

BREAKING BOUNDARIES: AN INVESTIGATION OF LIBERTARIAN OPEN BORDERS

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ABSTRACT: I will first offer a general understanding of the flavor of libertarianism I will be using as the foundation for my argument for open borders. Then, I will summarize the argument put forth by Joseph Carens (1987) which consummates the importance of open border policy in maintaining the efficacy of property rights. After, I will supplement an additional argument to Carens's in order to strengthen it. In this section, I will interpret Robert Nozick's *Anarchy, State, and Utopia* (1974) such that it informs the importance of the enforcement of a right of free movement, and I will furthermore detail how border restrictions directly violate that right. In the final section of this paper, I will address criticisms made both by libertarian and liberal thinkers against the enforcement of a right of free movement. One of the liberal criticisms, in particular, will serve as a jumping-off point for a conversation highlighting the ways in which libertarian arguments for open borders differ from liberal arguments for open borders. These differences, I contend, illuminate how disparate these philosophical traditions are, especially in the manner that they conceive of rights.

INTRODUCTION

For human beings, life is rendered a futile venture when the ability to pursue our highest-order interests is not safeguarded

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by the governments that claim to protect us. Such was the case for the Jews whose lives were lost during the Holocaust and the Japanese-Americans who fell victim to internment. These afflicted peoples were effectively made means to the ends of flagrantly criminal governments. I would argue that such reprehensible practices existed long before those unfathomable historical moments and still persist to this day in the form of the enforcement of border restrictions. Those individuals who yearn to immigrate for better life prospects are essentially denied their humanity when they are turned away at borders in ways comparable to the plights of the Jews and the Japanese. I understand that this is a bold claim to make since many reasonable individuals maintain that border restrictions are not only useful but necessary to the advancement of those very rights which I claim they violate.

Some endorse border restrictions because they affirm the associational rights of nations (Wellman 2008, 110–11), while others do so by calling upon utilitarian principles (Miller 2005). Needless to say, individuals justify these beliefs because it is thought that border restrictions are in the best interest of those citizens whose country is potentially subject to permeation by immigrants. However, a strong case can be made for the importance of *open* borders in best serving the interests of both alien and citizen. Some use John Rawls's (1999) original position to exemplify the ways in which open borders advantage those least well-off members of global society (Carens 1987, 255–62), some use a principle of humanity to denounce the act of turning the disadvantaged away at the border (Kukathas 2005, 207–20), and some even invoke those same utilitarian principles used by advocates of border restrictions to justify the existence of open borders (Carens 1987, 263–64). This paper, however, will focus on a justification for open borders that is entirely reliant upon libertarian principles.

Libertarianism can best be defined as a philosophy that places fundamental rights ahead of any other mechanism used to determine the permissibility of human action. Thus, a libertarian justification for open borders explains how border restrictions violate the rights of individuals and how open borders protect the rights of individuals. To form a strong libertarian case for open borders is to likewise build an argument which is reliant upon principles alone; rather than arriving at a conclusion which circumstantially justifies open border immigration policy, one

would have access to an argument which justifies such a policy under any and every circumstance. It is important to note here that there are libertarian consequentialists who contend that adherence to libertarian values is important because of the favorable consequences it produces (Murray et al. 2005, 31–39). However, I will take for granted that even these libertarians will agree that there is some worth inherent to libertarian principles themselves that make them worthy of moral consideration in a way that is not inherent to *mere* consequentialism.

Some may find the idea of a libertarian argument for the endorsement of open borders to be self-evident and altogether needless. It seems that an ideology stationed in non-aggression and the inviolability of human rights would necessarily have to extol such a border policy, but some libertarian thinkers have developed arguments that defend border restrictions. John Hospers, for example, argues for the observance of a distinction between absolute and *prima facie* rights within the libertarian tradition. Furthermore, he posits that border restrictions are consistent with libertarianism because the rights violations that would ensue in the enforcement of a restrictive border policy would only be considered such in the first place under ideal political conditions (Hospers 1998, 153–57). In other words, any rights that would be violated by the enforcement of border restrictions are not inviolable rights but rather rights that could be undermined given certain non-ideal political realities and proper justifications. Other libertarians, like Hans-Hermann Hoppe, have suggested that political societies with substantial amounts of public space have an interest in restricting immigration for the sake of preserving free trade (Hoppe 1998, 221–33). Moreover, he argues that publicly owned territory ought to be understood as expropriated private property belonging to citizens who have the right to exclude or avoid foreigners (Hoppe 1998, 231). Ultimately, it will be the goal of this paper to demonstrate that these ostensibly libertarian arguments fail to reconcile libertarian values with border restrictions.

I will first offer a general understanding of the flavor of libertarianism I will be using as the foundation for my argument for open borders. Then, I will summarize the argument put forth by Joseph Carens (1987) which consummates the importance of open border policy in maintaining the efficacy of property rights. After, I will supplement an additional argument to Carens's in order to

strengthen it. In this section, I will interpret Robert Nozick's *Anarchy, State, and Utopia* (1974) such that it informs the importance of the enforcement of a right of free movement and I will furthermore detail how border restrictions directly violate that right. In the final section of this paper, I will address criticisms made both by libertarian and liberal thinkers against the enforcement of a right of free movement. One of the liberal criticisms, in particular, will serve as a jumping-off point for a conversation highlighting the ways in which libertarian arguments for open borders differ from liberal arguments for open borders. These differences, I contend, illuminate how disparate these philosophical traditions are, especially in the manner that they conceive of rights.

