

## IMMIGRANTS: INTRUDERS OR GUESTS? A REPLY TO HOPPE AND KINSELLA

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IN A FREE SOCIETY, goods, capital, and people would enjoy unrestricted freedom of movement based on voluntary relationships and the respect for private property. There would be no borders beyond those established by individuals on their particular domain. This poses no problems or questions for libertarians. The problems and disagreements, however, arise with the welfare state.

Some libertarian authors hold that as long as the welfare state exists, thus being the *de facto* owner of taxpayers' public property, it must act as caretaker of this property and establish a severely restricted migratory policy. Hans-Hermann Hoppe, the leading defender of this position, has argued that proper immigration policy must be even more restrictive than the one implemented by the Swiss government, which makes it almost impossible for non-European nationals to immigrate into the country and gives up to six months of EU nationals to find a job or leave the country (Swiss Federal Office for Migration 2008).

Judged by the immigration policy required to protect one's own citizens from foreign invasion and forced integration . . . the Swiss government does a significantly better job than the United States. . . . These differences notwithstanding, the governments of both Switzerland and the U.S. pursue immigration policies that must be deemed far too permissive. (Hoppe 1998, p. 233)

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In our view, the U.S. immigration policies are far too restrictive. In this article, we restate the open borders case, arguing that immigrants do not necessarily require labor and housing contracts *before* moving to consider them invited. Also, the state cannot legitimately use force against immigrants crossing public property since it must be proven that they have committed aggression by at least identifying their *victims*, which is ultimately an intractable problem in regard to public spaces.

#### FORCED INTEGRATION, INVITATION IN ADVANCE AND CULTURAL HOMOGENEITY

Hoppe points out that the state must act as a gatekeeper, barring the entrance to the territory of those immigrants who have not been contractually invited *in advance*. He argues that the population prefers to live in culturally homogeneous environments, and that since the state has usurped the decision-making power from the individual regarding the access to territory, opening the borders amounts to foreign invasion and forced integration (Hoppe 1998).<sup>1</sup> In this context, Hoppe equates the buying and selling of goods to the movement of people:

There is no analogy between free trade and free immigration, and restricted trade and restricted immigration. The phenomena of trade and immigration are different in a fundamental respect, and the meaning of “free” and “restricted” in conjunction with both terms is categorically different. People can move and migrate; goods and services, of themselves, cannot.

Put differently, while someone can migrate from one place to another without anyone else wanting him to do so, goods and services cannot be shipped from place to place unless both sender and receiver

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<sup>1</sup>See also Hoppe 2002. For other libertarian or conservative-libertarian views on immigration favorable to Hoppe’s restrictionist thesis see Becker 2005, Brimelow 1996, Cox 2006, Epstein 2004, Milton Friedman 1999, Gordon 1997, Hospers 1998, Mercer 2002, North 1998, Paul 2005, Rosen 2005, Rothbard 1994, Salerno 1996, Sowell 2006, and Williams 2006. Kinsella’s arguments (2005, 2006) are discussed below. For authors more akin to the kind of open borders approach we are proposing here see Block 1998, 2002 and forthcoming, Block and Callahan 2003, Boudreaux 1997, Caplan 1996, Chacksfield 1991, De Havilland 2002, Ebeling 1995, Hornberger 1991, Fields 2006, Friedman (David) 2006, Gregory 2006, Gregory and Block 2007, Huerta de Soto 1998, Long 2007, Machan 1998, McMaken 2006, Michel 2007, Mises 2000, Murphy 2006, Niskanen 2006, Reisman 1998, Richman 1995, Rothbard 2004, Schoolland 2002, and Tabarrok 2000. Rothbard appears in both groups because his position on immigration evolved over time, from his early open borders stance to a restrictionist Hoppean-like view in his later years.

agree. Trivial as this distinction may appear, it has momentous consequences. For free in conjunction with trade then means trade by invitation of private households and firms only; and restricted trade does not mean protection of households and firms from uninvited goods or services, but invasion and abrogation of the right of private households and firms to extend or deny invitations to their own property. In contrast, free in conjunction with immigration does not mean immigration by invitation of individual households and firms, but unwanted invasion or forced integration; and restricted immigration actually means, or at least can mean, the protection of private households and firms from unwanted invasion and forced integration. Hence, in advocating free trade and restricted immigration, one follows the same principle: requiring an invitation for people as for goods and services.

[P]opulation movements, unlike product shipments, are not per se mutually beneficial events because they are not always—necessarily and invariably—the result of an agreement between a specific receiver and sender. There can be shipments (immigrants) without willing domestic recipients. In this case, immigrants are foreign invaders, and immigration represents an act of invasion. Surely, a government’s basic protective function includes the prevention of foreign invasions and the expulsion of foreign invaders. Just as surely then, in order to do so and subject immigrants to the same requirement as imports (of having been invited by domestic residents), this government cannot rightfully allow the kind of free immigration advocated by most free traders. (Hoppe 1998, pp. 226-27)

He then concludes:

At all ports of entry and along its borders, the government, as trustee of its citizens, must check all newly arriving persons for an entrance ticket—a valid invitation by a domestic property owner—and every one not in possession of such a ticket will have to be expelled at his own expense. (p. 231)

There are several problems with this reasoning. First, “free in conjunction with trade” and “free in conjunction with immigration” have different meanings only because Hoppe wants them to have different meanings, not because its advocates have attributed different meanings to them. Proponents of free immigration are not arguing that immigrants have a right to invade the private property of others without their permission. Rather, they are simply asserting that an individual has the right to immigrate insofar as any native owner desires to peacefully establish a relationship with him (as employer or landlord, for example). That is the meaning of free immigration according to its proponents. Likewise, when libertarians talk about freedom of speech, we do not mean that people have a right to say whatever they want on someone else’s property. It would be deceitful to accuse us of championing

trespassing on private property since it is obvious that our meaning includes the assumption that property rights must be respected. As Donald Boudreaux points out in his critique of Hoppe:

Labeling open immigration as “forced integration” is disingenuous. Such a practice is identical to labeling the First Amendment’s protection of free speech as “forced listening.” But keeping government from regulating speech is not at all the same thing as forcing people to listen. Likewise, allowing people to immigrate to America is not the same thing as forcing Americans to associate against their wills with immigrants. Under a regime of open immigration, I need not hire or dine with anyone whom I don’t wish to hire or dine with. Indeed, whenever government restricts immigration it coercively prevents me, as an American, from hiring or dining with whoever I choose to hire or dine with. (Boudreaux 1997)

Second, why should a contract *in advance* be mandatory to enter another country, that is, to cross a line that the state has arbitrarily established? Why is it illegitimate to first enter another country and *then* obtain a contract? When we move from one city to another within the artificial borders of the state, we are not forced to do so with a contract at hand. When we leave our property, our homes, we do not go around with a contract handy. The fact that we do not have a “previous invitation” does not mean that we are not invited. When we go to a restaurant, a supermarket, a shopping mall, a hotel, or an open party, we usually do not go there with a previous and personal invitation. While in some places the invitation is implicit, in some others it is not, and we simply have to knock on the door and ask if we can come in. Hoppe argues that the government must check all newcomers for an entrance ticket at the border, an invitation by a domestic property owner. Yet, we do not have a “ticket” or a “personal invitation” to go to a restaurant or supermarket, for example, but nonetheless it is legitimate for us to enter because we assume the owner wants us to be there. Analogously, immigrants do not have a ticket to cross the border, but we can fairly assume that many businessmen, landlords and vendors (that is, property owners) want them as employees, tenants or consumers.

