

Refashioning Immigration:

On the Possible Correlation between Ethical and Theological Approaches to Migratory Justice

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Resumen

Este artículo investiga las implicancias éticas de la inmigración, desde la perspectiva de la justicia. La inmigración se estudiará desde el enfoque del concepto de ciudadanía y de la pertenencia social, tal como la plantea Joseph Caren. Luego una teoría de la justicia de la inmigración será considerada, seguido de un análisis de la migración latina hacia Estados Unidos de América. En esta realidad se buscará el papel que puede jugar la religión católica (religión de la mayoría de migrantes) y eventualmente lo que podría contribuir en esta búsqueda de justicia.

Palabras clave: migración, ciudadanía, pertenencia social, justicia, religión católica

Abstract

This paper addresses the ethical implications of immigration, which is viewed as a justice issue. Immigration will be approached from the concept of citizenship and social membership, conceived by Joseph Carens. Then a theory of justice will be considered regarding immigration, after which the issue of Latino/a migration to the USA will be considered, as well as the role Catholic religion can play and how it could contribute in this particular quest for justice.

Key words: Migration, Citizenship, Social Membership, Justice, Catholic Religion.

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1. Introduction

In this paper I want to address the problem of immigration and its ethical implications. Even though immigration is a very practical issue with tremendous social and political consequences, my approach would be fundamentally philosophical. I believe that the problem of immigration is primarily an issue of justice. Therefore, some at least very basic theory of justice applied to immigration needs to be sketched in the paper. I claim that a theory of justice (which in this case would imply a series of normative claims) is crucial in order to address the aforementioned social and political consequences.

In order to address this set of questions, I will organize the paper as follows. First, I will study the idea of citizenship and its relation to what Joseph Carens calls “social membership”. The guiding question of this section will be: Who is a citizen and why? Second, even though some arguments would have been considered already, I will sketch a brief and more explicit theory of justice applied to the problem of migration. Finally, I will present some considerations about the Latino/a migration to the United States and the role that religion plays in such a process. Given that almost all Latinos/as entering to the United States are Christians, Christian religion would be the focus of the analysis. Can the Christian tradition provide anything of value in the quest for migratory justice? Exploring the nature of the contribution, if any, will be the final task of the paper.

2. Sketching a Theory of Social Membership

According to most immigration scholars, the publication of Joseph Carens’s *The Ethics of Immigration*¹ represented a major contribution to the field. Indeed, it is hard not to notice why: Carens’s book probably represents the first systematic approach to the immigration dealing with its ethical and political problems not from the perspective of mere sociological description, but from the viewpoint of the philosophical foundations of current migratory policy². My goal in this section is to

¹ Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013).

² As Carens does, when I refer to “current migration policy” I generally mean the policies enacted by North American and European democracies, see Carens, *The Ethics of Immigration*, 3. Obviously this still implies differences that Carens will consider and I will as well, but the generalization helps in order to think about some more or less common resistance to grant full social membership to

reconstruct Carens's argument in order to show its strength and to start sketching the theory of justice it has at its basis.

Put it simply, Carens's argument is this: democratic societies are committed to certain non-negotiable values that include as one of the most important ones the respect for the dignity of the human person; therefore, a democratic society that truly deserves that name cannot treat settled immigrants (regardless their legal status) as inferior members of society (deliberately limiting their rights) because this affects their human dignity and contradicts basic democratic principles. In his view, "immigrants belong, and democratic states and populations ought to adjust their policies and self-understandings to make that belonging more of a social reality"³. Let me flesh out this idea following Carens's careful considerations.

For Carens, the first thing is the need to start from a simple fact: migration is massive and, thereby, has very significant consequences. Take the United States, for instance: around eleven million immigrants live in American soil without official authorization⁴. The fact demands a response. How to proceed, though? Many answers are possible, but Carens wants to emphasize that whatever policy is implemented it has some moral assumptions at its basis and certainly moral consequences as well⁵. The interesting thing that Carens's argument shows is that democratic principles should "greatly constrain the kinds of answers we can offer"⁶ to the questions regarding the kind of policies governments can implement. In other words, some answers are morally incompatible with democratic principles.

immigrants without providing arguments to do so which are compatible with democratic principles those democracies, at least nominally, hold.

³ Carens, *The Ethics of Immigration*, 4.

⁴ See Carens, *The Ethics of Immigration*, 1.

⁵ I will use "moral" and "ethical" interchangeably in this paper, as Carens does in his book. For an excellent and careful introduction to the different historical trajectories of both terms following the Kantian or the Hegelian path, see Miguel Giusti's introduction to Miguel Giusti and Fidel Tubino (eds.). *Debates de la ética contemporánea* (Lima: PUCP, 2007).

⁶ Carens, *The Ethics of Immigration*, 2. Sarah Fine and Andrea Sangiovanni arrive to the same conclusion. They do so, though, by debating with what they call the "pure" case, namely, a thought experiment where the would-be immigrants are not refugees, do not experience economic deprivation, do not migrate in large numbers, truly want to live in the host state, and do not migrate in order to reunite their families. The advantage of this case is that makes the state's right to exclude hypothetically stronger. Thus when such right shows its inconsistency even while facing the "pure" case, it follows that it encounters even more significant hurdles in ordinary situations. See Fine and Sangiovanni (forthcoming) "Immigration" in: Darrel Moellendorf and Heather Widdows (eds.) *The Handbook of Global Ethics* (Acumen). I am very thankful with Prof. Fine for letting me read a proof-copy of the article.

Now, the idea of “democratic principles” is not at all utterly clear. There is no definitive list and, sometimes, some principles seem to collide with others. This granted, Carens suggests that “on a wide range of topics there is no serious disagreement among those who think of themselves as democrats”⁷. He provides the example of religious freedom or the moral rejection of discrimination on the basis of race, which are specific instantiations of the more general principles of freedom and equality, respectively. For Carens, this “lack of serious disagreement” does not imply a fully worked out theoretical account of democracy, but rather the existence of some principles already operating in most democracies⁸. Part of his attempt with the book is to make more explicit those already operating principles. His strategy, however, is not merely pragmatic. Behind it there is a strong desire to foster dialogue⁹: despite the fact that democrats can disagree regarding the extent of, say, religious freedom; the fact that democrats highly regard this principle facilitates the conversation and, hopefully, the middle ground needed for long-standing agreements. This, of course, requires willingness to concede and rethink our positions. I will discuss this issue in detail in the third section of the paper, focusing in the difficult case of the relation between religious beliefs and the public sphere.

Let us go back to Carens’s main line of reflection. One of the typical counter-arguments presented against Carens’s thesis is that his position undermines state sovereignty. Moral principles, according to this argument are incompatible with the political needs of the state¹⁰. Carens claims, however, that this reasoning is misguided. Moral considerations do not undermine state sovereignty because they do not put into question its authority to determine migratory policies; what they do, though, is an assessment of the moral value of the policies that are implemented. In other words, the author claims:

The decisions of a sovereign state may be morally wrong even if the state is morally entitled to make those decisions. The actions of a democratic

⁷ Carens, *The Ethics of Immigration*, 2.

⁸ See Carens, *The Ethics of Immigration*, 5. Indeed, the author does not want to commit to any available theory of democracy. He prefers to just work from the assumption that most theories agree upon the already operating democratic principles. He calls this, following John Rawls an “overlapping consensus among different political theorists and among ordinary people from different democratic societies” (9; see also 10). When needed, then, the author will single out the operating principle, discuss it, and connect it to the particular migratory practice he wants to defend or criticize. He calls this approach “political theory from the ground up” (9).

⁹ See Carens, *The Ethics of Immigration*, 11.

¹⁰ See Carens, *The Ethics of Immigration*, 6.

community may be unjust even if the community has not violated any democratic procedures¹¹.

Human rights legislation is a good example of Carens's point, even a paradoxical one. Human rights imply moral claims about the dignity of the human person, but those claims are most of the times "enforced by the states against themselves"¹². Thus, a moral claim does not have to undermine sovereignty. Moral claims, instead, control the exercise of sovereignty taking for granted the legitimacy of its existence.

With this preface in mind, let us pay attention to the main issue behind the counter-argument just presented: the problem of citizenship. Who is a citizen and how is this decided? In our current system, citizenship is defined and granted by the state "as a result of some chosen set of legal rules, some political practice that states have established"¹³. This is to say that there is no such a thing as "natural" citizenship. Even in the cases where citizenship is granted as a birthright¹⁴, that is a decision made by the state. The importance of being a citizen cannot be undermined, though. First, citizenship protects the individual: a stateless person is in a very vulnerable and precarious condition in the modern world. This is particularly important in the case of babies, the elderly, and people with disabilities. In principle, the state they belong to has the responsibility of taking care of them if nobody else does. More clearly, citizenship entitles the person to certain rights that the state must protect, even if the citizen is unable to claim them actively as in the case of babies or persons with disabilities, for instance¹⁵. The question Carens asks, yet, is if citizenship is truly needed in order to protect these rights from a moral point of view. Is not the state, for instance, obliged to protect the legal rights of *all* those within its jurisdiction, even temporary visitors? What the question suggests is that the current concept of citizenships needs, at least, to be problematized.

