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In Memoriam

Peter Desbarats, 1933–2014

The LRC is saddened by the recent loss of one of its contributors, who will be missed.

Cover art and pictures throughout the issue by Jeff Kulak.

Jeff Kulak is a graphic designer and illustrator based in Montreal. Past clients include the *National Post*, *Walrus*, Owlkids Books and the Art Directors Club NYC.

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Arguing for Open Borders

But exactly how open, and to whom?

ANDY LAMEY

The Ethics of Immigration

Joseph Carens

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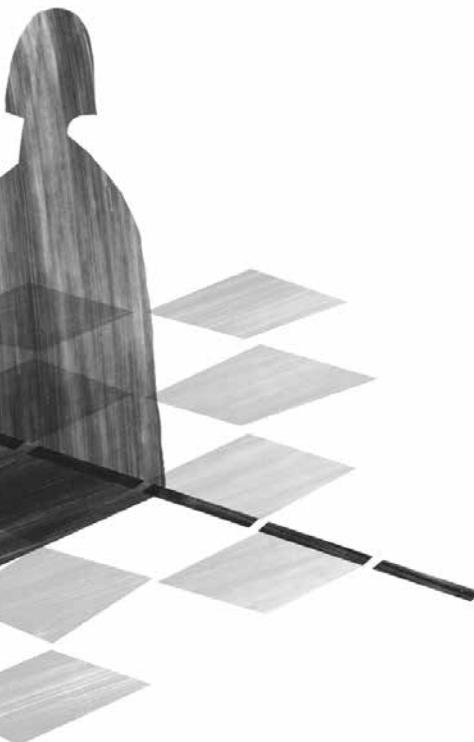
IN 1980 JOSEPH CARENS WAS A YOUNG political scientist casting about for a seminar paper topic when he came across news stories about the interdiction of Haitians trying to sail to Florida. A new policy under the Reagan administration saw Coast Guard cutters intercept the boats and return the people on board to Port-au-Prince. Carens at first was divided over the policy. On the one hand, it was cruel to return people to Haiti, an impoverished dictatorship where many would face extreme poverty or political persecution. On the other hand, an open-door immigration policy would potentially overwhelm the United States. Carens investigated what political philosophers had said on the ethics of immigration and, finding nothing, wrote up his own analysis. It eventually became a famous 1987 article now known to the world as "Aliens and Citizens: The Case for Open Borders."

There were open-border advocates before Carens, but it had long been a fringe view. Carens made the idea intellectually respectable. He did this by noting how it seems to follow from moral and political commitments that are widely embraced. In particular, Carens noted how the otherwise incompatible philosophies of libertarianism, utilitarianism and welfare-state liberalism all endorse norms of impartial justice that, when extended to immigration, seem to call into question the favouritism states play by restricting a right of admission to their own citizens. Such favouritism seems particularly unfair in the case of migrants seeking to escape poverty and violence. (While the laws of liberal states are committed in principle to making an exception for refugees fleeing persecution, the experience of Haitians and others shows that this principle is not always upheld in practice.) Carens's argument would permit stopping individuals who pose a threat to public security, and would avoid

taking in so many people that public order breaks down. Yet these minor limits on the power of states to control their borders would entail admitting far more immigrants than even so-called countries of immigration such as Canada and the United States take in.

There are political philosophies that emphasize community and national belonging and so do not seem to entail open borders the way libertarianism and the other philosophies that Carens cited do. Yet even staunch communitarians rarely reject outright the values of impartiality and equal concern underlying the open-border view (which might be more accurately labelled the take-in-the-most-immigrants-possible view, given that it would not abolish border control altogether). Thus, while not every reader of Carens's classic essay agrees with his conclusions, many come away feeling that the open-border view is more philosophically powerful than is commonly supposed. Indeed, some readers never quite shake the lingering sense that the most widely employed arguments for restricting immigration are based on premises that are, deep down, morally indefensible.