What, then, is the problem? Why can’t immigrants knock on doors and ask just as natives do when they move to another town to look for employment and housing? Why must they also have an invitation even

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<sup>2</sup>In fact, one of the authors of this paper has recently moved from Barcelona to London without any previous invitation from any employer or landlord *and* without trespassing on any private property. Within the European Union there

before knocking on doors? Immigrants, so long as they find a job and a place to live after their arrival, are being invited by those who hire them and offer them housing. It is irrelevant and unnecessary to obtain a contract before crossing a state's artificial borders.<sup>2</sup>

Furthermore, if immigrants are not allowed to enter the country unless they have been invited in advance, then neither could many tourists that arrive without a previous invitation. If it is enough for tourists to come with nothing more than a hotel room booked for a few days and sometimes with no booking at all, then it should be fine for immigrants to come without employment or housing and with a hotel room booked for a few nights (or with no booking at all, finding accommodation after their arrival). In fact, the distinction between a tourist and an immigrant is quite subtle. Someone can come as a tourist (with the intention to leave in two weeks) and become an immigrant once there (changing his mind and wanting to stay for a year) and *vice versa*. It is not clear how the state can distinguish, *a priori*, between tourists and immigrants. In a sense, the difference between tourists and immigrants is a matter of time (of how much time a person remains or wants to remain in a country), but aggression is not a matter of time. If a tourist is not aggressing against anybody by entering the country for a few weeks without a previous personal invitation, then neither is an immigrant committing aggression by staying there for two years.

As a side issue, we are not convinced by Hoppe's assumption that people generally dislike diversity and prefer to live in homogenous communities and that the mixing of races and cultures is more a feature of the welfare state than that of a free society. Says Hoppe:

Based on the insight that “likes” associate with other likes and live spatially separated from “unlikes,” the following picture emerges: People of one ethno-culture tend to live in close proximity to one another and spatially separated and distant from people of another ethno-culture. Whites live among Whites and separate from Asians and Blacks. Italian speakers live among other Italians and separate from English speakers. Christians live among other Christians and separate from

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is freedom of movement; people can move freely in the same way people in the U.S. can move between different states. According to Hoppe, he had no right to enter the U.K. since he was not invited in advance. The government would have had to check him for an invitation from a domestic property owner, and lacking this invitation the state would have had to expel him. But he went to a private hostel, like any tourist, the first three nights, rented a flat from a landlord and found a job, *in situ*, in the private sector. Has he aggressed against anyone? Who are his victims? He is already paying taxes, so he is not even using public roads or parks at the expense of other taxpayers. It would have been impossible for him to legally enter the U.S. in the same way.

Muslims. Catholics live among Catholics and separate from Protestants, etc. Naturally, some “overlap” and “mixing” of different ethno-cultures in various “border territories” exists. Moreover, as centers of interregional trade, cities naturally display a higher degree of ethno-cultural heterogeneity. This notwithstanding, however, neighborhoods and communities are internally homogeneous (uni-cultural). In fact, even in border territories and cities the same spatial association and separation of likes and unlikes is found. Nothing like a society where members of different ethno-cultures live as neighbors or in close physical proximity to each other (as propagated by some American multiculturalists) emerges. Rather, the emerging multiculturalism is one in which many distinctly different ethno-cultures coexist in physical-spatial separation and distant from one another, and trade with each other from afar. (Hoppe 2002, p. 77)

We tend to agree with Perry de Havilland’s thinking that diversity and cosmopolitanism is the likely result of extended trade and globalization. So far, globalization has not brought us more homogenous societies. Quite the contrary; it is reasonable to think that as economic interaction and globalization extend, people from different cultures get closer, influence each other and become friendlier. According to de Havilland:

Hoppe takes an extremely non-Anglosphere, quintessentially German view of the nature of civil society when viewed separately from the state: at its core lies a blood and soil *volk*, racially, genetically as well as culturally based and therefore leading to self-reinforcing communities of “like cultures.” Thus he takes the view that were it not for the imposed integration of the state, whilst people may wish to trade with anyone, they would inevitably not freely wish to live and work in close physical proximity with different cultures and races and lifestyles. Different races, homosexuals, libertines, people who take siestas in the afternoon etc. etc. (i.e. anyone who was not a member of the *Volk* either racially or culturally) would be either excluded from the community of free property owning citizens altogether, or at the very least banished to enforced ghettos like medieval Jews. I do not feel I am overstating Hoppe’s position (see chapter 9, “On Cooperation, Tribe, City, and State” in *Democracy—The God That Failed*, 2001, Transaction Books).

Yet I look around at London and see a very different world to that seen by Hoppe. It is abundantly clear that when the state does not enforce multiculturalism, social values will naturally evolve not to Hoppe’s hypothetical future libertarian neo-tribalism but rather to cosmopolitanism, right here and right now. The only *Volk* of the future is the Volkswagen. When people of different cultures and races actually interact economically, the inevitable consequence is familiarity, cultural influence and ultimately miscegenation, not a regression to atavistic tribalism. One only has to walk down the streets of

London to see the truth of that. Sure, areas of minority racial and to a lesser extent cultural concentration can be found in London, yet one does not have to look far to see an expanding and entirely British black and Asian population moving into the mainstream of cultural and economic life of Britain . . . and not just flipping burgers and digging up roads. In racial flash points, like Oldham, it is the racially segregated low income supporters of socialist largess who exchange bricks over which community is getting the bigger handout. In less separated and less state dependent communities like Clapham in London, for instance, economics unmediated by the state leads to a very different and altogether better result. (de Havilland 2002)

Toronto, Canada provides another example of a peaceful, integrated and cosmopolitan society, despite being one of the most ethnically-diverse cities in the world.

Of its 2.5 million residents, nearly half (49%) were born outside Canada, in over 200 different countries. . . . Some 43 per cent of Toronto residents are from racial minorities. Over a hundred languages and dialects are regularly spoken in Canada's biggest city, while over ninety religious groups congregate there. . . . Yet visitors to Toronto expecting to find a city in the throes of ethnic conflict and cultural meltdown will be sorely disappointed. It is sedate rather than edgy, integrated not segregated, peaceful and prosperous not poor and violent. Hate crimes are rare. Deprived ethnic ghettos such as those that scar American inner cities and the Parisian suburbs are virtually non-existent. . . . "Ghettos? I don't think that is happening here," says Jehad Aliweiwi, the Palestinian-born director of the Thorncliffe Neighborhood Office, which provides social services to the local community. . . . "There are no neighbourhoods in Toronto like the ghettos in Leeds or Paris. Even middle-class suburbs are racially diverse. Canadians are comfortable with diversity. The have come to terms with it. There is an intolerance of segregation and closed doors. (Legrain 2006, pp. 284-85)

It is not obvious to us that a freer society will be less diverse and that homogenously-gated communities will arise all around. There will surely be some homogeneous clustering, but overall, a free society is likely to be a more diverse place.<sup>3</sup>

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<sup>3</sup>Also, since huge disparities exist between developed and developing countries in terms of salaries and capitalization of production structures, there is plenty of room for migration from one place to another so as to use the labor factor in a more efficient way. This reinforces our opinion that a free society without immigration restrictions would be a more diverse place. More on this below.

“AGGRESSION” TO NON-IDENTIFIABLE VICTIMS  
AND SECOND-BEST RULES

Stephan Kinsella has refined Hoppe’s argument (Kinsella 2005). He claims that public property (seaports, airports, roads, public bus stations, railways, etc.) belongs to the native population, that is, to the contributors who financed it through taxation. Therefore, the state must act as if it were the administrator or manager of the property of the contributors by setting usage rules according to their preferences. By doing that, theft is not prevented, but at least restitution is maximized. Since the majority of the contributors are opposed to immigration, Kinsella holds that the state is allowed to limit immigrants’ access to public property. Thus, restricting immigration may be justified depending on taxpayers’ preferences.

Consider this case. . . . Our City has a public pool a few blocks from my house. As a resident of the City (and hence a taxpayer) I am entitled to use the pool for a very small fee—say, \$2 per visit. Nonresidents—outsiders—may use the pool too, but they pay three times as much: \$6 per visit.

