

# A LIBERTARIAN ARGUMENT AGAINST OPEN BORDERS

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It is 1939, and a ship filled with refugees from Nazi Germany tries to dock, first in Miami, then in Havana, but it is not permitted to dock. The ship returns to Germany, with death as a result for most of the refugees. In 1995, the U.S. Coast Guard forces a group of escapees from Cuba back onto the ships of the Cuban authorities, sealing the fate of those who were trying to find freedom in the United States. Of course, neither of these ships should have been stopped.

It is easy to generalize from such cases to the conclusion that *everyone* who wishes to come to the United States should be permitted to do so, and indeed, this conclusion has been supported by many people in the libertarian movement: it is called the policy of "open borders." I believe that such a generalization is mistaken.

Do the proponents of this view intend to include *all* persons wishing to enter *any* country? If so, it would imply that Israel should be committed to a policy of open borders for Palestinians, which would surely involve intense armed conflict. Is the "open borders" policy to be carried out for any person in any nation no matter what the conditions? Doesn't it depend on what those conditions are?

Sometimes, however, libertarians limit the application of this view to the United States; at any rate, the examples they give are usually limited to the United States, although it is not clear why their suggested policy should be so restricted. Why should a general principle be confined in its application to one particular nation or locality?

In their attempt to defend the "open borders" policy, some libertarians allege that all people have two rights with regard to immigration. First, they have the right to leave any country they want to leave. (Presumably this includes the proviso, "if

they can afford it" or "if they are able to do so." Of course, libertarians would not usually approve of someone robbing a bank to obtain the passage money. But this right is not sufficient: they can leave their own country but may not be able to enter another one. So the first right is supplemented by a second: their right to take up residence in any country they may choose. Without the second, the first would be quite useless.<sup>1</sup>

But does a person have a right to go to whatever country he chooses? Doesn't that depend on the approval of the proposed host country, or its political leaders? Some immigrants from Cuba were hardened criminals (Castro dumped them on us), and most of us would not have wanted them here, nor do we want them here now, in view of the crimes they committed in the U.S. and the expense of housing them in American prisons. Moreover, most people believe that there are many non-criminals who should be denied entrance. Should we take in mental patients who would have to be housed at public expense in psychiatric hospitals? Indeed, some nations refuse entrance to would-be immigrants who do not possess some skill or trade that would be useful in the host country; Australia, for example, prefers miners and engineers, but not dishwashers ("we have enough of those already"). Admittedly, it is not always easy to know in advance who will be useful in a certain society; some geniuses might not be admitted.

Still, just because we find it desirable to take in some immigrants, should we therefore be obliged to admit all? Isn't it up to us whether we choose to invite them into our country? Should we admit ten thousand trained bullfighters because they are, after all, experts in their profession? Or suppose that there is so much poverty or warfare overseas that ten million or more people want to come in every year. Should they all be admitted, just because they want to come? Yes, say "open borders" advocates, it isn't up to us, it's up to the immigrant. The immigrant has the right to come, and it is up to us to adjust to this fact by inviting him in. (Must we then give him a place to live as well? It's not clear how much the right is supposed to include).

The right of one person necessarily entails the obligation of another person or persons. If you have a right to life, I have the obligation not to kill you: if you have a right of free speech, I have the obligation not to stop you from speaking. The first half would be pointless without the second. If any given person has

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1. Richard Ebeling and Jacob Homberger eds., *Free Trade and Open Borders* (Fairfax, Va.: Future of Freedom Foundation, 1995). See also their audio tapes and video-tapes by the same title.

the right to enter the United States, who is it that has the obligation? Every person in the United States? Or only the person whose property the immigrant wishes to inhabit? Or perhaps, no one person in the United States, only the U.S. government, even if no individual in the U. S. wants him.

When one person treads on, or in any way occupies, however temporarily, the property of another person, unless the property owner has consented to the other person being there, the first person is by law guilty of trespass. It is the property owner's right to have the trespasser removed from his property.