¹¹ See Carens, *The Ethics of Immigration*, 7.

¹² Carens, *The Ethics of Immigration*, 7.

¹³ Carens, *The Ethics of Immigration*, 21.

¹⁴ Carens sharply points out that this form of obtaining citizenship, even though well-spread, seems to be an odd practice from a democratic perspective: "democracies emerged historically as a challenge to social orders based on inherited status" (*The Ethics of Immigration*, 21). Indeed, if one thinks about how much the simple fact of being born in a developed country instead of the third world matters for our economic status, citizenship seems to be an excessively determinant factor that should not be defined by such random criteria. Yet, the author acknowledges that this is the way the international system operates and, therefore, for pragmatic reasons makes sense to try to find ways to make the system work more justly. On the economic effects of the place of birth and migration, see Branko Milanovic, "Global Income Inequality in Numbers: In History and Now", *Global Policy*, Volume 4, Issue 2, May 2013.

¹⁵ See Carens, *The Ethics of Immigration*, 22.

Let us think about the case of birthright citizenship, which in every democratic state is granted to all children of resident citizens¹⁶. Is this an obvious right? Carens claims that is not. If this happens is because it is in the state's interest. Yet Carens also claims that this is a matter of justice. Why? The reason lies in that "when a baby is born to parents who are resident citizens, it is *reasonable* to expect that she will grow up in that state and receive her social formation there"¹⁷. Consequently, both in the state's interest and as a matter of justice granting birthright citizenship appears as the correct measure: it protects the newborn conceding her rights as a member of the community, but also engendering duties that benefit the community as a whole. Granting citizenship is the way in which the state recognizes the relationship of the newborn to the community and gives it legal backing¹⁸. Therefore, being a citizen means being recognized as a *full member of a society*, "even before [one] is capable of political agency or in possession of all the rights of an adult citizen"¹⁹.

Now, for the reasons already presented, Carens maintains that birthright citizenship should not be restricted solely to the children of residents originally born in the country in question, but also to *settled* immigrants. They have decided to live in a new country and, in all likelihood, their children (even if they were born abroad and came as infants²⁰) will do so as well. Therefore, their children have the right of being full members of their political community. Moreover, for similar reasons, settled immigrants themselves should have the right to become citizens too. In Carens's view

¹⁶ In Carens's view, this also applies to children born abroad to emigrants, although their claims weaken if the generational gap expands. Accordingly, it is reasonable and just to grant citizenship to children that were born abroad but whose parents still have deep connections to their original political community. In these cases, the child will very likely have immediate family there and therefore existing and potential relationships. In the case of the grandchildren, however, the links are less clear and makes sense to have more requisites to grant them the citizenship of their grandparents' original political community. (see *The Ethics of Immigration*, 27-30).

¹⁷ Carens, *The Ethics of Immigration*, 23, my emphasis. Carens is aware that some children of residents may leave the country which granted them citizenship; yet he does not consider this a good reason to deny citizenship (even if there are born to immigrants): there are more legal and moral problems in the denial than in the granting of the citizenship (*The Ethics of Immigration*, 25; 31).

¹⁸ On this topic, see the comparison between *ius solis* and *ius sanguinis*. In a nutshell, Carens's argument is that both approaches for granting citizenship are fine depending on the kind of political community we consider. However, the *ius sanguinis* approach has the great risk of, insofar as it heavily depends on ethnicity, becoming a source of discrimination based upon ethnical purity (*The Ethics of Immigration*, 32-35).

¹⁹ Carens, *The Ethics of Immigration*, 24.

²⁰ For the case of young immigrants, see Carens, *The Ethics of Immigration*, 45-49. Carens believes that in their case citizenship should be "unconditional and automatic" (46) because they have no significant difference from young children originally born in the new country.

naturalization, i. e., becoming citizen of a different country than the one where a person was born, becomes a right after a certain amount of time. Most countries agree on this; however, most of them demand the fulfillment of some requisites. Carens studies the three most frequent ones: giving up any previous citizenship, proving one's good behavior, and passing tests of civil competence. On the potential problems of dual citizenship, the author restates his previous argument: there is no threat at all. Double national belonging is not a rare condition and rarely implies conflict, especially after most countries decided to suppress compulsory military service²¹. In regards to the proofs of good behavior, he claims that unless there is a significant criminal record to warrant deportation, minor crimes should not prevent the immigrant's access citizenship²²: this would overlook the already acquired social membership due to the pass of time and, perhaps more importantly, would suggest a double moral standard in criminal law where only the ones already having citizenship can commit a crime without risking the legal recognition of their social membership. On the tests of civil competence, he maintains that it is not just (and a potential source of discrimination) to make citizenship contingent on the ability to pass exams: "they are not justifiable because they inevitably deny citizenship to some people who have a moral right to be citizens"²³ due to their social membership. In Carens's view, making citizenship dependent upon passing tests is based on a conception of the citizenry that assumes that some people deserve to participate in the political life of the country and some do not. For him, this criterion was at the basis of preventing some people from the right to vote. Given that such conception of citizenship is incompatible with our current understanding of democracy, Carens believes that the tests of civil competence, which heavily depend on such conception, if existent should not be determinant in the process of granting citizenship²⁴.

Carens's general position is clearer now, I believe: the moral principle grounding whether or not citizenship should be granted is *social membership*. For him, one of the most basic but important criteria to determine the depth of such membership is *time*²⁵. The longer the time one spends in a foreign country, the deeper the roots in

²¹ For more details on this issue and the discussion of other potential problems like taxes, voting, being elected for public office, etc., see *The Ethics of Immigration*, 39-44.

²² See Carens, *The Ethics of Immigration*, 55.

²³ Carens, *The Ethics of Immigration*, 56.

²⁴ See Carens, *The Ethics of Immigration*, 57-61.

²⁵ See Carens, *The Ethics of Immigration*, 145ff, 152. For his more fully fleshed out theory of social membership and the role of time in it, see chapter 8.

that new community (even if the immigrant received her social formation elsewhere); the greater the depth of the roots, the greater the entitlements of the immigrant²⁶. In the current geopolitical system, these entitlements are legally protected when a state grants us citizenship²⁷. Consequently, “policies that permit the exclusion of long-term legal immigrants [...] from citizenship are unjust”²⁸.

Perhaps here a clarification is pertinent because Carens’s emphasis on citizenship could be misleading. Carens is very aware of the fact that being a citizen does not necessarily mean being part of the community: one can have legal rights and be marginalized nevertheless, as happens many times with legally settled immigrants. What this situation shows is that citizenship is a fundamental right in order to protect human dignity, but not a sufficient one. Precisely for this reason, Carens does not focus exclusively on citizenship, but on the moral values that it should represent and protect. The implication is that democracies cannot be solely based on a legal framework: they “require a democratic ethos”²⁹ where respect for different opinions and forms of life is one of the central themes. In such a democratic ethos social

²⁶ See Carens, *The Ethics of Immigration*, 50, 52, 59.

²⁷ Carens, however, has an alternative approach where the current geopolitical arrangement is put into question and open borders are defended. He considers that open borders are a matter of justice, but knows that such a change is quite radical and that is why he devotes most of the book to work out a theory of social membership within the context of the current migratory system. For the details of his position on open borders and its consistency with the previous arguments of the book, see chapter eleven, “The Case for Open Borders” and thirteen, “Conclusion”.

²⁸ Carens, *The Ethics of Immigration*, 45. An example seems to be appropriate here. Faiza Silmi, a long-term Muslim immigrant, married to a French citizen and mother of four French children requested to be a French citizen. Her petition was dismissed claiming that her use of the *niqab* was “incompatible with essential values of the French community, particularly the principle of equality of the sexes” (51). In Carens’s view this is a manifestly unjust judicial decision: “access to citizenship [cannot] be contingent upon what a person thinks or believes” (52). This is different, nevertheless, from denying the right the state has to “create certain kind of political culture and to foster certain attitudes and dispositions. However, the state may not use coercion against people who do not adopt the attitudes and dispositions it is seeking to foster, and it may not punish people for behavior that is legally permitted” (53). For a very interesting comparison between the American and the French approaches to the principle of religious freedom, see Martha C. Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (New York: Basic Books, 2008), especially the introduction. For a very compelling theory regarding the different trajectories of the principle in the US and France (and other European countries), see José Casanova, *Public Religions in the Modern World* (Chicago: The University of Chicago Press, 1994), 25ff, and Charles Taylor, *A Secular Age* (Cambridge, Mass.: Belknap Press, 2007), 455ff, 523-530.

