply* a manifestation of matter of power or interest (political realism), relations of production (Marxism), or gender or race hierarchies. The conviction that moral language is often superficial, misleading, and mobilized for immoral purposes does not entail that there are no defensible moral standards. What it does is create an additional interpretation and argumentative burden.

Carens' account of the ethics of immigration rests on a contrast between liberal, democratic states and the rest of the world. Though he is agnostic about the ethics of immigration in non-democratic states (and indeed in democracies that are not part of Europe, Australasia, or North American [excluding Mexico]), the distinction suggests that some countries are committed to addressing immigration morally and others are not – or at least conceive of morality in very different terms. The moral case for naturalizing of immigrants or the extension of a full bundle of labor rights is not a serious moral question in the Persian Gulf, Singapore, or indeed much of the world (Ruhs 2013).

One way of putting this contrast is that, on Carens' account, in democratic states moral norms are imperfectly applied and are sometimes overruled by non-moral motives, but nonetheless affect how immigrants are treated. The purpose of an ethics of immigration is to clarify these norms, show their scope, point how they are violated by some practices, and otherwise help citizens and policymakers move closer to the ideals they already hold.

A more pessimistic view of liberal democracies' moral commitments to immigrants asks if moral principles are epiphenomenal, mere lip service without effect. Democratic presuppositions may also have an ideological function, serving the interests of certain groups and excluding others. In this case, they have a causal effect, but the effect is in service of non-moral or immoral causes. We do not have to be political realists, Marxists, or radical feminists to admit that *sometimes* the language of rights and equality is a veil to disguise baser motivations of power and interest.

This suggestion encourages us to ask about the etiology of moral principles. Whose interests do policies promote and how do democratic principles serve these policies? How do these

principles interact with economic and cultural structures – most prominently class, gender, and race? Moral principles can render morally problematic arrangements invisible. Formal rights and norms of equality may allow people to ignore substantial inequalities. Notably, *The Ethics of Immigration* has almost no sustained discussion of class, gender, and race. Carens is content to make the liberal point that policies that discriminate on the grounds of race, ethnicity, gender, sexual orientation, and religion are impermissible.

His discussion of the “state complicity argument” (152-4) is one of the few places that where he admits that the democratic consensus might disguise hidden motives. According to the state complicity argument, states do not in fact oppose irregular migration despite their public protests to the contrary. Instead, they are complicit in welcoming a reliable, irregular workforce whose legal status makes them vulnerable to discipline and exploitation. The state complicity argument provides an opportunity to reflect on how government policies interact with economic structures, allowing for significant economic stratification and inequality. Unfortunately, Carens does not investigate how unauthorized migration may be structurally embedded in capitalism (Baldwin-Edwards 2008, Piore 1979) or the ways in which admission policies may create and reinforce class hierarchies. Rather, he warns against overusing the state complicity argument (153), noting that states may be unable to prevent unauthorized migration due to “structural factors beyond [their] control” (153), that they are not responsible for employers’ desires or actions, and that they may choose not to prevent unauthorized immigration because it would violate other moral commitments.

Carens’ major discussion of gender equality examines the case of the French State denying Faizi Silmi on the alleged grounds that she rejects equality between the sexes. Carens’ main point is that the French state cannot deny citizenship because of what people think and feel (51-2). Silmi’s case was an opportunity for Carens to reflect on how immigrants are subjected to discrimination on gender, race, and religion. For example, the French government’s denying rights to Muslim *women* in the name of gender-equality deserves attention. Though later in the book he

acknowledges the parallels between Islamophobia today and fears of Catholics, Jews, and Asians in the nineteenth and twentieth century, he does not accompany this with an examination of how culture has been mobilized to disguise racism, how structural racism defines the opportunities of immigrant communities, or to the way that visa regimes are *de facto* discriminatory.

Similarly, Carens ignores the large literature in sociology and anthropology on the feminization of migration. He does not assess claims made by scholars such as Helma Lutz who sees the migration of women into feminized domains such as care work and sex work as contributing to these areas becoming linked with “low wages, low status and low occupational mobility (Lutz 2010, 1652)” or Rhacel Salazar Parreñas’ plausible assertion that “migration is a movement from one distinct patriarchal system to another, bound by race and class, in transnational capitalism.” (Salazar Parreñas 2001, 78)

Carens might retort that every book has to make decisions about what to cover and what to omit. This is true, but Carens’ omissions have wider consequences. First, norms of formal liberal equality often obscure substantial inequality – treating cases as if they were alike when they are not. The danger is that as states more closely approximate Carens’ democratic consensus, the less likely they are to admit continued injustice. A second, related point is that democratic norms can be mobilized to avoid addressing structural issues. If groups of migrants are systematically pushed into the informal economy or gendered labor, democratic norms of freedom and equality can attribute this to individual choice or culture. Third, Carens’ approach may make political action more difficult, underestimating the difficulty of transforming unjust systems. It is not simply that we are not living up to our own standards. Rather, many people benefit from treating immigrants badly and hide behind democratic pieties to excuse their complicity.

## **Conclusion**

I have presented two criticisms of *The Ethics of Immigration*. First, Carens’ methodology presupposes a robust liberal egalitarian theory that cannot be derived from a consensus among the democracies of Europe, Canada, the United States, and Australasia. Instead, his presuppositions

require an independent defense. The second criticism is that Carens' liberal egalitarian approach encourages the neglect and misunderstanding of many topics in the ethics of immigration, especially with regard to how the norms regulating immigration policy are implicated in class, gender, and ethnic inequalities.

Carens states his hope that reflection on his approach will illuminate the extent to which other approaches "reflect substantive intellectual disagreements or simply differences of focus." (297) My remarks are not meant to detract from the considerable value of *The Ethics of Immigration* or to suggest that we should abandon a commitment to liberal democratic norms. Many of Carens' arguments are compelling and I hope that many policy makers and members of the general public read and reflect on *The Ethics of Immigration*. In this respect, my reflections have pointed to differences in focus.

Nevertheless, there is a point in which differences in focus constitute a substantive intellectual disagreement. Carens is confident that a moral consensus lurks behind democratic states' often problematic behavior toward immigrants. In contrast, I understand the motives behind the treatment of immigrants to often be ones of interest, prejudice, and fear, sometimes couched in moral language. Political philosophers must take a hard look at migration to be sure that our liberal democratic norms are in fact used to transform the lives of migrants and potential migrants and their communities. This demands a more critical approach than we find in Carens.

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