

LIBERTARIANISM AND IMMIGRATION

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IMMIGRATION IS A CONTEMPORARY ISSUE that is debated across many disciplines. The fervent discussions in the past twenty years have linked immigration with attacks on the national culture, citizens losing their jobs to alien workers, threats on national security, terrorism and racism. A rich literature exists on immigration in political theory, which focuses on different aspects of this process.

My aim in this paper is to offer a closer look at philosophical arguments on immigration, in essence libertarian arguments. I proceed by showing the relation between self-ownership and immigration and analyze the arguments for and against immigration, pointing out the inconsistency of sustaining closed borders within the libertarian framework.

Going through the recent libertarian literature on immigration I decided to focus on the classical libertarian cases presented in the works of Robert Nozick, Hillel Steiner and Michael Otsuka. In the light of recent studies on immigration, I depart from Robert Nozick's case of protective associations and Hillel Steiner's cottage analogy in order to bring more clarity of how a libertarian should argue in the case of immigration.

Therefore, in this paper I investigate the libertarian account of immigration. In the first section I distinguish between right-libertarianism and left-libertarianism. In the second section I analyze the arguments focused on immigration from the perspective of self-ownership focused on Nozick's case and Steiner's analogy. In the third section I discuss the conflict between the collective consent on the issue of immigration and the individuals' decision. The conclusion sets the libertarian framework as being flawed in its argumentation on the issue of immigration because it fails to provide strong

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arguments about the fact that the individuals are free to choose to open or close the borders.

I. Definition of libertarianism

I define libertarianism as a political theory in reference to Kymlicka's distinction between libertarianism as self-ownership and libertarianism as liberty¹. In the libertarian theory self-ownership is the most important value and libertarians aim to protect the property rights of the individual as a consequence of self-ownership. A prominent libertarian in the philosophical literature, Robert Nozick, holds that the principle of self-ownership is the core principle in the libertarian theory because it protects the rights of individuals: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)"².

The self-ownership principle protects the property an individual possesses as well as his person, as a physical entity. To violate his person means to violate the self-ownership principle. The most common comparison given to illustrate this principle is the case of the slaveholder that owns a chattel slave: according to the self-ownership principle the rights that each person has over herself are the same as the rights a slaveholder has over his slave.

It is important to distinguish here that there are two important types of ownership: external ownership and self-ownership. If individuals do not hold property rights over a parcel of land, then anybody can claim it and work on it. If un-owned territories are claimed, then it is legitimate to consider these territories as external because anybody can come and claim them as their own properties.

Libertarianism refers primarily to the self-ownership principle, which is the fundament of this political theory in comparison with Rawls' theory, for example. Nozick states that redistribution of resources violates the self-ownership principle because when resources or properties that are owned by an individual are redistributed for the well-being of the disadvantaged, then this action represents a theft.

So respecting the self-ownership principle becomes the core argument of the libertarian theory and Nozick formulates this principle in contrast with the Rawlsian redistribution scheme according to Kymlicka's account: "If I own my self, then I own my talents. And if I own my talents, then I own

¹ Will Kymlicka, *Contemporary political philosophy: an introduction* (Oxford: Clarendon Press, 1990), 103 and 132–33.

² *Ibid.*, 104.

whatever I produce with my self-owned talents. (...) Hence the demand for redistributive taxation from the talented to the disadvantaged violates self-ownership.”³

When referring to external property Nozick argues that it can be appropriated by anyone as long as that person leaves enough and as good for everybody. Nozick relies on the Lockean theory of acquisition and on the Lockean proviso, which plays an important role in the libertarian theory because it sets a fair ground of property appropriation without necessarily involving a redistribution scheme: “Locke’s proviso that there be ‘enough and as good left in common for others’ is meant to ensure that the situation of others is not worsened.”⁴

In reference to the redistribution scheme, Nozick also argues that if another person has a legitimate claim over my resources then I can no longer be the full owner of my talents. Then self-ownership is transformed into partial ownership, where another individual has a legitimate claim to use my talents in association with my right of ownership. According to this argument, self-ownership is no longer respected and changes into partial ownership of talents or resources. If we address the question: who owns everything else, we can correlate the notion of self-ownership with the notion of property-ownership. I will come back to this idea later on in the next section.

The entitlement theory is based on three principles. I shall very briefly describe them because they are relevant for understanding the overall libertarian framework. These principles are: the transfer principle, the acquisition principle and the rectification principle. Nozick describes them in the following manner:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding,
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding,
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.⁵

Based on the idea of self-ownership, the libertarian theory is divided into two distinct branches: the right-libertarian and left-libertarian. The right-libertarian thesis promotes the full self-ownership and denies that the redistribution of resources represents a legitimate action. The difference between the two branches of libertarianism is reflected in different

³ Ibid., 105.