Now let’s say that as a libertarian I would rather the pool be privatized, or sold and the proceeds returned to those who have been victimized to found or maintain it—the taxpayers, or residents, of this City. This would be a type of restitution for the crime committed against them. Alternatively, if the land for the pool had been expropriated, the owner ought to be paid restitution. Etc. The point is that given a government theft, taking, or trespass, it is better, other things being equal, for the victims to receive restitution; and more restitution is better than a smaller, insufficient amount.

But restitution need not be made only in dollars. It can be made by providing other value or benefits to the victims. One such benefit to me is the ability to use a nice, uncrowded, local pool for a cheap price. It is arguably better, even more libertarian, for the City to discriminate against outsiders. If it did not, the pool would be overrun by outsiders seeking cheap swimming. It would be virtually worthless to me and most of my fellow residents of the City if there were no rules on entry, or no discrimination against outsiders.

This example illustrates the general point that when the state assumes ownership of a resource, then it has to establish some rules as to the resource’s usage. This is what it means to own something: to be able to determine how the thing is used. Coming back to immigration, let’s take the case of the federal government as owner-caretaker of an extensive network of public roads and other facilities. If the feds adopted a rule that only citizens and certain invited outsiders are permitted to use these resources, this would in effect radically restrict immigration. Even if private property owners were not prohibited from inviting whomever they wish onto their own property, the guest would



have a hard time getting there, or leaving, without using, say, the public roads. So merely prohibiting non-citizens from using public property would be one means of establishing *de facto* immigration restrictions. (Kinsella 2005)

In another article, Kinsella summarizes his position more succinctly:

My basic idea is that the citizens are the true owners of public property, and should have some say-so over how the state uses that property. Their interests and preferences should be taken into account. This will result in a greater degree of restitution, and thus an overall smaller degree of net harm, to them. Now obviously all their preferences cannot be simultaneously satisfied, but it seems reasonable, other things being equal, for the state to try to use the property in reasonable ways (like a private owner would) so as to result in partial restitution being made the citizens, or as many of them as possible. Obviously a greater degree of restitution (a better use of the property) made to a larger number of citizens is “better” (even from a libertarian standpoint) than a smaller degree of restitution (a more wasteful use of the property) made to fewer citizens. This does not imply there is an “optimal” usage of state property (other than to privatize it) but it does imply some uses are clearly worse than others. And it also implies that not every rule that ends up reducing usage by outsiders (immigrants) is necessary or inherently unlibertarian. (Kinsella 2006)

This reasoning has several problems, the most important being that this sort of restitution maximization hides initiation of force and violates the non-aggression principle. The use of force, as Kinsella points out, is only legitimate as a response to aggression (Kinsella 1996). So the relevant question is this: is the immigrant who enters or crosses into public property aggressing against anyone? Is he violating anyone’s rights? To answer these questions coherently we must identify two things: first, we would have to know the legitimate owner of the property; second, if the owner consents to that border crossing. We are, however, unable to know either of those things. On the one hand, it is impossible to clearly identify the owner or owners of a particular piece of public property. At any rate, it would belong only to the net contributors (or to the expropriated owners), but it is difficult to know exactly how much of a contributor one is given the disparate amount of taxes and subsidies that everyone pays and receives. The complications, however, do not end here. Why must we assume that every net taxpayer should have an active part over all the management of public areas of a country? There are many people who would not want, for instance, to get involved in rule-making for faraway highways that he will never use, and would, on the other hand, like to have, if anything, a greater involvement only on those properties that he uses the most (around his home,

to get to work, etc.). Since when are we owners of things that we do not want or that we do not consider ours? Also, who knows exactly what every dollar from every taxpayer has funded? The taxpayer is not a shareholder. Blurring the distinction between shareholder and taxpayer understates the real problem with state's interference and the distortions it introduces.

Thus far, we have only addressed the problem of identifying the legitimate owners of public property. What about their consent? Where has it been expressed, and who has asked them what they would like to do with their property? Surveys say that the majority does not want immigrants, but this says very little about the *specific usage* of roads, seaports and airports (Polling Report 2006). Many people do not want immigrants in their neighborhood, on their apartment complex or in their town, but do they mind if there are immigrants driving around in cars or buses or trains? What most do not want is to have them as neighbors or as co-workers, but that is a decision that does not belong to the population as a whole but rather to each particular owner, employer or landlord. Taxpayers, therefore, are actually expressing preferences about what other natives (employers, landlords) can do in their properties, even if they do not have any right to decide about it, but are not vocal regarding the specific usage of roads, seaports or airports, even if they are supposed to have a right to decide about it.

We can conclude these remarks by saying that we do not know exactly who are the legitimate owners of public property and that, similarly, we also do not know if they have consented to immigrant crossings, a moot point since we do not know who the real owners are. Available to us are only conjectures and vague estimates; we need more than that to use legitimate force against individuals crossing a particular area. If we are unable to identify the victims, how then can we claim that immigrants are committing aggression whenever they cross public property? Immigration, as long as victims cannot be properly identified, is a victimless crime. Thus, using violence to restrict immigration is initiation of force.

A related anti-open borders argument runs as follows: an immigrant's exclusion is not aggression since nothing establishes that foreigners have a better claim to access public land than the state has a right to exclude them. Jones may have forged your uncle's will and may be living in a house that you should have inherited. But this does not give Peter, a third party, any right to live in that house. Jones is the one aggressed when he cannot move into the house, but not Peter or any of the 6 billion people unable to establish their own occupancy rights.

This reasoning, nevertheless, is similarly flawed. Jones can only exclude other individuals from his *legitimate* property. If he does not

have a legitimate title, he cannot use force against newcomers. If Peter occupies one room of the house, Jones has no right to evict him by force since he is not the legitimate owner. It is not that Peter has a right to stay there because it is “his property.” Rather, he has a right to stay there because it is not Jones’ property and he has no right to evict him by force. Maybe Peter, the newcomer, has no right to exclude/use force against Jones, because it is not his property either, but to occupy part of the house he does not need to use force. This becomes still more obvious in the case of immigration, where the state uses violence against immigrants to keep them out of public property but the immigrants do not need to use any violence against other people at all to enter public property and stay there. In other words, neither the state nor the immigrants can use violence against other people in public land, since they are not the legitimate owners. But the only one using violence against other people is the state, excluding immigrants by force.

The above reasoning seems to imply that we have to remain neutral, *qua* libertarians, when two people are fighting in public land, because “nothing establishes that foreigners have a better claim to access public land than the state has a right to exclude them.” By the same token, nothing establishes that the state has a better claim. We cannot pick sides. But in any given situation where two people are using violence against each other, one of them must have necessarily *initiated* force against the other. Force is either aggressive or defensive and it is not possible for both individuals to use aggressive force and defensive force at the same time: if one of them is using defensive force, this means he is responding to an aggressive act; if one of them is committing aggression this means that the other one, when reacting, is not aggressing but defending himself. Let us consider the following scenario. An immigrant has just crossed the border and, while remaining on public land, a border policeman catches him and points a gun at him. Can we pick sides as libertarians or should we remain neutral? Clearly the policeman is using violence (the threat of violence), but this by itself does not mean he is initiating force. The policeman would have a right to threaten the immigrant, or even shoot him, only if the immigrant had initiated force first. But the immigrant is just staying in public land—this is the action we have to evaluate. Since the state is not the rightful owner of this land (and it is not clear who the real owner is or the nature of his consent, as we have elaborated before), the immigrant is not aggressing against the state (or anyone else) so the policeman’s threat is not a response to an aggression, but instead the initiation of force.

According to Kinsella, our position implies that the state cannot impose any usage rule in public property (e.g., the state cannot exclude

anybody from public property) and that there are no second-best rules (Kinsella 2006). In a way, we agree. Does this mean that as libertarians we should be indifferent regarding where our taxes go? No, and here is where we must introduce a distinction. It could very well be that from a libertarian point of view we can defend second-best rules in the sense that, if our money is taken, at least it should be used in ways that best satisfy us. In this case, Kinsella's restitution model may be valid. For example, it would be better for our taxes to be used to pick up trash rather than to increase the amount of trash. It is better to install a street light in a dangerous intersection than on a long stretch of safe highway. It is better for firefighters to put out fires than to be paid to sleep all day. In the same vein, if the state monopolizes healthcare, then it is better for it to spend taxes on actual healthcare rather than sorcery. If the state monopolizes education, then we may well prefer that the state spend our taxes teaching children grammar rather than cooking lessons.