I. THE ANATOMY OF LIBERTARIANISM

Before developing a libertarian argument for open borders, it is imperative that libertarianism is clearly defined. While those readers who are not persuaded by the libertarian ideology may be particularly interested in a defense of these values, it is not the object of this paper to rationalize the merits of libertarianism. Libertarianism, for the purposes of this paper, is merely a lens through which I will look for the sake of making a compelling case for open borders to a readership which likely endorses a core set of values. Though it is beyond the scope of this paper to offer a comprehensive defense of libertarianism, there have been many libertarian theorists who have propounded compelling arguments for the legitimacy of their adherent philosophy.¹ That being said, those qualities which tend to distinguish the libertarian tradition from other political philosophical traditions are a reverence for self-ownership, a commitment to non-aggression, and a belief in rights of life, liberty, and property.

Self-ownership entails the right to control one's own person. Furthermore, libertarians generally recognize that all rational agents are self-owned. This means that individuals may pursue ends that are of interest to them using those attributes over which they exhibit self-ownership, but that others may not interfere with them without their consent. This basic principle can be understood as a uniquely libertarian non-aggression axiom which I will later analyze in greater detail. The concept of self-ownership alone,

¹ See Rothbard (2006) and Nozick (1974), for example.

however, is crucial to understanding the interests which the libertarian philosophy aims to protect. In assuming that rational agents have ownership over themselves in the same way that they may own objects proprietarily, libertarians affirm the normative separateness and inviolability of persons (Vallentyne and van der Vossen 2014). It is important, however, to acknowledge that there are some libertarians who do not cede that individuals have transactional authority over their persons in the ways that a capacious understanding of self-ownership would require.² Suffice it to say, even these libertarians would accept that individuals have a considerable amount of discretion over what they can do with or to their bodies though they may not concede that they have the discretion to *sell* their bodies. This is because the body of an individual can strongly be understood as *theirs*. It is in this sense that all libertarians believe in self-ownership.

Self-ownership, and the subsequent affirmation of the separateness of human existences that springs forth from it, ultimately leads to the acceptance of a libertarian side constraint that prohibits aggression against other rational agents (Nozick 1974). This non-aggression axiom, as stated before, is derived from the assertion that individuals are self-owners. Persons who own themselves are necessarily owed non-aggression from other persons; likewise, self-owners are subject to a moral stricture which forbids their enactment of aggression against others. Aggression can best be understood as it is defined by Murray Rothbard: “the initiation of the use or threat of physical violence against the person or property of anyone else” (Rothbard 2006, 27). In this respect, libertarianism uses the concept of self-ownership and the higher interests which it preserves as a means by which to develop a set of enforceable duties that individuals have to one another as moral agents.

The enforceability of these derivative duties is made concrete through the libertarian recognition of property rights. In asserting that individuals own themselves and that this fact engenders a non-aggression axiom, libertarians maintain that they have an enforceable property right in their own person. Having this right can be construed as a right of life on a libertarian understanding of the term. And this property right likewise gives rise to the

² For a libertarian argument against possessing transactional authority over one’s own person, see Kinsella (2003).

necessary acceptance of a right of liberty understood in a purely negative sense. Individuals are free to do what they will with those bodies in which they have a property right so long as they do not infringe upon the rights of others in their pursuits. Libertarians, in other words, generally understand individuals to be free only insofar as they are owed non-aggression rather than free in the sense that they are self-masters (Berlin [1958] 1969).

While most libertarians are in agreement about enforceable rights of life and liberty, there is discord within the philosophical tradition regarding the application of a self-owner's right of property to external objects. Though some libertarians hold that natural resources belong to all individuals in some egalitarian manner, I will be presenting my case for libertarian open borders under the presumption that natural resources can be owned, given that they are acquired justly (Vallentyne and van der Vossen 2014).

To better understand libertarianism, it is helpful to examine it alongside a political tradition which endorses its own specific set of values: liberalism. Liberalism is a political philosophical tradition which is characterized by its commitment to liberty of conscience, equality of opportunity, the role of markets in economic relations, the role of government in providing public economic goods of certain kinds, and the impartial, general administration of the law (Freeman 2001). The liberal tradition is home to thinkers with vastly different conceptions of the good in politics, from classical liberals like John Locke ([1689] 1946) to liberal egalitarians like John Rawls (1999).

On its surface, liberalism seems similar to libertarianism in many ways: liberals and libertarians alike support an individual's right of free conscience, equality of opportunity—at least, of a certain kind—to participate in public institutions, the role of markets in economic relations, and the impartial, general administration of the law. Some libertarians even believe that the government ought to play a role in providing certain kinds of economic goods to the public, or they at least believe that the government has a legitimate function in preventing individuals from monopolizing the acquisition of certain resources (Nozick 1974). However, I believe that this paper will illuminate the characteristics of libertarianism which distinguish it so markedly from the liberal tradition it is at times conflated with. Through a property rights argument and a freedom of movement argument for open

borders, libertarianism's unique, unwavering commitment to individualism is made evident.

