

Is There a Right to Immigration?: A Libertarian Perspective

Walter Block and Gene Callahan

Introduction

The question of whether there is a right to immigrate, and, if so, what limits may exist on that right, is a controversial one for rights theorists. Even thinkers sharing many fundamental normative principles can come to radically different policy conclusions on immigration. To illustrate some of the difficulties with the issue, we will examine the controversy over immigration among those who adhere to the classic liberal view on the primacy of property rights for normative politics—what is often, today, called libertarianism.

There are some who take the position that any compromise whatsoever with free and unrestricted immigration must perforce be ruled incompatible with libertarianism. After all, the immigrant, merely by appearing at our shores, particularly at the invitation of a citizen and property owner, cannot be said by that fact alone to have initiated violence against an innocent person.¹ Not being guilty of a violation of the basic libertarian principle of not initiating aggression, there is no justification for visiting any violence upon him. Since forceful removal from our shores would indeed constitute an initiation of force against him, this would be improper.

A number of libertarians argue to the contrary.² We will employ Hoppe (1995, 1998, 2001) as our paradigmatic example, both because of the clarity of his arguments and his prominence among those making this case. Hoppe maintains that there can no more be a libertarian defense for unrestricted immigration than there can be one for unrestricted trespass, or for forced integration, or for the violation of the law of free association, or for the elimination of property rights. Just as trespass and coerced integration violate private property rights, so does “free” immigration.

Hoppe’s Case for Restricted Immigration

Let us consider the specifics. Hoppe (1999) begins his analysis by considering what the situation would be in regards to “immigration” in a stateless society based on private property:

All land is privately owned, including all streets, rivers, airports, harbors, etc. With respect to some pieces of land, the property title may be unrestricted; that is, the owner is

permitted to do with his property whatever he pleases as long as he does not physically damage the property owned by others. With respect to other territories, the property title may be more or less severely restricted. As is currently the case in some housing developments, the owner may be bound by contractual limitations on what he can do with his property (voluntary zoning), which might include residential vs. commercial use, no buildings more than four stories high, no sale or rent to Jews, Germans, Catholics, homosexuals, Haitians, families with or without children, or smokers, for example.

Clearly, under this scenario there exists no such thing as freedom of immigration. Rather, there exists the freedom of many independent private property owners to admit or exclude others from their own property in accordance with their own unrestricted or restricted property titles. Admission to some territories might be easy, while to others it might be nearly impossible. In any case, however, admission to the property of the admitting person does not imply a "freedom to move around," unless other property owners consent to such movements. There will be as much immigration or non-immigration, inclusivity or exclusivity, desegregation or segregation, non-discrimination or discrimination based on racial, ethnic, linguistic, religious, cultural or whatever other grounds as individual owners or associations of individual owners allow.

Hoppe then examines our current situation, where various states assert control over all of the land on earth:

In an anarcho-capitalist society there is no government and, accordingly, no clear-cut distinction between inlanders (domestic citizens) and foreigners. This distinction comes into existence only with the establishment of a government, i.e., an institution which possesses a territorial monopoly of aggression (taxation). The territory over which a government's taxing power extends becomes "inland," and everyone residing outside of this territory becomes a foreigner. [The existence of s]tate borders . . . implies a two-fold distortion with respect to peoples' natural inclination to associate with others. First, inlanders cannot exclude the government (the taxman) from their own property, but are subject to what one might call "forced integration" by government agents. Second, in order to be able to intrude on its subjects' private property so as to tax them, a government must invariably take control of existing roads, and it will employ its tax revenue to produce even more roads to gain even better access to all private property, as a potential tax source. Thus, this over-production of roads . . . involves forced domestic integration (artificial desegregation of separate localities).

Moreover, with the establishment of a government and state borders, immigration takes on an entirely new meaning. Immigration becomes immigration by foreigners across state borders, and the decision as to whether or not a person should be admitted no longer rests with private property owners or associations of such owners but with the government as the ultimate sovereign of all domestic residents and the ultimate super-owner of all their properties. Now, if the government excludes a person while even one domestic resident wants to admit this very person onto his property, the result is forced exclusion (a phenomenon that does not exist under private property anarchism). Furthermore, if the government admits a person while there is not even one domestic resident who wants to have this person on his property, the result is forced integration (also non-existent under private property anarchism).

And Hoppe contends that democratic governments may have especially perverse incentives regarding immigration:

For a democratic ruler, it also matters little whether bums or geniuses, below or above-average civilized and productive people immigrate into the country. Nor is he much concerned about the distinction between temporary workers (owners of work permits) and permanent, property owning immigrants (naturalized citizens). In fact, bums and unproductive people may well be preferable as residents and citizens, because they cause more so-called “social problems,” and democratic rulers thrive on the existence of such problems. Moreover, bums and inferior people will likely support his egalitarian policies, whereas geniuses and superior people will not.

So what, for Hoppe, does this imply in regards to a preferred immigration policy in a democratic state?

What should one hope for and advocate as the relatively correct immigration policy, however, as long as the democratic central state is still in place and successfully arrogates the power to determine a uniform national immigration policy? The best one may hope for, even if it goes against the “nature” of a democracy and thus is not very likely to happen, is that the democratic rulers act as if they were the personal owners of the country and as if they had to decide who to include and who to exclude from their own personal property (into their very own houses). This means following a policy of utmost discrimination: of strict discrimination in favor of the human qualities of skill, character, and cultural compatibility.

More specifically, it means distinguishing strictly between “citizens” (naturalized immigrants) and “resident aliens” and excluding the latter from all welfare entitlements. It means requiring as necessary, for resident alien status as well as for citizenship, the personal sponsorship by a resident citizen and his assumption of liability for all property damage caused by the immigrant. It implies requiring an existing employment contract with a resident citizen; moreover, for both categories but especially that of citizenship, it implies that all immigrants must demonstrate through tests not only (English) language proficiency, but all-around superior (above-average) intellectual performance and character structure as well as a compatible system of values—with the predictable result of a systematic pro-European immigration bias.

As we see it, while Hoppe voices some valid concerns about immigration under the democratic welfare states that dominate North America and Europe today, his solution is at odds with the libertarian view of human rights, and contains errors in its analysis of the entrepreneurial function of the ruler of a private domain. Let us explore our difficulties with Hoppe’s view.

The Monarchical Ruler as Entrepreneur

As we have seen, Hoppe hopes that a democratic government, for instance that of the United States, will act like an entrepreneur running the firm “USA Inc.” when deciding immigration policy. There is a major problem with the case he attempts to build from that postulate: his analysis of how entrepreneurs behave in their efforts to assemble the factors of production is flawed.

For one thing, entrepreneurs do not attempt to acquire *superior* or *above-average* factors of production—they attempt to acquire the *most profitable* factors of

production. Only an extremely foolish entrepreneur would, upon determining his business will need 1000 computers, tell his purchasing manager to acquire the 1000 best computers, or even 1000 above-average computers. A wise entrepreneur will attempt to acquire just those 1000 computers such that the difference between the cost of the computer and the projected value of the product it can produce is the greatest.

Similarly, no sensible entrepreneur, on determining he needs 1000 people to staff his company, tells his HR person to hire 1000 superior people. In order to maximize profits, HR should hire the 1000 people for whom there is the greatest difference between the cost of employing them and the projected value of their output. No company will hire an MIT graduate as its janitor, or a person with an IQ of 150 to answer the phone. It is true that some firms, such as a small, creative programming shop, might indeed want to hire *mostly* people who are, for instance, very intelligent. But a company supplying maintenance services to area office buildings would probably have very little interest in the SAT scores of applicants. Similarly, a hereditary monarch who is "staffing" his country, would not want the "best" people, he would want the people who will profit the nation i.e., himself, the most.

At many times and places in history we find illustrations of these facts. The citizens of Athens did not try to hire other Athenian citizens to clean their homes and harvest their olives. The people most fit for such jobs, so they thought, were "barbarians," in other words, less able non-Greeks.

Medieval nobles did not attempt to persuade other dukes and earls to come live on their lands. What they wanted were peasants and craftsmen. The head of an upper class, nineteenth-century British household did not try to find other members of the gentry to serve as scullery maids and gardeners; he hired lower class folk who would do the work he needed done at the lowest possible cost. Southern slave owners did not attempt to buy the slaves most culturally compatible with themselves; they sought slaves who they felt could best endure the harsh conditions of agricultural workers in the Deep South in the summer.

Hoppe seems to ignore the law of comparative advantage when it comes to analyzing immigration. He contends that kings would like to keep "people of inferior productive capabilities" out of their kingdoms. This implies that, if the whole world were privatized, such people would have to leave the planet! But as Mises and many previous economists noted, the great binding force holding human society together is that all people who are able to produce at all, whatever their capabilities may be, always can find a comparative advantage that enables profitable trade with others. Mises (1998: 159–164, 168, 175) found the principle so important that he preferred to call it "the law of association." It is true that anti-social people, whom we might refer to as the "counter-productive," are unwelcome in all societies. That is why we have law and law enforcement. Otherwise, all people cooperate in creating the "Great Society" based on trade and the division of labor.