Shouldn't that same legal principle apply to people from outside the country? Aren't they trespassers too, unless someone in the United States consents to having them on his property? Why should the property owner be free to reject the domestic trespasser but not the foreign one?

Most libertarians believe that all property should be privately owned. In that case, if the owner is to retain his property right, the prospective immigrant must have the consent of at least one property owner in the United States, the person who consents to play host to him. If nobody wants him, he can't come, that is, if the owner is to retain his property right. The problem is that his property right conflicts with the alleged right of the immigrant to go wherever he wants to. It is impossible to honor both.

Some might say that the immigrant doesn't require that consent on public property. Should he then live on the public roads (which, according to most libertarians, should also be privately owned)? Or should public housing developments be built for him, thus requiring only the consent of the housing authorities? For obvious reasons, libertarians do not opt for this alternative.

The libertarian view is usually taken to be that it is illegitimate (immoral? wrong?) to interfere with the actions of a person who is not initiating force against another. Here is an alien crossing the border, he is neither using nor threatening force against anyone else, therefore one has no right to interfere with his freedom of movement. It is not the immigrant who is guilty of anything, but the immigration authorities who use force to stop him.

One wonders, however, whether the "no initiation of force" rule is to be accepted without qualifications or exceptions. The native Ecuadorians didn't want the Europeans on their jungle land, so they killed the first missionaries. The missionaries initiated no force against them, so one could say that the natives

were the aggressors. "But the missionaries were violating the natives' rights by entering their land without permission." That may be, but were they initiating force? "But their action was intended to keep the Europeans out—to send them a message, Don't invade our territory. That may be, and maybe it was justified; but still, was it the initiation of force?"

There are many cases in which most Americans believe that a would-be immigrant should not be admitted. (1) Should we admit murderers who have served out their sentences in foreign prisons? "By committing murder, the would-be immigrant has initiated force in the past." But does this make a difference? He is not initiating force now or even threatening it. Do we go by his present conduct or his past record? Whatever we say on this, most Americans disapprove of Castro's action in releasing hundreds of thugs from Cuban prisons and dumping them into the U.S., where they caused a considerable crime wave in the cities to which they moved. Should the U.S. have admitted them despite their criminal records?

(2) Should we admit the thousands of southeast Asians who have various communicable diseases which are prevalent there but unknown here, but which are likely to start epidemics in this country? Suppose there were a new form of AIDS, communicable through one's breath. Should we say "Come one, come all, we won't stop you because we believe in the non-initiation of force"? "But then they are guilty of threatened initiation of force." Well, not exactly; there is a difference between initiating force and unintentionally passing on a disease. What if the ailment could only be communicated by some deliberate act which the individual might or might not commit say, sexual intercourse?

Should we really be willing to see waves of diseased immigrants come in? Countless lives, including our own, might be saved by stopping these immigrants. Does the immigrant still have the right to enter regardless of the conditions?

I suggest that we say "It depends." The non-initiation of force rule may not be the only rule applicable to the situation. Most situations represent the junction point of different, sometimes conflicting, rules. Not initiating force against others is, in general, a good rule, but not needlessly exposing ourselves to fatal diseases is another. The "it depends" answer is reflected in a long and distinguished tradition in philosophy, e.g., in Sir David Ross's famous distinction between absolute rights and prima facie rights,<sup>2</sup>

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2. Sir David Ross. *The Right and the Good* (Oxford: Clarendon Press, 1930).

between those rights we possess without qualification (no ifs, ands, or buts), and those of which we must say "other things being equal" or "provided that no other prima facie right overrides it." This makes things more complicated, but it also makes them more reconcilable with practical reality.

### THE WELFARE STATE FACTOR

The main obstacle that confronts the "open borders" policy is that many people enter the United States in order to collect the free benefits that it has to offer: food stamps, welfare payments, free medical care, and so on. The United States is, after all, a welfare state, and as such it presents many attractions to the indigent.

