

*Carens and the Problem of Method*

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## I. INTRODUCTION

Joseph Carens began writing about the ethics of immigration in the 1980s, and, if not the first, he was certainly *one* of the first political philosophers to ask critical questions about the state's right to exclude would-be migrants. The story goes – and I'm sure it is true – that his first attempts to have his work published were unsuccessful, with journals rejecting his papers. I had a similar experience in the 1990s, when my first paper questioning the right to exclude was returned by a journal editor without sending it to referees – he simply did not see it as a subject worthy of philosophical discussion. He held what Carens describes as the 'Conventional View' – the presumption that states have the right to discretionary control over who crosses their borders – and he could not imagine that this view could be open to rational criticism. The situation has clearly changed since those days and there is a substantial and still growing scholarship on the ethics of immigration, and another generation of scholars have picked up the arguments and taken them to more and more interesting levels. And now we have Carens' eagerly awaited book, which draws his work together into one sustained and coherent argument.

## II. THE ETHICS OF IMMIGRATION

*The Ethics of Immigration* does not disappoint. The breadth and depth of its vision is extraordinary and it will shape the debate for many years to come as an indispensable text. It also gives those of us who teach the ethics of migration in our courses the chance to introduce our students to that vision in its entirety, instead of guiding them to glimpses of it in journal articles and book chapters. However, my task here is not only to praise Carens and his book, but to raise challenges so that we continue the dialogue he began in the 1980s. The fact remains that I have always been aware of a difference between Carens' approach to the question of the ethics of immigration and my own, and it turns out to be an important one because it is central to the book's very structure. That difference is whether we as theorists can argue directly for open borders, or whether we need to work our way to that conclusion by tackling other questions of social and political justice first, and getting there only after having tackled those questions. Despite the fact that we agree on the ultimate destination, I take the first route, while Carens' takes the second.

What that means is that I take the question of membership to be fundamental to all other questions of social and political justice, and therefore hold that any theoretical approach to questions of social justice that takes place within the confines of a

nation-state that has not first addressed the ethics of membership must be incomplete and incoherent. Carens believes that there are questions of social and political justice that can be addressed and answered within the confines of a nation-state prior to asking the fundamental question about the ethics of membership. His book follows that pattern, with the first ten chapters addressing the ethical dimensions of specific issues, such as the status of temporary workers, irregular migrants and refugees, and the last three arguing for the ethics of open borders. The first ten chapters do not rest on any arguments for open borders, and indeed Carens says that in those chapters he is working within the framework of the Conventional View, and thus with the presumption that states have the right to discretionary control over who crosses their borders. In the last three chapters he argues that this Conventional View is wrong, but argues that it is possible to accept all of his arguments in the first ten chapters without abandoning it. Also, while the philosophical arguments in the first part are “[...] almost entirely independent from the arguments about free movement” in the second part of the book, the arguments in both parts are “compatible” with each other (12). However, his position is more complex than may appear from this, in that while he argues that most of the answers to the questions in the first part, if thought through correctly, will be compatible with an open-borders position (the correct answer to the fundamental question of membership), some of them will not be. I will return to this complexity in the relationship between the two parts of the book below.

Carens explains why he takes this approach. He is, he says, doing political theory from the ground up. By this he means he is not working from any specific theoretical framework about justice or democracy or human rights, but instead is drawing on widely shared democratic ideas and principles that he finds in the major liberal democracies in the world today. He is relying on an “overlapping consensus” about what democracy requires (9), a consensus that includes political theorists and ordinary democratic citizens. What emerges from this consensus is a set of democratic principles which all these people agree upon:

[...] the broad moral commitments that underlie and justify contemporary political institutions and policies throughout North America and Europe – things like the ideas 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 freedom of individuals, that legitimate government depends upon the 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, that we should respect norms like fairness and reciprocity in our policies, and so on (2).

The important point is that these principles morally constrain state sovereignty and democratic self-determination (7) such that a liberal democratic state cannot have any immigration rules it likes. What emerges from this consensus is a “[...] general account of how democrats should think about immigration” (10).