²⁹ Carens, *The Ethics of Immigration*, 64. Forming a democratic ethos, however, requires a variety of interconnected mechanisms: rules against discrimination (65-71), informal norms against it (71-80), incentives to become part of the broader political community but also to keep the language and values of the culture the immigrant comes from (80-82), positive practices of recognition (82-85), fostering a conception of national identity open to diversity (85-86), etc. For more details, see chapter 4, “Beyond Legal Citizenship to Inclusion”. The idea of forming a democratic ethos is the main concern of the project of Martha C. Nussbaum, *Political Emotions: Why Love Matters for Justice* (Cambridge, MA & London: The Belknap Press, 2013) and, in my view, a way to greatly deepen the main concerns of Carens’s book.

membership has priority over citizenship: “social membership (actual or anticipated, authorized or unauthorized) provides the foundation upon which moral claims to citizenship normally rest”³⁰.

I believe that, this nuance added, Carens’s position makes perfect sense³¹. What happens, however, in the case of *illegal* (or, better, *irregular*³²) settled immigrants? Examining this difficult problem will be my task in the following lines before moving to the next section. This is an issue of great importance in general, but particularly for this paper because most of the Latino/a immigrants to the US are precisely irregular ones. Considering them in the context of the ethical reflection about immigration would allow me to make the transition to their more specific situation, stressing the importance of their religious beliefs and practices and its connection to their claims in the public sphere.

For Carens, as we have seen, the main issue when assessing the ethical dimensions of immigration is human dignity, human rights. Yet, in the case of irregular immigrants this is particularly important: regardless their legal status, democratic societies recognize that *every* human being has human rights. Therefore, irregular immigrants do too. The police, for instance, have the duty to protect even irregular immigrants from being robbed or killed. The same happens with the right to a fair trial³³, health care in the case of emergencies, freedom of speech and religion, etc.³⁴ Moreover, in the case of irregular immigrant children some special rights are granted in democratic societies. For instance, they are entitled to free public education³⁵. The reason is simple: contemporary democracies recognize free public education as a general human right that cannot be contingent upon migratory status. The fact that this might create an incentive for irregular migration and a financial burden to the

³⁰ Carens, *The Ethics of Immigration*, 160.

³¹ Nevertheless, Carens is aware of the changes regarding citizenship policy for the case of immigrants that have been developing in Europe. In his view, these changes are not *de iure* objectionable because sovereign states are entitled to modify the law. *De facto*, however, the changes are morally troubling because they seem to be connected to strong anti-immigrant currents most of the times based on racial discrimination (see *The Ethics of Immigration*, 37-38). Even though similar changes have not happened in Canada or the United States, Carens maintains that if they do that will be very likely motivated by anti-immigrant feelings as well. For him, such changes would betray the very essence of these two immigration countries, a situation that he considers a national tragedy (see *The Ethics of Immigration*, 38-39).

³² Carens prefers “irregular” or “unauthorized” because it avoids taking sides with already established position in the debate (see *The Ethics of Immigration*, 129).

³³ See Carens, *The Ethics of Immigration*, 131.

³⁴ See Carens, *The Ethics of Immigration*, 132.

³⁵ See Carens, *The Ethics of Immigration*, 135.

receiving society must not be a reason to promote the violation of this human right: “to refuse to educate a child in the modern world is to condemn that child to a life of very limited possibilities”³⁶.

The problem arises, however, when the irregular legal situation of the immigrant undermines these general human rights. Irregular immigrant women suffering domestic violence, for instance, are terrified by the idea of calling the police because they fear that the information the police may gather would end up in their deportation. “This fear creates a serious normative problem for democratic states”³⁷, Carens rightly claims. Therefore, he continues:

We ought to establish as a firm legal principle that no information gathered by those responsible for protecting general human rights can be used for immigration enforcement purposes. We ought to guarantee that people will be able to pursue their human rights without exposing themselves to arrest or expulsion³⁸.

Carens call this the “firewall argument”. Against the critics who consider this unviable, he claims that this is an already operating ethical principle, for example, in the American rule that prevents the police from using evidence in a criminal case “if the evidence has been obtained in violation of someone’s constitutional rights”³⁹. The same happens with the information gathered by the IRS: it cannot be used for immigration enforcement purposes.

A similar argument can be used to address the problem of the work-related rights of irregular immigrants. Carens argues against those who claim that irregular immigrants are not morally entitled to these rights. For instance, he maintains that irregular immigrants must be paid justly for the work they perform. Even if they do not have legal authorization to work, that should not affect the economic retribution they should get for the work they have done: “they have earned it with the sweat of their brows”⁴⁰. Moreover, it is patently morally wrong to allow employers “to withhold

³⁶ Carens, *The Ethics of Immigration*, 137. More pragmatically, the author claims, having a group of uneducated marginalized children who will regardless live in the new political community implies costs that go beyond the financial ones (138). Even though he is not explicit, one obvious implication is that given their social marginalization they may end up involved in criminal activities.

³⁷ Carens, *The Ethics of Immigration*, 132.

³⁸ Carens, *The Ethics of Immigration*, 132-133.

³⁹ Carens, *The Ethics of Immigration*, 133.

⁴⁰ Carens, *The Ethics of Immigration*, 141.

promised pay from irregular immigrants after extracting work from them”⁴¹. Thus, Carens concludes: “If a democratic state refuses to grant irregular immigrants a legal right to their pay, it effectively abandons its responsibility to prevent them from being robbed”⁴². The same reasoning applies to working conditions: it is morally wrong to subject irregular immigrants to substandard conditions of work⁴³. This, by the way, does not require a very thick conception of morality. Carens’s argument is much more focused in internal coherence at this time: whatever work standards the state has established it must apply them to *all* the workers in its jurisdiction⁴⁴.

Now all these arguments just examine the general human rights of the irregular immigrants *qua* irregular. Yet, given the previous considerations about social membership, Carens maintains that they have the right to regularize their legal situation after sufficient time has passed in order to become full members of the political community they emigrated to⁴⁵:

As irregular immigrants become more and more settled, their membership in society grows in moral importance, and the fact that they have settled without authorization becomes correspondingly less relevant. At some point the threshold is crossed, and they acquire a moral claim to have their actual social membership legally recognized⁴⁶.

I would like to conclude with some critical observations to the theory of social membership sketched in this section of the paper, observations introduced by Carens himself. They will help me to move to the second section to briefly show why the dialogue between Carens’s position and the Capabilities Approach can be so fruitful.

First, Carens’s theory of social membership deals mainly with people already present in the new political community, saying very little about admissions. Supplementary reflections are needed to deal with the problem of refugees or freedom of movement, for example⁴⁷. Second, Carens’s theory emphasizes the access to the legal rights

⁴¹ Carens, *The Ethics of Immigration*, 141.

⁴² Carens, *The Ethics of Immigration*, 141.

⁴³ See Carens, *The Ethics of Immigration*, 142.

⁴⁴ See Carens, *The Ethics of Immigration*, 142.

⁴⁵ See Carens, *The Ethics of Immigration*, 147. Even though Carens knows that to determine the exact number of years is difficult, he seems to have in mind five to seven years as the average time (151). However, he maintains that the process should be accelerated when some pressing issues are at stake, particularly the reunification of families. On the issue of regularization, see also Adam Omar Hosein, “Immigration: The Argument of Legalization”, *Social Theory and Practice*, Vol. 40, No. 4, (October 2014): 609-630.

⁴⁶ Carens, *The Ethics of Immigration*, 150.

⁴⁷ See Carens, *The Ethics of Immigration*, 162.

comprehended by citizenship, but says little about how to foster more comprehensive inclusion. He is aware of the need of developing a democratic ethos, as we saw before, but the social membership approach has not focused enough in the *how*⁴⁸. Third, the theory requires some external ethical criteria not derived from the idea of social membership, like norms of proportionality, reciprocity, fairness, etc.⁴⁹ Finally, the theory just provides the bases for moral claims for the allocation of legal rights, but additional allocations are not discussed. They are needed, however, and can be grounded without reference to social membership⁵⁰.

3. The Capabilities Approach, a Necessary Supplement

The last two limitations of the theory of social membership sketched before suggest the need of a more carefully defined set of principles grounding the moral claims of immigrants. I believe that the Capabilities Approach provides what this theory is lacking. Moreover, the Capabilities Approach also recognizes that it has not considered the issue of immigration sufficiently⁵¹. Sketching some connections here, I hope, will suggest some possible productive paths for conversation⁵².

The philosopher Martha Nussbaum defines capabilities as follows:

[...] a set of opportunities to choose and to act. [...]. [T]hey are not just abilities residing inside the person but also the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment⁵³.

⁴⁸ See Carens, *The Ethics of Immigration*, 162.

⁴⁹ See Carens, *The Ethics of Immigration*, 162.

⁵⁰ See Carens, *The Ethics of Immigration*, 162.

⁵¹ See Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge & London: Harvard University Press, 2011), 143.

⁵² On the first two critical remarks introduced by Carens, namely, the problem of admissions and the issue of the democratic ethos, a couple of considerations are pertinent. First, I believe that the Capabilities Approach expands the criteria offered by the theory of social membership, but it still remains very general. Working in the specifics, however, requires a different kind of research and certainly a paper solely devoted to the topic. I will leave this problem aside, then. I am confident, nevertheless, that the more specific developments are possible when more concrete criteria like the one provided by the Capabilities Approach is kept in mind. Second, I believe that Nussbaum's *Political Emotions* is the best contemporary effort to respond to the problem of how to create a democratic ethos. In this case I will also leave the topic aside, but for the opposite reason: in *Political Emotions* we have a surplus of criteria that I cannot summarize here. A future piece would have to trace the connections between Carens's and Nussbaum's projects, but not to develop much newer criteria.