Carens has returned to the topic of immigration many times since first stumbling upon it over three decades ago. *The Ethics of Immigration* pulls together and refines arguments he has made in "Aliens and Citizens" and other influential essays. The author, who has long taught at the University of Toronto, still defends the open-border view, but with a new rationale. Whereas before he argued that seemingly opposed philosophies provided



converging support for open borders, now he bases his case on "democratic principles," by which he means uncontroversial moral commitments that are widely shared in liberal states. Carens argues that one such commitment is to freedom, which can be understood as "not being the subject of the will of another." A commitment to such a value would explain why freedom of movement within a state is considered a basic human right. (Carens is aware that we often balance one value against others: few of us recognize a right to enter the homes of strangers without permission.) But, he asks, if we have a general right to freedom of movement within countries, why not between them?

One reply says that if huge numbers of migrants arrived from the developing world it would make a welfare state economically impossible. But not only is this a high standard to meet—it offers no reason to exclude poor migrants beyond what is absolutely necessary to maintain viable welfare programs—it also does not justify the currently popular view that restricting immigration is acceptable whenever doing so is in the interest of current residents. The welfare state rationale also offers no reason to restrict immigration from developed countries. The European Union has abolished immigration controls between member states, Carens notes, and those with more generous welfare programs have preserved them by establishing waiting periods for other EU citizens seeking to access them. The welfare state argument therefore, rather than challenge open borders as a moral ideal, offers considerations that qualify the appropriateness

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of open borders given certain circumstances.

Carens concedes that open borders may need to be qualified on other grounds, such as to prevent an influx of immigrants so large that it endangers a host society's language and culture. But this again does not challenge freedom of movement across borders as a right, any more than the existence of libel and slander laws means we have no right to freedom of speech. If we admit that open borders is an attractive ideal that we cannot yet implement because of global poverty and other (hopefully) contingent facts about our world, we have accepted Carens's basic point, which argues for international freedom of movement at the level of ideal justice, not immediate feasibility.

Carens has long noted that however attractive open borders might be at the level of pure justice, they are deeply at odds with how immigration policy is normally viewed. Given this, his many writings on immigration have long approached it from a second perspective, one that puts aside questions of ideal theory and takes for granted the conventional view that states are entitled to discretionary control over their borders. This second perspective is the dominant one in *The Ethics of Immigration*, as Carens spends most of the book outlining standards of fair treatment for permanent residents, temporary workers, refugees and other migrants that do not presuppose any commitment to open borders. In this mode Carens offers a revised version of one of his most thought-provoking and controversial arguments, defending amnesty for immigrants who first arrive illegally.

Carens's amnesty argument cites the case of Marguerite Grimmond. Originally from the United States, her mother took her to Scotland as a young girl. She left the United Kingdom for the first time at the age of 80 to visit Australia, which she entered on a newly obtained U.S. passport. Upon her return to Britain immigration officers denied Grimmond's right of entry and gave her four weeks to leave the country. They deemed her an illegal immigrant on the grounds that she had never established a legal right to live in the UK as a citizen (a status she seemed aware of, given her decision to use a U.S. passport).

Grimmond's case caused outrage when it hit the papers. Most people considered it absurd to turn away someone who had spent her whole life in Scotland. Surely this view was correct and Grimmond was Scottish, regardless of what her citizenship papers said. But if so, Carens notes, legal status is not the sole factor we need to take into account when deciding who can live in a given country. Beyond legal status, there is the age at which someone first arrived, as well as the sheer amount of time someone has spent in the new society.

Grimmond spent her formative years in Scotland, which is sufficient on Carens's account for her to be a member of that society. But even if she had arrived illegally as an adult, he argues, after a certain point it would have no longer mattered how she first arrived. As time passes connections grow

to spouses and partners, sons and daughters, friends and neighbors and fellow-workers, people we love and people we hate. Experiences accumulate: birthdays and braces, tones of voice and senses of humor, public parks and corner stores, the shape of the streets and the way the sun shines

through the leaves ... all that gives life its purpose and texture.

On Carens's account, sheer time of residence matters morally because it sees people become rooted in their new society. Even if they initially arrived illegally, just so long as they do not commit any serious crimes (and no one says breaking immigration law is as bad as rape or murder), there comes a point at which the state is no longer entitled to uproot them.

We can debate exactly when that point comes (Carens suggests at least five years, but no more than ten), but the principle is the same. While it would remain permissible to deport people within a few years of their arrival, eventually it would not.

Carens's proposal would entail admitting far more immigrants than even so-called countries of immigration such as Canada and the United States take in.

