

HOPPE, KINSELLA AND ROTHBARD II ON IMMIGRATION: A CRITIQUE

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I. INTRODUCTION

AT ONE TIME, THE libertarian perspective on immigration could be summed up by the following mantra: “There shall be no interference with the free movement of goods, capital and people.”

For example, states Engerman (2002, 76): “The nineteenth century was marked by a liberalization of flows of goods, capital and people, both internationally and within the nation.”

According to Mises (1927, <http://www.mises.org/liberal/ch3sec7.asp>):

Under a system of completely free trade, capital and labor would be employed wherever conditions are most favorable for production. Other locations would be used as long as it was still possible to produce anywhere under more favorable conditions. To the extent to which, as a result of the development of the means of transportation, improvements in technology, and more thorough exploration of countries newly opened to commerce, it is discovered that there are sites more favorable for production than those currently being used, production shifts to these localities. Capital and labor tend to move from areas where conditions are less favorable for production to those in which they are more favorable.

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But the migration of capital and labor presupposes not only complete freedom of trade, but also the complete absence of obstacles to their movement from one country to another.

In the view of Rothbard (1993; <http://www.mises.org/rothbard/mes/chap15d.asp>):

Tariffs and immigration barriers as a cause of war may be thought far afield from our study, but actually this relationship may be analyzed praxeologically. A tariff imposed by Government A prevents an exporter residing under Government B from making a sale. Furthermore, an immigration barrier imposed by Government A prevents a resident of B from migrating. Both of these impositions are effected by coercion. Tariffs as a prelude to war have often been discussed; less understood is the Lebensraum argument. "Overpopulation" of one particular country (insofar as it is not the result of a voluntary choice to remain in the homeland at the cost of a lower standard of living) is always the result of an immigration barrier imposed by another country. It may be thought that this barrier is purely a "domestic" one. But is it? By what right does the government of a territory proclaim the power to keep other people away? Under a purely free-market system, only individual property owners have the right to keep people off their property. The government's power rests on the implicit assumption that the government owns all the territory that it rules. Only then can the government keep people out of that territory.

Caught in an insoluble contradiction are those believers in the free market and private property who still uphold immigration barriers. They can do so only if they concede that the State is the owner of all property, but in that case they cannot have true private property in their system at all. In a truly free-market system, such as we have outlined above, only first cultivators would have title to unowned property; property that has never been used would remain unowned until someone used it. At present, the State owns all unused property, but it is clear that this is conquest incompatible (sic) with the free market. In a truly free market, for example, it would be inconceivable that an Australian agency could arise, laying claim to "ownership" over the vast tracts of unused land on that continent and using force to prevent people from other areas from entering and cultivating that land. It would also be inconceivable that a State could keep people from other areas out of property that the "domestic" property owner wishes them to use. No one but the individual property owner himself would have sovereignty over a piece of property.¹

¹ We shall have to characterize these as the views of Rothbard I, since (see below, for Rothbard II) he has changed his mind on the incompatibility of libertarianism and open borders.

And according to Torpey (2000) the passport was not needed for international travel during the heyday of classical liberalism in the nineteenth century.

However, there are several authors who have challenged this linkage between the libertarian philosophy and open borders. In their view, the state is justified in regulating not the movement of goods or capital, but of people. The thesis of the present paper is that the claims of Hoppe (1998, 2001), Kinsella (2005) and Rothbard (1998) on immigration are erroneous. In their view, the government of the U.S. is at present justified in restricting immigration to the country,² on libertarian grounds.

There is no need to even discuss what libertarian theory is, since “there is not a dime’s worth of difference” on this score between the three of us on this matter.³

In section II we set the groundwork for what is to follow. We use the views of Rothbard as a foundation. Section III is devoted to a critique of Hoppe’s views, and section IV to Kinsella’s. In section V we explore possible reconciliations and we conclude in section VI.

II. ROTHBARD: THE GROUNDWORK

Let us start with this Rothbard (1998, 119) statement on the matter:

the private ownership of all streets would resolve the problem of the ‘human right’ to freedom of immigration. There is no question about the fact that current immigration barriers restrict not so much a ‘human right’ to immigrate, but the right of property owners to rent or sell property to immigrants. There can be no human right to immigrate, for on *whose* property does someone else have the right to trample? In short, if “Primus” wishes to migrate now from some other country to the United States, we cannot say that he has the absolute right to immigrate to this land area; for what of those property owners who don’t *want* him on their property? On the other hand, there may be, and undoubtedly are, other property owners who would jump at the chance to rent or sell property to Primus, and the current laws now invade their property rights by preventing them from doing so.

² Kinsella (2005) takes a more moderate position; he claims immigration restrictions can be justified as a second best policy on libertarian grounds. He, too, is in error.

³ It is testimony to the complexity of this issue that we four, who are in such complete agreement concerning libertarian theory in general, yet diverge on immigration.