We may grant, at least for the sake of argument, that most immigrants come in order to work. But if they do not find work, or work suited to their talents, there is a strong temptation (not usually resisted) to go on the dole. As the saying goes, "Theft is easier than honest labor." In any case, most immigrants don't seem to regard what they do as theft, or if they feel a bit ashamed at first, they soon come to consider a guaranteed income not as a privilege, but as a right, or an entitlement. The slide from the first to the second does not usually occupy very much time. The fact that they are living off the earned income of American citizens does not usually "strike home" to them, or if it does, they do not usually have prolonged doubts about the desirability of collecting unearned benefits. If they did, they might be deterred from procreating another generation of welfare recipients.

A dramatic illustration of this is provided in John Stossel's 1996 special on 20-20, which gives an idea of the extent to which illegal immigrants have taken advantage of the American welfare system. It shows long lines of them collecting their welfare checks and food stamps. It further shows other illegals residing in Mexico, but coming across the border periodically to pick up more checks in post office boxes on the American side. Many people were apparently shocked to discover the extent to which their tax money was being used to subsidize non-earners.

In his monumental work *Capitalism*, Professor George Reisman defends a general policy of "open borders" with this proviso:

To the extent that a country has a welfare system, tax-supported hospitals and schools, public housing, and so on, and the immigrants come to take advantage of these offerings, the effect is a corresponding loss to the present

inhabitants of the country, who have to pay the costs. The above proposition (open borders) applies to a country insofar as it is without these and other welfare-state-type programs—a country in which the immigrants must be self-supporting and themselves pay for whatever they receive?<sup>3</sup>

Not every defender of "open borders" exercises similar caution. When one questioner asks, "Isn't there a danger that immigrants will enter the country to receive the benefits of the welfare state?" Jacob Hornberger responds, "Then get rid of the welfare state!" The response, of course, provides no answer to the question asked. What are we supposed to do in the meantime? We have at the moment a rather "advanced" welfare state, and what policy should we adopt while we still have the welfare state with us?

### **SOME POINTS TO CONSIDER**

Let me now present a few observations and arguments directed against the policy of unlimited "open borders."

#### ***Immigration and Menial Labor***

It is often said that "we can't do without immigrants because we need them to keep the economy flourishing." But Japan, Taiwan, and other Asian nations permit almost no immigration; are they any the worse off for this? Some Californians say that we need immigrants to do the menial labor, such as picking strawberries. Do they really mean that without immigrants, strawberries would not get picked? In the absence of ultra-cheap labor, strawberries might well cost more, but the activity would continue as long as people had a taste for strawberries at a non-prohibitive price. In the agricultural and plains states of the U.S., there are virtually no immigrants, and those jobs for which there is a market usually get done.

#### ***Demography and Welfare***

Today many California gardeners and landscapers are out of work because laborers from south of the border have replaced them at a lower wage. This condition can be defended, of course, as being beneficial for the consumers. But it is not beneficial for the displaced American workers, who sometimes go on welfare to survive against the cheaper competition.

It is true that if the immigrants stay and become a part of the American economy, they will work and pay taxes like everyone

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3. George Reisman. *Capitalism* (Ottawa BL: Jameson Books. 1996). p. 362.

else. But in doing so, they will on the average have more children than persons born in the United States, and will often become grandparents by the time they are 35, and these children will again have more children than persons born in the United States. Some will make it on their own, but a larger proportion of them than of native-born Americans will become dependent on the U. S. taxpayer for welfare, medical expenses, and public education; and they will usually receive preferential treatment by the government.

No matter how new, all immigrants from the right "protected classes" —black, Hispanic, Asian— are eligible for preferential hiring and promotion. They are counted toward government quota requirements that were allegedly imposed on employers to help native-born minority Americans.<sup>4</sup>

### ***Affirmative Action***

Affirmative action and civil rights laws have prevented many Americans from obtaining jobs for which they are eminently qualified, particularly white males. A white male may still apply for a job as fireman or policeman in Los Angeles, but his chances of getting the job in the foreseeable future are not bright, because of the preference for "qualified minorities," and he is often told to go elsewhere.