II. THE IMPORTANCE OF PROPERTY RIGHTS

The libertarian case which Joseph Carens makes for generally open borders is predicated on the power of strongly enforced individual property rights in determining the nature of movement across borders. Put succinctly, individuals have the fundamental right of voluntarily entering into contractual agreements even if that means contracting with individuals across state borders. If one were to accept this principle, it would necessarily follow that he or she would support the right of an immigrant who engaged in a voluntary transaction with a citizen to live on the property of said citizen given those were the terms of the contract. Therefore, the government has no legitimate interest in obstructing free migration because its doing so would be a direct violation of the associational rights of both alien and citizen (Carens 1987, 253).

The simplicity of this line of argumentation, however, fails to divert criticism of its contentious conclusion. It is for this reason that Carens anticipates two arguments against generally open borders. The first argument is what I shall refer to as "the nationalist argument," which states that nations do have and ought to have the right to admit and exclude whomever they desire. Carens rightly criticizes this proposition for making an appeal to the existence of collective rights. The majoritarianism inherent to the concept of a collective right, however, poses a direct threat to the individualistic property rights for which libertarians so fervently advocate (Carens 1987, 252).

It is through the assertion of collective rights that individual rights are ultimately undermined. A collective right to safety, for example, comes at the expense of potentially jeopardizing an individual's right of privacy if its circumvention is intended to promote public safety. Such tradeoffs between collective and individual rights are ultimately inconsistent with the higher aim of protecting the interests of those individuals who constitute the collective in the first place. Moreover, such strong claims about the rights of a nation could potentially legitimize the exercise of a right to expel citizens just as much as it would a right to admit or exclude aliens. If a nation is validated in implementing precautionary measures to enforce some ambiguous right, it is surely

then justified in expatriating individuals in an act of self-defense whom it deems are violating its rights. Certainly, such arbitrary authority would undermine not only the autonomy of aliens but of citizens as well. Though evidently faulty, the nationalist argument does complicate our understanding of individual rights when it is presented in a specific way. I will return to this concern in a later section of this paper.

The second argument against open borders which Carens addresses in his paper is what I shall refer to as “the entitlement argument.” The entitlement argument states that the restriction of open immigration may be justified when citizens are hindered in the marketplace because of competition from aliens. This line of reasoning rests on the assumption that citizens are in some way entitled to protection from alien competition in the marketplace (Carens 1987, 253). This could be interpreted as a different formulation of the nationalist argument wherein the collective right called into question is a right of citizens to be guarded against the economic competition of aliens.

Even if the case could be made that such actions protect one’s *individual* right to protection against competitive disadvantage, Carens makes clear that it would be unreasonable at best to accept that a person has such a right just by virtue of being a citizen. The enforcement of such a right ultimately requires the contravention of a right which is even more fundamental. Though the features and extents of this right are outlined in greater detail in the next section of this paper, it is important to note that what is being called into question here is a right of free movement. One ought not condone the exercise of arbitrary rights that encroach on rights stationed in higher human interests because the capacity to act with respect to these interests is integral to the human condition. Carens notes that even contemporaries like Nozick make a point of explicitly denying the existence of such a right, and ultimately uses his reading of Nozick to conclude that the state has no right to exclude aliens. This conclusion is reached appealing solely to the importance of property rights in libertarian philosophy.

A strong emphasis on property rights, however, does not encompass all of the relevant libertarian motivations for open borders. The emphasis this type of argument places is on the burdens placed upon a citizen of a country who wishes to invite a foreigner onto his property. It fails, however, to make clear the

ways in which the foreigner is wronged by border restrictions. While Carens aptly constructs a libertarian, property rights argument for open borders using Nozick's *Anarchy, State, and Utopia*, he ultimately fails to conduct a reading on the text which yields a crucial component of the libertarian justification for open borders: freedom of movement as a fundamental human right.

III. NOZICKIAN FREE MOVEMENT

Although the property rights argument for open borders is fairly strong on its own in addressing the ways that open border policy protects the associational rights of citizens, I propose that Carens overlooks a crucial supplementary argument that would strengthen his case for open borders. While a property rights argument brings to bear primarily the interests of the citizen, a supplementary freedom of movement argument offers a more complete justification for open borders which underscores the fundamental rights of aliens. In order to clearly interpret Nozick's work as an affirmation of the fundamental right of freedom of movement, it is essential to look to his utopian model.

The utopian model is a thought experiment designed to generate a theoretical utopian framework which accounts for varied interests and values across individuals. In the model, individuals are allowed to conceive of worlds that reflect their values and desires with the exception that any imagined person in that world has the agency to stay where they have been imagined or to leave and imagine their own world. These imagined persons would likewise have certain constraints placed upon the ways they can be imagined—namely, they could not be imagined such that it would logically follow that they would want to live in a given world or with certain kinds of people. Ideally, individuals would imagine worlds and emigrate to others until every person found themselves in a community which best represented their observed values (Nozick 1974, 300–03). In this way, Nozick endows all individuals in his thought experiment with rights of imagining and emigration for the sake of self-determination.

Through the construction of his utopian model, Nozick illustrates how freedom of movement is integral to affirming an individual's right to make choices with his or her life. These individuals, however, cannot act in such a way that their choices would infringe upon the rights of others (Nozick 1974, 27). Because

the idea of choice in the utopian model is so inextricably tied to an individual's ability to exist or not exist within certain boundaries, it is therefore implied that freedom of movement is essential to the endorsement of free choice. Without the ability to freely move from one given world to another, the individuals in Nozick's utopian model would lack the power to establish themselves in worlds of their choosing with others who endorse values similar to their own. Likewise, aliens who are unable to move freely across borders are unable to determine for themselves what type of society represents their interests most fully because they are constrained by the limits of nations with governments that unilaterally control the openness (or lack thereof) of their borders.

