

Critical Dialogue

The Ethics of Immigration. By Joseph H. Carens.
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— Bridget Anderson, *University of Oxford*

At some stage no social scientist interested in immigration can avoid dipping their toes into liberal political theory. They will find Joseph Carens' enriching and thought-provoking new book invaluable. *The Ethics of Immigration* uses the treatment of non-citizens to hold a mirror up to liberal states and invites their citizens to look long and hard at themselves. The physical coercion of detention and deportation, the tying of workers to employers, the enforced destitution of asylum seekers, and the panoply of violence at the borders of liberal democracies appear on the surface to be extremely difficult to reconcile with the liberal values of equality and freedom, or with respect for human rights. The book explores the tensions that immigration policies pose and expose for liberal states, principally with respect to the United States, but also drawing in European examples. It is structured in two parts. The first part assumes that states have a right to control immigration and asks "Who Belongs?" It explores the rights of those non-citizens who are currently residing in liberal democracies and finds that they should be far more extensive than is the case in practice. The section develops a theory of social membership that emphasises the importance of the relationship between time and belonging. The second part asks "Who Should Get In?" It deals with the issues raised when non-citizens seeking "ordinary admission" and refugees request entry to a liberal state. This discussion leads to an argument for open borders on the basis of global equality and human freedom. The last substantive chapter considers the claims of community and what challenges these raise for Carens' open borders argument, and the book concludes with a reflection on methodology.

I should state from the outset that I am not writing this as a political theorist. I do though fall into one of the groups the book is aimed at, being a person who studies immigration but is not "deeply familiar with the existing philosophical literature on the topic" (p. 4). In that sense this piece is less a review than an engagement with some of Carens' arguments by a person with a more empirical

approach and background. From this position his methodology, "political theory from the ground up" (p. 9), is an attractive one. He examines real life problems and seeks to identify "an overlapping consensus among different political theorists and among ordinary people from different democratic societies about the moral principles that I appeal to in my arguments" (p. 9). I cannot comment on the consensus among political theorists, but for a social scientist, the idea of "ordinary people" cannot pass unremarked. In the UK the alleged concerns of "ordinary people" loom large in immigration debates. These are characterised by an ordinary person who is presented as part of a nation. They are not *any* ordinary person, but a *British* (or often English, Scots, Irish, Welsh) ordinary person. There is often a thinly veiled racialization here, meaning that the ordinary person is white. They feel ignored by a state (and a European Union) comprised of cosmopolitan embracing elites. This is all discursive of course, but in this context the distinction between state and nation, even if unremarked, has considerable purchase, and consequently immigration has a strong symbolic power. Crucial to their ordinariness is that ordinary people—unlike business elites, policy makers, and ivory towered academics—do not like immigration. The strength of this feeling has been such that it seems the general public is prepared to forfeit what Carens would characterise as "democratic principles" precisely in order to contain immigration. The so-called "Foreign National Prisoner" crisis of 2006 for instance, was sparked by concerns that too many criminals were not being deported after serving their sentences because they were protected by the pesky UK Human Rights Act as refugees or family members. This marked the beginning of a relentless campaign for the repeal of this law that continues to flourish. It is surprising what democratic principles it is possible to forego in the name of stopping immigration. This does not undermine Carens' methodology, but rather suggests that in the UK at least, it will convince hovering liberals and social scientists that are highly suspicious to the conventionally depicted "ordinary person."

One reason the populist position has such resonance is that migrants and citizens are typically presented as competitors for the privileges of membership arguably intrinsic to the logic of borders. Carens does not really dispute this, and perhaps thereby denies himself some

useful tools not just for his ideal, but also for his pragmatic arguments. Even in a closed border world, not all citizens are fully included, and not all migrants (even the undocumented) are totally excluded. Is it not conceding important ground to assume the interests of migrants and would-be migrants necessarily conflict with, or are independent of, the interests of citizens? For example, in a highly punitive United States, the deportation of longstanding resident non-citizens is possible in a context where twenty four states have “three-strikes laws,” thirty two have the death penalty (with the majority of foreign nationals on death row having been deprived of consular rights), and incarceration can mean the loss of rights to Medicaid, to food aid, and to vote for life (Alexander 2010). The deportation of Victor Castillo (p. 101) may not be consistent with democratic principles, but it is totally consistent within this socio-political context. This is not to applaud deportation of “criminals” for consistency, but rather to suggest the importance of understanding its acceptance within a broader suite of attitudes and policies that are not directly concerned with immigration, but shape the environment in which certain policies seem reasonable.