⁵³ Nussbaum, *Creating Capabilities*, 20.

To put it differently, when we speak about capabilities we refer to the freedom each human being should have to decide what kind of life he or she wants to live. Thus, the Capabilities Approach is *pluralistic about value*⁵⁴. However, Nussbaum's approach defends the importance of *normative claims*. Even though a just society should respect the freedom of all its members, some restrictions are necessary⁵⁵. Here the concept of human dignity is critical⁵⁶. Nonetheless, Nussbaum does not ground the concept in any metaphysical (some version of natural law theory, for instance) or *a priori* (the Kantian categorical imperative, for example) conception of justice or humanity. In her view "dignity is an intuitive notion" although "by no means utterly clear"⁵⁷. Thus, the dignity of the human being is an "intuitive *starting point* [that] offers definite, albeit highly general, guidance"⁵⁸.

In this sense, her position and Carens's are quite similar. Normative claims are possible without appealing to metaphysical frameworks: we all have a basic sense of what violates our human dignity; we all know that some things are unjust. Carens and Nussbaum work out the issue of the intuitive nature of the concept of human dignity differently, though. Carens avoids the development of a theory and heavily depends upon the already assumed historical determinations of the concept in most contemporary democracies⁵⁹. Nussbaum, in contrast, prefers to develop a more fleshed out theory because, I believe, the historical determinations of the concept can be very vague sometimes and more concrete criteria is needed⁶⁰. In my view both approaches are valid, but given the limitations already pointed out by Carens himself, I maintain that the Capabilities Approach helps Carens's project providing a still

⁵⁴ See Nussbaum, *Creating Capabilities*, 18.

⁵⁵ See Nussbaum, *Creating Capabilities*, 70ff.

⁵⁶ Yet Nussbaum is very cautious regarding the adjective "human" here. She does not want to exclude other sentient species from ethical reflection (see Nussbaum, *Creating Capabilities*, 29; 157-163).

⁵⁷ Nussbaum, *Creating Capabilities*, 29.

⁵⁸ Nussbaum, *Creating Capabilities*, 78, my emphasis. In the same page, the author refers to Karl Marx's vivid descriptions of alienated labor as an example of injustice that intuitively resonates with our understanding of what the human being does not deserve.

⁵⁹ Carens sees this both as an advantage and a limitation. For more details on these difficulties, see the appendix to *The Ethics of Immigration*, "Presuppositions and Political Theory". Interestingly, there he acknowledges, as Nussbaum does too ("Rawls's theory of justice is one of the great achievements of modern Western political philosophy", *Creating Capabilities*, 87), that John Rawls's is the "most successful" (298) twentieth century attempt to provide a general theory of justice and recognizes its influence in his work. In my view this is another good reason to try to establish connections between Carens's ethics of immigration and Nussbaum's Capabilities Approach.

⁶⁰ For more details on the practical and philosophical reasons to develop the Capabilities Approach, see Nussbaum, *Creating Capabilities*, chapter 2, "A Necessary Counter-Theory".

general but sufficiently concrete set of principles to address some ethical issues in the context of immigration.

Now given the lack of clarity of the concept of human dignity, Nussbaum claims that it cannot work in isolation: it must be illuminated by other notions: respect, freedom, for instance. What is important for our purposes is to show that some situations violate our dignity. Many of them can be the consequence of individual actions, but many are the consequence of political and economic structures. We see both cases in the context of immigration. In order to prevent these violations, Nussbaum has developed a list of ten “central capabilities” whose absence denotes the violation of the dignity of the person and, therefore, the presence of a significant lack of justice in society. The list includes: life; bodily health; bodily integrity; being able to use our senses, imagination, and thought; being able to freely experience our emotions; being able to use our practical reason; the right of affiliation; concern for other species; being able to play; and being able to control our own environment⁶¹. For the author, all the capabilities are interconnected and necessary⁶². They operate as a *threshold*, an ample social minimum, yet a very crucial one: below it a society cannot be considered a just one. Now, as a minimum, the logical implication is that a richer conception of justice would many times imply going beyond it⁶³.

For the purposes of this paper, however, the central capabilities are sufficient to think about the problem of immigration in relation to Carens’s theory of social membership. Let us consider one of Carens’s most difficult case-studies: irregular immigration. Carens’s position is known to us: irregular immigrants have some basic rights that the state must protect despite the fact that they do not have legal authorization to be in the country they emigrated to. Moreover, after a certain amount of time the immigrant has the right to regularize her situation becoming a resident. In my view, the Capabilities Approach supports Carens’s argument, but deepens it and provides richer content to the very general idea of human dignity defended by him.

For instance, when we consider *life* as a capability we need to understand it not as mere subsistence, but as a life worth of living. Thus, when we realize that in many

⁶¹ Nussbaum, *Creating Capabilities*, 33-34.

⁶² Although she acknowledges that “affiliation” and “practical reason” “organize and pervade the others” (Nussbaum, *Creating Capabilities*, 39).

⁶³ See Nussbaum, *Creating Capabilities*, 40ff.

countries living conditions are so precarious that the worth of life can be barely perceived, we can also understand how crucial is for some people to emigrate seeking for a better life. Therefore, this central capability puts into question the extent of the state's sovereignty and even invites us to think about the ethical need of open borders: poverty and global inequality ethically justify immigration and undermine the developed countries' sovereign "right" to exclude irregular immigrants. A similar argument can be made regarding the *bodily health* capability: severe poverty certainly undermines health and sometimes migration becomes the only way to access to better health care for many living in extreme conditions. Recall now the example of domestic violence provided before⁶⁴ and put in dialogue with these two capabilities and with the *bodily integrity* one. In my view, these three capabilities reinforce Carens's firewall argument: because these capabilities are essential in the constitution of the human being as such it is manifestly unjust to prioritize the enforcement of migratory law over the protection of the life, bodily health, and bodily integrity of the irregular immigrant. Consider the *senses, imagination, and thought* capability now. Basic education is many times inaccessible to poor households. Moreover, the possibility of expanding one's imagination through music and literature and simply *play* (another central capability) represents a chimera for many children and adults in situations of poverty. Consequently, the right to emigrate emerges as a legitimate one, as well as the right that irregular immigrants acquire with time to receive such opportunities in the political community they emigrated to. The capability *emotions* has a crucial role in the immigrant journey as we will see in the next section. One of the greatest tragedies of migration is the disruption of families. Given how essential is love for the constitution of the human being, this capability reinforces Carens's argument according to which families separated as a consequence of migration have the right to be reunified. Therefore, the state behaves unjustly when it prevents the reunification of families prioritizing the enforcement of migratory law over the development of our emotions understood as a central capability. The capabilities of *affiliation* and *control over one's environment* also strengthen Carens's argument. Every human being, regardless her or his migratory status should be able to be respected, to associate freely, to participate effectively in political choices, etc. All these dimensions of our being human are severely undermined when the state does not grant citizenship to irregular immigrants. Furthermore, as said before,

⁶⁴ See *supra*, pp. 9-10.

citizenship is just a minimal movement toward the right goal, namely, inclusion in the new political community. Thus, the state has the duty of creating the conditions to foster these capabilities. In addition, living with concern and in relation to *other species* although not in absolute dependence upon all the aforementioned capabilities, becomes much more possible when they are more fully developed. Finally, none of these capabilities seem to be fully achievable if the *practical reason* capability is not strongly developed in every human being. In an ideal world, it is likely the case that the massive irregular migration we see would not happen. In the current state of affairs, though, migration is an imperative for many: they are forced to emigrate because their original community cannot guarantee for them a truly human life. This tragic choice must be acknowledged by the state they emigrated to and it should do its best to reconstitute in the irregular immigrant her capability to freely decide what kind of life she wants to live. The first step in order to do so is helping her to regularize her migratory status. With her rights legally protected, she might be able to progressively recover her freedom to choose, *i. e.*, her capability to use her practical reason without all the limitations that the poverty of her original political community and the fear of deportation in the new one imposed on her.

In sum, I maintain that the central capabilities greatly help Carens's approach to think about the normative ethical dimensions of immigration. General as they are, they provide the concreteness the theory of social membership sometimes lacks while assessing the ethical status of some migratory practices. Moreover, given the importance of the role of the state in Carens's argument, the central capabilities provide a much more palpable standard of justice that can be used by government officials when discussing migratory policy. The "political theory from the ground up" model that Carens develops has the limitation of requiring from the reader the patience to follow lengthy arguments that would later disclose the human right at stake. Needless is to say that government officials rarely have that patience. If a project like Carens's were to be used by governments it would need to be translated in a more applicable model. In my view, this is, among others, the great advantage of the Capabilities Approach in the case of immigration. Both projects, however, complement each other. The Capabilities Approach has not considered in detail the ethics of immigration yet and I believe that nobody has treated it more carefully than Carens; therefore, Carens's project should be a fundamental conversation partner

whenever the Capabilities Approach theorists turn to the problem of immigration more specifically.

