

Not Really A Libertarian Case Against Open Immigration

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Speaking at the third annual meeting of *The Property and Freedom Society* in Bodrum on Friday, May 23, financial journalist Peter Brimelow¹ presented his views on immigration under the title “Immigration is the Viagra of the State—A libertarian case against Immigration.” However, his argument had little concern for the controversies that divide libertarians on the issue of immigration.² After a brief look at Brimelow’s comments, I shall consider the requirements an argument should meet if it is to amount to a libertarian case for or against a particular policy such as a liberal or a restrictive immigration policy.³ Then I shall offer a critique of libertarian philosopher Hans-Hermann Hoppe’s attempt to build a case against immigration on widely accepted libertarian principles. Finally, I shall present some test cases for judging the plausibility of the argument.

“Immigration is the Viagra of the state”

One line of argument in Brimelow’s lecture referred to the familiar thesis that the combination of welfare state and immigration cannot work; therefore, because the welfare state will not go away any time soon, we should oppose open immigration.⁴ For an apologist of the welfare state, this may be a sufficient argument against immigration. But what is its relevance to a libertarian?

A second line of argument, seemingly at odds with the first, identified immigration as the “Viagra” of the welfare state: “[T]he immigration influx of the late twentieth century into the US and the West in general ... has reinvigorated the state, when it was otherwise losing its powers because of collapse of socialism and the triumph of classical liberalism.”

¹ Peter Brimelow is the author of a.o. *Alien Nation: Common Sense about America’s Immigration Disaster*, Random House, New York, 1995. An edited version of his lecture can be found here: http://www.vdare.com/pb/080604_immigration.htm.

² See e.g. the symposium on immigration in *The Journal of Libertarian Studies*, XIII, 2, Summer 1998. Of course, Brimelow would probably agree that he is more a pro-free-market writer than a libertarian in the philosophical sense.

³ It is rather tendentious to speak of “open” or “free immigration”, or “open borders”, since no one advocates allowing criminals, carriers of highly contagious diseases, or enemy agents into the country.

⁴ Ten years ago, John Hospers (“A Libertarian Argument Against Open Borders”, p.153-165 in the JLS symposium referred to in note 2) challenged opponents with the question “What are we supposed to do in the meantime [before we have got rid of the welfare state]?”—as if “In the meantime, stick to your principles!” could not be considered a sensible answer.

The first argument suggests that immigration is likely to destroy the welfare state, the second that it is likely to reinforce it. Thus, it seems that we may conclude that the effect of immigration per se on the future of the welfare state is indeterminate. However, that was probably not the conclusion Brimelow intended to convey. The intended conclusion appears to be this: As an organization of political rule and dominance, the welfare state thrives by destroying wealth and the social and cultural fabrics in the society that it dominates; it does so by creating problems that can apparently be solved only if more regulatory, fiscal and police powers are transferred to the state. According to Brimelow, immigration is an obvious cause of such problems: “Immigrants, above all immigrants who are racially and culturally distinct from the host population, are walking advertisements for social workers and government programs and the regulation of political speech—that is to say, the repression of the entirely natural objections of the host population.”

Here there is a libertarian flavour to Brimelow’s argument against immigration: libertarians want to limit the powers of government but, in order to achieve that goal, they should first get immigration under control. If true, that proposition would be an argument against immigration a libertarian could find congenial. Unfortunately, politicians and bureaucrats are not so unimaginative that they can only find their *raison d’être* in problems linked to immigration. Indeed, the origin and the expansion of the welfare state in the twentieth century had little if anything to do with immigration. The interventionist mindset will find reasons for intervening in every issue that crops up. Consequently, curbing immigration may not do anything to roll back the intrusions of the state.

Besides, Brimelow’s contention that the state was losing its powers because of the collapse of socialism and the triumph of classical liberalism is rhetorical hyperbole at best. A more sober assessment of the nineteen-seventies (inflation, unemployment) and nineteen-eighties (the Thatcher and Reagan years—hardly a “triumph of classical liberalism”) is that deteriorating economic prospects led to policies that were far more responsive to the demands of entrepreneurs and private-sector employers than earlier policies had been. However, these changes did not lead to a politically relevant questioning of the power of the state in general or the welfare state in particular. The debates (and the elections) were about policies, not about constitutional powers. Among the demands put forth by entrepreneurs and employers was one for easier access to cheap, non-unionised labour—and immigration was an obvious source of that, especially after “the collapse of socialism” in the Soviet bloc and in the Third World. Arguably, not only did “socialism” direct most of the world’s savings to investment-friendly Western shores, thereby giving a further boost to the already capital-intensive and hence high-wages mode of production in the West, but “socialism” also obstructed the free movement of people from “socialist paradises” to “capitalist hell-holes”. Using Brimelow’s rhetoric, we might as well say that immigration into Western countries over the past thirty years was a consequence of “the collapse of socialism and the triumph of classical liberalism”. But we should not jump to the conclusion that, in the West, the state would have lost “its power” if only socialism had not collapsed elsewhere on

the globe and pro-business interventionism had not triumphed at home. Would statist and established and would-be tax consumers have thrown the towel in the ring if large-scale movements of people had not accompanied the wave of economic expansion and “globalisation” at the end of the twentieth century?

The libertarian case against the welfare state is solid. Brimelow did not dispute that. However, admitting that it is also a hopeless case, at least for the near future, does not confer solidity on the argument against immigration. At best, Brimelow presented a good criticism of the government’s role in matters of immigration but that is something else than an argument against immigration. A critique of the state’s policy of nearly indiscriminately granting citizen-rights (voting, use of tax-funded services, etcetera) to immigrants is not an argument against immigration per se. Residence need not imply citizenship—and it need not imply welfare rights. We had better be careful not to move too quickly from arguments based on circumstantial considerations to the conclusion that there is, or is not, a libertarian case against immigration.

Varieties of libertarian argumentation

It may well be that American libertarians prefer not to have to deal with problems of immigration in addition to the current problems they face in trying to impart a libertarian turn to American politics. To the extent that is true, they may have tactical reasons for opposing immigration. However, like all libertarians, they consider the issue relevant primarily because of the ways in which immigration and policies concerning immigration may affect the freedom that, for them, is every human person’s fundamental right. Changes occur all the time, but for a libertarian there is a relevant difference between changes brought about without violation of any person’s libertarian right of freedom and changes brought about through violent or unjust actions. Just so, there is a relevant distinction between peaceful, rights-respecting ways of counteracting or opposing changes and other ways of seeking to maintain certain elements or characteristics of the present state of affairs. Also, changes that tend to weaken or reduce freedom-restricting institutions belong in another category than those that tend to strengthen such institutions or to widen their scope.