An important part of this approach, however, is to work within the Conventional View for as long as possible, because it is part of the overlapping consensus – very few political theorists accept an open-borders position, and even fewer politicians or citizens of liberal democratic states. There is a pragmatic element to this approach: “[...] if I am to have any hope of persuading people of the merits of my views on the other issues that I discuss [...], I must not tie those arguments to the case for open borders” (11). But Carens insists this is not only pragmatism – it is “[...] a principled commitment to a certain kind of dialogue” (11). Democratic deliberation as a practice involves adopting moral views that are widely shared in the democratic community, even when we as participants may not agree with those specific views. Otherwise democratic dialogue could not take place. This means he takes a dialectical approach in the first part of the book, and a more direct approach in the second. Nevertheless, as we have seen, although the two sets of arguments are almost entirely independent, they are compatible with each other. Those who wish to stop the journey at the end of chapter 10 can do so with the sense that they have reached a coherent ending, while those who wish to stay for the rest of the ride can do so without feeling they have had to change trains.

Carens elaborates on this aspect of philosophical method in an Appendix, which shows the importance of the relationship between the two parts of books, and which, to an extent, justifies my focus on this comparatively narrow aspect of it. There, he makes it clear that all debate requires presuppositions to begin, even though those presuppositions can be questioned at a later stage. We cannot question everything at once. To illustrate this, he draws a continuum between what he calls the Just World presupposition, which takes very little as morally given (301), and the Real World presupposition, which takes the world more or less as we find it, morally and institutionally (303). Carens believes he is exploring a third way, which he describes as the Democratic Principles presupposition (306). All that is presupposed here is a commitment to democratic principles – we can address issues of migration by thinking through what justice requires in terms of the principles we find in the contemporary democratic tradition.

### III. THE JUST WORLD

The question of where we start the argument, what presuppositions we hold and which we question, is of course very complex, and Carens’ method here is attractive in that it enables us to avoid the need to establish controversial starting points – we can begin with some degree of consensus. As he points out, the Just World presupposition – which most closely captures my own approach – forces us to address some fundamental theoretical issues that require a wider moral theory or theories, such as a theory of human rights. If we take Carens’ approach we can take human rights as we find them in liberal democratic theory and practice and discuss the ethics of immigration in that context. If we take my approach, as I am all too aware, we need to more or less start again – as David Miller has pointed out to me, the fundamental difference between his

position and mine is not particularly our view about the ethics of immigration, but our theories of human rights.

That being said, the Just World presupposition, as I understand it, is built upon a commitment to moral equality, the equal moral worth of all human beings, and this commitment does not appear out of nowhere – it is already here, embodied in the democratic principles that Carens makes central to his work. Indeed, this commitment, I have argued elsewhere, is one of the defining features of any theory we can describe as liberal (Wellman and Cole 2011, 177-178). My claim is that if we recognize the force of the principle of moral equality, we can see that it leads us directly to open borders, because it is only in that political order that the moral equality of humanity is fully realized.

This claim needs clarifying in two senses because it is easily misunderstood. The first is that I do not argue that it is only under a regime of freedom of international movement that moral equality is fully realized *in all dimensions* – only that it is fully realized with respect to the right to move. There are many other aspects of moral equality that need addressing, and a world in which moral equality is fully realized in all its dimensions – not just with respect to movement – would be very different to the world that we live in today. I have never argued that open borders are the answer to every issue of social and global justice. The second is that when I say that the principle of moral equality leads us directly to the need for freedom of international movement, I do not mean that the journey from the one to the other is either a speedy one or a straightforward one. All I mean is that freedom of international movement is the inevitable destination of the argument – it may take us a long time to get there and require much argument in between. Natalie Brender certainly thinks I place too much weight on the principle of moral equality and its role in liberal political theory: “Even if the principle of equality is at the center of a liberal vision of politics, is it plausible to consider this commitment the *only* concern informing the practices and institutions of liberal democratic states?” (2003, 192). She concludes:

[...] the state exists for many functions other than the dubious ones of national community. Its administrative functions are by their very nature focused largely on the welfare of its members rather than of outsiders. A liberal state will have as *one* of its central commitments the moral principle of equality, but [...] that cannot be its *only* commitment. If it is to fulfill the functions we expect a state to fulfill, it must also be committed to tending to the political, social and economic welfare of its members (2003, 193).