This is not to say that an alien has an absolute right to freedom of movement on the common understanding of the word absolute, however. If an alien has a fundamental right of free movement, it does not necessarily follow that the alien's rights supersede the property rights of citizens. That would be the moral equivalent of asserting that a pagan's right of freedom of religion overrules the right of life of that individual whom they wish to sacrifice for their gods. An alien may move freely only insofar as their movement does not infringe upon the rights of anyone else. In this respect, the right of free movement is not absolutist in the ordinary sense of the word, but it is absolutist* which henceforth shall be understood as absolutist with the singular moral side constraint of being obligated not to violate the rights of others placed upon the general concept.

One may claim, however, that there are relevant distinctions between the endowment of these absolute* rights in imaginary individuals who can create and emigrate from worlds at will in Nozick's theoretical model and in real human beings under non-ideal conditions. And it may, furthermore, be the case that these distinctions complicate our understanding of free movement as a fundamental right. The ways in which the utopian model differs from the model projected onto the world as we know it are as follows:

1. In the utopian model, there are always enough people to live in non-exploitative communities because imaginers can will as many individuals as they see fit into existence while, clearly, this is not the case in the real world.
2. In the utopian model, communities affect one another only insofar as they draw members from each other whereas in the real world, communities may engage in commerce or war.

3. In the utopian model, there are not information costs involved in knowing what communities exist beyond the confines of the most immediate one, but this is the case in the real world; and the possibility of communities restricting information about the outside world is a distinct one in the real world (Nozick 1974, 307–08).

The first distinction, in fact, serves as grounds for stronger justification for the enforcement of free movement across borders. If it is not possible to will people into existence until a substantial number of them espouse the values on which you would found a community, you should be at liberty to move (given you have the resources to do so) until you are able to establish yourself within a community most reflective of your ideals. To deny one's ability to pursue such an end without jeopardizing the liberties of others is an affront to both liberty and humanity.

The second distinction also highlights the importance of free movement in allowing individuals to realize their desired ends. If it is the case that war can befall your nation, should it not just as obviously be the case that you should have the ability to exercise your right to flee to a nation that is not war-torn if the lives of you and your family members are in peril? If a human being is denied the enforcement of this right, there ought to be a substantial justification for it. Few, however, seem compelling enough. The right of self-defense seems to be a relatively uncontroversial right insofar as one accepts that humans are entitled to retaliate against those who threaten their life, liberty, or property. Yet it suddenly becomes contentious once the defense manifests in the form of deserting oppressive political circumstances. Some have even contended that prohibiting the needy from crossing borders to justly obtain necessities for life is tantamount to premeditated murder (Huemer 2010, 431–32). Fleeing from one country to another is sometimes the only means by which an individual is able to stay alive when the country in which he or she lives is systematically threatening the protection of fundamental human rights. There are arguments made in favor of restricting free migration even in such circumstances, but I will address their faults in the next section of this paper.

Lastly, the third distinction between the utopian model and the framework as projected onto the real world does not have any implications regarding the restriction of one's right of freedom

of movement. Rather, it calls into question the extent to which governments have a legitimate role in ensuring that certain material conditions are met for individuals to adequately exercise this right. Does the state, for instance, have a legitimate interest in making sure that children are aware of communities external to their own so they can make informed choices about whether or not they want to remain in the communities they were born into? While this question is a most intriguing one, it is not the concern of this particular paper.³

Thus, it is the case that Nozick's theoretical framework can be interpreted such that individuals are endowed with an absolute* right of free movement and it is subsequently the case that any differences between the theoretical framework and the actualized framework only serve to strengthen the cause for surety of this right. But a close examination of Nozick's argument for how the utopian model projected onto the world yields utopian society gives even more insight into the fundamental nature of this right and how its affirmation is correspondingly an affirmation of human worth.

Nozick opens his argument for the legitimacy of his particular utopian theory by criticizing the weaknesses of utopian theory generally understood. First, he underscores the tendency of utopian thinkers to assume that there is one best world for all people regardless of their differences. Utopian thinkers do not typically imagine that all members of society would engage in the same activities and make the same choices at all times, so why is it then that there is only one best composite world which is generally advocated for? Since human beings differ so greatly in their interests, values, and consciences, it seems that their environments should reflect those variations too. Nozick also notes that utopians tend to evade the problem of implementation, meaning that they do not intimate those details necessary to understanding how utopia would be realized. Would the initiation of force be a requirement for the development of a utopian infrastructure? Would individuals have to be inculcated with a set of perfectionist values in order to be receptive to a utopian solution to the world's problems? Would individuals choose, of their own volition, one singular conception of utopia?

³ Kukathas (2003) and Barry (2001) outline their views on these and related issues.

Assuming that one vision of the world is the correct one, it is important to explain how the world as it is currently will become the world as it should be (Nozick 1974, 310).