The work force is less efficient than it would otherwise be, because of this preferential treatment. The debacle of the Los Angeles subway system, with its repeated cost overruns which make it probable that the project will never be completed, is largely the result of the policy of minority hiring: many millions of dollars have been wasted because of bad planning, money paid in return for no work, and projects that had to be done over again because, for example, the subway walls were not thick enough (the contractors pocketed the saved money). It is true, of course, that whites can be guilty of incompetence and cheating as well, but it is at least probable that if more attention had been given to competence and efficiency rather than to ethnic quotas, the job would have been done better. To this can be added many decisions of the federal courts, prompted by directives from the E.E.O.C., which have favored minority hiring, promotions, and frivolous lawsuits.<sup>5</sup>

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4. Peter Brimelow, *Alien Nation*. (New York: Harper Perennial 1995).

5. See for example Walter K. Olson, *The Excuse Factory: How Employment Law Is Paralyzing the American Workplace* (New York: Martin Kessler Books, 1997). and Philip K. Howard, *The Death of Common Sense: How Law is Suffocating America* (New York: Random House, 1994).

***Family Unification***

Prior to the 1965 Immigration Act, a prospective immigrant had to have some skill that would be needed once he arrived. Since the 1965 Act, however, the emphasis has been on "family unification" which often means, "Let the immigrant's whole family come, and maybe they can all get on the welfare rolls." Two-thirds of the births in Los Angeles County hospitals are to illegal immigrant mothers.<sup>6</sup> "The incentive for citizenship has become to a large extent eligibility for welfare."<sup>7</sup> Legal immigration has become uncoupled from the needs of the American economy.

***Immigration, Welfare, and Fraud***

The average immigrant today has fewer skills than in previous decades. According to the 1990 census, immigrants arriving between 1985 and 1990 were more likely than other Americans to go on welfare. Indeed, the I.N.S. no longer makes an effort to enforce the guarantee given by the sponsors of immigrants that the new arrivals will not become "public charges." Many illegal immigrants have false social security numbers, and fraudulently collect food stamps. Moreover, local agencies are now essentially forbidden by confidentiality laws from reporting fraud to the I.N.S.<sup>8</sup> George Borjas writes:

The per capita G.N.P. of the United Kingdom is more than six times greater than that of the Dominican Republic. It is not surprising that immigrant households originating in the Dominican Republic are about five times more likely to be on welfare than those in the United Kingdom.<sup>9</sup>

In general, immigrants from developed countries assimilate to the American economy better, and resort to welfare less, than those from less developed countries.

***Population and the Environment***

Unlike the population of other industrial nations, U.S. population is still in a state of rapid expansion. There are conflicting attitudes about this. Environmentalists deplore this expansion because of increased pollution, dirty water and air, and the loss of non-renewable resources and of wilderness areas. They want stricter environmental regulations and condemn the inadequate

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6. Leon F. Bouvier and Lindsey Grant, *How Many Americans? Population Immigration, and the Environment* (San Francisco: Sierra Club, 1994). p. 20.

7. Brimelow, *Alien Nation*, p.149.

8. Kate O'Beirne. "Bread and Circuses," *National Review* (September 1, 1997):

9. George Binge, *Friends or Strangers: The Impact of immigrants on the U. S. Economy* (New York: Basic Books, 1990), p. 158.



enforcement of those regulations that are already in place. Most environmentalists propose radical programs of conservation, alleging that only such measures can save our environment.<sup>10</sup> However, many others doubt that the environment is anywhere near the verge of collapse, and they see an expanding technology as the solution to the problem: more technology and a free market can easily accommodate the great increase in population.<sup>11</sup> But whatever benefits the regulations may produce are often canceled out as soon as they occur by the increase in population growth. The anti-pollution regulations are rendered useless by the increased pollution that results from the population growth.

What is responsible for this constant increase in population? It is largely the consequence of increased immigration.