Here, Hoppe (1999) might protest that he recognizes quite well the advantages offered by free trade. But, he asserts, such trade can take place at a distance:

"Note that none of this, not even the most exclusive form of segregationism, has anything to do with a rejection of free trade and the adoption of protectionism. From the fact that one does not want to associate with or live in the neighborhood of Blacks, Turks, Catholics or Hindus, etc., it does not follow that one does not want to trade with them from a distance."

Certainly, at times the law of comparative advantage will operate such that people are best off trading at a distance, or, at least, that they can successfully do so in this manner. But if a Vietnamese lady would very much prefer doing our wives' nails to working in a rice paddy, and each of our wives' would very much prefer that Vietnamese lady, rather than some gum-chewing teenager from the local high school, perform this service, they will have a rather difficult time realizing these gains from trade if the Vietnamese lady cannot enter the United States.

Hoppe might attempt to answer our objection with his assertion that people with "inferior productive capabilities" would be "be admitted temporarily, if at all, as seasonal workers" by a proprietary sovereign. Perhaps the Vietnamese lady could do our wives' nails six months a year.

But this is merely an arbitrary assumption on his part, without foundation in economics or history. *Sometimes*, it might appear most profitable to the ruler to have the workers come and go. Other times, having them continuously close at hand might seem to be the best strategy. Southern U.S. slave owners did not admit Africans only as migratory workers, shipping them back to Africa each winter; rather, they *bought* them and had them live on their own property, indeed, often in their own houses.

When we examine Hoppe's criterion of "English language proficiency," again we find that it *may* be a consideration for an entrepreneur who is building his workforce, or it may not. If a businessman is hiring people to staff his customer support lines, he certainly will hope they can speak English fairly well. On the other hand, if he needs carpenters, he might be quite happy with an entire crew that speaks only Lithuanian, as long as he can find a bilingual foreman. The criterion of a "compatible system of values" falls to similar analysis: such a qualification is only as important as an entrepreneur deems it to be for his particular project.

The Bum in the Library

We also differ from Hoppe on the relationship of public property to the citizens who ostensibly own such property. We can illustrate our differences by examining the case of "the bum in the library." While Hoppe finds that the state has a right, indeed an obligation, to "throw the bum out," we hold that the bum can be interpreted as homesteading property that is now under illegitimate control, in other words, that is essentially unowned.

Hoppe (2001, 159–160, fn10), citing and criticizing Block (1998, 180–181), says:

"What, if anything, should be done about [the bum in the library]? If this is a private library, . . . the law should *allow* the owner of the library to forcibly evict

such a person, if need be, at his own discretion. . . . But what if it is a public library? . . . [Block holds that public libraries] are akin to an unowned good. Any occupant has a much right to them as any other. If we are in a revolutionary state of war, then the first homesteader may seize control. But if not, as at present, then, given 'just war' considerations, any reasonable interference with public property would be legitimate. . . . One could 'stink up' the library with unwashed body odor, or leave litter around in it, or 'liberate' some books, but one could not plant land mines on the premises to blow up innocent library users."

"The fundamental error in this argument, according to which everyone, foreign immigrants no less than domestic bums, has an equal right to domestic public property, is Block's claim that public property 'is akin to an unowned good.' In fact, there exists a fundamental difference between unowned goods and public property. The latter is *de facto* owned by the taxpaying members of the domestic public. They have financed this property; hence, they, in accordance with the amount of taxes paid by individual members, must be regarded as its legitimate owners. Neither the bum, who has presumably paid no taxes, nor any foreigner, who has most definitely not paid any domestic taxes, can thus be assumed to have any rights regarding public property whatsoever."

Our analysis of the bum in the library is very different. Hoppe (2001: 160) avers that the library is *de facto* "owned by the taxpaying members of the domestic public" We believe that this is an error. These premises are, indeed, owned *de jure*³ by the taxpaying members of the domestic public. But as far as *de facto* is concerned, the real owners are state officials.

The distinction we are making is offered in other words by Rothbard (1990: 241), who makes it in terms of punishment and defense: "In current law, the victim is in even worse straits when it comes to defending the integrity of his own land or movable property. There, he is not allowed to use deadly force in defending his own home, much less other land or properties. The reasoning seems to be that since a victim would not be allowed to kill a thief who steals his watch, he should not be permitted to shoot the thief in the process of stealing the watch or in pursuing him. But punishment and defense of person or property are not the same, and must be treated differently. Punishment is an act of retribution after the crime has been committed and the criminal apprehended, tried, and convicted. Defence [*sic*], while the crime has been committed, or until property is recovered and the criminal apprehended, is a very different story."

In these terms, Hoppe is in effect speaking of punishment, while we are speaking on the basis of defense. That is, our criticism of him is that, in effect, he is confusing the two concepts in this situation.

In order to see the import of this point more clearly, imagine the following scenario: We are partisans fighting the Soviets. We break into a garage of theirs, and are about ready to throw a Molotov cocktail at one of their trucks. Along comes a Russian Hoppean⁴ who says to us, "Stop, that truck was paid for with my taxes (among those of many other innocent people); it is, really, in effect, private prop-

erty, owned by me and my fellow long suffering tax payers. If you destroy that vehicle you are stealing from me." Our answer to this fellow is that he may well indeed be the *de jure* rightful (part) owner of the truck, but as far as the *de facto* situation is concerned, the conveyance is now owned by the Communists, they are using it for altogether nefarious purposes, and we are thus entirely justified in blowing it up. If he persists in his demands that we cease and desist from our altogether righteous behavior, we begin to no longer consider him an innocent victim of taxation, but rather a supporter of that very Stalinist system he purportedly opposes.

Yes to Hoppe, if we are now deciding upon whom, in justice, should be the owners of the library: the bum and the foreigner are way down on the list. But no to Hoppe, a thousand times no, if the bum or the foreigner is *the only one* now attacking this public property. Hoppe is in effect calling upon libertarians to resist *not the state*, but those very people who are now busily attacking it.⁵

The point is, Hoppe is confusing a real life *process* of privatization with the ivory tower libertarian *theory* of how it can best be attained. He in effect conflates a flow and a stock. Yes, under libertarian judicial supervision the library would be turned over to the taxpayers, exactly as articulated by Hoppe. But what are we to make of attempts on the part of other people to seize control over what we consider to be unjustified public property? Are we to reject them, because they do not accord with the theory? Not a bit of it. Very much to the contrary, we as libertarians must *applaud* the transfer of such property from public to private hands, no matter *who* is the owner of the appendages.⁶ We can always worry about getting this property into the exact right hands, later. But right now, we are faced with a stark choice between two and only two alternatives: *either* the bum gets to ruin the library (and the partisan blows up the Soviet truck) *or* the status quo ante prevails. When put in these terms, it is not too difficult to discern the proper libertarian answer.

In Rand (1957), the fictional hero John Galt "liberated" money from the government, and gave it to Hank Reardon, a deserving businessman. But suppose a bum, or a foreigner, had acted with regard to the state in exactly the same manner as did Galt, but kept the proceeds for himself. Hoppe, presumably, would oppose such an action; he would do so, presumably, because he thinks that the rightful owners are the taxpayers, and that this would amount to a theft from them. We would, in sharp contrast, *support* this wealth transfer, because based on our reading of libertarianism, while the best outcome would indeed be the one depicted by Rand and implicitly supported by Hoppe, the *second* best would be the scenario where the thieves were deprived of their ill-gotten booty; that is, where the "bum" or the foreigner, relieved the illicit government of this money. The worst alternative of the three, from this perspective, would be the status quo, where the crooks keep the swag.

Our disquiet with Hoppe's analysis is that it makes the best the enemy of the good. To be sure, all of us in this debate favor the first (e.g., Randian) situation, where someone returns the stolen property to the long-suffering taxpayers. But given that this option is unavailable (often the reality), we are forced to choose

between leaving the money with the thief or seeing it in the hands of another (e.g., the bum or the foreigner in this context). Which is more consonant with libertarianism? Clearly, it is the *latter*. For an illegitimate government is a thief; it has taken money through the use of force from the proper owners, the taxpayers. In very sharp contrast, neither the bum or the foreigner nor the John Galt character is a *robber*. They have not taken property from its rightful holders. Rather, they have *liberated* it from crooks.⁷

Hoppe is undoubtedly correct if we are in the context of a trial run by libertarians, where property is to be allocated to its rightful owners. However, we contend, that at present, we are not in any such situation. Rather, the position is that government now controls these properties, and the libertarian solution is for them to be privatized. We agree with Hoppe, fully, on the goal: complete privatization of all property. But our intellectual opponent acts as if we have, in some sense, *already* attained this objective. Therefore, he opposes the bum⁸ who acts so as to ruin the library or the rebel who attempts to blow up the Communist government truck as contrary to this goal. We, on the other hand, realize full well that we have not at all yet attained a situation of complete liberty. We thus welcome, and not only pragmatically, acts which are either intended to undermine the present unjust system, or which have that effect, whether they are intended to do so or not.