Philosophical libertarianism

Libertarianism is not a philosophy that aims to solve anybody’s real or perceived problems. Instead, it prescribes restrictions on every person’s attempts to solve problems if these attempts have or are likely to have an impact on the freedom of others. The gist of those restrictions is not that one may not solve one’s problems in ways that create problems for others; rather, it is that one may not solve one’s problems by depriving others of the freedom that is theirs by right. Thus, while a libertarian may share anybody’s misgivings about immigration and the problems it may cause, his primary interest is to identify ways of dealing with them that do not conflict with his commitment to respect the freedom of all. Accordingly, a criminal immigrant is to be treated as a criminal, not as a pretext for treating all immigrants as criminals or would-be criminals. Conversely, a non-criminal immigrant is to be treated as a free

person.⁵ Moreover, the presumption of innocence (“innocent until proven guilty”) applies to immigrants no less than to other people.

From a libertarian point of view, respect for the freedom of all non-criminal individuals is the supreme moral and political value that ought to govern all forms of human interaction and all human institutions. While the libertarian rights of individuals do not include trespassing on the private property of other individuals, they certainly do include the right of free movement to the extent that no such trespass occurs. Unless and until a proof of the contrary⁶ is given, we must presume that immigration *per se* no more involves trespassing on other people’s property than does taking an extended vacation or working as an expatriate in a foreign country. Therefore, the libertarian baseline concerning immigration is that everybody has the right to emigrate from one country to another, subject only to the condition that one thereby does not trespass on the rightful properties of others or unilaterally interfere with their rightful freedom in any other way. The burden of proof lies with those who wish to deny that right. It is clear, however, that such a proof cannot consist in pointing to the undisputed fact that people who migrate from one country to another may, and usually do, cause problems for others in one or the other or both of those countries. Otherwise, there would also be reason to argue for a libertarian case against emigration.

As for the problems allegedly caused by immigration, a libertarian would rather point to the policies of the states with regard to immigration than to the immigrants themselves. Occasionally, migrations are “engineered” by one state seeking to flood a neighbour with its own nationals to influence the latter’s internal politics—as the Soviet Union did in the Baltic states when they were seeking their independence. Apart from such politically engineered migrations⁷, spontaneous migration is driven mostly by differentials in labour market conditions. It goes from poorer countries with few opportunities for gainful employment to wealthier countries with many employment opportunities.⁸ Nevertheless, it is probably safe to say that today’s Western welfare states cause many immigrants to stay longer and to attract more of their compatriots to the Western host country than they otherwise would do. The states compound the problems they thereby create by denying to their own local populations almost all peaceful means of resistance to unwanted intrusions by immigrants. They do this through a proliferating body of legislation and regulation concerning

⁵ An “illegal” immigrant is not *eo ipso* a criminal, although illegal immigration may give rise to crime (not necessarily by the illegal immigrant himself).

⁶ In the next section, I shall discuss Hoppe’s attempt to prove that immigration *per se* involves unlawful trespass.

⁷ Many cases of colonization presumably also fit this bill. There is no need here to consider refugees from natural or man-made disasters. Presumably, no opponent of “open borders” is going to argue that individuals and privately funded associations may not provide sanctuary to people in need merely because they are foreigners. Whether or not it is right (“legal”) for a government to do so, obviously depends on the constitution of the host country.

⁸ M.Hooghe, A.Trappers, B.Meuleman, T.Reeskens, “Migration to European Countries. A Structural Explanation of Patterns, 1980-2004.” *International Migration Review*, XLII, 2, 2008. Welfare benefits and political rights do not appear to be important factors.

“discrimination”, “racism”, “hate speech”, and other offences against the unpredictable “politically correct” prejudices of the ruling and intellectual elites or the public opinion from which they derive their legitimacy. The deleterious effects of such schemes and policies may well be exacerbated by immigration, but they would be felt even if there were no immigration at all.⁹ Hence, under present circumstances, a “case against open immigration” is likely to attribute one symptom of malaise to another while avoiding mentioning the cause of both. If implemented as policy, it would tend to victimize innocent people by calling for increasingly intrusive legislation, regulation and police power for the government, who created the problems in the first place.¹⁰ And the victims would be not only the targeted immigrants but also the citizens of the state. The policy would deny them access to affordable labour services and deprive them of the opportunity to rent or sell houses and apartments for which there would be no other demand. After the immigration has been stopped and the undesirable immigrants have been kicked out, the enhanced police powers of the welfare state would still be in place and ready for use against other people deemed “undesirable” by politically dominant opinion.

Political conservatives may argue against immigration for no other reason than that they do not like immigrants. For them, as for their progressive opponents, political or state power is simply the means with which they hope to impose their norms, values, preferences and opinions on everybody else who happens to reside within their state’s jurisdiction. Libertarians self-consciously stand outside this left-right, progressive-conservative spectrum. They do not seek to use the coercive powers of the state but to curtail them to enhance the freedom of every non-criminal person regardless of his political rank or legal status. This is not to say that a libertarian cannot be committed to conservative or progressive values or opinions. Nevertheless, he is in any case committed to refusing recourse to violent, coercive—in a word, political—means to impose his worldview on others, and to refusing legitimacy to those (immigrants or not) who seek to impose their worldview by political means on others.

Political libertarianism

The situation is different for “political libertarians”, whose aim is to capture all or some of the levers of power in a particular society, either by organizing a Libertarian Party or by infiltrating already established political parties or other bastions of power and influence. They seek positions in institutions that often embody extremely un-libertarian principles but that they will not be able, and probably would not want, to abolish if they ever achieved positions of power in them. They move in an environment where demagoguery and opportunistic,

⁹ In Belgium, the first law that singled out racist and xenophobic motives, acts and utterances for [severer] punishment dates from July 30, 1981, years before the 1988 elections, which put immigration and immigrants on the political agenda.