4. A Public Theology of Immigration

In this final section of the paper I would like to do add some new pieces to the argument I have been developing so far. First, I want to focus more directly on a particular immigrant group, namely, the Latino/a population. This will help us to see more specific problems, particularly in the case of the role of their religious beliefs. Second, I will briefly consider how these religious beliefs become a crucial healing resource for the immigrants, but also the basis of their political empowerment in the quest for migratory justice. Finally, I will show how this movement from the private sphere to the public sphere prompted by religion itself can operate as a supplement of Carens's and Nussbaum's reflections about justice, particularly in the case of migration, when an adequate theological method is used.

The immigrant Latino/a population in the United States is one of the most vulnerable groups in the country⁶⁵. Seeking opportunities they do not have in their own homelands they emigrate to the United States hoping for better jobs, better living conditions, in sum, for the much promised American Dream. The American Dream, though, is for many much closer to a nightmare, especially in the process of attaining it, if it is even ever truly reached. Even those who succeed and eventually reach the United States suffer the constant threat of being captured without documents, and

⁶⁵ One of the main reasons for this claim is based upon the nature of the migratory process itself. Different from the case of most of the other undocumented immigrants who usually enter the U.S. legally and then remain in the country illegally, a great number of the Latino/a immigrants irregularly cross the U.S.-Mexican border, a highly dangerous journey that, as we will see, leaves deep scars on the immigrant's heart and social development. In addition to this severe problem, Latino/a immigrants are politically underrepresented which makes their claims weaker in the political debate. For instance, up to 2000, they just held the 1% of all elected offices despite representing more than 15% of the population. The pattern has not changed so much in the last 15 years. In 2014, the 114th U.S. Senate only has 37 Latino/a members, which means that they just represent the 6.9% of the total seats (535) despite the fact that they represent about 17% of all U.S. population. Gender wise the situation can be equally or more striking: as to 2014 from the 8,218 seats available for elected offices, Latinas only hold 92, about the 1%, despite representing about the 8% of all U.S. population. For a theological reflection about the specificity of the U.S.-Mexican border problematic, see Gioacchino Campese, "¿Cuántos más? The Crucified Peoples and the U.S.-Mexico Border", in: Daniel G. Groody and Gioacchino Campese (eds.), *A Promised Land, A Perilous Journey: Theological Perspectives on Migration* (Notre Dame: University of Notre Dame Press, 2008). For more information on Latino/a political underrepresentation, see Timothy Matovina, *Latino Catholicism: Transformation in America's Largest Church* (Princeton, NJ: Princeton University Press, 2012), especially chapter seven, "Public Catholicism"; the United Census Bureau website (www.census.gov); the recent reports of The Center for Voting and Democracy (www.fairvote.org); and the 2014 Report of the Latinas Represent Organization (www.latinasrepresent.org).

consequently live a life in the shadows, struggling for fair salaries and good working conditions. In my view, this situation not only requires the philosophical reflection provided before but also significant *theological exploration*, yet one that is in permanent conversation with other areas of inquiry, particularly philosophy and social sciences. Such exploration has already started and significant theological (and related) efforts have been developed⁶⁶. I would like to think about the lines to follow as a modest contribution to this already well-established tradition of theological reflection. My contribution would be located within the framework of what some authors call *public theology*, *i. e.*, the theological effort of making religious claims publicly available to others who do not share them. In order to do so, some criteria must be developed and some conversations partners must be invited to the table. I claim that the criteria have been very well developed by David Tracy's theology and that the best conversation partners for this effort are Carens's and Nussbaum's projects. My focus here will be the Christian tradition, yet other paths of reflection are encouraged and would certainly enrich this theological effort⁶⁷. Let me proceed, then.

When one thinks about immigration it is a good exercise to consider its multiple layers, because we are talking about a very complex process. Not all of them can be considered here, but let us pay attention to the ones I believe are central. In the first place, we have to consider the global problem of *poverty and inequality*, what we may want to call the *structural dimension* of migration. If immigration happens, especially the one we have been calling "irregular", this is due to the need people have to survive⁶⁸. As Fr. Daniel Groody puts it:

⁶⁶ The following is by no means a comprehensive list: Virgilio Elizondo, *Galilean Journey: The Mexican-American Promise*, revised and expanded edition (Orbis: New York: 2000 [1983]); Virgilio Elizondo, *The Future is Mestizo: Where the Cultures Meet*, revised edition (Boulder, CO: University Press of Colorado, 2000); Daniel G. Groody, *Border of Death, Valley of Life: An Immigrant Journey of Heart and Spirit* (Lanham, MD: Rowman & Littlefield, 2007 [2002]); Groody and Campese (eds.), *A Promised Land, A Perilous Journey*; Matovina, *Latino Catholicism*; Jacqueline Maria Hagan, *Migration Miracle: Faith, Hope, and Meaning on the Undocumented Journey* (Cambridge, MA: Harvard University Press, 2008); Pierrette Hondagneu-Sotelo (ed.), *Religion and Social Justice for Immigrants* (New Brunswick, New Jersey & London: Rutgers University Press, 2006); Michael W. Foley and Dean R. Hoge (eds.), *Religion and the New Immigrants: How Faith Communities Form our Newest Citizens* (Oxford: Oxford University Press, 2007).

⁶⁷ On migration and other religious traditions, see Janelle S. Wong and Jane Naomi Iwamura, "The Moral Minority: Race, Religion, and Conservative Politics in Asian America"; Karen Leonard, "Finding Places in the Nation: Immigrant and Indigenous Muslims in America"; Janet Hoskins, "Caodai Exile and Redemption: A New Vietnamese Religion's Struggle for Identity"; all in: Hondagneu-Sotelo (ed.), *Religion and Social Justice for Immigrants*. See also Foley and Hoge (eds.), *Religion and the New Immigrants*.

⁶⁸ On this problem, see Milanovic, "Global Income Inequality in Numbers". Despite the influence of this piece, I believe that the article has significant problems for the lack of a more systematic

Only in the hope of relieving this pressure does one go through the radical experience of separation from one's homeland, roots, language, and customs in order to become an immigrant [...]. Migration is a traumatic undertaking. Such a separation leaves an indelible mark on the heart of the immigrant⁶⁹.

Even though I cannot address the structural issues of poverty and inequality here, we must keep in mind that in most of the cases they are the root of the immigrant journey: if people irregularly immigrate it is not because they find some kind of strange pleasure in breaking the law; they do it because their need is great. Precisely for this reason when dealing with migration we are dealing with very powerful moral claims connected to the most basic human rights. In my view, following Carens, these claims have priority over migratory law enforcement, and they should be at the basis of any further developments in legislation on migration. For now, though, let us keep our attention on the immigrant journey itself.

Another fundamental element in this process is *breaking from one's family*. Let us call this the *psychological dimension*. The situation is somehow ironic, or, more accurately, tragic: in order to provide support to their families, people emigrate from their homeland breaking up the family they want to support. Choices like this, where no real options exist are appropriately called "tragic choices"⁷⁰: whatever one chooses, the consequences will be harmful. Evidently, between starving and breaking up one's family, most immigrants decide to do the latter, but the tragic nature of the choice should not be overlooked. In addition to this breaking from one's family, there is also a breaking from what one finds familiar⁷¹, what we could call the *cultural dimension* of migration. In the specific case of Latino/a migration perhaps the first thing one notices as radically different is the language, but this is just the top of the iceberg. Languages, in the end, are distinctive part of our cultures. What the immigrant leaves behind is his or her whole world: language, family, friends, food, traditions, etc.

approach. Among them, the conclusion of the piece seems to be the greatest one: "either poor countries will become richer, or poor people will move to rich countries" (208). For him, these two options are "equivalent" (although Milanovic acknowledges, only in one sentence and without further development of the idea, that they are not politically equivalent); but they are certainly not. Migration, as we will see, has massive effects in people which include psychological, sociological, political, cultural, and economic changes, to count just a few. Milanovic "descriptive" approach is far from providing a solution. In my view, the weakness of his piece is the consequence of the lack of systematic thinking, particularly in regards to normative ethical claims. Purely economic-descriptive approaches are greatly insufficient, but being familiar with them helps, precisely, to note their limitations and take from them the data and other important contributions they can make to the broader systematic task of thinking about poverty and social justice in a more comprehensive way.

⁶⁹ Groody, *Border of Death, Valley of Life*, 15-16.

⁷⁰ See Nussbaum, *Creating Capabilities*, 37.

⁷¹ See Groody, *Border of Death, Valley of Life*, 18-19.