What conclusions for immigration policy can we draw from this analysis of the bum in the library case? Simply, contrary to Hoppe, that the foreigner is *not* guilty of a trespass if he seizes or liberates public property. Thus, there is no apodictic argument to be made against his mere presence on our shores (we assume he does not trespass on *private* property.) Immigration is *not* logically equivalent to trespass or forced integration.

There is another difficulty with Hoppe's position. The argument that since the private library owner would throw the bum out, that therefore it is justified for the statist owner to do so too, is incompatible with Austrian insights into the socialist calculation debate. It is not a given that a private library owner would throw out the bum; it is due to Austrian analysis we know that the economist has no particular insight into what is essentially an entrepreneurial decision.

Unowned land

If the bum is justified in taking over the library, it is even easier to see a role for the foreigner with regard to totally unowned property. In the United States there are vast stretches of land west of the Mississippi and in Alaska that are "owned"⁹ by government, which have never been taken away from the people by force as have tax revenues (although the government did prevent citizens from homesteading these territories in the first place). Suppose a foreigner locates himself on some of this acreage, and homesteads it, in the teeth of governmental proscriptions to the contrary. That is, the foreigner violates the enactment against homesteading this unowned property, while domestic citizens sit idly by and obey this law. We ask

how Hoppe can regard this as trespass on private property, since by stipulation this is *not* private property.

Hoppe (2001: 121–122, fn. 1) states in a different context: “Now, if a man used his body (‘labor’) in order to appropriate, i.e., bring under his control, some other nature-given things (unowned ‘land’), this action demonstrates that he values these things. Hence, he must have gained utility in appropriating them. At the same time, his action does not make anyone else worse off, for in appropriating previously unowned resources nothing is taken away from others. Others could have appropriated these resources, too, if they had considered them valuable. Yet, they demonstrably did not do so. Indeed, their failure to appropriate them demonstrates their preference for *not* appropriating them. Thus, they cannot possibly be said to have lost any utility as a result of another’s appropriation.”

The Hoppe (2001: 160) who likens immigration to trespass on private property stands condemned by the Hoppe (2001: 121–122) who states that homesteaders do not violate any rights of non-homesteaders, nor do they even harm them economically speaking. The homesteaders in the scenario we are offering for consideration are the foreigners, and the non-homesteaders the U.S. residents who obey the law against homesteading this land which is claimed by government, but which is actually unowned, at least according to libertarian principles.¹⁰ If it is indeed the case that foreigners undertake the homesteading domestics might have (perhaps even, in retrospect, *should* have undertaken) but refrained from doing, then the former can take just title to the lands involved. They can do so without violating any rights of the latter. If so, then surely immigration is justified at least when the lands they enter are truly unowned.

We will illustrate this point by considering Canada, a relatively uninhabited country. As far as its actual settlement is concerned, it most resembles Chile, only stretching east to west, not north to south. That is, the overwhelming majority of its population resides within 200 miles or so of the border it shares with the United States. As for the rest of this vast terrain claimed by the government of Canada (the country is *not* presently run under anarcho-capitalist law) it is mostly frozen tundra, empty woodlands, icebergs, etc.

Now suppose there are a billion Chinese, or Martians for that matter, who live in inhumane (or un-Martian) overcrowded conditions. They are eying the empty parts of Canada with grave interest. These lands spell life or death for them. According to Hoppe, they can only settle there with the consent of the Canadian government, which would be justified in imposing rather strict conditions on their entry. To make this claim based on private property rights is highly problematic. In our view, if the Canadians want to preclude from entry these new inhabitants, let them first homestead these presently unowned areas. If they do not themselves first do so, their right to prevent others from doing this cannot be justified on libertarian grounds.

Nor can it sensibly be argued that these lands are sub marginal, uninhabitable, and thus not even worth discussing in the present context. This may have been true in the past, for Canadians in our example, but for the Chinese and Martians they are

anything but. To argue in this way would be to overlook the subjectivist insights of Austrian economists, who correctly note that objective valuation applies to neither land nor anything else. Rather, goods take on values from the subjective evaluations of human (well, Martian too) actors (Mises, 1998; Buchanan, 1969; DiLorenzo, 1990). Yes, if a country such as Switzerland were to allow immigrants in the millions, let alone billions, that country would very likely suffer egregiously, apart from the civil strife it would unleash. But the same hardly applies to countries with vast unsettled wilderness, such as Brazil, Russia, Australia, and the United States.

Children

Children, as all parents know, present special problems; nowhere is this more so than in the case of Hoppe's views on immigration.

Here, the same arguments that apply to immigrants from other nations (they come to the United States for welfare,¹¹ they will vote Communist, they will cause unemployment, etc.)¹² also apply to *new babies*, at an 18-year or so remove. For purposes of this analysis, new babies may be regarded as immigrants to this country from somewhere else: the country of Storkovia, from Mars, from heaven, wherever. Just as we have no right to limit new births on the grounds that when they grow up the new children will go on welfare, be criminals, vote badly, etc., so too do we have no right to limit immigration now on this basis. Any such argument against immigration applies equally well to bearing children.

The case of children can be employed as a *reductio ad absurdum* of the Hoppean system. Immigration is forced integration? Then so is childbirth. Immigration is per se a trespass against private property rights? Then so is bringing a new child into the world. Let us put forward a hypothetical, but, we contend, typical argument:

Many libertarians have been far too complacent in the face of a growing threat to our cultural cohesion, our way of life, and our liberty. We're talking, of course, about the thousands of people who arrive in our country everyday, hoping to make it their new home.

Those arrivals present us with a myriad of social problems. They do not speak our language. They are unfamiliar with our culture. It will take time to assimilate them all, and the government's effort to promote multi-culturalism through the public schools and other government institutions can only lengthen that assimilation time.

Few of these strangers arrive in America with job offers in hand. The odds are high that many of them will rely, at some point in their lives, on government handouts. And studies show that the longer new arrivals reside in the country, the more likely they are to receive welfare.

They will make use of public transportation, public roads, public utilities, public schools, and so on, further straining resources that are already stretched thin in many cases. Their arrival results in a "dumbing down" of the public education system, prompting politicians to throw even more money at it.

All of the above means an increased tax burden on the productive members of society, many of whom already work over half their day to pay their federal, state, and local income taxes, sales taxes, excise taxes, tariffs, and fees.

Because of the lure of government largesse dangled before them, the new arrivals represent a ready-made voting block for a bigger state. Unfamiliar with the American tradition of limited government, the arguments against expanded social programs seem remote and abstract to them, while the benefits appear immediate and tangible. The resultant swelling of the class of tax consumers portends an ominous increase in the scope of the welfare state.

As we have time to watch them adapting to our country, we find their customs strange. Whether it is their music, dress, dating, or manners, their distinct cultures present what appears to be an unbridgeable gulf between them and traditional American life. Americans find themselves longing, as Peter Brimelow (1995) put it, "for some degree of ethnic and cultural coherence."

Libertarians are correctly suspicious of any increases in government power. In the case of these new Americans, however, it should be clear that the cause of liberty is advanced, not retarded, by limiting their influx. So great are their numbers, and so enormous is the difficulty in assimilating them, that the current situation amounts to little less than a foreign invasion of our shores. Libertarians should at least be able to agree that as long as we have any government, its most essential role is to protect the nation from foreign invasion!

Of course, in a purely libertarian society, it would be property owners who would have the right to accept or reject anyone wishing to live on or otherwise use their property. But we don't live in that society. Property owners today are limited by law from excluding individuals from their place of employment due to affirmative-action and other anti-discrimination laws, and from their neighborhoods by similar "civil-rights" legislation.

Simply reducing the number of arrivals allowed in the country each year would be a step forward. But given the vast numbers who have already arrived in the past two decades, it would be wiser to place a several-year moratorium on all new. . . .

What's that you say? Immigration?! You think we've been talking about immigrants?

We've been talking about babies. What we need is a several-year moratorium on births. Our battle cry should be, "Outlaw babies, for the sake of our liberty!"

Clearly, the above is not a libertarian position.

The Irish Problem¹³

When the above argument appeared elsewhere (Callahan, 2002a), the question was raised as to whether there are actually deep similarities between babies and immigrants, or if the argument is merely a rhetorical trick. We will show that there are, and it was not.

Let us imagine we are in the United States in 1854. Irish immigrants have been pouring into the country. In the eyes of the bulk of the population of the United States, they are of sub-standard intelligence, indigent, inebriate, disorderly, pos-

sessed of a bizarre culture (Celtic-Catholicism) that is at odds with the predominant United States culture (Anglo-Protestantism), and just generally undesirable. The anti-immigrant American Party is a dynamic populist force in United States politics.