Nozick's utopian model projected onto the real world, however, resolves both of these problems characteristic of utopian theory. By describing the perfect world as that world which allows for individuals to determine their unique plans of life, the issue of imposing one schema onto varied individuals is bypassed. There is no schema but that which allows for each human being to forge a way of life for themselves. And if it is the case that there is, on the off-chance, one morally superior arrangement it is because an individual is free to move that the utopian vision would be realized. Individuals would design and filter (Nozick 1974, 312–17) through the various communities until eventually there would be one which appealed to every person. Though this is not necessarily the aim of Nozick's utopian model, it certainly is a feature built into it which solves the problem of implementation that has harrowed utopian theory (Nozick 1974, 328).

Were it not for his reverence for free movement, Nozick would be unable to construct a position that corrected those problems which typified the flawed utopian theory. The existence of a certain community—be it an association, organization, or state—rests entirely upon an individual's voluntary choice to submit to its rules and regulations. The assertion of one's existence within a society is, in this way, comparable to currency which pays into the development of one particular image of utopia. His belonging to one group rather than another signals to others all that is right with the group to which he belongs and all that is wrong with the groups to which he does not. It is by having the freedom to move, and by extension the freedom to shape plans of life, that utopia is possible. To refuse the enforcement of such a right is to erode the efficacy of our rights of life, liberty, and property. When viewed in congruence with the property rights argument for open borders offered by Carens, the freedom of movement argument extrapolated from Nozick's text corroborates the marriage between libertarianism and open border policy.

IV. THE INEFFICACY OF BORDER RESTRICTIONS

Now that we have supplemented Carens's original reading of Nozick that justifies open borders on the basis of property rights with

a reading of Nozick that justifies open borders on the basis of free movement, it is important to consider the arguments made against a right of freedom of movement. First, I will anticipate and address arguments that have been made in favor of border restrictions by libertarians. I will focus specifically on arguments advanced by John Hospers (1998) and Hans-Hermann Hoppe (1998). Then, I will address three liberal arguments proffered by David Miller (2005) in his “Immigration: The Case for Limits” against an enforcement of the right of free movement. The last of his arguments will serve as a point of clarification between liberalism and libertarianism. Understanding this difference, I contend, is central to understanding the *modus operandi* of libertarianism.

John Hospers grounds his criticism of enforcing a right of free movement in the claim that some rights are absolute while others are generally accepted until proven injurious (1998, 153–57). He would suggest that a right of free movement would fall into the latter category and would defend libertarian border restrictions on the grounds that a right of free movement is merely a *prima facie* right. This is a highly contentious claim, especially to those working within the libertarian philosophical tradition. Even if it were the case that there could be such a distinction made between kinds of rights, it would *not* be the case that a right of free movement would fall into the latter category by virtue of the superlative human interests which it demonstrably protects. As I indicated earlier, an individual’s right to move freely may be the difference between life and death. Beyond that, free movement is a means by which individuals can affirm their first principles and be surrounded by those that will support them in the realization of their plans of life. Because of this, libertarian thinkers like Hospers would need to justify the violation not only of *prima facie* rights but also of fundamental rights that protect the highest-order human interests of life and life plan revision. A libertarian who accepts the doctrines of self-ownership, non-aggression, and the inviolability of fundamental rights (as most self-proclaimed libertarians do) would likely have no such justification.

Hans-Hermann Hoppe (1998), on the other hand, offers arguments against the enforcement of a right of free movement that are more substantive and interesting to consider. It is important to mention that he does make arguments about the ways that open borders may adversely affect national security which I believe are

worth mentioning in passing, though I do not find them worth addressing at length. I will not examine these kinds of arguments for two reasons. Firstly, they rest on empirical assumptions that are contestable.⁴ Secondly, this paper is concerned with making a case for open borders using libertarian—*not* utilitarian—arguments. The arguments made by libertarians for border restrictions which are of interest to me are those that engage uniquely libertarian intuitions. I wish to show how these types of arguments do not succeed in enshrining libertarian values.

Hoppe ultimately argues against the widely-held libertarian belief that free markets require open borders. He suggests, in fact, that the only way to ensure that markets are free is by restricting immigration. This is because the relationship between trade and immigration is one of elastic substitutability, meaning that having more of one requires less of the other. Hoppe points out that, *ceteris paribus*, businesses relocate to low-wage areas and labor moves to high-wage areas. Since national borders tend to separate low-wage areas from high-wage areas, and high-wage areas are presently engaging in welfare statism on the domestic front and protectionism against low-wage areas internationally, immigration poses a threat to the rights interests of those in nations considered to be high-wage areas. This is because immigration, unlike free trade, involves the “invasion” of citizens by aliens. The following quote is illustrative of the sense in which Hoppe believes free trade and immigration are necessarily distinct:

...with respect to the movement of people, the... government will have to do more in order to fulfill its protective function than merely permit events to take their own course, because people, unlike products, possess a will and can migrate. Accordingly, population movements, unlike product shipments, are not *per se* mutually beneficial events because they are not always—necessarily and invariably—the result of an agreement between a specific receiver and sender. There can be shipments (immigrants) without willing domestic recipients. In this case, immigrants are foreign invaders, and immigration represents an act of invasion. Surely, a government’s basic protective function includes the prevention of foreign invasions and the expulsion of foreign invaders. Just as surely then, in order to do so and subject immigrants to the same requirement as imports (of having been invited by domestic residents), this government

⁴ Those interested in perusing literature that questions the previously unquestioned relationship between immigration and national security should see Nowrasteh (2019).

cannot rightfully allow the kind of free immigration advocated by most free traders (1998, 221–27).