¹⁰ A policy against open immigration requires at the very least stringent border controls and stop-and-search police powers, and to be effective, compulsory identity cards, registration, determination of conditions for acquiring work permits and citizenship, and the like—in short, a vast bureaucratic apparatus of “people control” in addition to that of “crime control”.

consequentialist arguments based on selected interpretations of selected statistics are paramount.¹¹ Political libertarians must learn to play the local power games as they find them to get anywhere, compromising principles to institutional, tactical and strategic considerations and risking coming to look and sound a lot like their political opponents. The libertarian stance on, say, central banking does not easily translate into policy prescriptions a libertarian might consistently follow, if he were appointed President of a central bank without power to shut it down. In the end, except perhaps in rare “revolutionary” conditions, political competition forces Machiavelli’s insight on those who participate in it: the vital concern for the politically ambitious is to gain and keep power, not what to do with it once they have. As Harold Macmillan reportedly said, “Power? It’s like a Dead Sea fruit. When you achieve it, there is nothing there.”

Similar remarks can be made concerning another, more abstract form of “political libertarianism”. Many libertarian intellectuals like to play the “Virtual policy-maker’s game”: What would you do, if you were to wake up in the morning only to discover that you are in charge of the country and have to clean up the mess left by decades or centuries of statist mismanagement of the nation’s affairs? It is pointless to try to answer the question by a mere appeal to abstract principles. The question concerns problems of transition that require judicious appraisal of, among other things, the merits and prospects of “shock therapy” versus gradualism in the light of all the relevant institutional, economic, political, cultural and other data about the actual state of affairs. Besides, the virtual policy-maker and his audience know that his answer is not a policy about to be implemented but a mere opinion, entailing no use of scarce resources and no responsibility or liability.

Libertarianism (in the philosophical sense) is not a political ideology. It is not about this or that policy. It addresses individuals about their relations with other individuals. That is why it is necessarily anarchistic—as is any moral view of how a person may or should deal with others. In contrast, political libertarianism is a political ideology, an approach to governing and making policy for a society. It may be more or less “minarchistic” but it cannot be anarchistic. Libertarian principles acknowledge people’s right to found, and become and remain members of, organizations or societies on a strictly voluntary basis; they do not prescribe that such organizations adopt a “libertarian profile” in their internal affairs.

Libertarianism in one country

The difference between philosophical and political libertarianism may be made clear by considering projects for creating a “libertarian society”, i.e., an autonomous libertarian enclave in a predominantly non-libertarian environment. It is obvious that such a society needs a government and that it cannot remain

¹¹ Julian Simon (“Are There Grounds for Limiting Immigration?”, *Journal of Libertarian Studies*, XIII, 2, Summer 1998, p. 137-152) offers a good overview of the problems involved in basing one’s stand on immigration on consequentialist arguments.

libertarian if its government is not extremely watchful in keeping out non-libertarian individuals and organizations. It must have strict immigration controls and strict controls on the sort of associations and organizations its members may form or call upon lest it exposes itself to an invasion (spontaneous or organized) of people who come to it precisely because of the opportunities it offers for living according to their own, possibly non-libertarian principles. For example, it cannot simply privatise policing, adjudication, schooling and education or allow foreign political or private corporations (for-profit or non-profit) to supply these services unless it has adequate “public” political means of enforcing its own constitutional principles and censoring the propagation of incompatible views. In this respect, it is not different from any other society based on a particular set of principles, no matter how un-libertarian.

If there were ever an occasion to found a territorially delimited autonomous society, the organizers might write in its constitution that, for example, immigration and free trade are not permitted. It would be their libertarian right to require of all who would want to become a resident or member of their society that they pledge allegiance to its constitution, including its non-libertarian anti-immigration and anti-trade clauses. However, that is their right only because theirs would be a truly voluntary society based on a genuine “social contract”—and it is true only for the original members. Even such a voluntary society cannot have enduring libertarian legitimacy if it simply presumes that the grown-up children of the first-generation members have agreed to all of the clauses of the constitution to which their parents agreed, and to all of the legal rules and policies enacted under that constitution. However, few if any states conform to the model of a truly voluntary society even for all of its first-generation subjects. In time, the notion of a consensual territorial society is in any case bound to be exposed as fiction,¹² and then one has to fall back on the defining characteristic of libertarian rights, viz., that they are rights of individual persons, not of “national” or “traditional” collectives (societies or communities). The only way to avoid this conclusion is to organize the society, by unanimous consent, as a territorially delimited political corporation—an artificial “immortal” person—and to endow it with more or less extensive property rights “in perpetuity” over the private domains of its original members.¹³ Then it could be said that the society is a state with a solid libertarian origin, and that its government has “original” rights of *dominium* and *imperium* over the land and the people in it. Being property-based, such rights

¹² For this reason, the notion of a “territorially delimited society” should not be accepted in libertarian theory as similar, let alone identical, to a domain justifiably held as private property. To understand this, one should reread M.R. Cohen’s famous 1927 essay “Property and Sovereignty” (reprinted a.o. in his collection *Law and the Social Order: Essays in Legal Philosophy*, 1933), which starts from the, in my opinion, indefensible assimilation of the two concepts.

¹³ John Locke, *Second Treatise of Civil Government* (edited by Peter Laslett, Cambridge Text in the History of Political Thought, 1970), Chapter VIII (“Of the Beginning of Political Societies”), §120.

would not depend on the current consent of later generations of citizens (even the property owners among them).¹⁴ There is of course no evidence that any existing state was ever constituted in this way; and there is ample evidence that, if there were a state like that, it would soon fall prey to the rivalries of factions and political parties trying to secure control of its government.

It seems, therefore, that having a territorially delimited “libertarian society” requires partially abandoning commitment to libertarian principles,¹⁵ which do not condone political monopolies, censorship, and the like. The reason is that libertarian principles apply to individual human persons as such, not to individuals as members of this or that organization or society. Clearly, what is or is not a “libertarian” argument depends on the context of argumentation. Unfortunately, libertarians arguing about immigration or other policy issues do not always take care to specify the precise context of their arguments.

A libertarian case against immigration?

None of the above considerations got any attention in Brimelow’s presentation. None of his arguments addressed the problem from a libertarian point of view. He did not deal with the question whether or under what conditions a libertarian would have to concede that an individual has, or does not have, a right to migrate into or out of a particular region, or a right to deny another individual entry into or exit from that region. Yet, a libertarian case against immigration should address this question before it addresses any other.