Let us further imagine that, by some miracle, the current American apparatus of anti-discrimination laws and "social" benefits suddenly springs full-grown into existence. American residents are able to collect unemployment; receive AFDC, Social Security, Medicare, and Medicaid payments; and sue for discrimination in the workplace, in housing, and at places they shop.

Suddenly, all of those "No Irish Need Apply" signs are useless. The Irish can sue their way into places that do not want them. Furthermore, their drunkenness and idleness no longer concern just them and their neighbors—they can now get on the dole. What was once a severe annoyance has now become a terrible burden.

We contend that, in the alternative science fiction-ish 1854 United States described above, every argument that could be put forward against free Irish immigration would apply equally well against free Irish procreation.

We should first note that the Irish who had come in under more libertarian arrangements would be justly staying wherever they were at the time the new welfare state came into being. Therefore, there is no libertarian rationale for violating their right to remain where they are.

Let us proceed to consider two further situations: each Irish family decides to have ten children, or each family decides to have no children, but invite ten relatives from Ireland to come live with them. (If you want to include rental contracts forbidding non-immediate-family from living in an apartment in the picture, you can just suitably increase the number of invitees by the Irish-Americans who do not have such contracts.)

Now, it is clear that both sets of newcomers are justly arriving in the country, in that they are invited to live where they will be staying. The problem, from the point of those who are quite understandably worried about the "Irish question" under the new regime, is that they will not stay there. Whether children or immigrants, at some point they will tend to wander off the property.

Not only will they get off the property, but with public roads and anti-discrimination laws in existence, they cannot be kept out of many places. People who detest the Irish will be forced to rent to them, sell to them, hire them, and so on. It's true that Irish babies will not be ready to head out and violate the property rights of "Gaelophobes" quite as quickly as will immigrants. But can a substantive issue of human rights turn on a few years difference in when a potential rights violation will occur?

Both babies and immigrants will tend to be more numerous than they would have been without government social programs in existence, although, of course, the incentives apply to the parents in the first case but to the immigrants themselves in the second.

While the children might be slightly more Americanized than the immigrants, the difference would only be of degree, not of kind. The children would, most

likely, remain Catholic, be raised in Irish neighborhoods, attend Irish Catholic schools, and know mostly first- or second-generation Irish immigrants during their life. They will be scarcely less foreign than newly arrived immigrants.

An Attempted Answer by Hoppe

Hoppe is not without a reply to these arguments. He (2001: 167) states: "the receiving party (the mentor of the immigrant) must assume legal responsibility for the actions of his invitee for the duration of his stay. The invitor is held liable to the full extent of his property for any crimes by the invitee committed against the person or property of any third party (as parents are held accountable for crimes committed by their offspring as long as these are members of the parental household.) This obligation, which implies that inviters will have to carry liability insurance for all of their guests, ends once the invitee has left the country, or once another domestic property owner has assumed liability for the person in question by admitting him onto his property."

But this simply will not do. It opens up a Pandora's Box of objections and difficulties.

One implication, by analogy, is that people ought to be held responsible for the crimes of their child as long as the child lives on their property. One could, conceivably, make a case for this for a very young child, completely under the control of the parents. But what of a youngster aged 14, 17, or even 20? The older in age we go along this succession, the further away we remove ourselves from the libertarian doctrine of *individual* responsibility.

And then when this child moves away from the parental abode into a rental apartment, it would appear that the landlord would become responsible for him, according to Hoppe. Surely that is a travesty of justice. Nor would this appear to apply only to children moving away from home. Rather, as a general principle, Hoppe would hold *all* landlords responsible for the crimes of *all* of their tenants. This would pretty much spell the death knell for renting. A more counterintuitive non-libertarian scenario could hardly be imagined.

Moreover, suppose that A allows B and C into his restaurant, as customers, whereupon B attacks C. Then, according to this Hoppean logic, it would not be B who is responsible for this attack on C, but rather A, the property owner. If B murders C, the presumption would appear to be that A would be made to pay for this crime; B would presumably get off scot-free, since the real criminal of the piece, A, has already been caught and punished.

It is one thing to hold entrepreneurs responsible for roughhousing on their property in the *economic* sense: those who do not provide suitable protection for customers will lose revenue. But it is quite another thing to hold restaurateurs accountable for such malfeasance in the *legal* sense; that is, to punish them, instead of the actual malefactors.

Nor will resorting to “insurance” protect Hoppe (2001: 239–265) from these implications. Insurance, in this context, is merely a cloaking device, obfuscating matters. The bottom line is that only the perpetrators of crimes, not the owners of property upon which the crime is committed, are guilty of criminal behavior under a libertarian theory of law.

States Rothbard (1990: 245–246) in this regard: “Under strict liability theory, it might be assumed that if ‘A hit B,’ then A is the aggressor, and that A—and only A—is liable to B. And yet the legal doctrine has arisen and triumphed, approved even by Professor Epstein, in which sometimes C, innocent and not the aggressor, is also held liable. This is the notorious theory of ‘vicarious liability.’” Rothbard (1990: 246) is “properly scornful of the tortured reasoning by which the courts have tried to justify [this] legal concept so at war with libertarianism, individualism and capitalism. . . .” It cannot be denied that Rothbard is discussing employer responsibility for the acts of employees, while we are debating Hoppe over landlord responsibility for the acts of tenants. Yet the analogy is quite close.

In Hoppe’s interpretation, parents offer security for their children, while those who invite immigrants do not do so for their invitees. That is why mothers and fathers are justified in bringing children into the world, while immigration runs contrary to the libertarian legal code, and our analogy fails. If so, then, he should at least allow, right now, all immigration for those who can find mentors in the United States willing to support them. But if Hoppe acquiesced in this practice, his opposition to immigration would vanish in one fell swoop, on the reasonable assumption that millions of property owners would be willing to undertake such a risk.

Hoppe might object on the ground that these mentors might renege and declare bankruptcy, rendering their promises unreliable, and free immigration unjustified. But so can parents go back on the responsibility that Hoppe assigns to them as guarantors in this regard. The implication, here, is either that no one would be justified in giving birth to children, a manifest absurdity, or that only those who are sufficiently wealthy to post bonds sufficient to cover pretty much any damage their children might wreak would be entitled to start a family. The latter may be more acceptable, but it takes us quite a bit down the road away from the usual libertarian assumption that population control is illicit. Further, it leads onto the treacherous ground of preventive detention.¹⁴ For example, it is currently the case that in the United States teenaged, black males commit a share of crimes disproportionate to their numbers in the general population. According to the logic we are attributing to Hoppe, he would be compelled to assent in locking them up at least until they grow to maturity, surely an act contrary to libertarianism.

Upon initially learning of our analogy between children and immigrants, Hoppe (2002) responded with a note to one of the present authors: “

[the analogy between immigrants and babies] just doesn’t [work] as soon as you consider the time dimension in the process of property acquisition, and accordingly the establishment of easements, carefully enough. Certainly the babies of domestic tax payers have a right to domestic public goods (and their parents have an easement to have the

kids), because their parents [were forced to finance] these goods. . . . The kids inherit ownership from the parents. Obviously, foreigners have no such inheritance claim to domestic public goods.”

But there are a number of problems with Hoppe’s answer. Firstly, it is a very curious sort of “inheritance” in which the person “passing on” the right to use public goods to his “heirs” hasn’t yet died! And no matter how much in taxes he has paid and how many children he has, he can “leave” them all full rights to all public goods to which he has a right.

True, Hoppe could claim that this is just like genetic inheritance, or inheriting the parent’s last name, so the parent need not be dead for this to occur. But there is a significant dissimilarity to these cases: names, and genetic inheritance are not at all scarce goods, while residence in a country with limited land certainly is. That is, a child can take on a parent’s name without depriving the latter of that nomenclature in the least. Similarly, the parent gives the child a genetic code without in the slightest depriving himself of that benefit. In sharp contrast, however, there is a limited amount of land on the earth, let alone in any one country. Thus when parents have children, and remain alive to live alongside of them, there is that much less land for the parents (or anyone else) to enjoy.

Consider the example of an Irish homeowner in the fictional 1854 United States described above. If he can have his children “inherit” his right to the public road, then why can’t he pass it on to the relatives, friends, or even strangers he invites from the old sod as well? He could just as easily leave his whiskey still to his cousin as to his children, so why not his right to use the road? We have seen that he need not be dead to “leave” this right to his heirs, nor does there seem to be any intrinsic limit to how many people to whom he can bequeath it.

Therefore, we contend that if Hoppe’s point is true, then so is a rewritten version that runs like this:

“Certainly the *guests* of domestic tax payers have a right to domestic public goods (and their *hosts* have an easement to invite the *guests*), because their *hosts* were forced to finance these goods. The *guests* inherit ownership from the *hosts*.”