In all of these cases, the state uses money illegitimately because its collection is aggressive, but the usage that we think is reasonable *does not violate any additional rights beyond the initial aggression at the time of taxation*. At most, it would leave some (those taxpayers who would have preferred another usage) without restitution, but at least they are not plundered any more, nor are they physically threatened.

When second-best rules over the use of public property are enforced, the state is either using aggressive force or defensive force. As we have seen, since the state is not the rightful owner of public land (and the legitimate owners and their consent are not properly identified), entering or using public land is not initiation of force. Therefore, the enforcement of rules against particular behaviors or the exclusion of particular individuals is not retaliatory force but the initiation of force. When the state is *spending* taxpayers's money (e.g., to build a hospital or a highway) the question, "is the state using defensive or aggressive force?" cannot arise since there is no use of force involved beyond the original aggression at the time of taxation. Once taxation has taken place, there is no more violence involved and thus the only question that can be asked is how to better spend taxpayers's money so as to not victimize the victims further. But when we are dealing with the *enforcement* of rules on public property, the question, "is the state using defensive or aggressive force?" does indeed arise. It is not a mere "restitution-maximization" problem any more. If we conclude, as we do here, that the state is using aggressive force when it enforces rules or excludes people from public property, then it makes no sense, from a libertarian point of view, to talk about which would be the rules that will better satisfy taxpayers.

An additional point should be made regarding enforcement of migratory policy. Current enforcement of restrictive rules over the border is not just “harmlessly” preventing people from entering the country at gunpoint, as many people tend to think, but is actually killing people. This is not accomplished directly by shooting immigrants but by forcing them to take different and more dangerous routes and pushing some of them to cross the border at the cost of their lives.

Quite deliberately, Operation Hold the Line [in El Paso] drives migrants away from the safer crossing points in metropolitan areas, in effect forcing them to take more dangerous routes through mountain and desert areas, where they risk drowning or freezing to death in winter and dying from thirst or heat exposure in summer. . . . Just as Operation Hold the Line diverts migrants from crossing near El Paso to the New Mexico desert, Operation Gatekeeper redirects them from San Diego, California, to the Arizona desert. Many migrants who attempt to walk for five days in Arizona’s baking temperatures die of thirst. . . . According to the Border Patrol, a record 464 people, 260 of them in the Arizona desert alone, perished trying to cross from Mexico into the U.S. in the twelve months to September 2005 (up from 330 the previous year). More than ten times as many migrants are recorded as having died on the U.S. border with Mexico than were killed trying to cross the Berlin Wall during its twenty-eight-year existence—and many people think true number of deaths on the U.S.-Mexican border is much higher than the official figures. (Legrain 2006, pp. 31–34)

We find a similar pattern in Europe, where immigrants from Africa try to avoid Western authorities by crossing the Mediterranean Sea, and many perish before reaching the coast.

United, a European non-governmental-organization network, has documented over seven thousand deaths caused by Europe’s border policies between 1993 and May 2006. Most of the migrants died trying to cross the Mediterranean from North Africa in rickety boats on the way to Italy, Spain, Greece and, more recently, Malta. . . . The Economist reckons that around two thousand people a year drown in the Mediterranean on their way from Africa to Europe. (Legrain 2006, p. 29)

Kinsella says, “and is it not sensible then to ask, what would [a] private owner do? To determine a better use of public use of property?” (Kinsella 2006). Both Hoppe and Kinsella claim that if seaports, airports and roads were privatized, then there would probably not be much discrimination against people based on their country of origin and entry would be granted to anyone paying the price. This is because their business, unlike the “business” of the state, is to facilitate interregional traffic, not to exclude immigrants.

There will be plenty of movement under this scenario because there are powerful reasons to open access to one's property, but there are also reasons to restrict or close access. Those who are the most inclusive are the owners of roads, railway stations, harbors, and airports, for example. Interregional movement is their business. Accordingly, their admission standards can be expected to be low, typically requiring no more than the payment of a user fee. (Hoppe 2002, p. 78)

[A] private road might not discriminate against outsiders—it might allow immigrants to move on the roads to property of willing participants. But the private road would also charge a fee (which is a way of filtering out some people); and would only take people who had a destination to go to (a willing invitee); and would not be imposing affirmative action and anti-discrimination requirements on citizens, so that its trafficking immigrants would not be a costly action. (Kinsella 2006)

However, how can we claim that the state should act as a caretaker of the property yet at the same time defend that it does what the owners would not do? If in a free society anyone paying the price of a ticket would be granted access, then how can that be reconciled with advocating that the state should discriminate on the basis of the country of origin and grant access to only a select few? Does it not seem that a restrictive migratory policy promotes a result *different* from that which would arise in a free society? In a free society with huge international disparities in terms of capitalization and salaries, movement from one place to another (to work in a more productive and higher-paying industry) would be massive; millions of people would pay the price of a ticket or a toll to go elsewhere. Yet Hoppe argues in favor of a migratory policy even more restrictive than the Swiss one, which is one of the most restrictive in the world.

At any rate, Kinsella's reasoning would only allow restricted access to immigrants to public areas but not the detention or deportation of immigrants who somehow managed to cross those areas and are now occupying private property with permission. Maybe they would have to pay a fine, according to Kinsella's argument, but why should they be deported if they are not using someone else's property without the owner's consent? And once the public property has been crossed, and they are established in a private place, can they not again cross into a public area? Could they do so only when they have paid taxes? If the employer or landlord is a net taxpayer, does it not seem as if they would have already paid *for* the immigrant's usage of streets or parks as would a parent with a newborn child? Furthermore, the relationship of the recently arrived immigrant in a private area is, in connection with the payment of taxes, analogous to that of *any native* who receives from the

state more than he pays. Why should the immigrant be treated any differently? This reveals the double standard implicit in all anti-open borders proposals. Why should we treat an individual who crosses the Rio Grande differently from an individual who crosses the Mississippi, or who goes from Tijuana to Albuquerque or travels from Boston to Philadelphia?

Kinsella's argument poses further problems. It could be argued that the net taxpayers are the real owners of roads, airports and any property that their taxes have funded. But can the same be said of the mountains, deserts, beaches, oceans or rivers, or any place where no tax money has been used? Is there currently a legitimate owner of these public areas? In a hypothetical denationalization process it would make sense to return roads to expropriated owners or net taxpayers who fund them, but why should the ocean or mountains of Montana or the deserts of Nevada or the tundra of Alaska or the Rio Grande be returned to the net taxpayers if those areas did not receive tax money? In the hypothetical case where the state breaks down and all its possessions are privatized, following libertarian principles, would these spaces be *returned* at all? To whom? Or would their homesteading be granted to the first person to occupy/use/emborder them? If the latter is correct, then that necessarily means that currently those areas are not owned; they are, rather, homesteadable. The state clearly is not managing the property of the taxpayers in this case—it is preventing its homesteading. Therefore, even according to Kinsella's argument, it is illegitimate for the state to use force in these homesteadable areas to block immigrants since it unambiguously would be initiation of force. The Federal Government owns 28.8 percent of the land in the United States, which means that roughly one-third of the entire territory of the U.S. is homesteadable by immigrants (Property Rights Alliance 2005).

