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From Birthright Citizenship to Open Borders? Some Doubts

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I. INTRODUCTION

Political theorists are much indebted to Joseph Carens for his 1987 article “Aliens and Citizens: the Case for Open Borders”. Written in a period of increased restrictions on migration, Carens’ article was pioneering in two ways: it introduced the migration question to political theory’s agenda and set the terms of the debate from the free movement side. Carens’ recent book, *The Ethics of Immigration*, takes a different strategy. It aims explicitly to engage with the Conventional View of immigration and shows that even a closed-borders view can accommodate some measures that improve citizenship and admission policies. The open-borders argument is not abandoned, but is left to the end of the book. Carens’ main concern, however, is to show that the open-borders argument does not conflict with the measures he proposes.

It is possible to have the opposite concern: are the proposed measures a way to advance towards a world of open borders? My analysis here will be limited to the first measure proposed in the book, namely that “[...] justice requires that democratic states grant citizenship at birth to the descendants of settled immigrants” (20). Whether justice requires this or not, many ‘democratic states’ already conform to this principle and my argument is not that they should stop. Rather, my worry is that an argumentative strategy aiming to extend birthright citizenship is not a way to advance towards an open-borders world.

To give a brief overview of my position, an analogy may help. Imagine that we live in the United States during the times of racial segregation. Homer Plessy, who is of seven-eighths Caucasian descent and one-eighth African descent, has just sat down in a ‘whites-only’ streetcar. To do this is legally forbidden. We have two argumentative options. One is to go to the Supreme Court and argue against the Segregation Act. The other is to go to Congress and argue that the law should be changed so that people like Plessy can travel in whites-only streetcars on the grounds that, after all, they are ‘white’. We do not know how convincing our arguments will be and given the political context, we may lose in both cases. But is a change of law a step towards the abolition of racial segregation?

My view is that by advocating some ‘true criterion of whiteness’ we reinforce the power of those who believe that racial distinctions are relevant. In the same way, by advocating some ‘fair criteria’ about who ‘deserves’ to be citizen we strengthen the view that national distinctions are important. Such argumentative strategies are likely to move us away from, rather than get us closer to, the abolition of racial and national segregation.

This contribution is a threefold critique of the idea that “[...] justice requires that democratic states grant citizenship at birth to the descendants of settled immigrants”. Firstly, I argue that by making ‘justice’ dependent on states and their attributes (birthright

citizenship), this idea strengthens methodological nationalism. Secondly, I analyze its justification and argue that grounding (citizenship) rights on the existence of social connections is logically and morally problematic. Thirdly, I analyze its scope (granting rights to the descendants of the ‘settled’) and its method of implementation (granting citizenship rights automatically ‘at birth’). While from a less sedentarist perspective, no one can be considered ‘settled’ in advance, I will express some doubts that granting citizenship rights is always automatically a way to extend people’s rights. All in all, I argue that by its justification, scope and method of implementation, this idea moves us away from, rather than gets us closer to, an open-borders world.

II. DOES JUSTICE REQUIRE METHODOLOGICAL NATIONALISM?

Carens argues that “justice requires that democratic states grant citizenship at birth to the descendants of settled immigrants”. Let us compare it with the view that “justice requires us to extend the criterion of whiteness”. While it is easier to see that it presumes racial distinctions, it is less obvious how extending citizenship rights assumes what social scientists call ‘methodological nationalism’.

‘Methodological nationalism’ is the view that “[...] humanity is naturally divided into a limited number of nations, which organize themselves internally as nation-states and externally set boundaries to distinguish themselves from other nation-states” (Beck and Sznaider 2010, 383). In the 1970s, sociologists were the first to realize that regardless of their theoretical orientation, their work was tarnished by this assumption (Martins 1974, 276). When they talked about ‘society’, they equated it with the society of the nation-state and either referred to a particular national object (e.g. ‘French society’) or had in mind a more general concept of a society that was necessarily bounded. In both cases, they took for granted a category imposed by the some particular actors (i.e. nation-states).

There are two problems with methodological nationalism. The first is that it is false and it biases our understanding of social phenomena. This is an important bias for on the one hand, “[...] society has never been the isolated, the ‘internally developing’ system which has normally been implied in social theory” (Giddens 1973, 265), and on the other, society may not even be a system, closed or open, at all. Some sociologists insisted that “[...] we can never find a single bounded society in geographical or social space” and urged that we study societies as “[...] multiple overlapping and intersecting sociospatial networks of power” (Mann 1986, 1ff.). If we change the paradigm, we view states as only one of the major types of power networks.

The second problem of methodological nationalism is that it transforms social sciences and ethics into a discourse that legitimizes particular actors. As states define themselves as political organizations needing a bounded territory and a delimited set of people, their view about the human world is taken for granted by most researchers. They endorse one or more of the following three assumptions: (i) *state-centrism*, the idea that the state is the only or the most accomplished form of political organization; (ii) *groupism*,

the assumption that people who live within the borders of a state represent a homogeneous group, endowed with collective intentions, projects, cultures, values etc. (Brubaker 2002); and (iii) *territorialism*, the idea that the spatial dimensions of human actions and of social phenomena should be analyzed according to the divisions imposed by the states (Sholte 2002). While the three assumptions are logically independent, they are often endorsed together (Dumitru 2014).