Hoppe might attempt to limit the right to invite immigrants based on the amount in taxes the invitor has paid. However, the implication of that approach is that the number of children also should be commensurate with taxes paid. For example, such and such an amount of taxation would entitle a person to have one child; a little more, then two children. Those who have *not* paid taxes (or, rather, whose taxes have not exceeded their subsidies)¹⁵ would not be able to have any children at all. This is not quite the program of “one child per family” practiced by the Mainland Chinese government, but it comes perilously close.

Another difficulty is that the age of initial childbearing would be unduly increased, perhaps even to biologically dangerous levels, at least in the case of the relatively impecunious. Typically, a couple might have their first child at, say, age 25. But if both husband and wife had just graduated from college a year or so

before, it might well be the case that this would be too young to justify bringing in immigrants from the foreign country of "Storkovia." It might be that a couple with their earning power would not pass from net tax consumer to net tax provider (see Calhoun (1953: 16–18) until age 30, 35, or even 40.

Hoppe might be willing to accept the logical implication of his stance, to wit, that greater obstacles ought be placed in the path of the poor who want to bear children than of the rich. It is the word "placed" that is key to our disagreement. If someone wants merely to assert that, in so far as they have fewer resources than the rich, the style in which the poor can raise their children is quite justly more cramped, then we would have no problem with his argument. (For libertarians, that one has a right to have children in no way entails an obligation upon others to support one's children.) As a general principle, again for libertarians, it is unobjectionable that the rich have greater command over goods and services than the poor; after all, unless that were true, there would be no point in being rich.

It is one thing to insist that all people be able to use their money in any non-invasive purchases they wish. But it is entirely a different matter to coercively forbid non-invasive acts, such as child bearing. Here, to contend that the rich can have as many children as they wish, while the poor must be constrained from doing so, is to violate the rights of the latter. That is, while it is theft to transfer boats and cars forcibly from rich to poor, it is a rights violation to prevent the poor from buying any boat or car that they can afford—even a yacht or a limousine. To justify such a policy based on the fact that one suspects that some poor person "can't really afford" the luxury item is to substitute one's own judgment for that of the other person. The poor now suffer not merely from having fewer resources than the rich, but also by losing a measure of control over their own choices that the rich continue to enjoy. This runs directly contrary to the core principles of libertarianism.

In fact, a law restricting childbirth on the basis of taxes paid is analogous to forbidding anyone who is poor from *ever* owning a yacht. (After all, the poor man who buys and uses a boat will add to the crowding of the public waterways.) While we can embrace a view saying that there is no injustice in the poor finding it more difficult to own large boats than the rich, we cannot do so to a view that says the poor fellow who scrimps and saves to afford the yacht of his dreams should be legally denied the right to buy it.

There is yet another difficulty for libertarians with Hoppe's position on this matter: It is akin to the justification used to defend interferences with liberty such as socialized medicine. Per such reasoning, you can be forced to wear a motorcycle helmet or refrain from smoking, since otherwise you might impose costs on all others who have medical coverage. In a libertarian society, whether the individual wears protective headgear or eats in a healthy manner is entirely up to his own discretion. He alone suffers the consequences of foolhardy action. But under socialized medicine, everyone else is forced to bear the costs of dangerous behavior, and this fact is used to justify forcing all members of society to protect their health willy-nilly.

Hoppe's analysis of child bearing opens up a similar door. Because of prior state interventions, what was previously considered a non-invasive act is suddenly criminalized. What aspect of liberty is safe under such a principle? The drug war is okay, as users are more likely to go on the dole. High taxes on fatty foods are fine, since the obese are more likely to have health problems. Zoning laws can now be recommended, since they force landowners to hold large lots, driving up lot prices and keeping the poor out of town.

In fact, as pointed out by Mises (1988), Ikeda (1997), and others, every governmental intervention leads to undesirable results that call for another intervention as a "fix." The state expands in a vast pattern of such interlocking interventions. The removal of any of them might have unpleasant effects for any number of people, even if they do not directly gain from the intervention. If, in attempting to reduce the size of the state, we restrict ourselves to only eliminating interventions when we can show that no innocent third parties are economically harmed by that elimination, we will never start. Nor, for the various reasons highlighted in the socialist calculation debate (Boettke, 1991; Hoppe, 1989, 1996; Mises, 1981) can we determine which interventions are least costly and eliminate them first. No, we must start wherever we can.

A Practical Objection

Hoppe (2001: 161) makes much of the fact that free trade implies a willing buyer and a willing seller—voluntary actions on both side of the transaction—while for the case of immigration, in sharp contrast, this does not apply. That is, if all land is privately owned, then, in addition to a willing immigrant, there must also be a landowner willing to take in the new arrivals.

A practical problem with Hoppe's perspective is that it is exceedingly likely there will always be *someone* with sufficient land holdings in the domestic country who will provide a sanctuary for immigrants—perhaps even for quite a few of them. There is nothing in his preferred immigration policy that would prevent the owner of a vast ranch in Texas from inviting the entire Masai people to move to his property and take up their traditional way of life there. It might simply entertain him to do so. Or he might be acting out of charitable or benevolent motives. But by far the most common reason for such invitations would be financial considerations. If the productivity of say, Argentinian labor is sufficiently higher in the United States than, in Argentina, then this difference can be capitalized, and used to finance immigration. Thus vast numbers of immigrants can legitimately arrive in this country, Hoppe's trespass objections notwithstanding (i.e., we stipulate that there are sufficient lands, held privately, enough of whose owners welcome the newcomers and provide surety for them).¹⁶

Hoppe's second line of defense is that these newcomers still would not be able to get out onto the roads and other people's property. That is, he contends, not only must there be a sufficient number of land owners to welcome the new immigrants,

but the society as a whole, or at least the nation's road owners, must also allow them onto their property, if the new arrivals are to become involved in the economy. As *everything* would be private in the present scenario, this would include streets, highways, avenues, indeed, *all* traffic thoroughfare and arteries.

There are several replies available to the pro-legalized immigration side of this debate. The first is to concede Hoppe's thrust and admit that immigrants will be confined to the lands of those who welcome them, while noting that this still varies greatly from the position Hoppe set out to defend.

The second is to deny his contention. An intensive discussion of this question would take us too far afield, but the conclusion reached by most analysts who have written about the subject from a private property libertarian perspective (e.g., Block, 1979) is, given that the landlord or the firm has a contractual right to use the road, this would extend to his tenants and employees. This is because a man would be unlikely to purchase land in the first place if he would not have access to the streets abutting his property; and also, because it is unlikely that the local street proprietor would not also have a contract with the owners of the other traffic arteries contiguous with his own holdings that each of them would allow motorist customers of the others to enter his own property.¹⁷ Of course, certain groups might adopt a policy of self-imposed isolation, but the standard arguments for the benefits of the division of labor and free trade make it likely they would be few in number.

This being the case, we believe that the number of immigrants in a fully laissez-faire society would approximate the number who would arrive under a government policy of unfettered immigration. No one could be turned away as long as there was *either* unowned land, *or* landlords willing to take large numbers of immigrants onto their holdings. Nor would they be confined to the property of any one or even the many host firms or people who had specifically invited them to the domestic country. Similarly, no one would be barred from entry in a society such as ours, with its public property.

Gordon (1997) summarizes the Rothbard–Hoppe position: “The result of doing so (e.g., adopting this perspective) is apt to be carefully controlled immigration, not unrestricted entry.” But, as we have shown, any holdout with large acreage can invite in *anyone he wants*. This may be “carefully controlled” in the sense that only private property owners can sponsor immigrants, but not in the usual immigration sense that the newcomers have to have property of their own, be intelligent, literate, be able to post a bond, etc.

A Reductio

If Hoppe is right that there is no right to international migration, since this would violate existing property rights, it implies that there is no right to intra-national migration either,¹⁸ and for the same reason. For example, the migration of blacks from the southern states to northeastern cities in the 1940s, that of the Okies to California in the 1930s, and of the Jews from the lower east side of Manhattan to

the surrounding suburbs of New York City would all be prohibited or restricted by law. Indeed, it is hard to see why any sorts of moves, even those of just a few miles, should not be regulated per his reasoning.

Hoppe's analysis is attractive to those who oppose immigration from foreign shores. It will be less so with regard to internal migration within one country, since it must be the rare person who opposes such movement of peoples. And yet if the argument implies in the one context it applies in the other, since national boundaries, while having political reality, are of no moment when it comes to the application of libertarian law.¹⁹

Culture, Value, and Private Property Rights

Consider these remarks of Rothbard (1994, p. 7):

"The question of open borders, or free immigration, has become an accelerating problem for classical liberals. This is first, because the welfare state increasingly subsidizes immigrants to enter and receive permanent assistance, and second, because cultural boundaries have become increasingly swamped. I began to rethink my position on immigration when, as the Soviet Union collapsed, it became clear that ethnic Russians had been encouraged to flood into Estonia and Latvia in order to destroy the cultures and languages of these peoples. Previously, it had been easy to dismiss as unrealistic Jean Raspail's anti-immigration novel *The Camp of the Saints*, in which virtually the entire population of India decides to move, in small boats, to France, and the French, infected by liberal ideology, cannot summon the will to prevent economic and cultural national destruction. As cultural and welfare-state problems have intensified, it became impossible to dismiss Raspail's concerns any longer."