One “libertarian” moment in Brimelow’s presentation was a short reference to the libertarian philosopher Hans-Hermann Hoppe’s proposition that in an analysis of the problem of immigration the state should be deemed to manage public property as the *trustee* of its citizens, as “a gatekeeper in private gated

¹⁴ Still there remains the question if or to what extent the transfer of rights from natural to artificial persons (i.e., to “la main morte” of an “immortal” artificial person) can be considered consistent with libertarian principles. The question arises in particular within the perspective of “natural law” libertarians. (I have strong reservations about limited-liability corporations in the economic no less than the political sphere. See my *Personal Freedom versus Corporate Liberties: A Libertarian Critique of Limited Liability*, Libertarian Alliance: Philosophical notes, nr. 76, London, 2006, 20pp).

¹⁵ The size of the United States of America, its vast internal market and its ethnically, religiously and ideologically heterogeneous population may easily lead American libertarians to believe that America could be a large libertarian space with always room for one more experiment in voluntary association. However, those among them who would like to take control of a single state (e.g., New Hampshire) by organizing a massive immigration of libertarian-minded people cannot ignore the fact that they would have to close the door behind them to prevent others from doing to them what they have done themselves. They would also have to take police measures to safeguard the libertarian character of their society. (I became aware of the paradoxes and contradictions of political libertarianism when the late Michael van Notten sought my advice regarding a “constitution” for his Somalia Freeport project. See Michael van Notten, *The Law of the Somalis*, edited by Spencer Heath MacCallum, The Red Sea Press, Trenton, N.J., 2005, especially part 3 and the “Proposed Membership Agreement for a Freeport-Clan” in appendix C)

communities”.¹⁶ I shall consider Hoppe’s argument because, as far as I know, it is the only attempt to derive a libertarian case against open immigration from libertarian principles. I do not think he made that case.¹⁷ Nevertheless, his argument deserves scrutiny because it helps to clarify how libertarian principles apply to “the problem of immigration”.

In his usual radical fashion, Hoppe argued that a policy of open immigration is wrong because immigration is itself a wrongful act, except perhaps under strict and onerous conditions, which he did not discuss in detail. His argumentative strategy was designed to prove that there is no freedom of migration, no freedom to move except on one’s own property. It starts with a description of a model of what he rather tendentiously called “the natural order”: “[A]ll property is owned privately and the entire globe is settled. Every piece of land, every house and building, every road, river, and lake, every forest and mountain, and all of the coastline is owned by private owners or firms. No such thing as ‘public’ property or ‘open frontier’ exists.”¹⁸ In such a world, every step one wants to take outside one’s own property requires the consent of some other person or persons. The obvious implication of the model is that there is no freedom to move outside one’s own property. For those who happen to be without property in land, there is no freedom to move at all. The less obvious implication is that freedom to move is not to be considered a libertarian right, if we assume—as Hoppe implies we should do—that such a world would be a full realization of a libertarian order.

The next relevant step is to introduce states into the model and to assume that they exert direct control over areas that are called ‘public property’, although these are (according to the specifications of model) nothing other than areas where states have expropriated private owners.¹⁹ States are defined as intrinsically incompatible with the “natural order” and cannot be deemed to have justly acquired rights. Therefore, the existence of states does not in any way alter the rights of individuals from what they were in the original natural order. Consequently, the existence of states cannot lead to the creation or emergence of rights where there were none before. In particular, it cannot create

¹⁶ H.-H. Hoppe, “Natural Order, the State, and the Immigration Problem”, *Journal of Libertarian Studies*, XVI, 1, Winter 2002, p.91, p.93. It is difficult, however, to take the reference seriously, as Hoppe, unlike Brimelow, calls the state “a contradiction in terms”, implying that it cannot logically be considered a trustee of private property owners because “the interests of private property owners and those of the state...are incompatible and in permanent conflict with each other.” (p.93) See also H.H. Hoppe, *Democracy: The God That Failed. The Economics and Politics of Monarchy, Democracy, and Natural Order*, Transaction Publishers, New Brunswick, N.J., 2001.

¹⁷ Anthony Gregory and Walter Block (“On Immigration: Reply to Hoppe”, *Journal of Libertarian Studies*, XXI, 3, Fall 2007, p.25-42) make telling points against Hoppe’s argument, mostly by applying the method of *reductio ad absurdum*—or rather, reduction to non-libertarian conclusions—to his statements on immigration.

¹⁸ Hoppe, *Natural Order*, Op.cit., p.77. (It is not clear whether the omission of seas and oceans and airspace is deliberate or a mere oversight.) Hoppe’s concept of natural order also implies that people tend to live among people who are in some significant ways like them—in other words, they tend to live in “homogenous communities”.

¹⁹ Op.cit. p.80

a right of free movement for any individual, unless that individual had such a right in the natural order—which, as per the specifications of the model, no individual had. Thus, we have Hoppe’s conclusion: there is no right of free migration and a state’s open-border policy is “a moral outrage”²⁰. Q.E.D.

Not really

In its own terms, the argument is conclusive, but the soundness of those terms may and must be questioned. To begin with, it is odd to discover that Hoppe, an adherent of the Austrian school of economics, relies on a model-theoretic argument to arrive at a conclusion that is intended to tell us something about the rights of real individuals in the real world. If the model is moreover endowed with normative significance then it leads us into the “utopian” method for arriving at normative conclusions: one starts with a description of an ideal world or society and then imputes the rights and obligations people would have in it to people in the real, far from “ideal” world. This goes against the grain of realist philosophy, which starts from the real human condition to determine people’s rights and obligations and leaves it to the people themselves to realize their ideals (whatever they may be) in ways that are compatible with their natural rights and obligations. Yet, Hoppe proceeds to derive conclusions about immigration policy in the actual world from the peculiar situation that constitutes his model, viz., that every inch of accessible space is already privately owned.²¹ And he does so without providing any justification or evidence for his implied claim that the said condition is not only compatible with human freedom but also its fullest realization.