⁴ Nozick, *Anarchy, state and utopia*, 175.

⁵ Ibid.,151.

interpretations of the Lockean proviso⁶. The right-libertarians interpret the Lockean proviso as requiring that nobody is made worse-off by the appropriation or use of a natural resource than in the state of its non-appropriation or non-use.⁷ Nozick makes use of this interpretation of the Lockean proviso in *Anarchy, state and utopia*.

However left-libertarians interpret the Lockean proviso in the following manner: initially all natural resources belong to individuals in an egalitarian manner⁸. Hillel Steiner and Michael Otsuka are promoters of left-libertarianism and specify that individuals have egalitarian claims to the natural resources of the land and also presuppose a redistribution of resources in the sense of exchange of resources (Otsuka). I shall refer to these interpretations of the Lockean proviso later on when I discuss the case of immigration applied to each branch of libertarianism.

The left-libertarian thesis is more sympathetic to an egalitarian redistribution of the unappropriated resources among individuals. These resources must be shared equally among individuals. This position leaves open to the individuals the chance to engage in redistribution schemes and obtain goods as a consequence of trade: “Left-libertarianism is a theory of justice that (like right-libertarianism) grounds justice in moral (as opposed to legal) property rights. Left-libertarianism rests on two central claims: (1) full initial self-ownership for all agents, and (2) egalitarian ownership of natural resources.”⁹

The difference between Rawlsians and left-libertarians can be summed up in two important points mentioned by Peter Vallentyne.¹⁰ These differences point out the fact that left-libertarians are not strongly committed to egalitarians principles of territorial closure and to a scheme of social cooperation. Although some individuals might claim a greater share of resources proportional to their talents, the left-libertarians do not find this

⁶See the definition of the Lockean proviso in Kymlicka, *Contemporary political philosophy*, 115: “Just as individual acts of initial appropriation are legitimate if they do not make people worse off than they were when the world was unowned, so capitalism as an ongoing system is just if no one is worse off than they would have been without privatization of the external world.”

⁷See the definition of right-libertarianism in Peter Vallentyne, “Libertarianism”, *Stanford Encyclopedia of Philosophy*, 2010, <http://plato.stanford.edu/entries/libertarianism/#2>.

⁸ Ibid.

⁹Peter Vallentyne, Hillel Steiner and Michael Otsuka, “Why left-libertarianism is not incoherent, indeterminate, or irrelevant: a reply to Fried”, *Philosophy & Public Affairs* 33, Issue 2 (2005): 202, www3.interscience.wiley.com.ezproxy.webfeat.lib.ed.ac.uk/cgi-bin/fulltext/118691042/PDFSTART.

¹⁰ Ibid., 214–15.

scheme of redistribution plausible in the light of a libertarian account of resource acquisition.

II. Libertarianism and immigration

(a) *Nozick's case*

In this section I analyze the libertarian arguments focused on immigration and I try to offer responses to each scenario. Firstly, I present the case of immigration as is treated in *Anarchy, state and utopia* and draw a few questions for guiding the discussion. Next, I focus on the self-ownership instance of libertarianism and I respond to the cottage analogy presented by Hillel Steiner in reference to immigration.

Nozick does not offer any real argument on the issue of immigration¹¹. Only the emigration topic is discussed in *Anarchy, state and utopia*.¹² Nozick does not discuss whether libertarians should allow open access to all individuals and oppose the restriction of open borders. Nor does he describe the cases where outsiders seek asylum or want to become members of the same community. Nozick's response to free access to communities is social diversity. If we create diverse communities then we can hope that everybody's values can be satisfied. He does not bring into question the idea of adherence to these communities or if entering a community should be promoted based on his anterior argument.

He refers to the right of exit from a libertarian community if that community is sufficiently big to benefit from other residents' work.¹³ The right of exit is accessible to those that accomplish their duty towards their community and based on this condition they are free to join other communities.¹⁴ Free access constitutes the main problem: whether individuals are justified from a moral point of view to associate with other communities,

¹¹ See Robert Nozick, *Anarchy, state and utopia* (Oxford: Blackwell, 1975).

¹² See *Ibid.*, 299, 302, 321.

¹³ *Ibid.*, 321: "Yet, I have argued, a nation should offer this opportunity; people have a right to so opt out of a nation's requirements."

¹⁴ *Ibid.*, 302:

Thus, it seems, we have the result that in every stable association, each person receives his marginal contribution; in each world whose rational members can imagine worlds and emigrate to them and in which no rational member can imagine another world he would rather live in (in which each person has the same imagining and emigrating rights) which he thinks would endure, each person receives his marginal contribution to the world.

to exit or enter foreign territories and the attitude a community must adopt regarding this issue.