Carens acknowledges that the status of citizen, far from being the gold standard, in practice hides multiple exclusions. However, it is not the status of citizenship in the abstract that offers protections and rights, but rather certain types of citizenship. For some nationalities the rights that citizenship offers are minimal and can be reduced in practice to the requirement of your state to admit you if you are deported. It is not for nothing that some people flush away their passports before attempting to enter a state and claim asylum. For some their citizenship can be a liability, really only meaning that they can be moved across the world against their will at the convenience of states, both liberal and non-liberal alike. Arguing for a limited right to citizenship by descent on the basis of connection to a community, Carens explained that he wanted his children to have dual Canadian/U.S. nationality as “the children would have had a right to move to the United States to live with relatives there if both of us had died while they were young” (p. 28). Had Carens been a Somali passport holder he might well have avoided dual nationality fearing that his children would be removed to Somalia if their parents died. His point is that this is about choice, but it suggests that some arguments about “community” may be more closely related to citizenship’s instrumental value than it appears at first sight.

This, of course, is related to global inequality and inequality between states. I could not agree more about the important role of borders in sustaining global inequality. But although Carens is concerned with inequality, he does not engage at all with the fact that contemporary liberal states, while they vary in

their institutions and their regulatory regimes, are capitalist states. This shapes a massive transfer of funds from the global South to what *The Economist* calls “the rich world.” Capitalist relations mean that the wealth and desirability of richer states are inextricably connected to the poverty of the poorer. They also have important effects on immigration policies: “Different varieties of capitalism found across liberal states are highly consequential for the kinds of immigration regimes they adopt” (Hampshire 2013, 11). This surely has some moral implications, however complex and uneven the relations between states, capital, and individuals. Furthermore, it invites questions about the relation between property and citizenship, exposed in the growing practice of selling formal citizenship status or fast tracks to citizenship.

One important contribution of this volume is that it puts the temporal at the heart of social membership. Too often migration is seen as being about space, and time is overlooked. In practice, submitting to state control of time is a key aspect of being subject to immigration controls: You can only work *x* numbers of hours a week, you must be married for *Z* period before you can claim independent residence, etc. It is through restrictions on length of stay that immigration controls can do much of the “dirty work” of restricting access to citizenship. Time foregrounds questions about generation and political community, which Carens examines as part of an exploration of what he calls the state responsibility thesis. He critiques David Miller’s argument that significant inequalities between states can be a legitimate outcome of collective self-determination, on the grounds that it “misses the on-going importance of the connection between equal starting points and responsibility” (p. 263). Equal starting points are crucial but, Carens contends, later generations do not have an equal starting point. This is a really important argument. However, while time matters, so too does history. Carens refuses to engage with the empirical and historical questions about the origins of state inequalities. Surely the histories of imperialism and conquest, like capitalist relations, are of considerable moral consequence for contemporary immigration and asylum regimes? The colonial classification of natives by empires-in-crisis cloaked the political fragmenting of colonized populations with the mantle of tradition (Mamdani 2012). It is this “tradition” that is called upon in many arguments about the preservation of national communities in liberal states, and in that sense they are infused with a fantastic (literally) sense of history. Refusing historical engagement allows this highly partial perspective to go unchallenged. The nation state is not a natural form, and it was often violently imposed with significant and lasting consequences for both “minority” and “majority” populations including longstanding conflict within and between states.