Carens' proposal according to which "justice requires that democratic states grant citizenship at birth to the descendants of settled immigrants" is based on the above three methodologically nationalist premises. It is state-centred by assuming that what 'justice' requires is dependent on the states' actions; it is groupist, by assuming that people labelled as citizens by a state are connected to each other from birth and 'belong' to that group. It is territorialist, by using the states' categories to analyze human mobility: permanent residents are distinguished from temporary workers and visitors, they can be settled, temporary authorized or unauthorized, they can come as family members, workers or refugees.

Is there an alternative to methodological nationalism? My suggestion is that one can come up with multiple alternatives just by looking at the above assumptions as descriptive statements. Does our social life have the shape of a bounded group or of a network, in which people connected to us have connections with people we are not connected to? Can there be social connections between millions, sometimes billions, of people labelled as citizens (except in an imagined community)? Are our decisions to change residence ever motivated by a single, exclusive reason (either family or work) as administrations assume? In real life, do we ever know whether we move permanently or just for a while? Unfortunately, there is no space to develop these points here, but the methodological nationalist's view about society and mobility would seem to be inaccurate.

III. THE ARGUMENT FROM SOCIAL CONNECTIONS

Carens argues that citizenship should be granted on the basis of *de facto* 'belonging' to the 'political community'. Such a proposal has been defended by Hammar (1990), among others, and more recently by Shachar (2009) who argued in favour of a *jus nexi*. The idea is that those who *de facto* reside in a country should be recognized as members of the 'political community' and granted citizenship. It is easy to see how the argument is based on methodological nationalist premises: residence in a territory bounded by a state is assumed to entail social connections with all the people living within a territory. The argument's aim is to extend people's rights, but its ground is shaky. Its strategy is to infer from a descriptive premise (*de facto* social connections) a normative conclusion reframed in national terms ('political community', 'citizenship'). Both the premise and the inference are questionable.

Firstly, the premise looks like a descriptive statement, asserting the existence of social connections, but its imagined character appears clearly in the case of newborns. Carens suggests that when born, a baby "enters a social world" and "she is connected

to people”, while recognizing that this is “[...] most intimately to parents and siblings, and through them to friends and more distant family members” (23). It is difficult to affirm, however, that newborns have a social life in the sense the adults have one. Newborns cannot make associations or be in conflict with other people; they do not have friends, cannot help anyone in difficult situations or invite them to dinner. Their ‘social membership’ is at most a form of ‘belonging’ not of ‘membership’. By contrast, children have a rich social life and their social connections are important in number and in types. Yet, it is newborns, not children, who are assumed to be members of a political community. Is it not strange to have to argue that newborns are members of political community merely to account for the custom of granting citizenship at birth?

Secondly, the inference from ‘social connections’ to ‘political community’ appears to be even more bizarre in the case of newborns. Not because newborns cannot vote or pay taxes, but rather because it is difficult to see how their ‘social world’, populated with as many parents and siblings as you wish, can be equated with the ‘political community’. Likewise, although young children have a rich social life – some richer than ours – it is difficult to see how their ‘social connections’ can be translated into ‘political membership’.

Let us take an example to clarify this point. Imagine that your child innocently plays Lego with mine every day: they develop stable and harmonious social connections, but are they also becoming members of some political community? Of course, our children are part of the ‘Lego community’, but only in a metaphorical sense. We would be surprised if one day, the Lego Group sends us a certificate of membership and some of us would squarely refuse to ‘belong’ to Lego. Yet, we find normal to translate concrete social life into political membership and none of us reject the idea that our babies belong by birth to some nation-state.

Historians of the nation-states demonstrated that they acted in a sense just like a powerful Lego Group in my example. Mann (1993), for instance, showed how in the nation-state building process, states succeeded in ‘caging’ social activities and people within themselves; Torpey (2000) described how states grasped or ‘embraced’ the population that happened to live in a territory – by censuses, birth registration and an increasing bureaucracy. In his book, *The Invention of the Passport*, Torpey analyzed the process by which governments also came to monopolize the legitimate means of movement: birth certificates, identity cards and passports became the mobile version of the administrative files through which the states kept their power over people.

One might think that we now live in a world of nation-states and that even if we were to assume that, by some kind of magic, our children’s birth and social connections would transform themselves into political membership, it would still be in children’s best interest to maintain this assumption. Nation-states give children protection, rights and opportunities. Citizenship is what gives our children rights to better schools and playgrounds and protection from being expelled when they play Lego together.