To apply an analogous argument in the case of immigration to libertarian communities: an individual should have the right to immigrate in a libertarian association if he is willing to contribute to it. In the same way as he is free to emigrate once he contributed to the community he must be able to join other communities in view of a better social framework. Because Nozick argues that the right to emigrate from a nation should be available to all individuals, it is coherent and logical to conclude that a right to immigrate should stand on the same grounds.

My argument is that if an individual is willing to subscribe to the requirements of a nation, that nation should let him in if he accepts to respect the self-ownership right of all members and not violate the rules of the community. Members and immigrants should agree on the rules of admittance within the libertarian community setting the right parameters for consent.

It is argued in the literature that the right to emigrate (which is recognized as a right in the international law) should be backed up by the right to immigrate, thus holding a moral symmetry between exit and entry. The general argument they use is that if I can exit a community there is no point to benefit from such a right if I cannot enter other community. It is equal with saying that if I can go out from my house I enjoy the liberty of exiting a property, but if all my neighbors and the other people close their doors in front of me then it is useless that I enjoy the liberty of exit. In order to fully enjoy this right I also need the right to enter other communities or foreign properties even if I have to ask for permission. It is obvious that I cannot enter foreign communities whenever I desire because I violate the self-ownership of the members in question.

But if my quality as a person and immigrant does not pose any harm for their properties or persons, then I do not see the reason for being turned away. This argument can be attacked by libertarians if they respond that the reason why they restrict the access is because they want to do so. I object that the justification needs to rely on something more than an arbitrary decision if their self-ownership right is not menaced. Moreover, immigration can maximize the extent of autonomy of the existing members of the libertarian community because they can engage in businesses that can bring to both parties profit and also create a more extensive degree of liberty.

For example, if some residents want to create new businesses but they lack labour force they can invite immigrants to work on their lands. In this perspective, immigrants have a positive impact on the autonomy and liberty

of action of residents in contributing to the growth of their wealth. For some residents immigration can be the only chance of becoming entrepreneurs and developing more their properties, having success and appropriating more properties. Inviting immigrants inside the community can be associated with enlarging the autonomy sphere of individuals and permitting them to have a bigger degree of liberty of action.

I shall later refer to these arguments and prove that libertarians do not hold a very strong position for restricting the access in front of immigrants.

If immigrants want to enter the community because they want to benefit from trade related exchanges, then in return the members can propose the immigrants the condition of agreeing with the self-ownership principle and with the libertarian rules. If common agreement is reached through negotiation nothing is lost in this process. Immigration can be assessed as a valuable process of acquiring more resources and making profit with external parties.

Nozick claims that emigration offers the possibility for the individual to find a better outcome and an association that can satisfy his needs and requirements. Analogously, immigration illustrates the individuals' desires to enter a better community, work or settle within based on the arguments presented so far. If Nozick agrees and proposes this type of exit from associations then he can also agree with individuals entering associations.

The association can impose its requirements and is the choice of the individual if he agrees with them in order to be accepted. If this is correct, then we can intuitively assume that the right of exit is analogous with the right to enter in the libertarian framework based on the arguments Nozick suggested for exiting the association. I do not think that Nozick would oppose this reading of the symmetry between the right of exit and the right of entry, in the perspective that libertarians sustain a maximal extent of individual freedom.

Next, I focus on Steiner's account on immigration, on the right and left-libertarian arguments and offer some examples that can clarify the case for open borders within the libertarian framework.

(b) Steiner's analogy

In this subsection I intend to offer three different cases where Steiner's analogy on immigration does not hold. Hillel Steiner's account of

transnational migration¹⁵ is the main argument he presents for the case of immigration. His argument is that a community has a right to accept or reject immigrants based on their mutual consent. The libertarian position on migration is: if the individuals from a community are willing to accept the immigrants and if they are not constrained by any contractual obligation, they can allow them the entrance right. Conversely, if they refuse the immigrants' right of entrance within their community then the state cannot oblige them to accept immigrants because this will interfere with their personal rights.¹⁶

He uses the analogy of a multitude of cottages owned by some individuals on the borders of a lake. The individuals acquired all the rights over the common facilities and also the right to veto against the acquisition of cottages by other foreigners. In this scenario, the individuals have rightful property rights because they bought the cottages from the rightful owner, who gave them the permission to own the common facilities. This analogy works perfectly for the case of immigrants who want to establish in a new community and where the members of the community rightfully own the properties of that land and also the common facilities having a full right to decide who joins their community or not.¹⁷

Let me make a short clarification for a libertarian that might object that the case of immigration is not problematic because national boundaries do not matter; only the boundaries of private property matter and these are defended by the self-ownership right. If national boundaries are of no interest for a libertarian then it is pointless to address the question of opening the borders. In this case, it is only a matter of allowing strangers on one's private property and not within the whole community.