This criticism certainly gets to the point and it is clearly a mistake to represent liberal theory as having only one value, that of equality. It consists of a family of values, such as pluralism, welfare, social justice, liberty, neutrality, democracy, public order, limited government, private property and others too. There is a wide variety of liberal theories shaped by the weight and order and interpretation they place on these values. Egalitarian liberal theory places moral equality near, if not at, the centre, but still, as Brender

observes, there must be other values in play. Moral equality, however, has a centrally important role to play, a role Carens recognizes when he observes: “It is so fundamental that it is probably not possible to find a moral view within the liberal tradition that is presented as incompatible with the principle of moral equality” (2014). For me, that role is in partially to provide a conception of what it is to be a human being and partly to provide a limit to the extent to which liberal states can pursue other particular values, especially non-liberal ones such as national security (I mean non-liberal rather than illiberal in the sense that national security is not a distinctively liberal value). In relation to the latter task, the question is to what extent the state can pursue national security without undermining the moral equality of persons to an unacceptable degree (members and non-members, of course). This interplay or dialectic between the value of moral equality and other values is at the heart of liberal theory and practice – for a liberal state, policy questions must always have this ethical dimension to them.

This does entail giving the value of moral equality a central and privileged position in liberal theory and practice, but it is not to say that it can never be compromised at all in the pursuit of other values. What it does mean is that there will always be a presumption in favour of moral equality and a dialogue or dialectic to determine the extent to which equality can be compromised for the sake of other goods. Brender is correct that immigration controls enable liberal states to achieve other goods and values, but the ethical question is whether, in pursuing those goals through the exercise of immigration controls, liberal states have compromised the principle of moral equality to an unacceptable degree.

And so, while I do believe that the principle of moral equality gets us directly to freedom of international movement, I mean ‘directly’ here to mean that it is the inevitable destination of the dialectic, not that there is no argument to be had in between. We will get to that destination through a complex process in which we draw out the contradictions and arbitrary limitations placed upon the force of this particular democratic principle when we measure other liberal values and practices against it, and work out how to make those values and practices compatible with it. For me, the commitment to moral equality drives the argument to a specific ethical conclusion, but the point is that this commitment is embodied in liberal democratic theory and practice from the beginning. What we are doing in our dialectical argument is digging out contradictions and working them through to the next step. When we have fully worked them through we will end up at a specific destination, but this is a long and complex process. Indeed, it may well entail a book at least as long as Carens’ *Ethics of Immigration*, with much the same arguments and much the same set of chapters.

#### IV. SOCIAL MEMBERSHIP

So what precisely is the disagreement here? If there is one, it is that for me the destination of the argument is already contained in the starting premises (indeed, logically, it

must be there somewhere). It may take a great deal of complex argument to reveal it, but it must be there. And this means that the Conventional View Carens takes as a presumption in the first part of the book must be mistaken. Carens, of course, agrees that it is mistaken given his overall view, but the point is that the dialectic Carens is engaged in during that first part cannot stop at the end of chapter 10 and a distinct set of philosophical arguments begin. Rather, there is a continuous dialectic running through the whole text that drives us through the border between chapters 10 and 11 and on to the end. Those passengers who may want to get off at the end of chapter 10 should find that they are unable to do so.

Carens replies to this criticism in his piece on *Crooked Timber* (2014). There are two aspects to this reply. First, the ideal of moral equality, while fundamental, is highly abstract, and there is very little agreement about what it means. “So, by itself, the abstract principle of moral equality does not take us very far in thinking about the legitimacy of alternative institutions and policies” (2014). Secondly, there is a theory of social membership that does the work in the first part of the book, and this theory stands alone in the sense that it does not entail any of the content of the second part. For Carens, social membership – the fact that one resides in a society as a member – is morally prior to citizenship. Therefore living within the territorial boundaries of a state makes one a member of society, and this social membership gives rise to moral claims in relation to that political society which strengthen over time. “The theory of social membership [...] provides a foundation for moral claims to legal rights. This foundation is an alternative to citizenship and is more fundamental than citizenship because it is actually the basis for the moral claims of citizens to many legal rights” (160-161). Carens’ strategy here is to show that as citizenship rests on social membership, a person who is resident for a certain period of time has a strengthening entitlement to the bundle of rights that make up citizenship. These, however, will be membership-specific rights, not universal human rights, and this distinction remains crucially important even if we move on to an open-borders position (291). Social membership will still be important in a world of open borders. I have two reflections on this reply. First, it is true that the idea of moral equality is highly complex and that there is very little agreement on its content in liberal theory. However, Carens seems to assume that the version of the principle that underlies our common arguments for open borders is especially abstract and complex and controversial. In fact, the principle of moral equality at work here is relatively simple, and so relatively uncontroversial – it is the conclusion of the argument that is controversial, not the ideal of moral equality appealed to therein. The ideal of moral equality does not have to be particularly abstract and complex in order to challenge the right of states to exclude – the comparatively theoretical ‘thin’ concept will do the job. If all human beings are held to be morally equal in a ‘thin’ sense of equality, exclusion from membership still emerges as highly problematic. By ‘thin’ here I mean a concept of moral equality that simply points to the need for equal moral weight to be attached to all human beings when it comes to important moral issues – the concept has very little content apart from equal treatment. This contrasts to a ‘thick’