Carens’ argument aims to extend children’s rights, but isn’t citizenship the problem rather than the solution? If we are concerned by the children’s best interests, can we accept that, by birth, some children have rights that others do not? Is the children’s best interest to be assigned, at birth, to one national category?

IV. CITIZENSHIP AND SEDENTARISM

Carens argues that descendants of settled immigrants should be granted citizenship at birth automatically. In a world as it is, where rights are granted by nation-states, this principle appears to be a clear extension of rights both in scope (immigrants' children are given citizenship rights) and in procedure (citizenship is granted without application). Our methodological nationalism prevents us from seeing the blind spot in this principle. I would argue that conceiving of this principle as limited to 'settled' immigrants and as an 'automatic' grant of citizenship raises some problems.

Methodological nationalism views people as settled by default. Elsewhere, I have called 'sedentarism' the assumption that it is normal or preferable to stay rather than to go (Dumitru 2012). Sedentarism is a bias that implicitly dominates the social sciences (they most often explain, analyze and classify mobility, not sedentary conduct), but is overtly defended in political philosophy (dominated by 'normative' accounts). In political philosophy, spatial mobility is not an object of conceptual analysis. While philosophers sometimes mention that (internal) free movement is a primary good (Rawls 1993), a basic right (Shue 1980), or a central human capability (Nussbaum 2000; Robeyns 2003; Kronlid 2008), too few books in political philosophy are dedicated to analyzing what freedom of movement is and what is it good for (for an exception, see Cole 2000). International mobility is always distinguished from internal mobility and analyzed as a kind of huge jump from one national container to another, a short and exceptional event in an otherwise sedentary life.

However, if we did not assume that social connections project us, by magic, into a community, we might pay more attention to how social connections are actually created. Spatial movement is a necessary condition for meeting people, and meeting people several times (that is, repeated movement) is a necessary condition for establishing durable social connections. Movement is intrinsic to our lives and, indeed, no action can be undertaken without moving. While social justice studies have developed remarkably in recent decades, no philosophical study has been devoted to inequalities of mobility. Privileged people spend their lives moving back and forth, coming and going, on longer and shorter journeys, for longer and shorter periods of time. The possibility to move depends on wealth, infrastructures, health condition, gender etc. But it also depends on states that erect barriers to people's movement. Therefore, a theory of justice dealing with inequalities in mobility cannot grant states the traditional role of distributive agents.

The first blind spot of Carens' principle is to assume people as settled. The concept of settlement is often taken as unproblematic and is rarely discussed in the literature. But who are the 'settled' immigrants whose children should be eligible for citizenship rights? In the 1793 French Constitutional Act, one year of residence was enough for a foreigner to acquire citizenship and in many states nowadays five years of residence is the legal requirement (of course, as naturalization cannot be claimed as a right, many long term residents die without acquiring citizenship). How many years are enough to be qualified as 'settled'? Should declarative statements (about intentions to settle) count?

What if we visit another country and change our minds? A non-sedentary approach would avoid granting rights on the basis of settlement.

The second blind spot is that citizenship should be granted automatically at birth. Nowadays, to methodological nationalists who see people as settled, automatic citizenship appears as an obvious precious good. There are two reasons to doubt this good. First, in the 19th century France, descendants of foreigners did not see it in this way: they did not apply for citizenship. In response to xenophobic public opinion, the government established the *jus soli*, the automatic citizenship at birth, with the aim not to empower descendants of settled immigrants, but to enable the state to conscript them (Brubaker 1992). The second reason is that in a world in which people move and nation-states view themselves as entitled to decide to exclude foreigners from citizenship and other rights, such an automatism creates problems. Numerous states do not recognize dual citizenship or recognize it only for some countries. Sometimes, for children who have been granted citizenship by *jus soli* in another country, a divestiture procedure is available at the age of majority and they can choose a single citizenship. But sometimes, they can simply lose their parent's citizenship. If people renounce a country's citizenship, they are sometimes obliged to apply for a visa to visit their parents' country, and when accepted, to spend a limited time with their siblings and friends, to renounce inheritance, to be excluded from jobs and ownership rights, sometimes to pay a different price for the market goods. Those rights and rights denials vary considerably from country to country and depend on their agreements. But differential treatment of foreigners and citizens is thought to be a sovereign right of states.

Faced with these practical problems, what is the solution? Should people be 'settled' and give their allegiance to a single country to have their human rights recognized? Or should human rights *tout court* be automatically protected without calling them citizenship? I suppose that the second solution is what justice requires.

To conclude, I would like to come back to my initial example of racial segregation. If we are happy that racial segregation came to an end, we will have difficulty in accepting that Homer Plessy should have been the only person to obtain the right to travel in a whites-only streetcar. Homer Plessy's appearance was 'white' and this is why he was chosen by the activists to defy the segregation law. They did not succeed, but their intention was not to obtain rights only for those whose appearance was 'white'. Analogously, immigrants who are indistinguishable from natives by their social connections should not claim rights only for themselves. National segregation is not better than racial segregation.

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