Then we have the dangerous crossing of the U.S.-Mexican border, the literally *deathly dimension* of migration. The immigrants face numerous obstacles. First, we have the border patrol which, interestingly, does not really stop the migration flows, but just redirects them pushing “immigrants more and more into dangerous and life-threatening territory”⁷². In addition to the border patrol, the immigrants worry about the smugglers, the so-called *coyotes*. *Coyotes* can be very expensive, especially given the precarious economic situation of the immigrants⁷³. But this is not the worst part of dealing with them. Many times *coyotes* use the immigrants to pass drugs through the border, rob them, sexually abuse them and, sometimes, even kill them or let them die in the desert⁷⁴. If one adds to this the risks of the extreme temperatures of the desert, the many dangerous animals, and the lack of the appropriate amount of food and water, it is easy to see how this journey implies the permanent risk of dying. As a man interviewed by Groody puts it: “We are aware of the dangers, but our need is greater. There’s always the risk of dying in the desert, but the desire to survive and keep going is even more important. It’s a gamble”⁷⁵.

Now, as we know, many migrants indeed cross the border, but that is not the end of the story. While in United States’ soil, they experience great isolation, cultural and linguistic alienation, great vulnerability at work, the permanent risk of deportation, among many other forms of affliction. In sum, they experience their lack of belonging. As a consequence, many times they try to find consolation in drugs, alcohol, gambling, and other forms of self-destructive behavior⁷⁶. If one adds to this a sometimes profound but punitive and fearful religiosity, it is not hard to see how devastating this situation can be. They are “nobody to anybody”⁷⁷. In some cases, they feel that they are nobody even to God.

⁷² Groody, *Border of Death, Valley of Life*, 20.

⁷³ Groody’s estimate is between \$800-\$1,800 (see *Border of Death, Valley of Life*, 22); Jacqueline Hagan’s more recent research affirms that the cost can go as high as \$8,000 (see “Faith for the Journey: Religions as a Resource for Migrants”, in: Groody and Campese (eds.), *A Promised Land, A Perilous Journey*, 4).

⁷⁴ See Groody, *Border of Death, Valley of Life*, 22.

⁷⁵ Groody, *Border of Death, Valley of Life*, 24.

⁷⁶ See Groody, *Border of Death, Valley of Life*, 29.

⁷⁷ Groody, *Border of Death, Valley of Life*, 30. Obviously, this is just one of the possible paths the immigrants follow. Many, in contrast, find consolation in their faith and great resources to fight for a better life. The *Encuentro Misionero* I will study in the next pages is a great example of this. However, there are simpler and more conventional ways (ritual, devote promises, prayer books, church attendance, etc.) through which immigrants cope with the problems they face, as Hagan’s studies show: see “Faith for the Journey: Religions as a Resource for Migrants” and, specially, her *Migration Miracle* (cited in the list above), from where the ideas of the shorter article come from. Despite their different contexts of study, Hagan’s work shows great affinity with Susan C. Sullivan’s,

In the Christian tradition, however, suffering and death are supposed to be seen always from the perspective of the resurrected Christ. Thus I would like to move from the many sorrows of the deathly immigrant journey to the sources of life where these men and women find hope and healing. The rehabilitation of the heart and the restoration of the capacity to re-experience and fully exercise their human dignity happen in many different ways. Yet I would like to focus in one powerful example provided by Groody's research: the *Encuentro Misionero* retreat sponsored by the Valley Missionary Program in the Coachella Valley, Southern California. In my view, this example is crucial because it shows how some traditions *within* the Christian tradition connect more "private" and "spiritual" religious concerns with more "public" and "political" ones. In doing so, the *Encuentro Misionero* puts together faith and social justice in a way that welcomes the methodology of public theology and, therefore, a fruitful conversation with the theory of social membership and the Capabilities Approach.

Working in the Coachella Valley with immigrant workers, Fr. Joe Pawlicki, the founder of the program, noted that many of the workers had no connection with the Church. Pawlicky decided to outreach. The way he chose to do so was shaped by a concrete option for the poor and the creation of basic Christian communities, two crucial features of the liberation theology tradition⁷⁸. Accordingly, he listened very carefully to the needs of the workers and, with their help, designed a spiritual retreat, the *Encuentro Misionero*, to help them to heal their wounds enriching their already existing faith⁷⁹. Thus the *Encuentro* was designed as a genuine experience of Christian liberation⁸⁰. When the heart is rehabilitated, the immigrants recover their strength and are ready to be part of the mission of sharing the liberating power of faith.

Living Faith: Everyday Religion and Mothers in Poverty (Chicago: The University of Chicago Press, 2011): both conclude that religion can be an empowering resource for people in poverty, providing them consolation, hope and even agency. The limitation of both pieces, though, is their almost solely descriptive interest. As with Milanovic's case, their reflections should be integrated in a more systematic matrix. The brief sketch I am presenting here is an attempt of integration.

⁷⁸ This is just one example of the great influence of liberation theology both in Latino/a theology in the U.S. and in the Latino/a civil rights movement. For more on this topic, see Pierrette Hondagneu-Sotelo, Genelle Gaudinez, and Hector Lara, "Religious Reenactment on the Line: A Genealogy of Political Religious Hybridity", in Hondagneu-Sotelo (ed.), *Religion and Social Justice for Immigrants*. For a more theoretical account of the influence, see Jorge Castillo-Guerra, "A Theology of Migration: Toward an Intercultural Methodology", in: Groody and Campese (eds.), *A Promised Land, A Perilous Journey*

⁷⁹ See Groody, *Border of Death, Valley of Life*, 42-43.

⁸⁰ See Groody, *Border of Death, Valley of Life*, 44.

Christian liberation, however, as Fr. Gustavo Gutiérrez defines it is a very rich concept. It implies liberation from structures of oppression, recovery of individual and communal agency, and salvation in Jesus Christ⁸¹. For Gutiérrez, these dimensions of liberation are interdependent, “three levels of meaning of a single, complex process”⁸². In the context of this discussion I just want to highlight that the *Encuentro* should not be conceived just as a psychological-therapeutical event where the goal is merely to feel well again. Important as feeling well is, the goal of the retreat is much more comprehensive: it implies the restoration of the capacity to experience and fully exercise the human dignity of the participants and the mission given to them to fight for the dignity and liberation of *all*⁸³.

In sum, what the retreat does is to provide a matrix that puts organically together faith and justice. It helps the wounded heart of the immigrant to recover, but not in order to live in isolation from the problems of the world. The *Encuentro* is far away from being a *fuga mundi* kind of retreat. On the contrary, what the retreat promotes is a deep understanding of the Christian faith where the figure of Christ is interpreted as a healer and liberator of *all*. Therefore, the retreat encourages solidarity with people in situations of suffering and marginalization, which many times implies some kind of political activism. Let me expand on these central issues before moving to the concluding parts of the paper. I will do so borrowing some ideas from the Jesuit theologian Ignacio Ellacuría, martyred in El Salvador in 1989, precisely for his commitment to social justice.

For Ellacuría, the Christian faith in order to be truly Christian must be realized *in history*. In his view, a faith without direct and transformative engagement with human reality is just ideology. Correlatively, mere political activism, even if it honestly seeks justice, cannot just by itself be identified with Christian faith⁸⁴. Hence, both faith and justice are essential for the Christian self-understanding. The question, then, is how to establish their connection. In more theological terms, the

⁸¹ See Gustavo Gutiérrez, *A Theology of Liberation: History, Politics, and Salvation*, revised edition with a new introduction (New York: Orbis, 2001 [1973]), 24-25. Thus, in principle, Christian liberation is a response to the problems emerging from the structural, psychological, cultural, and deathly dimensions of the immigrant journey listed above.

⁸² Gutiérrez, *A Theology of Liberation*, 25.

⁸³ Given the lack of space, I cannot fully describe the many elements by means of which the retreat helps the immigrant to recover and be ready for mission, but that is the goal of chapter two, “*Corazón Rehabilitado –The Rehabilitated Heart: The Dynamics of Healing and Empowerment*”, of Groody’s *Border of Death, Valley of Life*.

⁸⁴ See Ignacio Ellacuría, “Fe y justicia”, in Ignacio Ellacuría, *Escritos teológicos III* (San Salvador: UCA, 2002), 309.

question is what the Christian must do in order to realize God's kingdom in human history⁸⁵. Ellacuría cautions the reader, however: this is matter that can be clarified theoretically (as he will do), but its resolution only occurs in *praxis*.

For the Jesuit theologian, the understanding of faith and justice that treats the terms as disjunctive realities is normally an ideological mechanism to maintain the *status quo*⁸⁶. It is true that those that pretend to be just faithful Christians without active commitment to social justice usually do so led by their fear of radical and even violent transformations of reality, sometimes also scared by the possibility of the reduction of faith to social and political activism. Yet, Ellacuría claims, some excesses, that he does not deny, should not be the measure of the relationship of these two realities⁸⁷. Nevertheless, this said, Ellacuría recognizes that the dichotomy also comes from the opposite side. Some have lost their spiritual life, their sacramental life, their respect for the institutional Church, and, as a consequence, commit themselves to social justice in a way that considers faith just secondary, almost superfluous. For the theologian, this cannot be the answer either: a conception of justice that is not rooted in faith cannot be Christian at all⁸⁸. Interestingly, however, Ellacuría claims that a genuine commitment to justice, even without faith, could be in great harmony with Christian values; in contrast, a faith without commitment to justice, cannot.