The libertarian society would resolve the entire “immigration question” within the matrix of absolute property rights. For people only have the right to move to those properties and lands where the owners desire to rent or sell to them. In the free society, they would, in first instance, have the right to travel only on those streets whose owners agree to have them there, and then to rent or buy housing from willing owners. Again, just as in the case of daily movement on streets, a diverse and varying pattern of access of migration would undoubtedly arise.

It is tempting to think that the private ownership of all streets, (plus every other single solitary square inch of land) would resolve the immigration issue, at least among libertarians. Alas, not even this is so.⁴ Worse, there is also the question of whether or not, given circumstances as they presently are with regard to land ownership, the government is justified in interfering with the free movement of people.⁵ That is, it cannot be denied that at present, such a salutary state of affairs (complete private ownership of all property) simply does not exist. To wit, there are vast land holdings on the part of the government (streets, parks, forests, etc.), and, further, there are other vast tracts that have need been so much as trod on by a human foot (mainly in Alaska, Nevada, and other western states).

Let us take each point separately. First, suppose completely private ownership of all land. Then, posit, that one person owns a vast tract in the wilds of Alaska, Nevada or Montana. He invites one billion Chinese people (or Africans, or Martians for that matter) to come there, settle there, and work for him. Libertarian opponents of open borders such as Hoppe and Kinsella might grit their teeth and accept the proverbial “one billion” invitees to the wilds of Alaska or Nevada, but others such as Brimelow (1995) or Taylor (1998) would be horrified at any such prospect.

⁴ Suppose that someone owned a large parcel of land in Texas, or Alaska, say, 100 square miles or more. He then invited 100 million people from abroad to live there. Would this be licit? Would these new immigrant be allowed by law to get out onto the (privately owned) roads and thus disperse all throughout the country? This is an example of the complications that would still plague us even under full private ownership.

⁵ Traditionally, there has been an exception for criminals and those with infectious diseases. I shall follow this proviso in the present paper: we are herein limiting our discussion to the free movement of healthy non-criminals. However, with Draconian punishment libertarians would mete out to such elements (Kinsella, 1996, 1997; Rothbard, 1977, Whitehead and Block, 2003.), there is less need for this proviso than under present arrangements that coddle criminals.

Second, back, unhappily, to reality, private property wise. Here, the opponents of open borders claim that the government has a responsibility to act as would a private owner, and regulate the numbers of newcomers who may enter the country. It is likewise difficult to see how this can be reconciled with the position of those libertarians who favor the free movement of people (Block, 1998; Rothbard I).

Here is pure vintage Rothbard II (Rothbard, 1994, 7):

I began to rethink⁶ my views 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 people.

Forget about the non-lamented USSR, for the moment. Suppose Estonia and Latvia were completely anarcho capitalist countries and that Russia was too, for good measure. Suppose the Russians for some obscure reason, such as the overwhelming desire for Austrian Pure Snow Trees they thought were growing there (Demsetz, 1997) wanted very much to live in Estonia and Latvia, and force out the previous occupants. Could the Russians do so through purely voluntary means? It is difficult to see why they could not. They might not be able to buy out every last Estonian and Latvian, but if they were at least somewhat richer on average, far more numerous, and as highly motivated as I am assuming them to be, it is hard to why at least most of the inhabitants of these two small countries would not voluntarily sell out.⁷

⁶ It is greatly to Murray Rothbard's credit that he publicly changed his mind. To err is human, although very few top intellectuals will ever admit error. However, I am a follower of the Rothbard I who championed open borders, at least insofar as government regulations were concerned, not Rothbard II, who took the opposite point of view.

⁷ "Selling out" like "profiteering" or "gouging" seems to have an unwarranted bad press. Yet, voluntary purchase and sale surely has a good pedigree within the libertarian community. Virtually every other country in the world rid itself of slavery without conflagrations like the War of Northern Aggression of 1861 in the U.S.; in many of these other cases, money changed hands instead (Adams, 2000; Denson, 1997; DiLorenzo, 2002; Gordon, 1998; Hummel, 1996; Rosenberg, 1972; Stromberg, 1979; Thornton and Ekelund, 2004). Were Israelis and Palestinians allowed to purchase land from each other, that inferno might be settled peaceably. Instead, both sides prohibit such sales. For the claim that each authority prohibits its followers/citizens from selling land to the members of the other side, see Lehn (1974), <http://www.icahd.org/eng/articles.asp?menu=6&submenu=2&article=252>; <http://www.israelnationalnews.com/article.php?id=3215>; <http://world.std.com/~camera/docs/backg/land-pa.html>; however, for an alternative view

There is simply nothing incompatible with libertarianism and destroying “cultures and languages,” provided only that the latter is done without the initiation of violence. And this goes not only for Latvia and Estonia, but for the U.S. as well. To deny this is to buy into the propaganda spread by such as the Canadian opponents of free trade who don’t want to be tenants in “their own” country, who maintain (Axworthy, 1987) that “Canada is not for sale!” Of course it is, or, at least it should be, if the price is right in the eyes of the seller. It is to accept the cant of the Quebecois who want to preserve their language, and are willing to enact legislation making the use of French compulsory.⁸ It is to acquiesce in the blood and soil philosophy.⁹

The point is, there is no such thing as anyone’s “own country.” This is a notion incompatible with libertarianism. What happened to the doctrine of allowing free competition in all matters? Certainly, this should apply to languages and cultures.

