

WG 14 – Susumu Morimura

Libertarians on Restrictions on Immigration

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Abstract

It is generally understood that libertarians support free immigration and oppose closed borders. There are, however, a not insubstantial number of libertarians or classical liberals who argue for restrictions on immigration. They include such eminent figures as Friedrich Hayek and later Murray Rothbard. In this paper, I examine typical arguments among libertarians both for and against such restrictions.

While a standard libertarian case for open borders appeals to prospective immigrants' freedom of movement as well as economic considerations, some libertarians argue for restrictions on immigration for such reasons as the host state's property rights in its territory, social or cultural integrity and the citizens' desire not to associate with immigrants.

Those alleged reasons are, however, incoherent and/or unconvincing. First, while a state has legitimate property rights in its land, it cannot justifiably exclude foreigners as far as it permits its citizens to use it. Public property should be open to all. Second, since a state or nation is not a private voluntary community based upon its members' agreement, but rather, an involuntary community whose membership is usually difficult to change, the application of freedom of association to citizenship is misconceived. Third, while some citizens are reluctant to associate with immigrants, they are not forced to do so even when immigrants enter the state, and perhaps other citizens are quite happy to associate with or hire them. Fourth, from a libertarian viewpoint, it is not a state's business to preserve its cultural or social integrity.

Though my conclusion that those libertarians' arguments for restrictions on immigration are unsuccessful – unlike the standard libertarian case for open borders – is hardly surprising, it is still worth demonstrating, if only because libertarianism is often confused with conservatism in popular or partisan political discourse.

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1 Introduction

It is generally believed that libertarians support the freedom of immigration. In fact, however, there are a not insubstantial number of libertarians who argue for restrictions on immigration. In this paper, I examine arguments among libertarians both for and against immigration restriction. Since two recent excellent surveys on the justice of immigration restriction from a libertarian or classical liberal viewpoint (Hidalgo [2018] and Teson [2018]) hardly mention those libertarians who oppose open borders, it is worth filling this lacuna.

A small caveat: since this paper deals with *libertarian* arguments on immigration, it does not discuss the implications of immigration for democracy, communitarian or communitarian values, and distributive justice (global or national), unless they have relevance for libertarianism. I already examined those considerations elsewhere (Morimura [2017]).

2 Libertarians against Restrictions on Immigration

Well-known libertarian economist David Friedman succinctly and forcefully advocates open borders policy in his *The Machinery of Freedom* (Friedman [1989] ch.14). After presenting an economical argument that unrestricted immigration will not only attract inexpensive unskilled labor but also bring about new skills and entrepreneurial ability to America, hereby making both immigrants and present Americans richer, he appeals to the idea of liberty.

It is a shame that the argument must be put in terms of the economic and psychological “interest” of the present generation of Americans. It is simpler than that. There are people, probably many millions, who would like to come here, live

here, work here, raise their children here, die here. There are people who would like to become Americans, as our parents and grandparents did. (Ibid., p.71)

Though it is a most straightforward example of libertarian plea for free immigration, one can cite many similar arguments. Within my knowledge, the most detailed one among them is stated in libertarian philosopher Michael Huemer's paper "Is There a Right to Immigration?" (Huemer [2010]). Huemer advances his argument in American context, but I believe it can have universal validity.

At the beginning of this paper, Huemer shows the injustice of restricting immigration by adducing an imaginary example of blatantly unjust intervention which is of the same kind in principle as immigration restriction.

Huemer thinks that a rich state's government has no duty to support poor states unless it positively harmed them, and that it has no right to expel immigrants from them, either. Then he elaborates his claim by critically examining several alleged reasons for closed borders.

The first reason is the probable resulting decrease of some American workers' wages. But Huemer does not think it justifies expelling poor immigrant workers. Nobody has an entrenched right to present income in competitive market (ibid., pp. 437-9).

The second reason is the supposed special duty of a state to its citizens. According to Huemer, however, the greater part of the citizens would not be disadvantaged but rather benefit from immigrant workers, and the supposed special duty to the citizens does not empower the government to harm non-citizens (ibid., pp. 439-44).