In his view, the best way to overcome the dichotomy is to declare it a false one by paying attention to the role of *love* in the Christian tradition and its unifying capacity when related to faith and justice. Thus, if faith is rooted in God's love for us and our response to God; justice must be interpreted as the *historical manifestation of that love*. If this is true, Ellacuría maintains that the Christian and her Church, as signs of God's presence in history, must *actively* participate in it. Hence intervention in "worldly" affairs is not just something that the Christian must do as some sort of secondary effort, despising her world's "citizenship" but fulfilling her duties because they are mandatory. On the contrary, it is in the realization of God's kingdom *in* history where God and the human being encounter each other more fully⁸⁹. In Ellacuría's view it is clear that given the situation of dramatic poverty and inequality in most parts of the world Christians should consider the struggle for justice as their

⁸⁵ See Ellacuría, "Fe y justicia", 309; also his comments about the main theme of theological reflection, 310-311.

⁸⁶ See Ellacuría, "Fe y justicia", 311.

⁸⁷ See Ellacuría, "Fe y justicia", 311-312.

⁸⁸ See Ellacuría, "Fe y justicia", 312.

⁸⁹ See Ellacuría, "Fe y justicia", 321-322.

fundamental task⁹⁰. For Ellacuría, then, this intrinsic unity of faith and justice is undeniable and must be considered *an absolute* of the Christian faith. The historical realizations of that justice, however, are *relative*. There are different kinds of involvement and people should be free to discern what the ones that fit better with their particular talents and callings are. In my view, the *Encuentro Misionero* represents a perfect example of this integration of faith and justice described by Ellacuría. My last step now is to show how this understanding of the Christian tradition helps us to think about public theology and, thereby, about the fruitful conversation between religious beliefs and both the theory of social membership and the Capabilities Approach.

In David Tracy's view the pluralistic context of contemporary societies represents a challenge for Christian theology. Faith-based claims assumed as self-evident before are not so anymore. Therefore, theologians have the moral and intellectual responsibility to make those claims available to the wider public. The other two options are either just to speak to the ones already in agreement with them or to simply give up assuming that the challenges posed by modernity and postmodernity are too great. Tracy does not like any of these options and, consequently, has committed himself to the development of a theological method capable of making those faith claims available to the wider public. He calls his effort a *method of critical correlation*⁹¹ and, later, an *analogical imagination*⁹². Let me very briefly describe Tracy's proposal.

For him, there are two principal sources for Christian theological reflection, namely, the Christian texts and doctrines, and the common human experience and language⁹³. The former implies the sacred scriptures and their tradition of interpretation; the latter, everyday life and the diverse language games at play in human experience, which include also the scientific description of experience, art,

⁹⁰ See Ellacuría, "Fe y justicia", 325.

⁹¹ See David Tracy, *Blessed Rage for Order: The New Pluralism in Theology* (New York: Seabury Press, 1996 [1975]), especially chapter three for a summary of the argument.

⁹² See David Tracy, *The Analogical Imagination: Christian Theology and the Culture of Pluralism* (New York: Crossroad, 1981), especially chapter ten and the epilogue for a summary of the argument. For some of the differences between the method of critical correlation of *Blessed Rage for Order* and the approach of *The Analogical Imagination* and Tracy's later work, see the preface to the 1996 edition of the first book. Also, *The Analogical Imagination* provides a great number of clarifications about the differences in its footnotes. In my view the differences are not substantial, but just represent an effort of refining the previous version of the method being more aware of plurality and ambiguity in the methodological steps themselves.

⁹³ See Tracy, *Blessed Rage for Order*, 43-46.

etc. In Tracy's method both sources must be in permanent and critical conversation if religious claims are to become available to the wider public. Different from other theologians, however, Tracy does not believe that Christian beliefs should unilaterally work as the lens through which the world must be interpreted; for him, the world, understood as common human experience and language, should have a role in the process of reshaping the Christian beliefs too⁹⁴. Now, Tracy's standpoint does not want to discard the importance of Christian doctrines or the relevance of the Church's interpretation of them; nevertheless, his position invites us to examine both in a critical fashion by means of a careful assessment of their internal coherence and practical applicability. In order to do so, Tracy suggests an open dialogue with culture. Yet the author does not suggest that this should elicit a reversal of the position above described: common experience and language must not have an *a priori* privilege in this process of correlation⁹⁵. Thus, Christian texts and their interpretation and common human experience and language must examine *each other* critically, trying to learn from each other in a process of *mutual illumination*, in a process of what hermeneutical theory calls *fusion of horizons*.

In order to do so more properly, though, Tracy claims that a *theological focal meaning* or *prime analogate* is required⁹⁶. Here we move to some of the refinements provided in *The Analogical Imagination*. Tracy believes that correlation is possible because some events are *classic* ones. He writes:

When a text is a classic⁹⁷, I am also recognizing that its 'excess of meaning' both demands constant interpretation and bears certain kind of timelessness [...]. That is, the classical text is not in some timeless moment which needs mere repetition. Rather its kind of timelessness as permanent timelessness is the only one proper to any expression of the finite, temporal, historical beings we are. The classic text's real disclosure is its claim to attention on the ground that an event of understanding proper to finite human beings has here found expression⁹⁸.

Later he adds: "what we mean in naming certain texts, events, images, rituals, symbols and persons 'classics' is that here we recognize nothing less than the

⁹⁴ See, Tracy, *Blessed Rage for Order*, 46.

⁹⁵ See, for example, Tracy, *Blessed Rage for Order*, 10-14, where the author presents his critical remarks regarding the secular mind.

⁹⁶ See Tracy, *The Analogical Imagination*, 410.

⁹⁷ But this applies to "events, images, rituals, symbols and persons" too (Tracy, *The Analogical Imagination*, 108).

⁹⁸ Tracy, *The Analogical Imagination*, 102.

disclosure of a reality we cannot but name truth”⁹⁹. Precisely for this “excess of meaning” the correlation mentioned above requires a *theological focal meaning* or *prime analogate*. By this Tracy refers to the need of a key concept or doctrine able to analogically re-articulate the “excess of meaning” of the classic event. What the prime analogate allows is the “refashioning of the original disclosure”¹⁰⁰. This implies, however, an *analogical imagination*, i.e., “a language of ordered relationships articulating similarity-in-difference”¹⁰¹. The rationale behind this need is a consequence of the way Tracy understands the classic. If there truly are events with such a surplus of meaning because they disclose for us truth, it is by definition impossible to grasp that truth fully. Therefore, we only grasp the event analogically, refashioning of the original disclosure. In Tracy’s words: “each of us understands each other through analogy or not at all”¹⁰².

What I would like to claim in this paper, then, is that migration represents a classic event. There is in it a surplus of meaning that exceeds sociological, philosophical, theological, or other approaches. There is truth revealed in the event, truth about the meaning of life, the importance of sacrifice, the capacity of resilience, the value of love for one’s family, the gift of solidarity with other’s suffering, etc. Given its excess of meaning, though, some kind of prime analogate should be provided in order to refashion the original disclosure. In the case of this paper, whose concern is the relationship that can be traced between Christian religious beliefs and both the theory of social membership and the Capabilities Approach, I believe that the key concept should be *human dignity*. Let us see how the correlation might operate.

We know well that one of the central concerns of the Christian faith is the dignity of the human being, whose significance the *Encuentro* stresses highly. One of the most traditional ways to describe this concern is the Christian understanding of our being *imago Dei* (Gen. 1:27). The dignity we all share comes from God’s loving creating act. Thus human dignity is inherent to our condition of children of God and cannot be taken away from us. Nevertheless, as the immigrant journey shows, such a dignity can be barely experienced when extreme poverty, violence, suffering, and death are the everyday experiences of so many people. In traditional Christian vocabulary, all this is the consequence of sin. Therefore, Christ’s passion, death, and resurrection

⁹⁹ Tracy, *The Analogical Imagination*, 108.

¹⁰⁰ Tracy, *The Analogical Imagination*, 410.

¹⁰¹ Tracy, *The Analogical Imagination*, 408.

¹⁰² Tracy, *The Analogical Imagination*, 447.

represent God's greatest sign of love in order to overcome sin and restore in us the experience of our dignity of being God's sons and daughters. Accordingly, the mission of the follower of Christ is to live a life according to Jesus's words and deeds, whose central aim were to liberate us from the consequences of sin and invite us to the fullness of life in friendship with God. In sum, our fully being *imago Dei* implies an *imitatio Christi*¹⁰³.