Hoppe’s description of the “natural order” moreover reflects an unfortunate bias that has become established in the writings of many, especially American, libertarians. We may call it the “freedom as property” conception of freedom, which is potent enough in combating the many fallacies of socialism and interventionism but hardly adequate for explicating the conditions of life in a world where personal freedom counts as the supreme value. It is one thing to say, correctly, that property relations concerning external resources are rooted in every person’s self-ownership.²² It is another thing to say, incorrectly, that unlike throwing an innocent person in a cell, building a cell around him without touching his body or his other property is merely a rightful exercise of one’s own freedom and does not deprive him of his. Yet, it is an implication of the

²⁰ Op.cit. p.90.

²¹ Because the model applies to a world that is in a sense already fully occupied, one may ask what it implies with respect to, say, population growth and the decision of couples to bring a child into the world. It would seem that population growth can only be accommodated either by subdividing property holdings (which exacerbates the problems to be discussed further in the text) or by accepting a deterioration of the ratio of owners of land to people without any property in land. Does the fact that all the available space is already owned justify the claim that those without property in land have no right to procreate; or that a state that does not make birth control mandatory for such people (to prevent “undesirables” from entering the world) commits a “moral outrage”?

²² See James Sadowsky’s classic “Private Property and Collective Ownership”, in S.L. Blumenfeld (ed.), *Property in A Humane Economy*, Open Court, LaSalle, Ill., 1974, p.85-100.

“freedom as property” conception of freedom that is the basis of Hoppe’s “natural order”. The model specifies that neighbours surround every person on all sides. They have the right to refuse him passage through their property for any or no reason at all as well as the right to impose any conditions they want on him in return for a transit visum.²³ This effectively excludes the free movement of persons but also the free movement of goods. For in Hoppe’s “natural order”, sending one’s goods to any destination outside one’s own property would obviously require begging or paying for as many permissions from others as would going there in person. Hoppe’s argument takes us far beyond the immigration question to any human activity that involves going from one place to another.

Every person is at risk of being denied the ability to leave his own property, or to receive visitors, mail, and deliveries, at the mere whim of the neighbour or neighbours whose properties surround his. Given the uneven geography of the Earth, the inhabitants of certain regions could be cut off from travelling to or trading with the rest of the world by the decisions of a few individuals or communities with control over strategically situated properties. One does not have to be a callous property developer to see the opportunities for driving down the value of other people’s properties in order to buy them at cheap prices or simply take possession of them when they are abandoned. Call it sharp business practice, if you will, even if it is as likely to be wilful harassment or spiteful pestering—but do not call it respect for other persons and their freedom.

In standard economic arguments, libertarians are prone to belittle the problem of hostile encirclement, pointing out that profit-maximizing road owners are not likely to antagonize potential customers, because to do so would be bad for business. That may well be true as far as it goes. However, even a cursory look at human history teaches that many people are prepared to pay a high price in order to harm, diminish, humiliate, spite, and defeat others whom they do not like. Outside the context of standard economic argumentation, “profit” has many dimensions that the art of business accountancy cannot even begin to assess, let alone calculate.

References to private, exclusive, “gated” or “homogeneous” communities, whether operated on the model of a hotel (or a monarchy) or of an association of property owners (or a republic), likewise fail to address the risks involved in the model. Such communities also have neighbours on all sides. Moreover, the larger they are the fewer competitors they have and the more likely they are to generate all the problems of political (“autocratic” or “democratic”) decision-making that are so offensive to libertarian sensitivities. The “freedom as property” paradigm is for all practical purposes merely the “private” analogue of the system of sovereign *territorial* states.²⁴ One may hope that only nice

²³ Frank van Dun, “Freedom and Property: Where They Conflict” (forthcoming, 2009)

²⁴ In a personal communication to me, David Gordon wrote: “Rothbard once told me that Sidney Morgenbesser objected to him after a lecture that libertarian anarchism doesn’t do away with government but universalises it, by claiming that each property owner forms his own state. Rothbard responded that this isn’t correct: property is held subject to the correct libertarian law code, which one presumes would bar exclusionary measures of the sort you describe.”

people populate the natural order but one can hardly deny that the possibilities for strategic and opportunistic coalition building to encircle and exploit disliked individuals and communities are endless. Who would want to live in such a world? Unless the answer is “Almost everybody!”, Hoppe’s “natural order” is bound to remain a fiction, useful as a foil for clarifying certain conceptual relations but irrelevant as a practical, achievable goal for real people.

A last oddity to be noted here is Hoppe’s concept of public property, another model-theoretic construct. According to the specifications of his “natural order”, a state’s public property is categorically different from un-owned land (which every individual, whether of domestic or foreign origin, would have a libertarian right to appropriate by an act of homesteading, provided he has the requisite permissions to move to it²⁵). It is, he says, merely confiscated private property or property “brought about by the tax-paying members of the domestic public.”²⁶ From this proposition Hoppe concludes, in general, that since “[f]oreigners have not been subject to domestic taxation and expropriation... they cannot claim any rights regarding [the domestic state’s] public property”²⁷ and, in particular, that foreigners have no unconditional right to immigrate into the territory claimed by that state.

In its particular as well as its general expression, the conclusion is both valid and true (within the framework of a “freedom as property” analysis). However, Hoppe’s argument is complex and should be analysed carefully lest we overlook the logical constraints upon which its validity depends and risk being carried away by its suggestive rhetorical emphasis on “the immigration problem” as it is currently perceived.

The logical nexus that integrates the argument is Hoppe’s ingenious and original explication of the concept of public property. Whether it is also a satisfactory explication, is another matter. It is hardly accurate to claim that in the real world public property is merely confiscated private property. Contrary to Hoppe’s assertion that public property is categorically different from un-owned land, many states have claimed as “public land” or “public domain” land that was not homesteaded by any individual person or private entity.²⁸ Arguably, many states claim jurisdiction over land that they keep inaccessible to any would-be homesteader, regardless of the latter’s origin or nationality. Moreover, not all public property is public land. In modern states, public property is perhaps predominantly the confiscated sums of money with which the state funds its “public services”, its landholdings (including buildings) being incidental to its service functions.

²⁵ Robert Nozick (in his *Anarchy, State, and Utopia*) famously asked why merely building a fence around a tract of land should give one a property title to the land rather than only to the fence. The standard libertarian answer is that merely building a fence is far from sufficient to constitute an act of homesteading, which is the only sort of act that gives one title to previously un-owned land. With respect to Hoppe’s model, the distinction is moot because only the owners of the fence can have access to the land behind it (without violating anybody’s property rights).