It may be, however, that the kind of free immigration required by libertarian commitments is not the kind “advocated by most free traders.” Here, I would like to reiterate that freedom of movement, for our purposes, is not an absolute right but rather an absolute* right. When examined closely, this side constraint precludes the very “openness” that is intuitive to a general understanding of open border policy in terms of libertarianism. It is possible to conceive of a libertarian society where geographically contiguous individuals decide to forbid the entry of foreigners on their private property owned in common. Furthermore, it is conceivable that these individuals could make use of restrictive covenants that would ensure that whoever inherits these properties in futurity would not be allowed to permit foreigners on said private property owned in common. The fundamental difference between this aforementioned society and a society that enforces border restrictions publicly, however, is the voluntarism inherent in the creation of the former society. The ability to act voluntarily, even in an arguably discriminatory manner, is an indispensable human interest because it sanctifies choice and empowers individuals to forge unique life plans. A libertarian is therefore not ideologically committed to unrestricted, free movement. They are only committed to unrestricted, free movement when it is challenged by the authority of a state that claims to be exercising its dominion over individuals regardless of the interests of all those implicated.

Therefore, the argument put forth in this paper evades the force of Hoppe’s criticism of open borders. Hoppe himself concedes that the need for border restrictions entailed by his theorization becomes less urgent as the amount of public property in a nation is reduced. This is because the invasion problem associated with immigration would be dealt with via the corrective measure of enforcing private ownership rights and respecting the ability of property owners to exclude (and admit) aliens and citizens alike from their property (Hoppe 1998, 231). It is natural to wonder at this point whether citizens would be able to exclude aliens from public property. While Hoppe would contend that they can because they are *de facto* owners of public property as taxpaying members of the domestic public, other libertarians do not advance this position (Hoppe 2002, 75–97). Walter Block and Gene Callahan (2003)

suggest that aliens occupying public spaces are homesteading property that is under the illegitimate control of government. If a libertarian enshrines the importance of private property rights (as Hoppe himself does), he must also necessarily commit himself to the illegitimacy of collectively-owned public property. The only reason to treat public property as the property of taxpaying members of the domestic public would be to preserve order in said public spaces, but this is not sufficient grounds for overriding an individual's fundamental right of free movement. If anything, Hoppe's view merely commits him to significantly reducing the amount of public property while respecting individuals' absolute* right of free movement, which is a view to which the present paper is highly amenable.

Now that we have examined libertarian criticisms of the enforcement of a right of free movement, we will turn to liberal criticisms made by David Miller (2005) to clarify what it is that makes libertarianism distinct as a political philosophy. The way that Miller addresses rights, however, is quite foreign from a libertarian perspective. In the libertarian tradition, rights are not enforced because of their instrumental value or because there is a body politic which grants them to its subject population. Rather, libertarians believe rights ought to be enforced because they demand enforcement in and of themselves. Miller makes arguments for why freedom of movement should not be treated as a right, but for the purposes of this paper I shall interpret his arguments as reasons for which the right of freedom of movement ought not be enforced. This is because, even within the libertarian tradition, there are compelling arguments against the enforcement of a certain right when exercised in a particular manner.

In general, libertarians would agree that freedom of speech is a fundamental right that ought not be undermined even when the speech articulated is highly controversial and vastly unpopular. However, a case consistent with libertarian principles can be made against the enforcement of this right when the speech is used to clearly and presently pose a danger to the life, liberty, or property of an individual or group of individuals. Similarly, it might be the case that a right of free movement exists but that there are compelling circumstances under which its restriction may be warranted consistent with libertarian principles. I shall argue in this section that there is a fundamental problem with

the liberal arguments made against the enforcement of a right of free movement when examining them with libertarian principles, but that these failings ultimately illuminate a distinct and central feature of the principles used to unearth them.

The first argument against the enforcement of a right of free movement is what I shall refer to as “the population control argument.” Miller essentially posits that there are two levels at which population size affects the world: the global and national levels. At the global level, the carrying capacity of the Earth may be reached if the population grows without restraint. Miller suggests that, “In such a world it is in all our interests that states whose populations are growing should adopt birth control measures and other policies to restrict the rate of growth” (Miller 2005, 201). He argues that states would not have the incentive to adopt such measures if it was convenient for them to dispose of the population posing a threat to their overall population by encouraging international migration. At the national level, high population density may adversely affect a citizen population by altering its way of life in a fundamental manner. The more people there are in a given state, the less space there is for individuals to enjoy. Moreover, mobility, ecological welfare, and consumption levels would be affected to varying degrees if nations were unable to restrict immigration (Miller 2005, 202).