What I would like to claim is that these same concerns are *analogically* present in other approaches to human dignity. Moreover, what I see in both Carens's and Nussbaum's approaches are precisely another way to refashion the original disclosure about the meaning of human life using the concept of human dignity in the context of migration. Obviously neither Carens's nor Nussbaum's theories depend on theistic claims; yet seen more carefully one can easily identify the commonalities with the Christian way to ground human dignity presented above¹⁰⁴. In my view this is generally possible, but it is particularly more fruitful when the correlation is made between Carens's and Nussbaum's interpretations and theologies which emphasize the connection between faith and justice, as in the case of liberation theology. Recall now what Ellacuría said about the faith-justice relationship. Despite the fact that fighting for social justice is not sufficient to be called a Christian; one cannot be called one without doing so. Thus the concept of human dignity helps us to see how Carens's and Nussbaum's projects defend the worth of the human person in a way perfectly compatible with Christian beliefs, although, as Ellacuría reminds us, that

¹⁰³ Interestingly, the narrative I just provided can be told in many different ways depending on which prime analogate we pick. Here I have used the "*imago Dei*" as my theological focal meaning to understand the Christian narrative. In his *Justice in Love* (Grand Rapids: William B. Eerdmans, 2011), Nicholas Wolterstorff refashions the original disclosure using "agapic love", although in the end our being *imago Dei* has foundational role for him too (150ff.). Another way to tell the story is using "spiritual poverty" as the theological focal meaning, as Johan Baptist Metz's *Poverty of Spirit* (Mahwah, NJ: Paulist Press, 1998) does. I give these examples just to show how the analogical imagination operates providing systematic approaches which are similar-in-difference in order to disclose classic events. In this case, the classic event is the Christ-event itself seen from creation, through discipleship, to resurrection. Different goals and classic events, however, change the shape of the systematic approach. In this paper, the event I am studying is *migration* and my theological focal meaning is *human dignity*. In a bigger picture, for instance, I would probably focus on the event of the *irruption of the poor* using *liberation* as my theological focal meaning.

¹⁰⁴ Such commonalities have been identified already between the work of the Peruvian theologian Gustavo Gutiérrez and the Nobel Prize Amartya Sen in Javier Iguñiz, *Desarrollo, libertad y liberación en Amartya Sen y Gustavo Gutiérrez* (Lima: CEP, PUCP & IBC, 2009 [2003]). Given the significant harmony between Sen's and Nussbaum's work, Iguñiz contribution significantly helps in the effort of establishing the more general commonalities between the Christian tradition and both the theory of social membership and the Capabilities Approach that I just suggest in this paper.

does not mean that the theory of social membership or the Capabilities Approach exhaust the depth of the concept of human dignity in its Christian interpretation.

All this said, let me conclude trying to respond to the following question: In which way Carens's and Nussbaum's approaches and the theology of migration exemplified by the *Encuentro* can help each other? Moreover, how does their interaction show the potential of the analogical imagination as a method of critical correlation between Christian doctrines and symbols and common human experience and language?

Let me start with the contributions of Carens and Nussbaum. First, I believe they offer very rich criteria to assess the presence or lack of justice in our societies. The categories of "liberation", "option for the poor", "cultural identity"¹⁰⁵, etc., foundational as they are for a theology of migration, work just as general guiding principles, but sometimes can be insufficient when concrete situations demand clearer criteria to assess their ethical status. This is particularly important in the case of migration where what is just and unjust is not very clear for many. Policy change, among other things, depends on making a strong case against current legislation on the grounds of its incompatibility with the conception of justice that most democratic societies defend. In my view the theory of social membership qualified by the capabilities approach provides a powerful framework for such an argument. Second, both can operate as a *secular* arm to protect the same *basic* convictions that Christians defend in their fight for migratory justice. Thus, in the use I give to it, Carens's and Nussbaum's approaches combined operate as an imaginative analogical effort to disclose the same *basic* truth about the human being Christians want to disclose using a *theological* narrative.

The advantage of Carens's and Nussbaum's projects is that they can insert themselves in the public conversation in a more productive way when policy change is required. Legislation wise, immigration policy cannot be grounded in religious convictions at least for two reasons. First, because given the plurality of religions of both the immigrants and the citizens it would be virtually impossible to decide which religious argument should be chosen without marginalizing other options. Second, even if a consensus regarding religious argumentation is possible, grounding

¹⁰⁵ See Castillo-Guerra, "A Theology of Migration: Toward an Intercultural Methodology", 253ff.

legislation on religion would be disrespectful to the non-religious¹⁰⁶. Thus the language of membership and capabilities allows the religious believer to advance the agenda of human dignity that her religion defends, but changing her rhetoric for the sake of respect of diversity¹⁰⁷ and also for pragmatic efficacy. In my view, this is a requirement of any act of understanding, but particularly those occurring in the pluralism of the public arena.

Nonetheless, there is something crucial that religious traditions can offer to the both the theory of social membership and the Capabilities Approach, namely, the *sense of belonging*. One of the difficulties I see especially in the Capabilities Approach¹⁰⁸ is its endorsement of John Rawls' *political conception of justice*, particularly in regards to its allegedly *freestanding nature*¹⁰⁹. Such a conception of justice is grounded upon an "overlapping consensus" supported by the different "reasonable comprehensive doctrines"¹¹⁰ existent in a pluralistic society. In Rawls' view the overlapping consensus operates as a "module"¹¹¹ that people can attach to their comprehensive doctrines, but is independent from them. In my view it is more fruitful, at least in the case of immigration, to think about the central capabilities (insofar as they represent the overlapping consensus) as an *analogy* (perhaps in this case we can call it an *abstraction* too¹¹²) coming from our own comprehensive doctrines than as a *module* that we attach to them. In all fairness, Rawls recognizes that people can see their own comprehensive doctrines represented in his conception of political liberalism. Moreover, people may see such a conception as originated in their comprehensive

¹⁰⁶ Nevertheless, this does not mean that legislation should not make exceptions for religious reasons; on the contrary, the whole idea of this argument is that the more respectful of religion legislation is the less religious it is in nature precisely in order to allow an ample exercise of religious freedom. For more on this issue, see the famous Sherbert vs. Verner case (1963) and Nussbaum's analysis of it in *Liberty of Conscience*, 16ff. Obviously, the balance between freedom of religion and ethical behavior according to the standards of basic democratic justice is sometimes very difficult. Nussbaum's whole book is a study of such a difficult balance.

¹⁰⁷ For more on this issue, see Nussbaum, *Liberty of Conscience*. An overview of the problem is presented in the introduction, especially pp. 12-16.

¹⁰⁸ Carens avoids this difficulty by not developing a fully fleshed out theory of justice, but this has its own problems as I have noted before.

¹⁰⁹ For Rawls's political conception of justice, see *Political Liberalism* (New York: Columbia University Press, 1993), 11-15. For Nussbaum's basic agreement with Rawls on this topic, see *Creating Capabilities*, 89ff.

¹¹⁰ For Rawls' definition of a "reasonable comprehensive doctrine", i.e., one which respects and tolerates other comprehensive doctrines, see *Political Liberalism*, 58-66.

¹¹¹ See Rawls, *Political Liberalism*, 12. For Nussbaum's basic agreement with this idea, see *Creating Capabilities*, 90.

¹¹² What I have in mind here is Michael Walzer's argument in "Moral Minimalism", in: Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: Notre Dame University Press, 2002 [1994]).

doctrines. Rawls has no basic problem with that, but his position avoids this form of argumentation¹¹³.

In my view, despite my substantial agreement with the general argument of *Political Liberalism*, this becomes a somehow artificial formulation of the problem. I believe it is more accurate to see the overlapping consensus as an abstraction or analogy, *i.e.*, a form to express the core values of our diverse reasonable comprehensive doctrines in more conversational categories, categories able to find similarity-in-difference. From my perspective, this approach highlights in a better way the agency of people and shows how they are able to use their practical reason in a respectful and consensual way. The analogy is highly important in order to enter in respectful conversation with other comprehensive doctrines, but it simply represents an exercise of our analogical imagination: it has roots, is part of a tradition of faith, reflection, etc¹¹⁴.

When the Christian immigrants we have studied fight for their human dignity in the public sphere they may need sometimes to change their rhetoric and use more general and consensual categories like those of the Central Capabilities; however, they know well that that would be an effort to understand better their own tradition and make it available to others. Deep in their hearts, those hearts once crushed and now rehabilitated by their faith in God, they know that their fight is rooted in their Christian faith. They never forget that those roots are the source of their strength. We should not either.

¹¹³ He writes: "But a distinguishing feature of a political conception is that it is presented as freestanding and expounded apart from, or without reference to, any such wider background" (Rawls, *Political Liberalism*, 12).

¹¹⁴ Different from Rawls, however, Nussbaum is highly invested in a kind of reflection where roots and traditions are central in the political sphere not only as an assumption of the theory, *à la* Rawls, but as active parts of political reflection and action (see *Creating Capabilities*, 150-151). For this reason, Nussbaum believes that the development of political emotions, *i.e.*, those emotions which "take as their object the nation, the nation's goals, its institutions and leaders, its geography, and one's fellow citizens seen as fellow inhabitants of a common public sphere" (*Political Emotions*, 1-2) is crucial as the base of political liberalism.