We readily admit that we disapprove of a situation in which a state (the Soviet Union, in Rothbard's example) coercively relocates people. However, that is not the same thing as a state merely allowing people to enter its territory. First of all, no one has been more eloquent in making the point that what is legitimately owned is property itself, and *not* the value of that property, than Hoppe.²⁰ One can own a house itself but not its value, which depends upon the evaluations and actions of others (e.g., buyers and sellers). We suggest that the same considerations apply to the case of the value of culture. Here, too, *all* that one can legitimately own is one's physical property, *not* the value of it as impacted upon it by the culture of one's neighbors.

Take Raspail's scenario of the Indians and the French. Here, at least from our perspective, the Indians did nothing wrong²¹ (at least in the barebones scenario as laid out by Rothbard.) They did not violate the libertarian proscription against initiatory violence. They were peaceable. They did not trespass. They purchased land and homes, or rented them, all on a voluntary basis (or homesteaded public or unowned property). Yes, they also perpetrated "economic and cultural national destruction" upon the French, but this is merely part and parcel of *values*, *not* private

property rights. The French people, along with everyone else, have a right to their physical property. They have, in contrast, no right at all to its *value*; e.g., they have no right whatsoever, to resist "economic and cultural national destruction," at least not by violent means.

How, then, may they properly resist these incursions? In the same way that all of us may do so: by tying up neighbors in restrictive covenants, or joining gated communities, or housing cooperatives, or condominiums, or proprietary communities (see McCallum, 1970). These, based on the libertarian concept of free association, may licitly specify not only the type of fences and exterior color paint that can be utilized, but also the types of people who can live there.

But suppose there is but one (and there might well be, in any reasonable scenario, dozens, hundreds if not thousands of such people) Frenchman who is desirous of inviting Indian immigrants, hordes of them, to his own private property. If he owns several square miles of land, far from an insurmountable task at least in agricultural areas, he will be able to host literally *millions* of immigrants. We have already rejected Hoppe's contention that this holdout would be responsible for any crimes his invitees might commit, on the ground that people are responsible for their own legal transgressions, and cannot legitimately pass them off onto their landlords, employers, etc. As well, we resist his notion that the Indian immigrants would not be able to get out onto the (privatized) French roads.²² Condos and covenants may provide some measure of protection against French "economic and cultural national destruction," but it is an empirical issue as to just how much.

Thus, it is not true that "the regime of open borders that exists de facto in the United States really amounts to a compulsory opening by the central state." Very much to the contrary, this state of affairs would exist even under anarcho-capitalism, provided, only, that there was at least *one* large-scale land-owning holdout.

The Pragmatic Aspects of Immigration Restriction for Libertarians

An anti-immigration libertarian might acknowledge the above reasoning, but contend that as a purely practical matter immigration must be restricted today, since the consequences of unrestricted immigration for liberty would be so pernicious under the existing political regimes in the United States and Western Europe. Cases in point include the welfare state, anti-discrimination (i.e., forced association) laws, and public property. In a different, more libertarian world, open borders might be practical, but not in ours.

Such a stance as a holding action, an attempt to keep the status quo from becoming more pro-immigrant, might work. But if a libertarian really means to reduce the number of immigrants from current levels, we must ask him if he has seriously contemplated the expansion of government power and intrusiveness necessary to fully control the borders of a nation like the United States?

Such an expansion would be needed to prevent the chief effect of new laws from

decreasing legal immigration by increasing illegal immigration. After all, immigrants arrive here primarily because they perceive a demand for their labor. Prohibition in the face of demand simply drives the supply underground.

Since immigrants arrive in America by plane, boat, car, and foot, government surveillance of all parts of the country would have to be increased. The movements of tourists must be closely tracked to make sure they do not stay or work while they are "vacationing."

Illegal immigrants flood an area of several square miles around the house one of us lives in every morning in the spring, summer, and fall. The aftermath of 8:16 into the local train station is a Mexican diaspora. Are the neighbors upset that the State has sent an invading force into their community? No, the illegal aliens are going to work at their houses. Productive, private citizens and migrant workers are cooperating to evade the State's laws and peacefully conduct mutually beneficial private transactions.

Given private individuals' complicity in the "law-breaking," it is clear that a serious effort to reduce immigration would have to investigate and punish such "criminals" as well. Private homes would be subject to search to ensure they were not housing or employing any illegal aliens. Everyone's bank balance would be monitored and all suspicious payments traced.

That is not a pro-liberty scenario, unless one is of the "it can only get better by getting worse first" school of libertarian thought. We are not arguing, at least here, that this school of thought is wrong. But if that is the line of thinking to which an anti-immigrant libertarian is adhering, it should be made explicit, i.e.: "I favor an immigration crack-down because it will help to bring about a police state, hastening the day of full freedom." Hoppe, at least, does not make this argument.

So, what can be done, given that we do not dismiss the concerns of anti-immigration libertarians as baseless? We admit that the Anglo-American residents, in the imaginary 1854 United States we depict above, had many valid reasons to be worried about "the Irish problem." Cultural assimilation is not a difficulty to be sneered at. And we agree that the welfare state creates perverse incentives that result in a different kind of immigrants than would occur in a libertarian society. But we recommend addressing the problem in a libertarian fashion.

There are a number of reforms available to that would entail the government doing *less for* immigrants, rather than *more to* them (and to citizens):

- The United States could greatly extend the period after which citizenship can be granted. Since most libertarians do not believe that anyone should be able to vote away anyone else's property in any case, forbidding that power to immigrants alone does not take away anything from them that is justly theirs.
- Reserve automatic citizenship for the children of citizens, rather than for all children born in the United States. The argument follows that above.
- Make immigrants ineligible for government transfer programs. In the libertarian view, Social Security, Medicare, Medicaid, and so on, ought not exist. If immigrants are the group that we can wean off of such programs first, so be it. Again, for a libertar-

ian, this does not entail taking anything away from them that is justly theirs. Proposition 187 in California was an example of such an initiative, successful, at least, with the voters, if not the courts.

- Eliminate civil rights protection for immigrants. For libertarians, no one has the right to force himself onto another's property. Not applying anti-discrimination laws to immigrants might be a first step in ridding ourselves of such laws completely.

These measures go some ways toward handling what we feel are the valid concerns of anti-immigration libertarians. Furthermore, they reduce the risk that libertarians, ironically, will be the sponsors of a massive new Federal program, Operation Iron Borders, or whatever it would be named. And lest we face the complaint that we are being unrealistic in what we ask of the political system, we point out that the libertarian anti-immigration platform has not, so far, met with electoral success either, nor does it seem to be on the verge of doing so.

Conclusion

In one sense, there is no real debate between Hoppe and us. As libertarians, we all favor private property rights and oppose trespasses against them. If this implies "limiting" immigration, then we all favor doing just that; if not, not. We agree, further, that in a libertarian society, no foreigner would be allowed into any territory without the permission of at least one property owner.

However, we are not, "as ships passing in the night," failing to contradict each other's position; this is not a mere verbal dispute. For one thing, we appear to differ as regards an empirical issue: would an ideal libertarian society be one which could, in the main, heavily reduce the number of foreigners who enter and live in the territory now controlled, for example, by the U.S. government? Hoppe maintains that it will; we take the opposite position, based on our supposition that there will be large numbers of holdouts to any restrictive covenant amongst the hundreds of millions of people now residing in this area, and that without such specific contracts, the profit motive, if nothing else, will lead to the mass invitation of foreigners to our shores.

But it is when we come to the real world that we diverge from Hoppe even more sharply. Hoppe maintains that in the present context the U.S. government is in effect a manager²³ for the private property owners who live within the borders of the country. We maintain, in contrast, that the state cannot properly take on any such role.

States Higgs²⁴ in this regard: "Some of us . . . are disinclined to recognize that the United States or any other existing nation state has legitimate authority to establish any so-called borders within which it takes pleasure in exercising its coercive powers over the resident population. Such borders are nothing but artifacts of the interplay of the brute forces exercised by the various armed groups (that is, nation states) wielding established powers over the people who inhabit this planet. If the state cannot legitimately create borders in the first place, because its very existence

is illegitimate, then it manifestly cannot promulgate just rules with regard to how open or closed any such borders will be."

We differ with Hoppe, moreover, as to the proper status of "public property" and whether any would-be homesteader may seize it; we further diverge as to the responsibility for crimes committed by children, tenants and employees, on the part of parents, landlords and employers. We say, as a matter of libertarian principle that there is no such legal responsibility; Hoppe takes the opposite stance.