If this view is correct, the indiscriminate use of the term "illegal aliens" is incorrect. Eventually something like a statute of limitations applies, and we should recognize a right to remain even on the part of people who first arrived by breaking the law as a matter of course.

Carens's investigation of immigration issues at both the level of ideal justice and the more immediate plane of the debate over amnesty and related issues makes his book unusually rich. It has the rare virtue of being both philosophically rigorous and politically relevant. It is difficult to think of any deep problem with his argument for open borders as an aspect of ideal justice. Carens does consider objections to his view at a philosophical level, but they invariably invoke premises that are too counter-intuitive to accept, such as the idea that we have duties of justice to fellow citizens but not to foreigners, or that there is no right to freedom of movement inside countries after all. Of the latter reply, Carens dryly observes that when he first started advancing the open-border argument, he took it for granted that no one would dispute our right to movement within our own country. "I was wrong. I have found that, faced with the choice between extending the right of free movement across borders and challenging the moral status of internal free movement as a human right, some people are willing to throw internal freedom of movement under the bus." Defending discretionary border control does not seem worth the intellectual contortion.

Carens's argument for amnesty is also compelling. In addition to legal status, surely where someone spent his or her formative years and the sheer time of residency should also determine that individual's citizenship status, even in a world of tight border control. Nevertheless, Carens's amnesty argument also raises unanswered questions.

As it happens I recently taught a university class in California in which students read the essay where Carens first made the case for amnesty. California had recently introduced legal changes granting driver's licences and college scholarship eligibility to irregular migrants, which made the essay quite timely. Many students were open to Carens's proposal, but one, whom I will call Peter, said it made him bitter. He was a migrant himself, he explained, and not only had he arrived through legal channels, which was time consuming, but he

had lived in California for years on a student visa, yet was not eligible for state scholarships. Why should people who arrived in an illegal way receive benefits he was denied? Surely that was unfair.

Carens's amnesty proposal does not say anything about scholarships, so Peter's criticism was directed partly at Carens, partly at California. Nevertheless, his objection forces us to think about the claims of people who arrive legally. Surely it would be unfair to grant citizenship to irregular migrants after five years, but make someone on a student visa wait six years or longer. This means that, at a minimum, whatever the time threshold for obtaining citizenship is for irregular migrants would also have to be the threshold for legal arrivals. So even while Carens's amnesty proposal does not take issue with the state's basic right to control immigration, it does have ramifications for how other immigrants can be treated.

On a deeper level, Carens's amnesty proposal connects time of residency with social membership. "I have been asked on more than one occasion to imagine an immigrant who establishes no relationships with others," he notes. "Does she become a member of society as time passes?" Does that person have a right to stay? Carens's answer is yes. If the recluse were not an immigrant, he suggests, "no one would suggest that we take away legal rights and legal status from someone just because she does not have many connections to other people in the community in which she lives." So while social membership is the normal reason we eventually cannot deport irregular migrants, if an irregular migrant formed no social ties we could still not deport him or her, for the same reason we would not deport a recluse who was not an immigrant.

What might that reason be? Carens does not say, but one possibility is that non-immigrants are generally thought to have a right to be in the country of their citizenship. Such a right of residency seems closely related to the right of internal movement Carens cites in his open-border argument. Both seem based on the idea of being legitimately present within a given territory and not subject to the will of others. (It would seem strange, for example, to argue that someone had a right of movement within a country but did not have a right of residency there, or vice versa.) But in his open-border discussion, Carens is at pains to argue that when the right of internal movement is properly understood, it entails a right to international movement. The purpose of the amnesty argument, however, was to make a case for amnesty that stopped short of endorsing open borders.

Keeping the two arguments separate means that even someone who rejects open borders still has to confront the independent force of the amnesty argument before current deportation practices can be justified. In grappling with the recluse example, however, Carens seems to brush up against an idea that, by his own account, when it is fully understood puts us on the way to open borders. This suggests that the amnesty and open borders argument may stand and fall together after all, presenting defenders of the status quo with only one argument to beat rather than two.

Even so, *The Ethics of Immigration* is an excellent book. In forcing us to grapple with the legitimacy of something as widely accepted as contemporary border control, it ensures that our minds remain open even when the borders are not. LRC