²⁶ Hoppe, op.cit. p.90.

²⁷ Ibid.

²⁸ Greogory and Block, op.cit., p.36 also raise this point.

Thus, for the sake of argumentation, we may distinguish three pure types of states, depending on whether all public property they claim as their own is

- 1) land that has never been homesteaded;
- 2) land confiscated from private owners;
- 3) in the form of tax-funded public services.

Bearing these categories of public property in mind, I should say that Hoppe's argument implies that foreigners have a libertarian right to immigrate into a state of the first type—a case he does not consider because it does not fit the model—but not into a state of the second type. On the one hand, a state of the first type has no right to use force to keep foreigners out, because it would then interfere with the undeniable right of every individual to homestead un-owned land. On the other hand, by denying entry to a foreigner a state of the second type would not violate that person's libertarian rights: no one has the right to trespass on the property of others even after it has been confiscated from them by a third party. Therefore, conceding that the type-2 state had no right to expropriate the land from its rightful owners in the first place, we can say a priori that its restrictions (if any) on immigration do not wrong *any would-be immigrant* who is unable or unwilling to buy or rent space in the territory from an original, now expropriated owner. This is indeed the particular expression of Hoppe's conclusion as it was quoted above—"There is no libertarian right to immigrate into a state"—except that it applies only to the extent that the state in question is of the second type. However, we cannot say a priori that such a state's immigration policy (whatever it may be) inflicts an additional wrong on *any members of the domestic public*—a wrong, that is to say, that comes on top of the earlier wrongful expropriation of their lands. In particular, it would seem that by adopting an open-immigration policy and making some of the previously appropriated private land available to immigrants, the type-2 state is re-privatising some of its public property and thereby strengthening the "private economy"—which, according to most libertarians, works out to the benefit of all. In other words, a no-immigration policy would harm the expropriated landowners even more by denying them all the advantages (including the appreciation of the value of whatever private property the state has allowed them to keep) that libertarians expect from widening the scope of the market economy. However, we cannot aprioristically say anything about how the citizens of the state value the presence of foreigners in their midst relative to their valuation of the economic opportunities forgone on account of the no-immigration policy. Given that they apparently do not have the option of getting rid of the expropriating government, they cannot take back their own property. Hence, they may or may not prefer the relative poverty of confiscation-and-no-immigrants to the relative wealth of confiscation-and-re-privatisation-in-the-hands-of-immigrants. Contrary to Hoppe's claim²⁹, there is no a priori way to determine the duties of the state as a so-called trustee of its citizens with regard

²⁹ Op.cit., p.91-93. It just might be that citizens without property in land are more likely to oppose open immigration than the owners of land and real estate. However, Hoppe's model does not tell us anything about the relations between these groups of citizens.

to the management of its public property. Thus, granting that no foreigner has an unconditional right to immigrate into a type-2 state, we cannot detect why an open-immigration policy should be considered a “moral outrage” once it is clear that the expropriated proprietors will not get their property back from their state.

For a state of the third type, the argument provides no implications regarding immigration. Immigration is, strictly speaking, a matter of becoming a resident of a foreign country, not a client of public services. Nevertheless, it is clear that immigrants have no libertarian right to the public services provided by a type-3 state until and to the extent that they are taxed. And this holds true for immigrants everywhere, whether they immigrated by homesteading un-owned land in the state’s territory or by buying or renting property from already established residents. However, this libertarian no-right has nothing to do with immigration, as it holds for all pure tax-consumers³⁰ and indeed all residents, be they immigrants or not, for whom consuming public services is not a second-best way of “getting [some of] their money back”.

Hoppe’s argument is certainly a sound one, at least according to the logic of the “freedom as property” paradigm. It is however not easily applicable to actual states, whose “public property” is a mixture of the three types mentioned here—a mixture that is likely to vary enormously from one state to another: the composition and geography of public property in Switzerland or Delaware are hardly comparable to what they are in Russia or Nevada. The argument is effective in proving that there is no universal libertarian “right to immigrate”. It is also effective in proving that a foreigner (or indeed any person) who has not been subject to domestic taxation and expropriation has no libertarian right to state-provided services. Still, it does not amount to a clear case against “open immigration”. A substantial part of it is not concerned with immigration at all but with coercive redistribution, in particular with coercive redistribution as practiced in the welfare state. Moreover, it does not prove that a government that will not return expropriated land to its rightful owners wrongfully harms the former owners by permitting immigrants to use parts of it. Thus, what is supposedly the crux of the argument, that a policy of open borders is a moral outrage, is not provably applicable to a real-world setting as against the model-theoretic setting of Hoppe’s “natural order”. The argument fails because of its reliance on an inadequate explication of the concept of public property, which leads Hoppe to overlook the difference between the three types of public property and to assume that a foreigner’s access to previously expropriated private land implies his access to tax-funded public services or welfare benefits.

To the extent that “the problem of immigration” consists in the legal consumption of public services by immigrants, the obvious solution would be to legally deny them access to such services, at least until they have been taxed enough to warrant the claim that they are not taking a free ride at the expense of

³⁰ Hoppe, Op.cit., p.94

domestic taxpayers.³¹ Such a denial would not imply any restriction on immigration per se, although it certainly would deter would-be immigrants who are attracted mainly by the prospect of receiving welfare benefits. It is obviously compatible with libertarian principles. It does not require partisan speculation about the “profile” of desirable versus undesirable immigrants or reliance on dubious statistics to make the “immigration problem” seem bigger or smaller than it is.

Conceptual clarity must precede causal analysis and moral evaluation, and it demands that problems of immigration and coercive redistribution be delineated as unambiguously as possible. While immigrants may be the beneficiaries or the victims of coercive redistribution, they cannot be held responsible for the legal mechanisms of redistribution in force in the [welfare] state to which they migrate. They certainly cannot be held responsible for redistribution from immigrants to residents—a practice that is not less known in the long history of the exploitation of man by man than the practice of coercive redistribution introduced by colonizing or state-building immigrants to the detriment of local populations. Nor can they be held responsible for the fact that the host state prefers not to change its system of redistribution in the face of the influx of immigrants. Moreover, it would be inappropriate to blame the immigrants for the inability or unwillingness of the local population to keep its culture intact or to procreate enough to ensure its survival. That would be as inappropriate as blaming them for the locals’ inability or unwillingness to get rid of their own expropriating and redistributing government or to force it to give up its preference for Big-Nannyism over proper police work. One would have far better reason to blame the local property owners for allowing the organization of coercive redistribution to become established in their area in the first place.