approach, which argues that only a rich set of social and political rights can fill the content of equality. Interestingly, both theorists on the libertarian right and the liberal/socialist left can arrive at the same place when it comes to freedom of movement, and I believe this is possible precisely because the concept of equality underpinning the argument is a theoretically ‘thin’ one that the libertarian right can accept without difficulty.

In fact, the ideal of moral equality that underpins Carens’ arguments about social membership is much more ‘thick’ than the one that underpins arguments for freedom of international movement, as it entails a commitment to the relatively rich set of social and political rights that make up citizenship of a liberal democratic state. If that is right, then the ideal of moral equality that underpins the first part of the book is far more complex and controversial than the ideal that underpins the arguments in the second, in which case the arguments are the wrong way round. We should begin with the relatively thin and uncontroversial sense of moral equality that undermines exclusion from membership as such, and then build a more complex picture of moral equality around possession of specific rights, duties, access to resources and so on, which establishes the specific argument from social membership. First, we argue that all have the right to enter; second, we argue that certain of those who have entered have the right to the full set of rights attached to social membership. Tackling the questions in the order Carens uses leads to some of the complexities between the two parts of the book I noted above, that not all the principles Carens identifies in the first part of the book are compatible with the second. The fact that most of the principles Carens establishes in that first part are compatible with the second part but some are not indicates that the treatment of those latter questions do not fully work through the implications of the principle of moral equality.

Setting aside the question of method I explore above, I should emphasize the extent to which I am in agreement with the arguments in the book about social membership and access to the rights of citizenship, and the arguments concerning the immorality of immigration controls. It is a major contribution to the debate that answers many fundamental questions. Most importantly, it answers a question that has always troubled me, and, ironically perhaps given what I have said here, it does so in the first part of the book. There are two major challenges facing political theorists who advocate open borders. The first is to establish why a liberal democratic state has no moral right to exclude anybody from crossing its borders. The second is to recognize that once we have done this there is still the need to distinguish between members and non-members, in that not everyone who crosses the borders automatically becomes a member. What can make a new location ‘home’? This is a key aspect for the discussion of migration and membership of political community that can be neglected. There must be a distinction between just passing through and being at home, such that merely being within the geographical space is not sufficient. To be a member is to be settled, which is to be present in a particular way. Membership is to have some kind of stake within that place, but this stake is something one can take up voluntarily, rather than something given to some but withheld from others.



## IV. CONCLUSION

The strength of Carens' contribution is that he answers both questions fully. The second part of the book explains why liberal democratic states have no right to exclude, and the first part explains the distinction between members and 'visitors'. However, while Carens may be the first theorist to give such a full answer to this second and crucial question, I still have some reservations about his answer. For him, what grounds membership is residence and length of stay. They act as proxies for other more complex criteria of social membership that are objective and easy to measure (165); nevertheless, it is the length of time a person lives in a society that grounds the right to citizenship through that social membership. My view is that membership is not grounded in the past, but in the future, in one's future intentions and undertakings. Membership is an undertaking voluntarily taken up. Civic republicanism provides a historical tradition here, with the idea of civic responsibility being a set of obligations to the political community – the focus is on duties rather than rights, and one can take up the duties of citizenship as soon as one arrives. While this implies that anybody who remains within the territory for a certain period of time is *obliged* to take on membership (one cannot remain a 'visitor' and refuse to take up those duties beyond a certain time), it does not imply that only someone who has been within the territory for a certain time can become a member. If membership is voluntarily taken up and that taking-up is the acceptance of a set of duties, then it can be taken immediately upon arrival within the territory.

This is, of course, a minor difference. This is a book I shall be reading for many months, perhaps years, in order to fully grasp its arguments, and my respect and admiration for Joseph Carens can only grow with every reading.

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