Immigrants and their descendants will make up about two-thirds of the U.S. population growth during the 1990s. Thereafter, they will supply virtually all population growth.... And by 2050, the Census Bureau estimates that U.S. population will have reached 392 million.... At that point more than a third (36%) of the U.S. population will be post-1970 immigrants and their descendants—a staggering 139 million people.<sup>12</sup>

### ***Irrevocability***

Add to this the fact that once the admission of immigrants into the country has occurred, the action is well-nigh irrevocable. The immigrants and their descendants will remain here, regardless of the merits (or demerits) of having admitted them in the first place.

## **TRANSFORMING AMERICAN POLITICS**

### **AND THE POLITICAL STRUCTURE**

The political implications of all this are enormous. Mexico, like many other Latin American nations, has a formal political structure not dissimilar to that of the United States, but its content is vastly different. There are far fewer safeguards of individual liberty, such as the U.S. Bill of Rights, and those that do exist are typically ignored in practice. Bribery is an accepted way of life, to escape arrest or imprisonment. Money and political power count more than does obedience to law. The system is rife with corruption at every political level, from the top to the

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10. Bouvler and Grant, *How Many Americans?*, p. 57.

11. Jullian Simian and Herman Kahn, *The Resourceful Earth* (New York: Basil Blackwell, 1989).

12. Brimalow. *Alien Nation*, p. 96.

bottom. Every Mexican knows this, and little is done to change it, because every cheater thinks he can "beat the system" by engaging in it. Of course, in the end, the whole system is brought down by an accumulation of such actions. Who you know, and whether you have money, is considered to be more profitable than living by the rules.

The nations of Latin America exhibit little knowledge or appreciation of the Lockean conception of limited government or of Jeffersonian democracy, or any of the other ideals of the founding fathers. Government in these nations has never been limited government, nor is it devoted to the protection of individual rights. Despite a few inroads, spearheaded largely by those from English-speaking nations, libertarianism does not have many adherents in Latin America.

When the new immigrants become a majority of the American population, will there be more, or less, devotion than there is now to the ideals of individual rights and limited government? Will the bureaucracy that is so corrupt in Mexico be any less so when it has migrated north of the border? Will there be less of a tendency than now to "live off the government"? Will the new immigrants help to stem the tide of taxes and regulations that now bid fair to bring the American republic to its knees? Shall the future of America rest on so slender a reed as this?

And what will happen then? The states most inundated by immigrants, California and Texas, will, through the sheer force of their numbers, lose whatever Republican majority they have (California no longer has it at all) and become increasingly affiliated with the Democratic Party, as most immigrants from Latin America now are. Last year an issue of *National Review* (June 16, 1997) was devoted to the "The Coming Democratic Majority" (the issue is subtitled "Immigration and Politics"). The new Democratic majority will not look kindly on taking actions that reduce the national debt, or curtail welfare, or anything that will increase prosperity or job creation; they will see such measures as "favoring the rich."

California has 54 electoral votes. it is difficult to win a national election today without that block of electoral votes. Politicians will do their utmost to woo California voters; they will tell them what the majority of Californians want to hear. Trimming big government, reigning in the bureaucracy, reducing welfare payments—these will not be vote-getting issues in the new Hispanic California. To suggest such things will be political suicide. Who can believe, in the light of the recent explosion of

immigrants—many of whom were "swooshed in" (however dubiously) by Clinton during the 1996 campaign—that the emerging Democratic majority will veer in a libertarian direction?

### **MASSIVE IMMIGRATION BENEFITS THE "NEW CLASS"**

The United States is being increasingly dominated by what Irving Kristol has called "the new class" —the class of regulators whose goal is not in any usual sense a socialistic state, but a new Regulatory State. Rupert Murdoch has described it vividly in a recent article:

The classical definition of socialism, of course, is that contained in clause 4 of the old British Labour Party's constitution: public ownership of the means of production, distribution, and exchange. Socialism in that sense is dead. No one talks about nationalizing industries any more.

But then no one has to nationalize industries, because the extraordinary growth of regulation has given effective control of them to the government without its having to assume the hassle of ownership. Socialism has effectively reinvented itself. We can call it "neo-socialism" "... And it's right here.