Notes

1. The classical liberal position of open immigration always excepted criminals and those with communicable diseases, on the ground that persons of this sort would represent a physical threat against the citizenry.
2. For other critiques of open immigration from a libertarian point of view see Gordon (1995, 1997), Raico (1996) and Rothbard (1994). For other libertarian treatments of this issue see Simon (1998), Hospers (1998), de Soto (1998), Machan (1998), and North (1998).
3. Well, de libertarian jure, in any case.
4. It is more than passing curious that Hoppe, perhaps the foremost theoretician of anarcho-capitalism at present, nevertheless persists in defending the government. Hoppe (2001: 263) gives it as his view that: "If there were any aggression or provocation against the state at all, this would be the action of a particular person, and in this case the interest of the state and the insurance agencies would fully coincide. Both would want to see the attacker punished and held accountable for all damages." Here, the "insurance agencies" are Rothbard's (1978: 219) "Metropolitan Protection Companies," e.g., the very embodiment of anarcho-capitalism. How could it be to the interest of the latter to protect government property? Why, merely pragmatic considerations aside, should a libertarian applaud the capture and punishment of a person who commits aggression against an unjustified government? Surely, libertarian principle would incline us in the opposite direction.
5. Attacking it, that is, in the objective sense. The bum's understanding of the finer points of libertarian property theory might be altogether lacking, but at least he is acting so as to undermine unjustified public property. Hoppe is making the exact same mistake made by Rand (1967) when she opposed the student takeovers of the *public property* that was the University of California at Berkeley. See on this Block (2003).
6. This reminds us of the following joke. There was a flood, and a man was hanging for dear life from the top of a house, perched just above the raging water. A pious man, he prayed long and hard for God to rescue him. Along came a man in a rowboat who said to him, "Get in, I'll row you to safety." Replied the religious man, "Thanks, but I'm waiting for God to rescue me." Whereupon a helicopter pilot threw down a rope ladder, and offered him a ride to higher ground. Again said the religious man, "Thanks, but I'm waiting for God to rescue me." No sooner did the helicopter recede into the distance but the waters rose, and drowned the man. Appearing before St. Peter, the man remonstrated with God: "I was a pious man. I worshipped you all my life. I prayed for a rescue, but you abandoned me." Retorted God: "And who do you think sent the rowboat and the helicopter?"
7. We define a robber, crook, or thief as a person who unjustifiably takes property from its *rightful* owner. In contrast, if someone takes property from a criminal of this sort, he is not himself a thief but rather a liberator.
8. Support for our analysis is offered by Rothbard (1992: 119), who discusses not the bum in the library but rather, analogously, the "undesirable" on the street: "In New York City ... there are now hysterical pressures by residents of various neighborhoods to prevent McDonald's food stores from opening in their area, and in many cases they have been able to use the power of local government to prevent the stores from moving in. These, of course, are clear violations of the right of McDonald's to the property which they have purchased. But the residents *do* have a

point: the litter, and the attraction of 'undesirable' elements who would be 'attracted' to McDonald's and gather in front of it—on the *streets*. In short, what the residents are *really* complaining about is not so much the property right of McDonald's as what they consider the 'bad' use of the government streets. But as taxpayers and citizens, these 'undesirables' surely have the 'right' to walk on the streets, and of course they *could* gather on the spot, if they so desired, without the attraction of McDonald's." We must concede that there is one slight disanalogy: Hoppe assumes the bum has paid no taxes at all (a heroic assumption) while Rothbard more realistically stipulates that the 'undesirable' person has been victimized in this manner.

9. De facto but not de (libertarian) jure.
10. The government itself never homesteaded these territories; it only precluded others from doing so. For a further discussion of illicit pre-emption, see Block and Whitehead (forthcoming).
11. Milton Friedman has been quoted to the effect that (paraphrase) "Free immigration is incompatible with the welfare state, and thus we cannot have the former." The libertarian response, in contrast, is surely, "Free immigration is incompatible with the welfare state, and thus we cannot have the latter."
12. According to Hoppe (2001: 162, fn. 11): "Note, that even if immigrants were excluded from all tax-funded welfare entitlements as well as the democratic 'right' to vote, they would still be 'protected' and covered by all currently existing anti-discrimination affirmative action laws, which would prevent domestic residents from 'arbitrarily' excluding them from employment, housing, and any other form of 'public' accommodation." This is disingenuous, since in the fully free society on the assumption of which we are contrasting present immigration law with Hoppe, all of these provisions would disappear. And in the present society, it is likely they would be swept away by the proverbial "hordes" of immigrants who would arrive on our shores. But suppose, for argument's sake, that this is not the case. That is, that these unjustified laws would remain on the books. If the immigrants have a right to enter the domestic country, anti-libertarian enactments passed by the legislature of the host nation cannot properly undermine it. To maintain that they can is to tread dangerously close to legal positivism, the doctrine that all man made law is per se rightful.
13. An earlier version of this section appeared in Callahan (2002b).
14. It also leads in another direction that neither Hoppe nor any libertarian could welcome: preemptive war, as in the U.S. attack on Iraq of 2003. For more on this see antiwar.com, lewrockwell.com, two libertarian opponents of military adventurism.
15. They are net tax consumers in Calhounian language.
16. There are also public lands, and territory never homesteaded by anyone, mentioned above.
17. An exception might be gated communities, where the contract would be "one way." That is, all owners of property in the gated community would be allowed out onto all roads and highways, but the reverse would not be true.
18. We owe this point to Michael Edelstein.
19. Although Hoppe does not explicitly discuss this reductio, we have no doubt he would embrace it as logically consistent with his overall view. That is, for him, this is no criticism at all, but merely a logical implication of his thesis. However, this depiction of traffic immobility within a country may not be acceptable to all (libertarian) opponents of open immigration.
20. Hoppe (1989, pp. 139ff; 1993, pp. 188ff, pp. 199ff; 206f). See also Hoppe and Block (2003).
21. In contrast, the Russians, presumably, engaged in violence vis-à-vis the Latvians and Estonians. If so, they would be booted out of these two countries under a libertarian regime.
22. However, there is a role that a privatized road industry can play in ameliorating this scare scenario of millions of Indians in France. As more people patronize the roadways, the price of so doing will tend to rise, which will reduce that tendency. Also, likely, many of those already located in France will be the owners of its highways. They may legitimately, under the libertarian code, choose to discriminate against foreigners. This phenomenon will likely play a far greater role in densely settled places such as France or Switzerland, and less so in relatively empty countries such as Canada, Russia, Australia, etc.
23. For a critique of putting government on a "business basis," see Rothbard (1956, 1970).
24. This is private e-mail correspondence to the mises@yahoo.com list; dated 1/27/02.

References

- Block, Walter. 1969. "Against the Voluntary Military." *The Libertarian Forum* (August 15): p. 4.
- Block, Walter. 1979. "Free Market Transportation: Denationalizing the Roads." *Journal of Libertarian Studies: An Interdisciplinary Review* 3, 2: 209-238.
- Block, Walter. 1998. "A Libertarian Case for Free Immigration." *Journal of Libertarian Studies: An Interdisciplinary Review* 13, 2 (Summer 1998): 167-186.
- Block, Walter. 2003. "Libertarianism vs Objectivism; A Response to Peter Schwartz." *Reason Papers*.
- Block, Walter and Roy Whitehead, "Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy," unpublished ms.
- Boettke, Peter J. "The Austrian Critique and the Demise of Socialism: The Soviet Case," in *Austrian Economics: Perspectives on the Past and Prospects for the Future*. Vol. 17, Richard M. Ebeling, ed., Hillsdale, MI: Hillsdale College Press, 1991, pp. 181-232.
- Brimelow, Peter. 1995. *Alien Nation: Common Sense about America's Immigration Disaster*. New York: Random House.
- Buchanan, James M. 1969. *Cost and Choice: An Inquiry into Economic Theory*, Chicago: Markham.
- Calhoun, John C. 1953. *A Disquisition on Government*, New York: Liberal Arts Press.
- Callahan, Gene. 2002. "They're Coming to America: What Should We Do About It?" *Anti-State.com* (March): <http://www.anti-state.com/callahan/callahan5.html>.
- Callahan, Gene. 2002. "The Irish Problem." *Anti-State.com*: <http://www.anti-state.com/callahan/callahan6.html>.
- de Soto, Jesus Huerta. 1998. "A Libertarian Theory of Free Immigration." *The Journal of Libertarian Studies* 13, 2 (Summer 1998): 187-198.
- DiLorenzo, Thomas J. 1990. "The Subjectivist Roots of James Buchanan's Economics," *The Review of Austrian Economics*, Vol. 4, 1990, pp. 180-195.
- Gordon, David. 1997. "The Invisible Hoppe." *Mises Review* (Winter): http://www.mises.org/misesreview_detail.asp?control=47&sortorder=issue.
- Gordon, David. 1995. "Come One, Come All?" Rev. of *Alien Nation: Common Sense about America's Immigration Disaster*, by Peter Brimelow. *Mises Review* (Summer).
- Hoppe, Hans-Hermann. 1989. *A Theory of Socialism and Capitalism: Economics, Politics and Ethics*. Boston: Kluwer, 1989.
- Hoppe, Hans-Hermann. 1993. *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*. Boston: Kluwer, 1993.
- Hoppe, Hans-Hermann. 1995. "Free Immigration or Forced Integration?" *Chronicles* (July): 25-27.
- Hoppe, Hans-Hermann. 1996. "Socialism: A Property or Knowledge Problem?" *Review of Austrian Economics* 9, 1: 147-154.
- Hoppe, Hans-Hermann. 1998. "The Case for Free Trade and Restricted Immigration." *The Journal of Libertarian Studies* 13, 2 (Summer 1998): 221-233.
- Hoppe, Hans-Hermann. 1999. "On Free Immigration and Forced Integration." [LewRockwell.com](http://www.lewrockwell.com/orig/hermann-hoppe1.html). <http://www.lewrockwell.com/orig/hermann-hoppe1.html>.
- Hoppe, Hans-Hermann. Democracy—The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order. Rutgers University, N.J.: Transaction Publishers, 2001.
- Hoppe, Hans-Hermann. 2002. E-mail to Walter Block. March 19.
- Hoppe, Hans-Hermann and Walter Block. 2003. "Property and Exploitation," *International Journal of Value-Based Management*, 15, 3.
- Hospers, John. 1998. "A Libertarian Argument Against Open Borders." *The Journal of Libertarian Studies* 13, 2 (Summer): 153-166.
- Ikeda, Sanford. 1997. *Dynamics of the Mixed Economy: Toward a Theory of Interventionism*. London: Routledge, 1997.
- McCallum, Spenser H. 1970. *The Art of Community*, Menlo Park, CA: Institute for Humane Studies, 1970.
- Machan, Tibor. 1998. "Immigration into a Free Society," *The Journal of Libertarian Studies* 13, 2: 199-204.
- Mises, Ludwig von. [1949] 1998. *Human Action: A Treatise on Economics*. Scholar's Edition. Auburn, Ala.: Ludwig von Mises Institute.