If we follow Kinsella's arguments fully, then we find that, ultimately, immigrants and native citizens cannot peacefully coexist because for that to occur they must cross into and use public spaces. This means that individuals cannot interact peacefully because of the state's interposition between them. But then, could it be legitimate to restrict free trade in a statist context wherever public property is involved? Let us consider this for a moment: foreign goods move around and cross public property (seaports, roads, airports, railways). If the majority of people were to become opposed to the importation of foreign goods, then should not the entry of these products be rejected based on Kinsella's argument, which adjusts the usage of public property to the desires of the majority of net taxpayers? Those products enter the country through public property; they come in across harbors and travel on highways and public roads. According to Kinsella, U.S. citizen A would not be able to buy a

product from B, a Chinese seller, because the majority of his neighbors do not wish for that exchange to happen. Can protectionism be libertarian (or more libertarian than free trade) in some particular context? If not, then neither can be migratory barriers because they make it impossible for property owners (landlords, employers) to interact freely with foreigners in a context with public spaces.<sup>4</sup>

Moreover, Kinsella's argument can be used to justify mass restrictions upon minorities inside the country whenever the majority is biased against a minority and favors these restrictions. Thus, given that the Nazi state was the *de facto* owner of Germany's streets and most Germans deeply disliked Jews, it can be argued that the Nazi Party could bar Jews from travel on streets or enter airports and harbors (at least tax-consumer Jews). And assuming most Germans wanted Jews to die, the Nazi government could have done it through starvation, restricting the supply of goods to Jews (goods that necessarily cross public spaces) (Caplan 1996). This would have been the second-best rule in Nazi Germany, assuming widespread racism by the native population.

#### ASSESSING THE EVIL AND STRIKING THE ROOT

The existence of anti-discriminatory laws and massive social welfare programs is not a reason to limit immigration but rather to repeal those laws and programs. Nevertheless, this problem is often stated as follows: "Assuming that the welfare state exists, is it not preferable to restrict the influx of immigrants?" It is precisely by taking the state as a given that any possible libertarian analysis becomes impossible. It is without a doubt preferable to some residents that immigration be restricted. Is, however, this preference enough to justify aggression against peaceful individuals?

Assuming the existence of minimum wage laws and regulations, welfare and unemployment benefits are the second-best alternatives

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<sup>4</sup>Gregory and Block make the same argument:

Goods that are imported into America under provisions of free trade are also driven around on roads, and otherwise move through socialized sectors of the economy. Many of the same folks who are forced to fund roads and consider their now-stolen private property to be "invaded" by immigrants, would also consider free-flowing goods from China and Mexico, trucked around on public roads, to be "invasive." . . . If he can object to immigrants using roadways, he is compelled by logical necessity to make the same objection to shipping these imported goods on streets and highways. (Gregory and Block 2007, pp. 29-30)



according to the unemployed. To them, it is preferable to receive public benefits. Is this preference enough to justify aggression against peaceful individuals? No. Libertarians must strike the roots of the problem: labor regulations. In the case of immigration, libertarians must also strike at the roots of the problem, the welfare state and public property, instead of abandoning the libertarian solution by acquiescing in the interventionist *status quo*. Critics could say that this demand is unrealistic—that we should assume the existence of the welfare state and argue for realistic second-best solutions. Anthony Gregory and Walter Block have a very adequate response to this criticism:

The only policy answer from a libertarian perspective is elimination of democracy and of public property. This is unrealistic, say the Hoppeans. But even more so is the collectivist notion of the state keeping out immigrants in any way that emulates the market decisions and choices of the taxpayers. Since it is unrealistic, why even consider asking the government to do so? Between two unrealistic choices, why, on libertarian grounds no less, favor the one that necessitates state action? (Gregory and Block 2007, pp. 30-31)

Other people argue in this manner: “We must stop the entrance of the majority of immigrants because, overall, they are going to plunder more money from the taxpayers.” This is equivalent to saying that we must, at gunpoint if necessary, prevent entrance to a majority of immigrants even though a *fraction* of them will live off the taxpayers. What about immigrants who are not going to live off the taxpayers? Or, similarly, what about natives who are *already* leeching off taxpayers? According to this logic we should deport tax consumers. This suggests that libertarianism cannot defend the prohibition of an action that, *per se*, is not aggressive (immigration). What are aggressive instead are subsidies, welfare and taxes, and these are what must be condemned.

A workable solution that does not require abolishing of the welfare state is to deny immigrants *all* social benefits such as unemployment compensation payments, food stamps, Medicare, Medicaid and government schooling (Huerta de Soto 1998; David Friedman 1989, 2006). This would be discriminatory, and immigrant taxpayers could fairly complain that natives would benefit at their expenses. However, it is better to unequally reduce redistribution and, thus, taxes than to increase taxes equally for all. To some extent this proposal has already been put into practice in Western countries so it is not unthinkable to fully implement it.<sup>5</sup>

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<sup>5</sup>We recognize that a full-fledged “two-tier” welfare system nowadays could be politically unacceptable, but so are many other policies libertarians defend as just and beneficial. Tyler Cowen points out, “For whatever reasons, it has proven

In 1996, the U.S. Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), commonly known as the Welfare Reform Act, which cut off immigrants' access to federal public benefits. Legal immigrants (except refugees and those granted asylum) are barred from all federal means-tested public benefits for five years after entering the country and denied Supplemental Security Income (assistance for needy old and disabled people) and food stamps until they gain citizenship.... Asylum seekers and temporary workers are denied access to nearly all social benefits. . . .

In Britain, temporary migrants, non-EU labourers and those admitted on family reunification visas are not eligible for any social benefits, except housing assistance, for which eligibility varies locally. The Asylum and Immigration Act of 1999 barred immigrants seeking to remain permanently in Britain from non-contributory social programmes, such as income support, for five years. In order to qualify for indefinite leave to remain in Britain, foreigners must prove that they have sufficient income and adequate housing and that neither they nor any of their family have claimed benefits. . . .

In France and Germany, temporary workers and asylum seekers are denied most social benefits. Australia limits immigrants' access to social assistance, housing, healthcare and social security for the first two years. Canada severely restricts temporary worker's access to most social benefits. . . .

The British government barred East Europeans from the new EU member state from claiming social benefits for two years when it allowed them to come and work freely in Britain in 2004. Likewise, although New Zealanders are free to move to Australia, since 2001 they no longer have access to social benefits until they become permanent residents. (Legrain 2006, pp. 147-49)

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politically unacceptable to have large numbers of non-welfare-protected individuals in a society. Calling these people "immigrants," or seeing them with a different skin color, won't make this problem any easier" (Cowen 2004). This may be true (though watered-down versions of this system are already in place and have proved politically acceptable), but it shows the hypocrisy surrounding immigration debates: non-welfare protected individuals are tolerated as long as they are kept far from us, in their own countries. The fact that they could be equally non-protected in our countries but much more wealthy and productive does not seem to bother many supporters of the welfare state who portray themselves as caring for the poor. As in other fields involving the welfare state, this does not seem to be as much about immigrants as it is about ourselves: we have a clear conscience if "our" welfare state takes care of all "its" people—we do not feel that responsible (and therefore guilty) for the fate of poor people if they are in foreign countries.

It is quite an odd position for a libertarian to hold that the state has to bar immigration because, on balance, it could become a net cost to the taxpayer. Should the state limit the number of children that parents can have if, overall, such restriction decreases the amount of taxation and welfare in terms of public education and subsidies? Having children is not, *per se*, illegitimate, and this is why that prohibition cannot be justified on libertarian grounds. Libertarians should defend the privatization of education and the abolition of taxes, not regulations regarding the number of children people can have to keep taxes from increasing. As Walter Block points out:

It cannot be denied that any children born today might, some years into the future, avail themselves of our welfare program. But if we can preclude the entry of immigrants on this ground, this goes as well for having babies. Becoming pregnant ought to be a crime, on these grounds. At least the Chinese Communists limited people to one child per couple. If opponents of totally open immigration on the ground that they might become welfare recipients are logically consistent, they would have to oppose any childbearing, whatever. (Block 1998, p. 179)

Ryan McMaken also notes that although a peaceful activity like immigration may lead to undesirable activities (the extension of welfare in some cases), it is not a reason to prohibit the former. Redistribution, not immigration, is the actual crime.