Anyone who owns or manages a business must be aware of this neo-socialism. They find hiring, firing, buying, selling, just trying to operate, vastly more complicated than they were 15 or 20 years ago.

In the last decade, the change in what you can do and what you can't do has been simply extraordinary. Whether it is digging a well or trying to get rid of a gopher, farmers ... now spend a day a week in their offices filling in forms.... Farmers in the United States are now outnumbered by employees of the Department of Agriculture.<sup>13</sup>

The members of this New Class, Kristol writes, are professionals who run and benefit from the state and its power to tax: the government bureaucracy, the educational establishment, the media elite, which interlocks with both, and all their various client constituents, to whom they channel tax monies?<sup>14</sup>

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13. Rupert Murdoch, "Reinventing Socialism," *National Review* (September, 1, 1997): 38-40.

14. "Irving Kristol, *Three Cheers for Capitalism* (New York: Basic Books, 1978), P. 26.

How is this dismal prospect related to the issue of immigration? Very closely indeed. To the New Class, increased immigration is manna from heaven. It will give them limitless excuses for more government intervention in the economy and in all social life. They will milk this bureaucratic windfall for all they can. They will grasp at the immigration issue as a means to expand their own powers.

What will be the long-term consequence? Here is one projection for the future: deep into the twenty-first century, throughout the lifetime of my little son, American patriots will be fighting to salvage as much as possible from the shipwreck of their great republic. It will be a big wreck and there will be a lot to salvage.<sup>15</sup>

The first act of the new drama is already being played. Recently, there was a world soccer match in Los Angeles. When the American national anthem was played, the large Hispanic contingent booed and hissed; and when the Mexican team won, 1-0, the American players were doused with beer and water. The incident was deemed sufficiently important to be the subject of a radio talk show, KABC, for two hours the following day. Many of the students I encounter at UCLA parade banners on behalf of Azatlan, a new Mexican nation, to be carved out of the states of the southwest United States, thus reclaiming what was "stolen from them" a century and a half ago.

### **A VISION OF THE FUTURE AMERICA**

Those who advocate a policy of "open borders" would be well advised to go on a sight-seeing trip. Perhaps they need not go so far as the border itself, to see the illegals crossing the Tijuana River. Or the no-man's-land in which bandits prey on illegals, or the tunnels and various paths of exit into the U.S. which the illegals use night after night. It will be sufficient if they pay a few days visit to the towns and countryside of the southernmost counties of California (or for that matter Arizona and Texas). Let them stay in the motels that ordinary citizens use, and walk the streets of any once-flourishing town which is now a shantytown, the fashionable shops all gone, and dangerous now to walk in or even to drive through by night. Do they hesitate any longer to visit Tijuana? Now they have it here.

Or let them leave the luxurious Bonaventure Hotel in downtown Los Angeles, a popular convention center where they meet

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15. Brimelow, *Alien Nation*, p. 268.

with fellow intellectuals to discuss world problems, and walk just a couple of blocks to Skid Row, and witness the crowds of immigrants, most of them probably illegal, roaming the streets in search of one knows not what and ask whether here in microcosm is the future of America.

Or let them go to a public elementary school, where thousands of children begin their classes without knowing a word of English. The teacher tries to impart to them the meaning of a few English words and phrases. (In some schools, no English is spoken at all, only Spanish.) One can imagine also the boredom of those first-graders who were born in the United States who are already familiar with these English words, whose minds wander to other things, some of which they are supposed to be studying.

Occasionally, we hear the phrase "limousine liberals" used to describe the members of the liberal establishment who send their children to expensive private schools while consigning all the others to the public school system, which educates these children so little that by the time they finish the eighth grade they can barely read and write or do simple arithmetic, or make correct change in a drug store. It would be equally appropriate, however, to describe some other people as "limousine libertarians" —those who pontificate about open borders while remaining detached from the scenes that their "idealism" generates. They would do well to reflect, in their ivory towers, on whether the freedom they profess for those who are immigrants, if it occurs at all, is to be brought about at the expense of the freedom of those who are not.