I assume that a group of individuals establish a community and they have the interest of keeping it safe from the access of other individuals. My case refers to a libertarian community, which is located among other communities that happen to be non-libertarian. The rule of accessing the libertarian community will obey the same principles as any other community by appeals to the closed or open borders policy. Following this scenario, a libertarian community can choose to close or open the borders because they assume a territorial importance to the borders themselves. According to this

¹⁵ See Barry and Goodin, eds., *Free movement-Ethical issues in the transnational migration of people and of money* (London: Harvester Wheatsheaf, 1992), 87.

¹⁶ Cf. Hillel Steiner, "Libertarianism and the transnational migration of people" in Barry and Goodin, eds., *Free movement-Ethical issues in the transnational migration of people and of money*, 91–92: "If I am willing to lease, sell, or give away space to other persons and am under no contractual obligation to refrain from doing so, the state has no authority to establish whether they are insiders or outsiders before permitting me to do so".

¹⁷ Fabre, *Justice in a changing world* (Cambridge: Polity Press, 2007), 127.

example, a libertarian community should prefer open borders, case debated in this chapter.

In short the cases where Steiner's cottage analogy does not work are: 1) illegitimate transfer of property from the initial owners of properties to the present owners thus rendering the entitlement process to be faulty, 2) external ownership applied to the case of immigration (un-owned parcels of land that are claimed by foreigners), 3) in problematic situations like a corrupted political regime or scarce vital resources, immigrants can claim a partial-ownership of the land or resources with the members of another community, even if this partial-ownership implies retribution or exchange of goods (from a left-libertarian perspective).

The following question arises: if this analogy holds up then we can say that the citizens own the country and the immigration policies? To answer this question I need to further develop the analogy Steiner presents. According to the analogy, if the individuals acquire legitimately property rights over the land and the resources, then a foreigner that wants to join the community must ask for permission to enter from the members of that community.

I present my first objection to Steiner's analogy: if the members are the legitimate owners of the land, resources and properties then we can conclude that the decision the members reach over the immigration policy is legitimate, based on the argument of legitimate entitlement and transfers of properties. But to claim just a legitimate immigration policy in the case of many states is exaggerated. Many states (e.g. USA-Native Americans, Australia, New Zealand-aborigines, etc.) have territories conquered through force from the native populations. The land ownership is not legitimate due to the appropriation through violence.

It might be objected that if the present owners have obtained the land through an illegitimate appropriation (e.g. violence), then the rightful owners should be found and their properties returned (or compensated according to the damage registered for their case). However, I do not argue that this scenario might happen and is valid to pay back the past injustices. But my argument focuses on a different perspective: in many cases, paying back and compensating the descendants of the rightful owners represents a long and painful process, which can take years to finalize. Although, this action is perfectly valid still there will be many descendants who will be impossible to trace. Even if this compensation process takes place I think that it does not cover the entire damage committed at one point in the past.

My point is that the immigrants who claim a right to enter in these communities should be accepted on the following ground: the present

owners are, from the rightful owners' point of view, simple visitors or trespassers and they have the same status as the immigrants knocking at the doors of their community. The answer the members of such a community might give—"we do not want you here because this is our land and we can do whatever we want with it"—can be attacked based on my argument. The immigrants have the same status as the actual owners in asking for permission to enter the community (if not to claim the existing land). Because the current residents do not legitimately own the lands the immigrants can object that they cannot be refused entry according to this reason.

However, even if the current residents worked the land and they can claim that they added value to it, still the restriction of entrance is not fully justified in this line of argument. From a left-libertarian perspective, the immigrants can start an exchange with the current members and settle on a way to commonly work the land or make business. Solutions are available for this scenario.

In order to claim legitimate ownership rights over a land, the individuals must prove that the initial appropriation was itself legitimate and all the other transfers of properties and resources obey the same principle. If the initial acquisition was an illegitimate one, then all the chain of transfers suffers from an inconsistency on a legal ground. Fabre argues: "In so far as, according to libertarians, a state's territorial rights are simply the concatenation of its individual members' rights over their property, and then states (which have acquired much of their territory through unjust wars, colonization, and fraudulent treaties) cannot be regarded as the legitimate owners of their territories."¹⁸

The analogy does not hold in the case of the states that acquired the land through violence owning the present land illegitimately according to the libertarian principles. The injustices realized in the case of the initial acquisition do not justify the decision of closing the borders in front of immigrants or adopting a restrictive immigration policy. Only in the case of the states where the initial acquisition can be proven to be legitimate then the case of restricting immigration is justified according to this argument.