The third reason is the priority of the least advantaged people. According to the Rawlsian Difference Principle, it may be claimed that the government should give priority to the least advantaged people in the state. But how can the Difference Principle justify immigration restriction? If this principle is to be applied internationally (against Rawls' intention), it will order the government to give a preference to possible immigrants from abroad who are even poorer than the least advantaged citizens. Many people would disagree to this conclusion, perhaps because they believe distributive justice is applicable only within a state. But libertarians are cosmopolitans in principle and do not share that nationalist presupposition. And even if we concede that presupposition, still it cannot justify the positive coercion of expelling foreigners (ibid., pp. 444-7).

The fourth reason is cultural preservation. Some authors claim that a state has a right to limit immigration in order to preserve its own culture. This argument assumes immigrants will destroy its culture. But there are no empirical evidences showing that

such fears will be realized. And morally speaking, the preservation of a particular culture does not make the coercive expulsion of immigrants justifiable. Besides, many threats to the prevalent culture are brought about by domestic citizens. For example, if a considerable number of locals in a Christian neighborhood are converted into some other religion, this neighborhood's culture drastically changes. But it is not permissible to prohibit conversion in order to preserve the prevalent local culture. The same is true for the cultural changes accompanied with immigration (*ibid.*, pp. 447- 50. For a slightly skeptical appraisal of this issue from a libertarian perspective, see M. D. Friedman [2015], pp. 162-7).

The fifth reason is the collapse of the host state. Some people (Huemer cites political theorist Brian Barry) are afraid that open borders would let more than a billion people come over to America, hereby undermining governmental activities, increasing crime, destroying democracy, making environmental disasters, lowering the living standard and so on. But those horrible results are greatly exaggerated. Indeed, we cannot expect such a tremendous exodus from the first (*ibid.*, pp. 450-5).

After refuting those five specific reasons for immigration restriction, Huemer turns to criticizing the general assumption underlying those arguments: that a state as a community has a legitimate right to restrict immigration. This assumption is usually based on the analogy of citizenship of a state and membership of other associations. Just in the same way as a private club has a power to decide who are its members, so a state is supposed to be entitled to decide accept or reject foreigners. This kind of reasoning is liable to two objections. First, almost all people today have to be a citizen of some state in order to live at all, while nobody has to belong to any private club. Second, a private club is entitled to impose any limitation on its membership as far as it is morally permissible, while a state does not have such discretionary powers. The analogy of a state and a private association is unsound (*ibid.*, pp. 455-8).

Huemer concludes his case for open borders by claiming that his arguments focus on the almost universally accepted right of negative freedom from coercion alone, not on controversial philosophical theories on consequential considerations or distributive justice, which are often adduced by other supporters of free immigration. He also writes that, though morally unjustifiable, immigration restriction has a strong support today only because many people have a nationalist bias to the disadvantage of foreigners' rights and interests, which bias he likens to racism and sexism (*ibid.*, pp. 458-61).

Thus Huemer criticizes the case for immigration restriction. Although I suspect he is a bit too sanguine that most people believe freedom of movement is so sacred, yet we must admit his argument is a consistently libertarian one.

Friedman and Huemer are merely two examples. Beside them there are numerous authors who advance the case for free immigration in their writings on libertarianism (e.g., Norberg [2003] pp. 145-150; Narveson [2003] pp. 178-180; Boaz [2008] pp. 114f.; Griswold [2008]; Brennan [2012] sec.49; Casey [2012] p.8). Indeed some of them write that one of major differences between libertarianism and conservatism lies in their opposite attitudes towards immigrant restriction (Sciabarra [2000] p. 194; Huebert [2010] p.27; Casey [2012] p.52). And not only extreme libertarians but also more moderate classical liberals argue for much less closed borders for immigrants than contemporary practice (Kukathas [2014]; Lomasky [2001]).