Needless to say, Miller overlooks the importance of rights considerations when championing particular policies, as he invokes mere consequentialism when he asserts that states with growing populations ought to legislate birth control measures to constrain unstable population sizes. If it is possible to justify birth control measures on the basis of population stability for the common good, would it be possible to justify forcible organ-harvesting on those very same grounds? Effecting birth control measures may compromise the bodily autonomy of individuals who wish to use their bodies to instantiate child-rearing in a manner tantamount to the forcible harvesting of non-vital organs like kidneys, lung lobes, testicles, and ovaries. Would there be a justification for forcible organ-harvesting were it the case that the prosperity of 99.9 percent of the population would upsurge exponentially if 0.1 percent of the population were stripped of their non-vital organs? Imagine if you were to fall in the 0.1 percent. Would you feel as though you are being slighted by your government when it robs you of your body for the sake of others you

may not even know? If you would, this intuition uncovers the basis for the libertarian's commitment to the inviolability of certain rights, including the property right one has in their own person. If a single person's body can be used indiscriminately and non-consensually to the end of some other person's arbitrary amelioration, it seems that person cannot even call his body *his*. The same could be said when a single person's reproductive power can be restrained by the state to the end of some other person's life prospects.

Therefore, people who revere bodily integrity and life for reasons independent of their mere instrumentality in achieving certain unclear, arbitrary ends do not take seriously the type of argument put forth by Miller with regard to restricting immigration for the sake of stabilizing population size alone. If it were truly the case that states would be discouraged from implementing birth control measures because of an open border policy, one may have even *more* reason to champion such a policy. Unrestrained population size may very well be preferable to the nature of dystopian policies which aim to control population size by stripping individuals of their reproductive rights and subsequently their bodily autonomy altogether.

The second argument made by Miller against the enforcement of a right of free movement is what I shall refer to as "the cultural continuity argument." The cultural continuity argument maintains that free migration may threaten the society of a subject nation with unprecedented cultural change. These changes pose a threat of such gravity that they warrant the implementation of border restrictions in order to prevent them. Miller posits that all immigration involves both alien and citizen changing and being changed by their respective values. This fact leads him to conclude that members of a society have a vested interest in stabilizing their culture by effectively ensuring cultural continuity within their nation via the restriction of movement of aliens across borders (Miller 2005, 199–200). In his paper, Miller calls to mind the interest that individuals have in preserving a national linguistic identity and how restricting immigration aids in maintaining cultural continuity with respect to language. Without having a legitimate claim to the formation of culture and those aspects which constitute it, citizens of a certain society would not be able to preserve their language, which is likewise one of their most important distinguishing characteristics (Miller 2005, 200).

The first criticism which I shall levy against Miller's cultural continuity argument is founded on the pragmatic flaws of the argument, while the second criticism is more concerned with its underlying principles. Pragmatically, there is an issue with the claim that restricting free movement is a manifestation of a collective interest in cultural continuity because radical cultural change can occur in spite of such restrictions. Miller's specific fixation on language preservation calls to mind the malleable qualities of language which subject the spontaneous order to the whims of ever-changing colloquialisms. If the preservation of a cultural feature such as language serves as an interest which may require the subversion of a human right, is it possible to conceive of a polity which would justify an extreme form of cultural isolationism that is characterized by governmental barriers being put in place to restrict the communication of individuals across borders via technology? And if so, is it at all practical to believe that any government would be able to imprison its citizens in a way such that language undergoes no crucial alteration? Even when in isolation, it is conceivable to imagine that the communities within a nation would develop linguistic differences that could potentially lead to misunderstandings between national subgroups. While Miller takes great care to underscore the fact that his argument is not meant to be interpreted as an argument against cultural change of any kind but as an argument for cultural continuity of a certain kind, he fails to acknowledge that even within a nation at one given time there can be and often are culturally disparate communities and continuity is not possible when values and customs are inherently at odds.

Regardless, even if it were possible to restrict free movement such that a kind of cultural continuity is achieved by a nation, I would argue that there is something fundamentally wrong with Miller's cultural continuity argument. To assert that an individual has a right to live in a society that is culturally continuous by means of governmental interference is to assert that they have a right to be protected by the government against those things which may pose a threat to cultural continuity. If this is the case, it would be wise to return to Nozick's argument against a positive right to protection from competitive disadvantage which ultimately serves as a rebuttal against the nationalist argument described in the second section of this paper. However, rather than formulating a right to protection against competitive disadvantage in an

economic marketplace, Miller is alluding to the existence of a right to protection against competitive disadvantage in a marketplace of cultural values. However, there is a fundamental right of free movement for all individuals, and the enshrinement of this right is essential to the relevant exercise of other fundamental rights (as demonstrated through the reasoning of the previous section of this paper) in a way that a supposed right to protection against competitive disadvantage is not. Therefore, the enforcement of such a right would abjure the fundamental importance of a right of freedom of movement and is therefore not legitimate.

The last argument which Miller offers against the enforcement of a right of free movement, and arguably his most sophisticated and revealing one, is what I shall refer to as “the sufficiency argument.” The argument essentially highlights the ways in which rights have certain physical extents and how these extents constrain an individual’s right of free movement. While generally individuals should be able to move freely, they cannot move freely about the property of others. Furthermore, individuals cannot move freely such that they neglect traffic laws or any restrictive laws made in the public interest. Miller makes the case that most people would not view these restrictions as violations of fundamental human rights in liberal society and implies that such restrictions are consistent with liberal principles. Though individuals have an enforceable right of freedom of movement, Miller would stress that this right is circumscribed by relevant physical extents and that it ought not be treated as absolute. In short, people in liberal society exercise a *sufficient* amount of their right of free movement rather than exercising it in an *absolute* manner. Miller ultimately suggests that this is how it ought to be as well (Miller 2005, 195).