I am a social scientist and also writing from a “no borders” rather than an “open borders” position. As such, I am among a minority of Carens’ readers who want to push him further. That said, I suspect *The Ethics of Immigration* is already making an impact. Its structure is mirrored in the Charter of Lampedusa, launched in February 2014. This is a call for no borders by a number of European associations. It is divided in two: “This division aims to highlight the tension between our desires and convictions on the one hand, and the reality of the world we live in on the other” (Preamble Charter of Lampedusa). The beauty of Carens’ book is that he is writing to convince the unconvinced rather than preach to the converted, but he is crafting tools for political engagement along the way.

References

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Response to Bridget Anderson’s review of *The Ethics of Immigration*

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— Joseph H. Carens

Bridget Anderson’s review of my book confirms my sense that our approaches to migration are largely complementary rather than conflicting. The only disagreement that I have with her is that she seems to think that we disagree about some issues where I think we agree.

For example, I agree with her point that critics of immigration often contrast the views of “ordinary people” with the views of elites in an attempt to discredit the latter, but, as Anderson herself notes, this does not really challenge my claim to rely upon moral principles that are widely accepted, at least nominally, in states in Europe and North America. I disagree, however, with Anderson’s suggestion that I do not dispute the widespread view that migrants and citizens are “competitors for the privileges of membership.” On the contrary, the whole point of the first part of my book is to insist that justice requires that migrants be seen as members of society. I’m trying to criticize attempts to construct migrants and citizens as opposing categories of identity or as groups in competition with each other. Migrants’ claims to the rights of membership—and I prefer the term “rights” to “privileges”—are based upon the fact that they do belong, and I argue that it is both morally required and mutually beneficial for that belonging to be recognized by those in the receiving society.

Anderson also objects that I do not engage with the “empirical and historical questions about the origins of state inequalities.” I certainly agree that these are important questions. Consider, for example, the recent debates about how the United States should respond to child migrants fleeing from Central America. Those favoring a generous and welcoming response often made the point, rightly in my view, that the United States was in large part responsible for the creation of the violent circumstances that the children were fleeing because of its past actions in the region. In an earlier book I did emphasize the moral relevance of these sorts of historical and contextual factors in thinking about justice (Carens 2000). In this book, however, I wanted to offer a theoretical account that would apply to all rich democratic states in Europe and North America, and that necessarily entails an abstraction from particularistic features of history even when they are morally relevant. In the case of the Central American children, for example, the responsibilities of all liberal states with respect to child refugees would be sufficient to make the United States obliged to extend protection to these children for reasons laid out in my book, even in the absence of this specific history. That is the sort of broader, more general argument that was the focus of my book. My sense is that the contextually specific arguments that are relevant to immigration complement and reinforce the general arguments that I offer in my book, and almost never conflict with them. A parallel point applies to Anderson’s objection to my lack of any discussion of the responsibility of capitalism for the global inequalities that I criticize. I think that it would be a mistake to tie a principled argument like mine too closely to a particular empirical explanation of the causes of existing inequality. For my purposes it is sufficient to establish that this global inequality is unjust and that this inequality is deeply linked to control over borders. That is the more fundamental point.

Reference

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Us & Them? The Dangerous Politics of Immigration Control. by Bridget Anderson (Oxford: Oxford University Press, 2013) 209pp. \$15.95

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— Joseph H. Carens, *University of Toronto*

In this important book, Bridget Anderson, a well-known expert in the field of migration studies, explores the various ways in which British policies and public discourses about immigration construct an understanding of British collective identity that excludes and marginalizes many migrants.

She argues that the same understanding of British identity also excludes and marginalizes British citizens who are not migrants but who need income support or in some other way fail to conform to the ideal of good citizenship generated by this identity. The result is a “community of value” with both internal and external borders. Anderson’s goal is both to challenge this construction of the British “us” and to promote solidarity among the various “thems” excluded by that “us.” She does this by bringing to the fore inadequacies, tensions, and contradictions in the treatment of, and the talk about migrants.