It is commonly understood among non-libertarian scholars, too, that libertarians are against closed borders. For example, C. H. Wellman, the representative theorist advocating states' right to restrict immigration, devotes one chapter criticizing "The Libertarian Case for Open Borders", in his co-authored book *Debating the Ethics of Immigration* (Wellman and Cole [2011] ch.3. Also see, e.g., Carens [1995] pp.230-3, Wenz [2009] ch.13). The vital difference between Wellman and the libertarians whom he criticizes is that the former thinks that such rights as freedom of movement and economic freedom are liable to limitation based on the state's purposes, while the latter believe such rights are almost supreme except in case of emergency.

3 Libertarians for Restrictions on Immigration

Nevertheless, recently some libertarians argue for immigration restriction. One may think they are not true libertarians as far as they oppose free immigration. But since they usually advance libertarian cases on the other issues such as free expression, free market and domestic and foreign policies, we can classify them as libertarians. Perhaps freedom of immigration is a topic where libertarians have different opinions in the same way as national defense, penal system, inheritance, and intellectual property are. This situation is attested by the fact that several libertarian authors argued for and against free immigration in the pages of *Journal of Libertarian Studies* some years ago (Simon [1998]; Block [1998]; Huerta de Soto [1998]; Machan [1998]; Hospers [1998]; Hoppe [1998]; Hoppe [2002]; Gregory and Block [2007]; Esplugas and Lora [2010]; Krepelka [2010]; Block [2011a][2011b]).

Since I cannot examine them all, I pick up only two eminent libertarian thinkers who are usually thought to represent (quite different stripes of) libertarianism but critical of free immigration: Friedrich Hayek and Murray Rothbard.

According to Alan Ebenstein's biography of Hayek, he roused a public controversy in 1978 when he wrote a letter to the London *Times* in praise of Thatcher's call for an end

to immigration. He wrote, “Nobody who has lived through the rise of the violent anti-Semitism which led to Hitler can refuse Mrs. Thatcher admiration for her courageous and outspoken warning....It was the sudden influx of large numbers of Galician and Polish Jews....which in a short period changed the attitude [of the people to Jews in general]. They were too visibly different to be readily absorbed”. In defending himself against the charge of anti-Semitism, Hayek claimed that his support for immigration restriction is not based on racism but on the difficulty of immigrants’ acculturation (Ebenstein [2001] pp. 293f.).

Indeed Hayek had been skeptical of immigration into America already in 1960, when, arguing for the need of the common education of common standard of values, he wrote “[i]f in long-settled communities within a predominantly indigenous population, this is not likely to be a serious problem, there are instances, such as the United States during the period of large immigration, where it may well be one” (Hayek (1960)[2011] p.500).

Another Austrian school economist Murray Rothbard (1926-95) was one of the most important and prolific hard-core libertarian theorist and activist in his lifetime. He once explicitly criticized immigration restriction as the government’s interference with free market (Rothbard [1977] pp.52-54, 81f.).

But in his later year Rothbard seemed to turn to the opposite position concerning immigration in the context of contemporary international politics (Rothbard [1994]; [1995] pp. 406-9). Thus he wrote:

The question of open borders, or free immigration, has become an accelerating problem for classical liberals. This is first, because the welfare state increasingly subsidizes immigrants to enter and receive permanent assistance, and second, because cultural boundaries have increasingly swamped. I began to rethink my view on immigration when, as the Soviet Union collapsed, it became clear that ethnic Russian had been encouraged to flood into Estonia and Latvia in order to destroy the cultures and languages of these peoples....It seems clear....that the regime of open borders that exists *de facto* in the U.S. really amounts to a compulsory opening by the central state, the state in charge of all street and public land areas, and does not genuinely reflect the wishes of the proprietors. (Rothbard [1994] p.7)

In this passage Rothbard makes at least three assumptions: firstly, the state has a legitimate right to preserve its culture and language; secondly, the state must manage the public property in accordance with the people’s will; and thirdly, the majority of

Americans want to expel prospective immigrants. While the last assumption is a matter of empirical nature, the first two ones are problematic from a libertarian viewpoint, as I will explain soon.