We have already established that libertarians believe not in absolute rights, but in absolute* rights, so the first stipulation of his sufficiency argument is relatively uncontroversial, even for libertarians. The restriction of free movement as it pertains to the regulation of *public* spaces, however, illuminates a complicated and distinct aspect of libertarianism beyond the scope of the immigration debate. Miller notes that public spaces are often heavily regulated and are consequently characterized by the limits they place on free movement. Examples of these limitations include traffic lights, speed limits, and the hours of operation of public parks (Miller 2005, 195). Within the liberal tradition, it is

not uncommon to accept these sorts of restrictions on one's free movement as necessary to the end of some sort of public order. The restrictions placed upon people within the United States, however, are different than those restrictions placed upon people in the United Kingdom. Take, for instance, the side of the road which Americans drive on and the side of the road which Brits drive on; the rules are different between these two stable liberal democracies, yet it is not the case that people perceive the members of one society as more oppressed than the members of the other, or that the members of either of these societies are oppressed at all.

Within the liberal tradition, rights can very much have the physical extents in public places to which Miller alludes in his paper. This sufficiency argument can also be applied to other rights such as freedom of speech. It is common knowledge that the extent to which an individual's freedom of speech is protected varies across stable liberal democracies and these variations are not seen as different forms of oppression so much as they are seen as separate manifestations of cultural values. And this is the point at which the libertarian tradition diverges from the liberal tradition by which it seems to be so heavily informed.

While liberal thinkers advocate for restrictions placed upon rights of free speech and free movement in the interest of some common good, libertarians recoil at the prospect of permitting the state's determination of a sufficient exercise of a given right. In public spaces, it ought not be the case that regulations can be written to restrict the movement of peoples because the right of free movement would lose the force with which it constrains the powers of the state. If it can be rationalized that free movement is not to be treated as an absolute* right but rather as a right that is to be exercised in sufficient quantity, who then would determine the extent of this right? What if it were the case that the state restricted movement in public spaces to an extent where entire groups of people—perhaps racial minorities—were unable to move in a way that was convenient and comfortable to them for the sake of some allegedly higher good? Libertarians would reject that the state could have any such arbitrary authority and would defend the notion that rights could be circumscribed only by the rights of other rational agents.

Some liberal democrats may attempt to avoid the force of Miller's sufficiency argument by suggesting that the only reason

freedom of movement is legitimately restricted in public spaces is that those individuals subject to the strictures which limit free movement are also participants in the liberal democratic system which is restricting them. Aliens who aim to traverse borders that are closed to them, on the other hand, do not participate in the liberal democratic system which subjects them to state coercion (Abizadeh 2008, 45). Ultimately, this line of reasoning would yield the creation of institutions which would *most likely* enact open border policies because aliens would have a say in the policies which would possibly subject them to state coercion. This line of argumentation, however, fails to acknowledge the severity of a potential outcome of such a system: even despite alien participation in a liberal democratic system, it may still be that they vote for heavily controlled borders.

Regardless of whether or not a majority approves of such a measure, the rights of individuals would still be violated. Individuals are under a moral obligation to abstain from infringing upon the rights of others even if there are circumstances under which a majority expresses a desire to abnegate the rights of certain people. In other words, restricting free movement is not made acceptable when it is done through democratic processes in the same way that forced slavery is not made respectable simply because it is derived from a democratic process. To libertarians, rights are demonstrably primary; to liberals and liberal democrats, they seem to be secondary.

CONCLUSION

We are all human beings, whether we were privileged enough to be born into a society which reflects our values or whether we were unfortunate enough to be born into an oppressive society which we seek to escape through migration. And it is by virtue of our humanity that we are all endowed with those rights discussed *ad nauseam* in this paper: rights of property and free movement. Without these rights, and the enforcement of these rights by a government that actualizes libertarian ideals, it would not be possible for individuals to have the power to make the kinds of choices in life that emblemize freedom. Without an enforceable right of property, individuals would have no claim to the hard-earned fruits of their labor which are integral to the preservation of life and well-being. Without an enforceable right of free movement, individuals would not be able

to determine their plans of life meaningfully. Without having these rights enforced, human beings are effectively gridlocked at the whims of pernicious governments that claim to be defending life and liberty while simultaneously eroding both.

While border restrictions seem to be consistent with liberal values to some extent, they are not compatible with libertarian values at all. Even when thinkers working within the liberal tradition attempt to make liberal cases for open borders, they tend to help themselves to property rights arguments and freedom of movement arguments which are inherently libertarian. However, the invocation of these absolute* rights directly contradicts the application of the enforcement of other rights in liberal theory. As discussed before, the enforcement of an individual's right of free speech varies across liberal democracies; yet, it seems that the type of free movement which is advocated for by open-border liberals resembles the type of free movement which is unique to the libertarian philosophy—free movement which is unbounded with the exception that it cannot be used to encroach upon the rights of others (Jones 2019). Why is it the case that liberal arguments can justify the arbitrary circumscription of some fundamental rights such as free speech while concurrently championing a sort of libertarian absolutism* for others?

It is because liberals fail to venerate the importance of individual rights in affirming the humanity of an individual. It is through free choice and being allowed to pursue a path of life independent of governmental sanction that individuals can avow a sincere generosity, tolerance, and industriousness. And border restrictions prevent individuals from doing so in the most fundamental way: they deny abject peoples those rights which may allow them to raise themselves out of abjection.

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