The book begins with two historical chapters that link the present to the past, sometimes in unexpected ways. In the first chapter, Anderson shows that control over mobility was originally directed not at foreigners, but at the domestic poor. It is striking how many of the familiar tropes of contemporary discussions of immigration can be found in these early concerns to restrict the free movement of British vagabonds in the name of protecting social cohesion, preserving the capacity of local communities to take care of their own, and so on. The second chapter traces the evolution of British laws and practices with respect to entry to the UK, arguing that racialized categories have shaped who was welcome and who was not, and continue to do so, even when the formal rules make no mention of race and the state celebrates its “racelessness.”

The next three chapters consider the ways in which migrants are selected, sorted and shaped. In chapter three, Anderson reveals contradictions between announced policy goals and the ways in which those goals are measured, and between the rationales for admission and the realities of migrants’ lives. Chapter four discusses the ways in which migrants are rendered vulnerable in the workplace. The fact that they take on poorly paid and difficult jobs is simultaneously used to accuse the British working class of relying on welfare rather than work and to blame immigrants for taking jobs from British workers. Chapter five explores the evolution of British policy on naturalization, which has become more demanding in recent years, in an ostensible attempt to make citizenship more meaningful and important. Again, Anderson exposes the ambiguities and contradictions in the way in which citizenship is conceived both in policies and in the associated public rhetoric.

The next two chapters focus on the ambiguities and contradictions of immigration enforcement. Chapter six looks at the issue of illegality and deportation. Anderson points out that illegality is not as clear a category as much of the public rhetoric on this topic assumes. Many migrants are in a state of semi-compliance with the immigration laws, and many are not fully aware of whether or not they are in compliance. And ordinary British citizens become disquieted as they become aware of the ways in which strict enforcement of immigration laws can prohibit activities that most people take for granted as unproblematic (such as a lecture by a visiting

scholar) and as they become exposed to the serious harms caused by immigration enforcement, especially when this involves detention and deportation. Chapter seven focuses on the problem of anti-trafficking. To describe anti-trafficking rather than trafficking as a problem may seem puzzling, but Anderson wants to draw our attention to the dark side of an effort that is supported by migrants’ rights activists and human rights NGOs as well as by the British state. She argues that the anti-trafficking policies serve to make “us” feel good about our desire to act morally and to protect migrants (especially women) from harm, while enabling us to ignore the underlying structural factors that give rise to this problem and the ways in which we are implicated in producing and maintaining those structural factors.

The final substantive chapter explores the ambiguities and contradictions of domestic work in the context of immigration, and in doing so, links together many of the themes of earlier chapters, especially Chapters four and six, because domestic work is the sort of poorly paid, vulnerable work that is often undertaken by migrants whose legal entitlement to work is not entirely clear. At the same time, migrants may unintentionally run afoul of immigration authorities by engaging in normal activities, as is illustrated by the poignant story that opens the chapter about a woman from China who was deported after revealing that she had been helping to care for her young nephew while visiting her sister.

Since this is a critical exchange, I want to use the rest of my space here to reflect upon the differences between Anderson’s approach to immigration and my own. I’ll begin with some comments about what Anderson’s work offers and then raise a few challenges.

I’m a normative political theorist, and so when I write about immigration, I’m interested in trying to understand what policies and practices we ought to adopt. The arguments that I advance may be used to criticize or endorse current policies, but my main concern is to ask what would make sense in this area (against certain background assumptions). I think that Anderson is engaged in a very different project. I see her as working within a tradition of critical social science that aims to reveal the problematic rhetorics, logical flaws, contradictions, and hypocrisies actually operating in a given area of public life—in her case, in the area of immigration. Instead of asking what would make sense in principle, she wants to reveal the non-sense in what exists in practice. And there is a lot of nonsense to reveal.