Although Rothbard did not assertively advocate closed borders in the passage above, Hans-Hermann Hoppe, a disciple of Rothbard, more recently elaborates the latter's case against open borders at greater length. Basically Hoppe's arguments are similar to those of Rothbard. But Hoppe is more eloquent in his apocalyptic fear of the collapse of not only welfare states but also civilized life in general which would be caused by free immigration, and he adds the argument that open borders policy means the forced integration with immigrants ("foreign invaders") against the native citizens' will. Thus Hoppe argues the state must take the same role as the gatekeeper of a private gated community (Hoppe [1998] [2002]. For similar arguments, see Conway [2004] pp.40-44, 87-89; Raico [2012] p. 291).

While a standard libertarian case for open borders appeals to prospective immigrants' freedom of movement as well as economic considerations, these libertarians argue for strong restrictions on immigration for those reasons as the host state's property rights in its territory, social or cultural integrity and the citizens' desire not to associate with immigrants.

Those alleged reasons are, however, incoherent and/or unconvincing. At the risk of repeating some of the arguments in the last section, I mention those shortcomings.

First, even when a state has legitimate property rights in its land, it cannot justifiably exclude foreigners as far as the state permits its citizens to use it irrespective of their status, residence or taxes. Such public property as roads and havens should not be used for particular people's interest but be open to all for the common good.

Second, since a state is not a private voluntary community based upon its members' agreement, but rather, an involuntary community whose membership is usually difficult to change, the application of freedom of association to citizenship is misconceived. The citizens share the same citizenship, but not the same desires or convictions.

Third, while some citizens are reluctant to associate with immigrants, they are not forced to do so even when immigrants enter the state, and perhaps other citizens are quite happy to associate with or hire them. Thus the idea of freedom of association supports open borders.

Fourth, from a libertarian viewpoint, it is not a state's business to preserve its cultural or social integrity. Its only duty is to protect everyone's morally legitimate rights and freedom, and possibly to increase their welfare, in its territory. It may be

objected, however, that free immigration from certain nations today would endanger the liberal states' culture which is essential to the civilization as we know (e.g., Hoppe [2002] esp., sec. V). But in this point we must distinguish "thick" culture and "thin" culture. Thick culture is closely connected with some religion or world-view and includes certain views on the meaning of life and universe. It is particular and concrete. Such expressions as "multiculturalism" and "cultural studies" refer to thick culture. On the contrary, thin culture is universal and abstract. It does include such ideas as human rights, promise-keeping, and non-aggression, but they are limited in so far as they are necessary for peaceful social cooperation. The liberal state has to enforce this thin culture in order to protect basic rights and liberties, but it ought to be neutral in terms of thick culture, because public enforcement or endorsement thereof is incompatible with basic freedom. True, it is often hard to distinguish these two senses of culture, but anyway it is unjustifiable to expel prospective immigrants only because they come from different national cultures, while it can be justified to expel them if they are apparently dangerous criminals or terrorists.

Last, but not the least, those libertarians who argue for closed borders are strangely lukewarm about foreigners' personal freedom including freedom to move and to find employment: they do not seem to value freedom highly enough for being libertarian.

4 Concluding Remarks

I conclude that some libertarian theorists' arguments for immigration restrictions ultimately fail. Though this conclusion is hardly surprising, it is worth demonstrating, if only because libertarianism is often confused with conservatism in popular or partisan political discourse.

More difficult problems concerning immigration remain for libertarians, however. Since the majority of the present host states' citizens seem much more nationalist and less susceptible to the case for free immigration, how can free immigration be realized in practice? Perhaps supporters of free immigration have to accept some restriction of immigration in terms of, say, numbers and requested skills of immigrants or condition of stay, as far as the proposed immigration restriction is still superior to the prevailing one (see, e.g., Huerta de Soto [1989]; Machan [1989]; Becker and Posner [2009] ch.5.). But it is hard to determine what kind of immigration restriction seriously compromises the case for free immigration.

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(“*JLS*” means *Journal of Libertarian Studies*.)

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