Cracking down on peaceful activity because it may decrease undesirable activity is the philosophy of the prohibitionists: Drinking might cause bar fights and wife-beating. Therefore drinking must be outlawed. Or perhaps a person who buys a gun might shoot his wife or his neighbor at some future date. Therefore, gun purchases must be watched and controlled by the state.

Of course, the only actual crimes here are the *actual* crimes. A twenty-year-old purchasing a beer or an individual purchasing a gun is no more a crime than is a peaceful immigrant who contracts for work without government approval. Yet, the prohibitionists would have us believe that since someone who drinks or purchases a gun *might* commit a crime at some point in the future, liberty must be cast aside. (McMaken 2007)

Yet calculating the net impact of immigrants in public finances is more nuanced. As Philippe Legrain explains:

It depends on who immigrates—their skills, experience, education and the number of kids they have—and on what terms, such as which taxes they have to pay and which social benefits they have access to and when. Their age is crucial: if they arrive aged twenty, having completed their education abroad and with a full working life ahead of them, they will probably be net contributors; if they arrive in their sixties, they

will probably be a net drain. The calculation depends heavily on which methodology is used, which time-frame is considered, which expenditures and revenues are included, how they are allocated, and whether individuals or households are considered. For instance, . . . should the cost of educating an immigrant's daughter count as a net drain that offsets the taxes he pays, or should his daughter be considered separately, with the spending viewed as an investment that will be repaid many times over through the taxes she pays in later life? Viewed over lifetime, natives are broadly speaking a net burden on the state while they are in the state-financed education; net contributors while they are working; and a burden again when they are unemployed, retired or they require expensive medical services. The same is likely to be true for immigrants. (Legrain 2006, pp. 150-51)

Then there is the following related argument: given that most immigrants are strong supporters of the state and tend to vote for Democrats, the state will become more interventionist. First, is there really a major difference between Democrats and Republicans nowadays? Even if there were a difference, why is this an argument to forcefully prevent immigration, which is not aggression *per se*, instead of an argument to deny voting "rights" to immigrants, at least for a few years? Jesús Huerta de Soto, for example, supports the latter position:

[U]nder no circumstance should the political vote be granted to immigrants quickly, since this would create the danger of political exploitation by various groups of immigrants. Those who move to a new country and cultural environment will, presumably, improve their living conditions. But they have no right to use the mechanism of political coercion—the democratic ballot—to promote policies of income redistribution or to intervene in the spontaneous processes of the national markets which they enter. It is true that, as dismemberment into increasingly smaller states progresses, the right to vote and political elections will lose importance and will, in practice, be replaced by "voting with one's feet." But it is no less true that, until this process of decentralization is complete, the automatic granting of political rights to immigrants may be a time bomb that under certain circumstances can be used by a voting majority to destroy the market, culture, and language of the recipient country. Only after a long period of time, when the immigrants may be assumed to have fully absorbed the cultural principles of their new society, should the granting of full citizenship, including voting rights, be considered. Apropos of this, the principle established in the European Union, whereby citizens of other EU countries may vote in the elections of the municipality where they reside, is highly questionable. Such a rule could completely distort the atmosphere and culture of many localities where there happens to be a majority of foreign residents, for example, in parts of Spain, where elderly persons come to live from the United Kingdom, Germany, etc. Only when such residents have been living

in the new area for a minimum number of years and have acquired property rights there (homes or other real estate) would it be justified to grant them the right to vote. (Huerta de Soto 1998, pp. 195–96)

Moreover, the argument that the state will become more interventionist as a result of immigration and democratic participation only takes into consideration the recipient country. What about the country of origin? Let us not forget that the so-called ability to “vote with one’s feet” is hampered by restricting freedom of movement, and this eliminates even the smallest of efforts that countries could make to attract investors and workers, efforts which would potentially lead to lower levels of intervention. Hoppe himself stresses the importance of this effect (Hoppe 2001), considering it a powerful reason to support secessionist movements and the proliferation of micro-states all over the world. But you cannot have it both ways. You cannot oppose open borders and advocate secession and at the same time be certain that your position implies more people voting with their feet. The increasing opportunities to vote with one’s feet as a result of secession and the proliferation of states is counter-balanced by the restrictive migratory policies these states are supposed to put in place. In previous works, Hoppe had actually argued that immigration restrictions in Western countries were to be blamed for the continuation of socialist regimes in Eastern Europe.

If left alone, the current exodus [in Eastern Europe] would continue until the losses of productive individuals became such a burden and caused so much economic hardship that the governments of Eastern Europe, whether communist or welfare statist, would be toppled and socialism completely uprooted. Unfortunately, such a development is unlikely, as migration is not being left alone. However, this time it is not the governments of Easter Europe that are taking the initiative. . . . Rather, it is the governments of Western Europe which are now determined to prevent such a development by tightening their own anti-immigration policies. . . . In forcing potential immigrants to stay where they are, it implies support for the communist or semi-communist regimes of Eastern Europe. (Hoppe 1998b, pp. 194, 203)

But this is indeed the outcome of his proposed immigration policies. The same can be said nowadays about the totalitarian states in Cuba or North Korea, or about the corrupt and oppressive governments ruling in many countries around the world: they are supported, to a degree, by Western immigration restrictions. Furthermore, if all Western countries were to implement Swiss-like migratory restrictions

of a more severe kind, as Hoppe advocates, then Western policies would be even more supportive of repressive regimes around the world.<sup>6</sup>

Hoppe and other anti-open borders authors argue that if Western states open their borders, tens or hundreds of millions of people from developing countries would come to Western countries and that would be devastating. Even though we do not necessarily think it would be devastating if that actually happened, it is not clear that this is the likely result. Hoppe argues as if other things would remain unchanged, a sort of *ceteris paribus* reasoning, namely, “all other things being equal, hundreds of millions of people will flood Western countries.” But if hundreds of millions of people are going to migrate because they cannot prosper in their home countries, then it would be surprising that “other things remain equal.” Indeed, governments of developing countries will be forced to change as a result of the new Western open-border reality, as Hoppe acknowledged regarding Eastern Europe during the communist era (Hoppe 1998b, p. 194). Free international movement would result in frenetic competition between states to retain their citizens. The states will be pushed, if they want to keep any citizen or business at all, to introduce economic reforms and reduce political repression. Thus, open borders in Western countries could bring in millions of immigrants, but because it would pressure developing states to implement market reforms and be nicer to their people, open borders would also increase the incentives to stay at home.

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<sup>6</sup>Hoppe seems sympathetic to free immigration in his early discussion of immigration controls and secession in the context of socialist Eastern Europe. “With foreigners apparently the sole victims, increased immigration controls are considered downright popular, and are depended upon to assure public forgiveness of the support that is thereby given to communist regimes. If any protests against immigration restrictions are voiced at all, they come from classical liberal quarters” (Hoppe 1998b, p. 203). In this passage Hoppe seems to imply that opposition to immigration restrictions is the proper classical liberal position. He also highlights that foreigners are the major victims of this policy. However, according to his other works on the subject, the fact that immigration controls were considered “downright popular” would justify those controls and therefore foreigners would no longer be victims. In his more recent papers about immigration Hoppe has never recognized immigrants, in general, as victims of immigration controls (and he has advocated even more restrictions on immigration). We find Hoppe’s views in this essay slightly in contradiction with his hardcore restrictionist stance in his other works.

AGGRESSING AGAINST IMMIGRANTS  
TO MAXIMIZE LIBERTY?