How far does the argument take us?

In any case, outside the context of a modern “Western” welfare state with its institutionalised confusion of natural (convivial) rights and legislated (social or political) rights³², the extent to which “the problem of immigration” consists in the consumption of public services by immigrants is likely to be small enough to be negligible. This is not to say that there may not be exceptions, for example in cases of sudden, unanticipated mass immigration. In such cases, as far as the funding and consumption of public services is concerned, the “problem of immigration” is like any other problem caused by a sudden, unanticipated large-scale event: a moment of crisis entailing a more or less protracted period of

³¹ Price and tax discrimination for public services is rampant in most welfare states, with different prices or taxes for the young, the old, the handicapped, students, state employees, and so on. Surely, it is not beyond the administrative capacity of modern welfare states to add immigrants to the list to make them pay more for such services than long-established residents do.

³² See, for example, my “The Science of Law and Legal Studies”, <http://users.ugent.be/~frvandun/Texts/Articles/ScienceOfLaw.pdf> and my chapter “Concepts of Order” in H.Bouillon and H.Kliemt (eds.), *Ordered Anarchy: Jasey and his Surroundings*, Ashgate, Aldershot, 2007, p.59-92.

transition and adjustment. The migrations to the cities and to the new centres of production during the industrial revolutions in the nineteenth century caused many severe problems and disruptions, including cultural clashes between “town” and “country”. How should a libertarian who accepts Hoppe’s argument view those migrations, which were essential episodes in the genesis of modern industrial-capitalist society? Many people did and do refer to them as a “moral outrage” but they are not what libertarians tend to focus on when they recognize that injustice pervades the actual history of capitalism as it does the actual history of everything else.

Admittedly, those problems and disruptions were the effects of migrations within a particular state, not across the borders between states.³³ Yet, why the mere existence of a state’s national borders should affect a libertarian’s appreciation of individual decisions to move from one place to another is a good question. Brimelow, again referring misguidedly to Hoppe (for whom national borders are without moral significance), intimated that there is a difference between migrating within a “national community” and migrating to another “national community”. However, in the context of a discussion about immigration, this distinction makes sense only if one defines a national community as a community of people living under the dominion of the same state, which in this context begs all the relevant questions. Otherwise, the appeal to the concept of national community would appear to condone that an Italian migrates to, say, Hoboken, New Jersey, but not that the same person migrates to Pennsylvania or Montana; that a Scotsman migrates from Edinburgh to Aberdeen but not to Newcastle. Besides, what sort of actions does an appeal to “the importance of national community” justify? Similar things can be said with respect to the concept of “national culture”.³⁴

We might also consider how mass tourism has transformed many places on the planet. Of course, whereas the “problem of immigration” primarily upsets conservatives in wealthy Western states, the “problem of tourism” is likely to rankle the sensitivities of conservatives in the poorer regions or countries that have been targeted by the tourism industry. However, if there were a libertarian case against open immigration then there would presumably also be one against open or mass tourism. It can hardly be denied that the phenomenon bears a striking resemblance to mass immigration. Indeed, although relatively few tourists eventually settle in the country where they take their vacation, tourist destinations typically experience a permanent presence of large numbers of

³³ While the way these problems were handled differed from place to place, resulting here and there in experiments in “municipal socialism”, they did not immediately give rise to welfare states. That did not happen until bank-generated boom-and-bust cycles had undermined the bourgeoisie’s adherence to the principles of economic liberty and self-reliance, and the ambitions and conflicts of political and economic imperialism had forged an alliance between the political classes and plutocratic and corporate interests seeking to transform the national population into a manageable, easy-to-mobilize mass of human resources, docile citizens, productive workers, and eager soldiers.

³⁴ See Rudolf Rocker’s *Nationalism and Culture*, Michael E. Coughlin, Publisher, St. Paul, Minnesota 1978. This is Ray E. Chase’s translation of *Die Entscheidung des Abendlandes* (copyright 1937, not published until after the second world war).

foreigners who place heavy demands on local “public services”, dramatically change the local economy and affect, even destroy, the traditional local culture, its religious, social and family structures. Tourism usually drives up not only most property values but also prices of various resources and commodities, including water and other consumption articles, and labour services, while it depresses the values of other properties, skills and articles of consumption that do not survive the transition to a tourist economy. Besides, tourism not only means an influx of tourists but also of workers, professionals, investors and developers, many of them foreigners, who cater to the tourist trade. All of these bring with them opinions, values, attitudes, preferences, and so on, that may be, and usually are, radically at odds with those of the original local population. Moreover, investors and developers will do the utmost to increase the number of tourists in the shortest time. Thus, the tourist population may be expected to “outbreed” quickly the host population. In its infrastructure, services and in many other respects the host region may come to look a lot like a characterless cosmopolitan suburb or a holiday resort in the tourists’ home countries—as if it were an enclave of their home countries, possibly with one set of legal rules and regulations for the tourists and another for the local population.

It would seem that most of Hoppe’s arguments against open immigration apply with equal, perhaps greater, force to a policy of opening up a country to mass tourism.³⁵ The same is true for the arguments of many other Western opponents of open immigration into their own country. Yet, none of these critics is likely to argue that their fellow citizens are trespassing on other people’s property or that they are a threat to other people’s way of life when they flock to their exotic holiday destinations. Nor are they likely to urge their own governments to make tourism illegal, to ration it, or to reserve it for “deserving” individuals. To do so would obviously be too reminiscent of Soviet-style policies.

Tourism, may drastically alter, even destroy, local cultures and ways of life. The difference is, of course, that in the case of tourism, the alteration and destruction come about through wave after wave of fun- and thrill-seeking individuals “getting away from it all” for a few days or weeks. In the case of immigration, the effects come about through the efforts of people seeking permanent improvement of their and their children’s conditions of life. That is no mean moral difference.