But in the other instance where the members of the states acknowledge the past injustices over the initial acquisition a negotiation over the property rights and immigration policy can be the right solution. Fabre offers a plausible argument for this situation: "In sum, libertarianism would seem to mandate open borders, at least, *prima facie*, as a way to rectify past injustices—just as some commentators have argued, you recall, that it also allows for

¹⁸ *Ibid.*, 128.

coercive taxation as a way to compensate the worst off for breaches of the Lockean proviso.”¹⁹

If self-ownership cannot be called on in this case to protect the current owners and their properties vis-à-vis the restriction of immigrants, then the libertarians cannot fully justify this type of immigration policy. Apart from the cottage analogy, Steiner has further arguments for the case of immigration.

My next scenario presents another objection associated with the idea of owning external resources. If, for instance, in a community the members have legitimate rights over their resources and properties, but still there are some parcels of land, which are not claimed by anyone and no one resides on those parcels, can we conclude that foreigners have the right to claim those parcels? What is the libertarians’ response in the case of unowned lands within a community occupied by legitimate owners of land? In this scenario if nobody inside the community claims the land then foreigners who want to appropriate the land (maybe in exchange of other resources, or just to work the land and invest their talents over it) can do so without being refused the entrance inside the community.

Nozick, from a right-libertarian perspective, would answer that if the land is not owned by anyone inside the community and nobody claims it and is left un-worked or exploited and then a foreigner who can accomplish this task has a right to appropriate it. The parcels of land are not under the self-ownership right of other members and if the foreigners can work and add value to the lands then the libertarians cannot reject this scenario.

Otsuka, from a left-libertarian perspective, would offer the following response: if the members of the community do not have legitimate property rights over the un-owned parcels of land, then claiming the Lockean proviso²⁰, immigrants can offer something in exchange for the appropriation of those un-owned pieces of land. The exchange would represent an intention of acquisition in which the members of the community are offered either a part of the benefits produced from the land in exchange of opening the borders. Opening the borders is the repaid action in this context not the appropriation of un-owned lands (the foreigners will pay a percentage of their

¹⁹ Ibid.

²⁰Cf. Peter Vallentyne, “Libertarianism”, *Stanford Encyclopedia of Philosophy*, 2010, <http://plato.stanford.edu/entries/libertarianism/#2>: “*Equal opportunity left-libertarianism* (...) interprets the Lockean proviso as requiring that one leave enough for others to have an opportunity for well-being that is at least as good as the opportunity for well-being that one obtained in using or appropriating natural resources”.

benefits for the members' effort to open the borders, not for the appropriation of the un-owned lands).

I will analyze two situations mentioned by Nozick in *Anarchy, state and utopia* that can be useful to illustrate the case of immigration. In the first example, Nozick presents the situation of a water hole, the only one existent on a given territory, which is appropriated by a person. The individual has no right to claim the water hole only for himself knowing that this source of vital natural resource is inaccessible for other individuals in the whole area. Nozick argues:

Thus a person may not appropriate the only water hole in a desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, except this one. This unfortunate circumstance, admittedly no fault of his, brings into operation the Lockean proviso and limits his property rights.²¹

The second case refers to owning the single island on a given area and restricting the access to it: "Similarly, an owner's property right in the only island in an area does not allow him to order a castaway from a shipwreck off this island as a trespasser, for this would violate the Lockean proviso."²²

Applied to the case of immigration, we can say that if a community or state that possesses resources vital for immigrants that are inaccessible for them, for a different reason, no fault of them or the resourceful country, it is wrong to conclude that the state in question should restrict the access of foreigners. If the vital resources needed by other individuals become a motive for claiming the Lockean proviso and the state or community in question has an obligation to share a part of their resources with the immigrants. But what if the case is presented in a slightly different perspective? If the immigrants live in a community or state where the political regime they choose proves to be a vicious one leaving all the individuals (or the majority of them) without riches, resources or properties?

I present my third scenario applicable for the immigration case, in which Steiner's analogy does not hold. Assuming that the members of that community chose rationally that type of political regime without any constraints from an external party, someone can conclude that the situation is the result of the members' political decisions. No other external party can be accused of the outcome. Consequently, the members of that community chose to emigrate towards richer countries in search for new opportunities, resources, etc. If the members of the receiving state decide to close the

²¹ Nozick, ASU, 180.

²² Ibid.

borders according to the argument that the outcome of that specific community was the result of the political decisions of the members, rationally chosen, without any constraints imposed by an external party, therefore justified, and they have no duty to share any of their resources would this decision violate the Lockean proviso?

According to the Nozickian response in the case of the water hole, the above situation is not about an appropriation of the single source of vital resources or about breaking the Lockean proviso in the case of the initial acquisition. Rather this is a case of two parties that had an equal situation, two communities with a territory of their own, resources and liberty of choice and after a sequence of events, one of the parties chose a political regime that proved to be the end of its fecundity. The first community caused no harm, so Nozick can reply that it cannot be obliged to share any of the resources with the members of the second community.