- Mises, Ludwig von. 1981. *Socialism*, Indianapolis: Liberty Press / Liberty Classics.
- North, Gary. 1998. "The Sanctuary Society and its Enemies," *The Journal of Libertarian Studies* 13, 2 (Summer): 205-220.
- Raico, Ralph. 1996. "Mises on Fascism, Democracy, and Other Questions." *Journal of Libertarian Studies* 12, 1 (Spring): 1-27 (see especially 24-25).
- Rand, Ayn. 1957. *Atlas Shrugged*, New York, Random House.
- Rand, Ayn. 1967. "The Cashing-In: The Student Rebellion." *Capitalism: The Unknown Ideal*. New York: Signet Books, 1967: 236-269.
- Rothbard, Murray, N. 1956. "Government in Business." *Freeman* (September): 39-41. Reprinted in *Essays on Liberty IV*. New York: Foundation for Economic Education, 1958: 183-187.
- Rothbard, Murray N. 1970. *Power and Market: Government and the Economy*, Menlo Park Cal.: Institute for Humane Studies.
- Rothbard, Murray N. 1978. *For a New Liberty*. Macmillan, New York.
- Rothbard, Murray N. 1982. *The Ethics of Liberty*. Atlantic Highlands, N.J.: Humanities Press.
- Rothbard, Murray, N. 1994. "Nations by Consent: Decomposing the Nation-State." *Journal of Libertarian Studies* 11, 1.
- Simon, Julian. 1998. "Are There Grounds for Limiting Immigration?" *The Journal of Libertarian Studies* 13, 2 (Summer): 137-152.

October-December 2003

Volume 5, Number 1

HUMAN RIGHTS REVIEW

ARTICLES

*Clarity and Confusion in the
Human Rights Debate*

Gary B. Herbert

*Terrorism, the School of the
Americas, and the Military
in Latin America*

Gregory Weeks

*Public Health, Human Rights,
and the Beneficence of States*

Chris Beyrer

*The "Happy Convention" – Is
Our New Unwritten Constitution
Better Than Our Old Written One?*

William J. Quirk

Is There a Right to Immigration?

Walter Block

Gene Callahan

Suicide Bombing

Howard Kainz

Cobden on Freedom, Peace, and Trade

Thomas E. Woods, Jr.

REVIEW ESSAYS

*Annihilating Difference – The
Anthropology of Genocide*

Grant Niemann

*Human Rights between Critique
and Moralization*

Christopher Pollmann



Transaction Periodicals Consortium
Rutgers
The State University of New Jersey

HUMAN RIGHTS REVIEW

EDITOR

Gary B. Herbert, Loyola University, New Orleans

REVIEW EDITOR

David Jacobson, Arizona State University

EDITORIAL BOARD

Akbar Ahmed, Cambridge University

George Andreopoulos, John Jay College of Criminal Justice

George Annas, Boston University School of Public Health

Roger Clark, Rutgers University

Hamid Dabashi, Columbia University

David Eisenman, University of California, Los Angeles

Jean Bethke Elshtain, University of Chicago Divinity School

Richard Hovannisian, University of California, Los Angeles

Ben Kiernan, Yale University

Steven Lukes, New York University

Irving Louis Horowitz, Rutgers University

Edward Peters, University of Pennsylvania

Darius Rejali, Reed College

John Rodden, University of Texas, Austin

R.J. Rummel, University of Hawaii, Manoa

Jaume Saura, Universidad de Barcelona

Adam Seligman, Boston University

Philip Selznick, University of California, Berkeley

Gideon Sjoberg, University of Texas, Austin

Vladimir Tismaneanu, University of Maryland

Mario Vargas Llosa, Lima, Peru

PUBLICATION STAFF

TRANSACTION PERIODICALS CONSORTIUM

Mary E. Curtis, Publisher

Andrew McIntosh, Managing Editor

Angel L. Soto, Associate Editor

Nancy Conine, Fulfillment

Nick Zoppi, Production Manager

Deborah A. Berger, Production Typesetter

Jeremy Réch, Graphic Designer

Human Rights Review (ISSN 1524-8879) is published quarterly by Transaction Periodicals Consortium Rutgers University, 35 Berrue Circle, Piscataway, NJ 08854-8042. Copyright ©2004 Transaction Publishers. Printed in U.S.A.

Manuscripts: *Human Rights Review* welcomes submissions on all areas of human rights. Guidelines for contributors and more information about *HRR* can be found on the web at www.transactionpub.com. Submissions may be made electronically to gberbert@loyno.edu. Please include in the subject line the following message: "Submission to HRR." *Human Rights Review* is a refereed journal.

Subscriptions: Individuals: \$84/1 year, \$152/2 years, \$204/3 years; institutions: \$250/1 year, \$480/2 years, \$660/3 years. For all subscriptions outside the USA, add \$40 per year air expedited delivery. Current and back issues: individuals \$21; institutions \$63 (postage additional). Send subscription orders, single/back-copy orders, and change-of-address requests (send old label or address along with your new address) to: *Human Rights Review*, Transaction Periodicals Consortium, Dept. 8010, Rutgers University, 35 Berrue Circle, Piscataway, NJ 08854-8042.

Business and Advertising Information: Send business communications, permissions, and advertising rate requests to the above Transaction Periodicals Consortium address (telephone: 732-445-2280); all advertising copy is subject to publisher's approval.

PHOTOCOPIER USERS/LIBRARIANS: The appearance of the fee listed below indicates the copyright owner's consent that copies of articles may be made for personal use or internal use, or for personal or internal use of specific clients. This consent is given on the condition, however, that the copier pay the per copy base fee of \$6.00 per article or feature plus 15¢ per page through the Copyright Clearance Center, Inc., 222 Rosewood Drive, Suite 910, Danvers, MA 01923, for copying beyond that permitted by Sections 107 and 108 of the U.S. Copyright Law. This consent does not extend to other kinds of copying, such as copying for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale. 07387997/95 \$6.00 + .15.

Microform editions are available from University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106-1346.

HUMAN RIGHTS REVIEW

Volume 5, Number 1

October-December 2003

CONTENTS

<i>Clarity and Confusion in the Human Rights Debate: An Editorial</i> by Gary B. Herbert	5
<i>Fighting the Enemy Within: Terrorism, the School of the Americas, and the Military in Latin America</i> by Gregory Weeks	12
<i>Public Health, Human Rights, and the Beneficence of States</i> by Chris Beyrer	28
<i>The "Happy Convention"—Is Our New Unwritten Constitution Better Than Our Old Written One?</i> by William J. Quirk	34
<i>Is There a Right to Immigration?: A Libertarian Perspective</i> by Walter Block and Gene Callahan	46
<i>Suicide Bombing: A Challenge to Just-War Theory and Natural Law</i> by Howard Kainz	72
<i>Cobden on Freedom, Peace, and Trade</i> by Thomas E. Woods, Jr.	77
REVIEW ESSAYS	
<i>Annihilating Difference—The Anthropology of Genocide</i> by Grant Niemann	91
<i>Human Rights between Critique and Moralization</i> by Christopher Pollmann	99