Concluding remarks

As Hoppe himself makes clear throughout the length of his essay, the real problem with the systematic violation of every person’s freedom is that it is institutionalised on an ever-increasing scale in the regime of the state. This is especially true in the democratic welfare state, which fosters a mindset that

³⁵ The fact that the tourists themselves do get political rights (voting rights) does not make much of a difference as far as the direct material and cultural impact of tourism is concerned. Moreover, wealth and political power usually go together: opening a country (or region) to mass tourism may have significant distributive effects on its economic and political affairs. How does all of this square with the supposed role of the government as the trustee of its citizens?

finds ideological fodder in every event and calls for a political solution to every problem.

Surely, except for problems arising from the fact that new immigrants of the first generation are often incapable of speaking the local language, none of the problems now commonly associated with immigration are strikingly different from the problems that have marked recent Western history before immigration became an issue. Terrorism, social unrest, partisan political mobilization, vandalism, crime-infested neighbourhoods and local degradation, loitering unemployed youth, and the like, were not unknown before there was large-scale immigration from the Middle East, the Far East, Latin-America or Africa. Nor were attempts to exploit the anxieties to which such phenomena gave rise for political and ideological gains. Look at Ortega y Gasset's *Revolt of The Masses* and numerous other famous laments on the real or perceived dangers of phenomena such as proletarianisation, the upward mobility of underclass values, the downward mobility of upper-class sybaritism, the loss of high culture, the decline of the Christian religion and the rule of law, of the aristocracy and the bourgeoisie, indeed of the West itself. They did not have to await the arrival of the first Muslims or refugees from colonial empires left in shambles by inept Western ruling elites. The problems they warned about are real enough, whether they are ascribed to one cause or another. However, while recognizing the reality of those problems, libertarians of earlier times did not feel compelled to make a case, say, against "free industrialisation" or against "free urbanization". I see no reason why present-day libertarians should feel otherwise with regard to the current forms of such problems, now that they are being blamed on immigrants.

The basic cause of the rise of bureaucratic, regulatory institutions in the so-called private sector no less than the public sector and the addiction to coercive redistribution as the universal solution to every social or economic problem is, in my view, of a religious nature. The West faces a spiritual and cultural crisis of its own making—one that surfaced in the third quarter of the nineteenth century and led to the simultaneous and connected demise of Christian orthodoxy and classical liberalism.³⁶ If at present libertarian prospects are dim, at least in the West, I would suggest as the main reason the slow but dramatic shift of the dominant religious paradigm over the past two centuries. That shift entailed a radical modification of the worldviews of most ordinary people and therefore also of the political fortunes of various types of political discourse.

Until the last quarter of the nineteenth century, the basic framework of the West's intellectual discourse was defined by the partial integration of Biblical and Hellenistic concepts of Power and Reason in a Christian attempt at synthesis. It did not quite succeed, as some expressions of Christianity focussed on the religion of power (the Almighty, God's will) while others opted for a religion of reason (the Ultimate Judge, God's wisdom). With the rise of the state, the stage was set for a gradual assimilation of the religion and the politics

³⁶ Frank van Dun, "Natural Law, Liberalism, and Christianity", *Journal of Libertarian Studies*, XV, 3, Summer 2001, p. 1-37.

of power. This led to a blurring of the boundaries between divine and worldly power, and eventually to reverence for the state (or, at any rate, politics) as the messianic agent of redemption and liberation, capable of bringing about the New Jerusalem by its own political will³⁷. Reason was no longer associated primarily with the faculty of moral judgment but increasingly with the ingenuity of schemes of “scientifically enlightened” technocratic control and management. The propagation of such schemes became a core mission of the state as the virtually monopolistic purveyor of “public education” (often enough a euphemism for indoctrination). The religion of reason lost out to the belief that where moral judgement is not a matter of scientific expertise, it is merely subjective opinion. Progressivism integrally and conservatism in almost all of its present manifestations are secularised versions of the religion of Power. However, because progressivism has a messianic justification for political power and most forms of conservatism do not, the former invariably succeeds in setting the terms of any ideological confrontation between them.

Within this scheme of interpretation, libertarianism emerges as a secular expression of the religion of reason, equally despised by progressives and conservatives and, without the support of strong educational institutions, bereft of a public educated to live according to their own judgments and open to moral argument and censure.³⁸

In a sense, libertarianism is fundamentally at odds with the dominant culture and ideology of the West, which look upon the existence of “injustice” (i.e., undesired situations) as proof of a lack of will on the part of the powers-that-be (i.e., the supposedly all-powerful and abundantly wealthy West, which fails to accomplish its ordained mission). The libertarian ideal is not to impose current Western values on the world; it is not to regulate a multicultural world in such a way that all cultures equally hail the same Caesar. On the contrary, it is a world in which individuals, despite all their innumerable differences, can live together in peace and freedom.

Many years ago, I attended a conference where someone wondered whether the walls that separate the churches reach up into Heaven. I would be quite happy if they did not reach down to Earth. At that conference, another participant argued convincingly and dramatically that there are irreconcilable differences between Christianity and Islam. So what? I asked him. Such differences, which are no more irreconcilable than those between, say, Christianity and paganism, theism and atheism, liberalism and socialism, upper

³⁷ “The kingdom of God, my friend, is a social conception. It is a conception for this life here of ours, because Jesus says: ‘Thy kingdom come, thy will be done’ here... We together have to work at it. It is a matter of community life.” Walter Raushenbusch, “The Kingdom of God”, R.T. Handy, ed., *The Social Gospel in America 1870-1920*, Oxford University Press, New York, 1966, p. 267. On the Catholic side, the Church’s adoption of a “social doctrine” led to a situation in which politicians found it easy to mobilize the faithful and, eventually, to transfer their primary allegiance from the Church to the state as the only effective source of “social policy”.

³⁸ Inevitably, some people have tried to restate libertarian principles in terms of power rather than reason, seeing them as constituting a program for “imposing liberty” by appealing to the desire for power for oneself and the fear of the power of others.

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class and lower class, Capulet and Montague, or this side and that side of the track, are no doubt interesting points of discussion at conferences. Whether or not such differences and separations stand in the way of convivial relations as threats to our freedom depends on the strength and scope of convivial attitudes. Why greet your neighbour in the morning with “Your god stinks!” when a simple “Looks like another rainy day, doesn’t it?” or “Are the kids doing alright?” will do?

The point of the libertarian message is that people learn to live together in peace and freedom while resisting those who seek to turn every difference into a divisive political issue. Obviously, that goal would be a lot easier to achieve if the basic principle of association were personal rather than territorial.