But one can object to the fact that even in this case, considering that a political regime is hard to predict and the historical events are hard to control by the members of a specific state or community, anything can happen and cause this chain of events. The first community could have chosen a vicious political regime and face the same desperate situation. The argument used is that a political regime is hard to control and predict from the beginning and sometimes the members have no power in protecting themselves or correcting the course of events. Immigrants are appealing to a sense of morality and human cooperation that goes beyond the responsibilities caused by interrelated events. Should libertarians be sensible to this kind of arguments in the case of immigration?

Although the morality claim does not grip the libertarians as the opponents of this theory demand, I present the following argument in favor of offering immigrants a second chance. Consider that instead of a corrupted political regime, the first community deals with a dangerous disease capable of killing all members of the community. However, the scientists find an antidote for the disease and they test it on a small number of people. It works and they are ready to use it for the entire population in order to eradicate the plague.

But in order to fabricate the medicine for the entire population they need to use a special container, which is fabricated only with a natural resource used by the second community not affected by the disease. The scientists from the first community decide to ask for permission to work and reside for a short while in the community in order to produce the necessary medicine for the whole population. It is not possible to take the natural resource and come back to the original community and fabricate the

medicine there. The conditions of fabrication are not the same and they need to stay in the foreign territory for a while whilst fabricating the medicine.

What will be the response of the second community's members? If they say no, they will be responsible for the death of their neighbours (or anyway of many human lives) and they risk to be infected as well, since the disease cannot be exterminated in another way but producing the antidote. Saying 'yes' implies several consequences: the scientists will use their land for a while, their resources (because they need to eat, sleep, etc.) including the natural element available only on their lands, and they will also enter into contact with some of their members thus creating possible connections.

Weighing the two situations I think the members of the second community will decide to allow the scientists on their territory, even for a short while, in order to avoid the disease to spread further. They can ask for some deposits from the antidote to make sure that they will be protected in the future by the disease's attacks.

Applying this scenario to immigration we have the following outcome: the immigrants are the members from the first community and the libertarians are the members from the second community. The immigrants are in a desperate need of some resources from the second community and they need access to this community even for a short while in order to escape a fatal situation (or a very desperate one). If the libertarians make an effort to see that the same situation can happen to them in a short while or on a longer term they will make a compromise and offer them the necessary help.

However, because they are willing to collaborate with the immigrants they can claim an exchange of goods or services. They also can impose taxes, action that usually happens with the immigrants that arrive in a new territory, or claim some benefits in return for their generosity. The libertarians are aware that anytime the situation can reverse and the same treatment can be applied to them. For this scenario, I invented a mild moral claim in order to justify the acceptance of the immigrants on the libertarian territory. The obligation is not an absolute moral claim: the libertarians are still free to do whatever they want, as Steiner states.

But the future consequences will be nevertheless important for their fate. In this case, the libertarians must take a risk in order to avoid a similar situation or just to assure a serious collaboration if things will turn into their disadvantage. This can happen anytime as no one can predict the future (for good or for worse). Using this claim as a hypothetical moral backup, immigrants and libertarians reach a common agreement in order to sustain a future collaboration if resources run scarce. In this scenario I am not

excluding a left-libertarian claim for an exchange or taxation, as it happens in the real world for all the immigrants.

To conclude, this section provided enough examples to sketch a response for the immigration case: even in the cases where the ownership rights are not strong enough to invoke the opening of the borders based on the Lockean proviso there are other plausible arguments for a libertarian to welcome immigrants either from a moral or from a practical perspective.

III. The problem of collective decision-making procedure

I distinguish in this final section between the individual and the collective decision in the immigration case. Whereas the collective decision-making is a process that depends on the individuals' consent over a political matter (see Steiner's analogy), I argue that within the libertarian framework this issue is a problematic one. However, if applied to the case of immigration the collective decision-making procedure needs further clarification.

I intend to offer in this section two different perspectives on this issue that refer to three distinctive types of ownership, which rely on different accounts of responding to the same problem: 1) collective ownership (Fabre's account), 2) private ownership (O'Neill's account). Firstly, I describe the general problem of the collective decision-making within the libertarian framework and offer my interpretation. Secondly, I analyze each of these accounts individually.

If an individual agrees or rejects the entrance of a foreigner in his house or on his property this action regards his personal set of values and preferences. If the libertarian community decides to reject or welcome foreigners, this action implies a collective set of preferences and values. The collective set of values and preferences must be a sum of all the individuals' preferences and values on this issue.