Let us carefully examine the following liberty-maximization argument as it relates to Kinsella's position: all state actions are interconnected and we cannot pass judgment on an isolated policy/state action because it has implications on other policies/state actions. If we apply this to immigration, it means that we cannot make a judgment about open borders as an isolated policy because in the context of the welfare state, an open borders policy has implications on other state policies such as the extension of welfare benefits or the effects of anti-discrimination laws. Because the state exists, one must look at each state policy in the context of the rest of state policies. Thus, the argument proceeds, open borders necessarily imply, in the present scenario, more plundering of the taxpayers (due to socialized welfare, medicine, housing or education) and more property rights violations (due to anti-discrimination laws and similar regulations that force property owners to accept unwanted people on their property). A restrictive migratory policy, therefore, may imply aggression against those immigrants who would support themselves and would not be a burden on taxpayers, but open borders also imply more plundering and violation of property rights, so we must actually choose between two sets of policies (open borders or restricted immigration) that we know for certain, *a priori*, will entail aggression. Some libertarians conclude that the policy that maximizes liberty in their own countries is restricted immigration (below we argue that this conclusion does not apply if we take into account other countries).

We do not think that, *qua libertarians*, we can advocate aggression arguing that it prevents another (greater or lesser) aggression. This does not mean we cannot choose between a tax of 50 percent and a tax of 40 percent on a given population because both taxes are aggressive. Rather, it means that we cannot, for example, advocate a new tax on a non-taxed people (or oppose a tax cut) because we presume this will lead to another, more important, tax cut (or tax increase) elsewhere. Let us clarify with an example: we can advocate that Jones be taxed 30 percent instead of 50 percent, but as libertarians we cannot say that in a given context Jones should be taxed because this leads to or would imply a tax cut benefiting Smith, Mark and Carol. Such reasoning relies on interpersonal utility—or liberty—comparisons. There can be non-libertarian reasons (even if libertarian-related) to prefer one arrangement to the other, but we cannot advocate or justify this policy *qua libertarians*.

The complete decriminalization of drugs implies aggression against at least some taxpayers if socialized healthcare were to take care of drug addicts. Do we, as libertarians, have to rethink our position about drug legalization in the context of the welfare state/socialized medicine? Do we think a libertarian can argue, “I am all in favor of drug liberalization, but only once socialized medicine has been dismantled. Until then, to protect taxpayers, I favor the imprisonment and harassment of drug dealers, drug consumers etc., to keep the price of drugs high and therefore discourage demand?” By calling for open borders in the context of the welfare state we are not supporting aggression *a priori* any more than we would if we called for the repeal of drug laws or defended that families have as many children as they wish regardless of the effect on public spending. We are, after all, also calling for the dismantlement of the welfare state and its anti-discrimination laws; it is not our fault that politicians are not paying attention to our suggested policies. Further, as we show here, immigrants are not violating anyone’s rights when they migrate, and even when some of them take advantage of welfare benefits or anti-discrimination laws, they are not the ones *enforcing* these laws—the state is. Immigrants are not using force against domestic property owners even if they benefit from state’s policies. They are as guilty of aggression as any other domestic welfare recipient.

Let us approach the issue from another angle. We will call it the “micro-level” as opposed to the (more collectivist) “macro-level.” Suppose an immigrant is crossing the border in a public place (like a river, the ocean or a mountain). Now we should ask ourselves: would we advocate that the border police use violence and, if necessary, kill the immigrant, to enforce the restrictive migratory policy? Would we pull the trigger or support someone else doing it? If we are unwilling to defend the use of force at that micro-level, then the defense of a “restrictive migratory policy” against the “immigrant collective” at the macro-level loses its force. Conversely, if we are serious about implementing a restrictive migratory policy, then to be consistent we should advocate shooting immigrants who are crossing the border (if they try to resist and the conflict escalates). At this micro-level, when we have to take sides between the immigrant and the police officer regarding the use of violence, we think the force of our argument can be felt more strongly. It does not sound very libertarian to say, “I don’t think this immigrant is aggressing against anybody by crossing the Rio Grande, but we should stop him, and kill him if necessary, because in the present context the free, undisturbed influx of immigrants will lead to more taxes.”

We also believe that the liberty-maximization argument makes the use of nuclear weapons against civilians a defensible “second-best solution,” or, at least, makes it apt to be seriously considered by libertarians.



Let us consider the following example. Imagine that we are in the middle of WWII and Japan is not going to surrender. The U.S. could stop the war anyway but let us assume that is not going to happen either. Given that the U.S. is going to keep fighting until Japan surrenders, and given that a massive invasion of Japan could arguably cause hundreds of thousand of victims among American soldiers and Japanese civilians (let us also assume we know that for certain), is it defensible, as a second-best option, to nuke Hiroshima? There would certainly be aggression at the grandest of scales, but the alternative is even worse (you can change the terms of the analogy so as to find one that makes this trade-off clearer). If we oppose nuking Hiroshima it will lead to an invasion. In the real world, we could say that opposing the nuking of Hiroshima has the *implication* of invading Japan. Every state action has implications on other state actions. We would in principle oppose both nuking Hiroshima and invading Japan, but according to the liberty-maximization view it seems that we cannot avoid choosing one of them.

We differ; we would oppose both policies and, *qua* libertarians, would not defend any of them as a “second-best solution.” The question lacks a libertarian answer so we do not feel compelled to have a position in this hypothetical case.

There is an illustrative example, however, that makes a persuasive case in favor of a liberty-maximization approach. Taxpayers pay the bill for feeding state’s prisoners, and of course taxes are aggressive. Can we advocate that the state stop feeding its prisoners before it releases them? The reasoning here is that feeding prisoners with taxes is evil, but to abolish these taxes means that the prisoners will starve, which would be even worse. So as long as the state does not release its prisoners, resorting to taxes to feed them would constitute the second-best solution. Similarly, immigrants will increase taxes and property violations due to the existence of welfare programs and anti-discrimination laws. Can we advocate open borders before the state abolishes welfare benefits and anti-discrimination laws?

The feeding-with-taxes position seems persuasive when we think about it at the macro-level, but let us consider the micro-level: the state extracts taxes from one taxpayer to feed prisoners. Do we take the side of the state if the taxpayer resists? If we support the taxpayer in his fight, we are no longer arguing in favor of feeding the prisoners with taxes. If we take the side of the state and support violence against the taxpayer (which could result in his imprisonment or death), we are being consistent with the feeding-with-taxes position, but can we call it libertarian?

Imagine we start with a private system of prisons and the state nationalizes it. As soon as the state does so, would we advocate, *qua libertarians*, a tax increase to feed the prisoners? Is it libertarian to impose, as a second-best solution, *new taxes* on people that were not taxed before, just to prevent a new set of rights violations by the state against another group of people? Moreover, not feeding the prisoners with taxes does not imply that they are going to die of starvation if they are not released. Plenty of people could voluntarily donate food to feed the prisoners, or there could be more pressure to release them or privatize the system. An analogous pressure could exist against the welfare state if open borders are implemented.

At this point, let us “internationalize” the liberty-maximization approach. It is said that a restrictive migratory policy should be enforced because, even if it implies aggression against some immigrants (the ones that could support themselves and are kept by force out of the country), it prevents aggression against many more millions of taxpayers inside the country (or a more severe kind of aggression). A restrictive migratory policy, therefore, maximizes liberty, even if it does imply a certain amount of aggression. For the sake of the argument we concede this point. But if we broaden our perspective the picture does not lead to the same conclusion. Open borders would benefit hundreds of millions of people around the world that would stay in their countries because governments of the developing countries will face extraordinary competition to keep their citizens and will have to implement massive reforms and diminish political repression if they want to retain them. Thus, open borders imply that millions of immigrants will be better off; that millions of native taxpayers will be worse off; *and* that millions or hundreds of millions of people around the globe will be better off due to competitive pressure by oppressive states. From an international point of view, and because all human beings, natives or foreigners, have equal individual rights, it seems to us that the liberty-maximization approach leads to open borders. In other words, the fact that natives will be worse off (assuming they would be) is counter-balanced by the benefits enjoyed by hundred of millions in their home countries, in the same way that the fact that some innocent immigrants would be worse off with closed borders is allegedly counter-balanced by the benefits enjoyed by the native population.