I think that Anderson’s approach can enable people to see things about immigration that are simply not visible in my sort of work and to gain a critical perspective that is quite different from the one I offer. She wants to highlight how politics actually shapes policies and discourse. So, she tries to make explicit views and values that are often left implicit and that must remain implicit, or at least

disconnected from each other, in order to work effectively. She does not try to resolve contradictions but highlights them because the contradictions are often crucial to the political effectiveness of a policy or a way of talking about immigration, but only if we don't notice that they are contradictions. She is interested in the use of code words, in psychological associations, in verbal manipulations, in short, in things that don't belong in a good argument about what immigration policy ought to be, but that actually play a crucial role in determining what immigration policy is and in justifying that policy in public fora. So, people interested in gaining a critical perspective on the politics of immigration in Britain should certainly read this book.

On the whole, I am inclined to see Anderson's work as complementary to, rather than in conflict with, my own. I might quibble with this or that claim that she makes at times about the nature of liberalism, but I don't think those particular phrases are central to her project. There is an aspect to her approach that leaves me a bit dissatisfied, however, namely her unwillingness (at least in this book) to say what she thinks would be a preferable alternative to the status quo. For example, I share her critique of British naturalization policy, but does she think that there is some naturalization policy that would be defensible, and, if so, what would that be? She is right to say that deportation practices are deeply problematic, but does she mean to say that deportation is never justifiable under any circumstances? I am persuaded that British anti-trafficking policy is flawed and serves objectionable political ends, but would she want to eliminate anti-trafficking laws altogether? In short, is she willing to address the question, "What is to be done?" or does she regard that as a question that one should refuse in principle to try to answer? Because this is a critical exchange, these are not rhetorical questions and I look forward to reading her responses.

Response to Joseph H. Carens' review of *Us & Them? The Dangerous Politics of Immigration Control*

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— Bridget Anderson

"What is to be done?" is a question that haunts migration scholarship. At a time when academics are under pressure to demonstrate their contribution to the "real world," the study of migration, like the study of crime, occupies a privileged place. It is "policy relevant," and attracts grants far more readily than, say, the study of medieval French. This has attendant dangers, and intellectual engagement can be overly shaped by a policy agenda. Immigration policies are structured by binaries such as

refugee/economic migrant, legal/illegal, family/worker, and a pathway from temporary migrant, to settlement, to citizenship, and it has been surprisingly difficult for scholarship to move beyond these imaginaries. The critical study of the social exposes a highly fraught relation between the academic and the political. While I do not refuse to answer the question on principle, my book is indeed wary of making the kinds of policy suggestions that funding often requires of empirical researchers.

"What is to be done—about *what?*" The impacts of migration on the social, the economic, and the political are perceived as profoundly disruptive, but the history of the world is a history of mobility. When does mobility become migration, and why are liberal democracies so consumed with it as a problem? Are the solutions to whatever the problem is, necessarily to do with migration? If, for example, the problem of trafficking is a problem of exploitation and abuse, why is the response framed within immigration controls? In response to Joe Carens's question, I do advocate for the elimination of anti-trafficking laws: far more constructive to build a firewall between immigration law and employment rights that means migrants' status as workers is not undermined by immigration controls.

Furthermore, whom are we asking the question of, or telling our answers to? There is a place for policy recommendations to government, but policy recommendations must be realistic, and deciding what is realistic is both limiting and highly political. Votes for women, freedom for slaves, rights for children, must all have seemed unrealistic once. In universities some of us still have the luxury of being unrealistic, free to imagine a world completely differently ordered. It is an imagination I want to share. Like Joe, I am interested in the "ordinary person," and more particularly, the ordinary person who is disturbed by growing inequality both within and between states, not as an observer but as a social actor. My hope is that *Us and Them?* brings the exclusions of citizenship, manifest, among other forms, in naturalisation and deportation, to their attention. This is not with a view to eliciting policy solutions, but in order to initiate a debate that is grounded in daily life and in political action. Migration is often separated from issues like homelessness, health, and labour rights, as if migrants are not homeless, sick, exploited, or as if migrants' experiences of homelessness, sickness, and exploitation have nothing in common with the experiences of marginalised citizens. By exploring those commonalities we are already beginning to answer the question, "what is to be done?"