I construct the following imaginary scenario: how can libertarians form a perfect set of preferences on this matter, which does not disagree with the individual's personal opinion? If, for example, 98% from the community says "yes" in the case of rejecting immigrants and only 2% agree with the entrance of these immigrants, then those 2% of members will have their personal preferences violated. For instance, those 2% might strongly object to the rest of 98% that are indifferent on the issue of immigration or simply refuse foreign competition on their territory, on the basis that they can have productive and useful relations with the immigrants.

In fact, those 2% might offer the argument that even if they represent a minority, the extent of freedom they will benefit from along with the benefits brought by the immigrants will help them increase their businesses and resources in a rapid interval of time. Therefore, their future will be improved considerably in this scheme, as this might be their only chance to secure a prosperous future in the libertarian community. What is the majority's response in this case? They would answer: "we voted and you lost."

The majority can further explain that even if the minority's future depends on this decision, still the protection of their self-ownership right is more important than the benefits the immigrants might cast over the minority's businesses. How can we draw a relative fair conclusion in this case that does not violate the self-ownership right of the parties concerned? Moreover, on what principles do we rest upon while making an impartial selection in this matter? One type of response can be that: even if the consequences might affect a minority from the community and the outsiders as well, the final decision is based on the majority's consent and reflects the preferences of the group in rejecting the immigrants.

Another type of response can object to the claim that the minority must not suffer in this context, where the only chance of improving its future rests on the decision of approving immigration. As in the democratic process, the majority usually wins over the preferences expressed by a minority; however, in the libertarian framework, the minority can claim that is coerced in its liberty to engage in transactions with immigrants that can bring them profit and a greater degree of autonomy.

The individuals within the minority are thus constrained in their liberty of action and their autonomy is reduced when the majority chooses closed borders instead of open borders. For the individuals within this minority, welcoming immigrants inside the community represents a profitable action that widens their degree of autonomy in relation with the rest of members.

Some might object to the idea that within the libertarian framework self-ownership counts more than other values, such as autonomy, which is considered to bring to an individual more liberty of action. The majority tries to protect the self-ownership right of the existing members overlooking the fact that the autonomy of some individuals is coerced. These individuals might perhaps never gain their desired level of autonomy and/or wealth if immigrants are rejected from the community. In this perspective, I consider that the collective decision-making process is problematic and can lead to disputes within a libertarian community.

It is difficult to draw the line between the collective decision and the individual's decision, where the group will violate some individuals' decisions.

This internal conflict represents also a problem for the libertarian argumentation, to derive the right consensus inside an association without promoting some egalitarian principle for it. We have no principle based on which the majority's decision is "more suitable" than the minority's decision. All the members of a community are facing a similar reality once the immigrants are allowed inside, since the self-ownership right can be violated arbitrarily. If immigrants violate the self-ownership right, libertarians consequently can opt for inflicting punitive measures on immigrants or for excluding them from the community.

The collective decision-making process does not render more liberty to the members of a community, on the contrary; the effect is that individuals' preferences will be blocked by other individuals' preferences, and the rule of reaching an objective decision is missing. We cannot maximize liberty where all individuals claim that they are right and their preferences should be respected accordingly.²³ The conflict points to the problem of selecting an objective decision, related to our case immigrants' acceptance.

Another problem with the collective decision-making process is that in the absence of a contract individuals can claim that they are coerced in their liberty of associating with immigrants, which can bring profits and even extend their degree of autonomy. In the case of a contract that stipulates that all members must conform to the majority's decision and predefines the collective decision-making procedures, the majority's decision to close the borders would not violate self-ownership and would be legitimate according to this contract.

The issue resides in lessening the degree of autonomy of individuals without necessarily violating the self-ownership right. Some can object that libertarians are reducing to an alarming degree the autonomy of individuals, which can also mean a reduction in their liberty.

The collective decision-making in the libertarian framework is also unclear in the case of the public and private properties. As I described in a previous section, if some parcels of land are un-owned by anyone inside a community, and some immigrants claim those parcels in view of a future

²³ I make a reference here to the discussion on collective decision-making in Thomas Christiano, "Freedom, consensus, and equality in collective decision making", *Ethics* 101, no. 1 (1990): 160, www.jstor.org/stable/pdfplus/2381897.pdf: "Even on the broadest possible account of decisiveness, I will rarely be free to determine the course of common activities. Moreover, that freedom will be quite limited since it will only exist after the agenda has been formulated and the alternatives are supported fairly evenly by all the other members. This would be a freedom that would appear only at the very end of the decision-making process."

usage, it is unclear what the decision-making process would be in this case. If there were no contract that would stipulate the procedures of the collective decision-making process, then the final decision would be very hard to draw without violating self-ownership. However, if a contract exists and grounds that the final decision belongs to the majority then a decision over the acceptance of foreigners on un-owned parcels of land would be justified legally.