#### THE VICIOUS CIRCLE OF INTERVENTIONISM AND BASIC ECONOMICS

It is important to note that what opponents of immigration demand is not less statism, but more. Faced with a problem created by the state,

what they endorse is precisely more of it—the very same vicious cycle of interventionism that Mises refers to: more taxation and government plunder, ID cards and travel control, fines for entrepreneurs, walls on the border and even more domestic spying. Do these measures help to reduce the burden of the state on a society? How is this a step in the right direction? It is not. It means more bureaucracy, regulations and taxes, all of which are performed under the ever-growing and omnipresent Orwellian lens of the government. Anthony Gregory explains the difficulties of allowing the state to “fix” state-caused problems:

Regardless of one’s stand on immigration per se, it is clear that the central state simply wants to further manage and rule our lives, and is using the borders as just another excuse. Yes, some politicians are lenient on the immigration issue as part of a general agenda of bigger government. This does not mean that when politicians suggest closing the borders, they are not also acting according to that agenda. . . .

Under the current regime, we should not cheer on the federal government to “close the borders,” harass employers, or further nationalize law enforcement in the name of immigration control.

If the problem with immigration originates with the state, there is a paradox and danger in calling on the state to fix the problem it has caused. There is no knowing what the state will do in order to fix it. There is no guarantee that it will do a good job. It is more than likely that it will make things worse, all while expanding itself and eroding our liberties. We should all be cautious what we advocate, for we do not want to function as pressure from below for a web of policies and regulations we never would have endorsed if asked up front. (Gregory 2005)

So far, the U.S. border control record does not match the government’s avowed target of deterring illegal entries and settlements in U.S. soil. Why expect any different when politicians request even more resources and power? The law of unintended consequences also applies here.

The consequences of the current U.S. strategy of border enforcement, after nearly ten years of implementation, can be summarized as follows: illegal entries have been redistributed along the Southwest border; the financial cost of illegal entry has more than quadrupled; undocumented migrants are staying longer in the United States and more of them are settling permanently; migrants deaths have risen sharply; and there has been an alarming increase in anti-immigrant vigilante activity. The following consequences have not yet materialized: That unauthorized migration is being deterred in Mexican places of origin; that would-be illegal entrants are being discouraged at the border after multiple apprehensions by the Border Patrol and returning home; that their employment prospects in the U.S. have been curtailed; and that the resident population of undocumented immigrants

is shrinking. All of the latter outcomes were predicted by proponents of the post-1993 strategy of border enforcement. (Cornelius 2004, quoted in Legrain 2006, pp. 38-39)

It is also worth noting that, from an economic point of view, it does not make much sense for the government to allow entry to qualified workers only. The state does not know what kind of labor the market needs. This must be determined by employers and business owners in a decentralized manner. For example, how exactly does the state know that a high-tech engineer is needed instead of a waiter or a gardener? There is a huge demand for low-skilled labor in rich societies.

As our society becomes older and richer, our demand for relatively low-skilled, labour-intensive services is rising fast. As the number of old people increases, the demand for nursing care soars, for instance. And as people get richer, their demand for personal services rises disproportionately. As more mothers go back to work, demand for child-care and cleaners grow. Rather than preparing their own meals, people increasingly buy sandwiches at lunchtime, have dinner delivered to their homes or eat out in restaurants. They pay someone to paint their house, mow their lawn and wash their cars rather than spending their precious weekend time doing so. In other words, as people get richer, they increasingly pay others to do time-consuming and arduous tasks that they once did themselves, freeing up more time that they can devote either to more productive work or to more enjoyable leisure. All of this boosts the demand for unskilled labour. (Legrain 2006, pp. 74-75)

Some libertarians believe that dozens or even hundreds of millions of immigrants would move to the U.S. or Western Europe if these countries opened their borders. They also take for granted that this phenomenon would ruin Western societies. First, it is not clear if dozens or hundred of millions would migrate in a few years. It understates the attachment people have to their communities and culture and presupposes that enough jobs, housing and other facilities would be available upon arrival in today's existing statist scenario (with regulation on labor, housing, etc., all of which impede the market's dynamic adaptability to new circumstances). If jobs and shelter are not offered in sufficient quantity, then immigrants must choose between working in their community or begging and living in the streets of a rich but unfamiliar country. It is not obvious to us that most people would choose the latter, even among the poorer ones.<sup>7</sup> But if the market is flexible enough

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<sup>7</sup>To illustrate the point that freedom of movement does not imply the inflow of dozens of millions of people from poorer countries, the reader can examine recent immigration figures in Britain, Sweden or Ireland, each one allowing free entry to

to accommodate dozens or even hundreds of millions of immigrants, then what is the matter from an economic point of view? If all of them find a job and a place to live it is because there is a demand for their services and a supply for their needs. Immigration, after all, only puts pressure on state-provided services; the market perfectly adjusts to changes in supply and demand. This is yet another reason to replace inefficient, state services with flexible, market alternatives.

When there is freedom of movement, workers are deployed where they are more productive. Migration barriers distort the market process. These barriers act as price controls or protective tariffs over an essential factor of production: labor. Rich countries are more capitalized so the productivity of workers is higher in those countries than in poorer ones. By keeping immigrants out, the state is imposing autarky in the labor market, impeding the allocation of workers where they are more needed while keeping both native and foreign workers in relatively inefficient lines of production. As Ludwig von Mises explains:

As a result of the relative oversupply of labor in areas with comparatively unfavorable conditions of production, and the relative shortage of labor in areas in which the conditions of production are comparatively favorable, production is further expanded in the former and more restricted in the latter than would be the case if there were full freedom of migration. Thus, the effects of restricting this freedom are just the same as those of a protective tariff. In one part of the world comparatively favorable opportunities for production are not utilized, while in another part of the world less favorable opportunities for production are being exploited. Looked at from the standpoint of humanity, the result is a lowering of the productivity of human labor, a reduction in the supply of goods at the disposal of mankind.

Attempts to justify on economic grounds the policy of restricting immigration are therefore doomed from the outset. There cannot be the slightest doubt that migration barriers diminish the productivity of human labor. (Mises 2000, p. 138)

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citizens of the eight new (and poorer) members of the European Union. Seventy-five million people in Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia and Lithuania are free to move and work in Britain, for example. Since Britain is much more prosperous than these countries we would have to expect, according to doom-laden predictions, a vast inflow of immigrants from East Europe. However, only 427,000 East Europeans have so far applied to work in Britain, and many of them were already in the country illegally. Most immigrants stay only temporarily. In 2004 net immigration from Eastern Europe was 48,000 (Legrain 2006, p. 328).

An increase in population would lead to a more extensive division of labor, greater creativity and entrepreneurship. It would enhance productivity, reduce consumer prices and strength competition. Granted, the landscape of the country would change, and it can be argued that, even if we become richer, we still could be worse off because of cultural disruption and unwanted multiculturalism. Again, society continually changes and we do not have a right to stop or alter these changes as we please, no matter how they affect us. We only can legitimately enforce our desires in our private property.

#### CONCLUSION

An individual has the right to choose who can live on, work on, buy or rent his property but not the right to decide who can live, work or buy in *his country*. Migratory barriers hinder voluntary interaction between people, employers and workers, landlords and tenants, and sellers and consumers. As long as employers, landlords or sellers accept immigrants on their property, immigrants are not intruders but guests. It is true that the welfare state makes immigration more attractive in the same way it makes other types of behaviors attractive, but this does not mean that immigration (or these behaviors) amounts to aggression and, thus, is worthy of defensive force. The only measures that libertarians *qua libertarians* can defend are the suppression of all subsidies to immigrants (and to anyone else for that matter), the privatization of public spaces, the abolition of protectionism that perpetuates poverty in the countries of origin, the repealing of anti-discrimination laws and the denial of voting rights, perhaps until the foreigner has assimilated. As for the migration barriers, tear them down!

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