To draw a few conclusions for this scenario: a) the collective decision-making process is unclear in the absence of a contract that stipulates the procedures of this action; b) in the absence of such a contract, self-ownership is likely to be violated and the final decision rendered illegitimate; c) the same case applies to the private and public properties where immigrants claim access or acquisition (in the absence of a contract the members of a community are in the difficulty of reaching a legitimate final decision); d) for public properties, but un-owned by anyone in particular, the collective decision should be clear in the case of welcoming foreigners and allowing them access.

To explain in detail the last point that I made: in the case of un-owned parcels of land that constitute the public properties of a certain community, the collective decision should be clear in allowing access to foreigners. The argument is that in opposition to the decision regarding private properties, where the landowner is the only one who decides to restrict or allow access on his property, in the case of public properties; it is not legitimate to claim the same thing because the land is not the property of any of the members. Even if they contributed to the development of the land, claiming that they added value, still there would be unjustified to restrict the access on it. If foreigners can access the public properties then, at some point, if they use the land properly and add value to it, then they can acquire it.

I refer to the argument presented by Fabre, which considers the collective decision-making procedure to be severely flawed:

So we consent, in advance, to not being able to decide whether a specific person or group will be allowed in. As we have given such consent in advance, if the decision goes against us, we cannot really complain that our rights of ownership have been violated. But the difficulty, of course is that, once the libertarian makes that concession, she has to accept that such a decision-making procedure will yield other results to which she objects, such as coercive taxation for helping the poor. It is hard to see how she can

complain, in such cases, that taxation for those purposes violates individual rights of self-ownership.²⁴

So it seems that by agreeing to obey a contract that gives the majority the right to take the final decision, the libertarians can find themselves in the hard situation where they disagree with the majority, thus losing important gains. If instead of the immigration case the majority decides to have a redistribution scheme the members cannot object to the violation of their self-ownership right because they agreed to follow such a contract. To obey a contract in the conditions where it violates either the self-ownership right of the individuals or leads to further damages means to coerce from the start the freedom of the parties involved in the contract. The contract might be rendered invalid sooner or later, and we arrive in the same position as the one described before, where the majority will oppose a minority in relation to accepting or not immigrants.

If libertarians want to have a contract that does not violate the self-ownership right in such a degree, they should instead select a constitution for example, which states that the majority decides in all cases, except in important aspects (such as the redistribution scheme, which libertarians oppose vehemently). The decision over the borders is entirely in the hands of the majority as Steiner argues, but in this case the violation of the self-ownership right of the minority is understood as part of the contract obligations.

If there is no contract, then the case remains a very difficult one as presented above. I next refer to the second type of scenario, which relies on the argument of private ownership. I prove that in this case there is no need to assume either closed or open borders since this issue becomes a non-issue (does not imply any further complication). If a libertarian community does not assume the need for borders in the first place as private properties are the only properties to be defended then the issue of opening the borders for immigrants is not problematic. Whether the immigrants choose to enter the libertarian community or not resumes to the case of asking for permission to trespass private properties. The landowners will choose to allow or reject the immigrants' request as they find fit according to their private ownership rights.

The role of the association is important in deciding the status of foreigners. If all individuals have the same status, without any discrimination, then all candidates have the same chances to be accepted. I argue that, in principle, the right of exit and entry should be analogous because as individuals are free to exit a protective association after they paid the debts

²⁴ Fabre, *Justice in a changing world* (Cambridge: Polity Press, 2007), 130.

towards the association they should be allowed inside another association if they choose to obey the rules of that particular association.

As O'Neill observes we should not draw a distinction between individuals based on their birth origin or any other factors that can justify the preference for a certain category of people.²⁵ We can interpret that libertarian associations can be used in the broader context of liberalism, where individuals live in a multicultural world and are accepted as equals.²⁶

According to O'Neill's account, the issue of immigration is a non-issue because the individuals interact with immigrants only when they try to access their private properties. The borders are open permanently to anyone who wants to come in (actually the borders being opened is not an action that is done with the intent of allowing immigration, the borders are opened to anyone because national boundaries are not important private properties are). To trespass private properties is the issue that needs attention but as long as owners accept immigrants on their properties and give their permission unconstrained then the self-ownership right is respected and immigration is not considered to be a problem.

IV. Conclusion

In this paper I focused on the analysis of the libertarian arguments on immigration. I showed that although the individuals are free to decide if they close or open the borders, the collective decision-making process meets some difficulties from which we can establish that the individuals are in fact constrained in choosing their preference. Libertarians do not offer a clear argument for closing the borders when the universal right of free mobility is a prerequisite for individual liberty. I conclude that in this case libertarians should be promoters of open borders, which represents a coherent decision vis-à-vis the libertarian principles.

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²⁵ See O'Neill's commentary on libertarian associations in Barry and Goodin, eds., *Free movement*, 119.

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