III. HOPPE: THE CRITIQUE OF BLOCK (1998)

Hoppe (2001, pp. 159–160, ft. 10) states:

A truly remarkable position is staked out by Walter Block, “A Libertarian Case for Free Immigration,” *Journal of Libertarian Studies* 13, no. 2 (1998). Block does not deny the above predicted consequences of an “open border policy.” To the contrary, he writes:

. . . suppose unlimited immigration is made the order of the day while minimum wages, unions, welfare and a law code soft on criminals are still in place in the host country. Then, it might well be maintained, the host country would be subjected to increased crime, welfarism, and unemployment. An open-door policy would imply not economic freedom, but forced integration with all the dregs of the world with enough money to reach our shores. (p. 179)

Nonetheless, Block then goes on to advocate an open-door policy, *regardless* of these predictable consequences, and he claims that such a stand is required by the principles of libertarian political philosophy. Given Block’s undeniable credentials as a leading contem-

on this matter, see <http://world.std.com/~camera/docs/alert/jensen.html>; <http://www.meforum.org/article/370> (accessed on 9/13/06).

⁸ See on this http://en.wikipedia.org/wiki/Legal_dispute_over_Quebec's_language_policy; http://en.wikipedia.org/wiki/Official_Language_Act; http://canada.justice.gc.ca/Loireg/charte/const_en.html

⁹ <http://www.google.ca/search?hl=en&q=Blood+and+soil+&btnG=Google+Search+&meta=>

porary theoretician of libertarianism, it is worthwhile explaining where his argument goes astray and why libertarianism requires *no* such thing as an open-door policy. Block's pro-immigration stand is based on an analogy. "Take the case of the bum in the library," he states.

What, if anything, should be done about him? 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? . . . As such [libraries] are akin to an unowned good.¹⁰ 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. (pp. 180–81)

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.

Let me respond. I regard Hoppe, along with Kinsella, as the leading contemporary theoreticians of libertarianism.¹¹ One crosses their bows only with great trepidation, but in this case I feel I must.

First, the position I took in Block (1998) is not really all that remarkable. Indeed, this was roughly Murray Rothbard's (1993) position for many years. Indeed, as the quotes from Engerman (2002), Mises (1927), Rothbard (1993) and Torpey (2000) cited in sec-

¹⁰ We must of course distinguish between legal ownership (that actually recognized in positive law) and "natural" ownership (that corresponding to libertarian or "natural" rights). It should be clear that in this discussion we are of course referring to the latter concept. That is, we full well recognize that according to positive law, libraries are now owned by the state apparatus. We only contend that they should not be.

¹¹ Rothbard of course gets my vote in this regard as the all time master.

tion I of this paper, this was, roughly, the position of the entire classical liberal school of thought.

Second, while Hoppe (2001) is undoubtedly correct in mentioning that I do indeed rely on the bum in the library analogy, this by no means exhausts my arguments. Let me briefly mention a few of them before returning to the analogy, as none of these others have been so far addressed by Hoppe. To wit: what about the vast open spaces in the Rocky Mountains and Alaska that no one has ever settled. What aspect of libertarianism could an immigrant possibly violate if he somehow catapulted himself to any of this terrain and began subsistence farming? Or, trading with other such immigrants, among themselves. Or, trading with the rest of us, on a totally voluntary basis?

We have no less of an authority on this matter than Rothbard (1998, 47) himself:

We cannot fully explain the natural laws of property and of violence without expanding our discussion to cover tangible property. For men are not floating wraiths; they are beings who can only survive by grappling with and transforming material objects. Let us return to our island of Crusoe and Friday. Crusoe, isolated at first, has used his free will and self-ownership to learn about his wants and values, and how to satisfy them by transforming nature-given resources through “mixing” them with his labor. He has thereby produced and created property. Now suppose that Friday lands in another part of this island. He confronts two possible courses of action: he may, like Crusoe, become a producer, transform unused soil by his labor, and most likely exchange his product for that of the other man. In short, he may engage in production and exchange, in also creating property. Or, he may decide upon another course: he may spare himself the effort of production and exchange, and go over and seize by violence the fruits of Crusoe’s labor. He may aggress against the producer.

If Friday chooses the course of labor and production, then he in natural fact, as in the case of Crusoe, will own the land area which he clears and uses, as well as the fruits of its product. But, as we have noted above, suppose that Crusoe decides to claim more than his natural degree of ownership, and asserts that, by virtue of merely landing first on the island, he “really” owns the entire island, even though he had made no previous use of it. If he does so, then he is, in our view, illegitimately pressing his property claim beyond its homesteading-natural law boundaries, and if he uses that claim to try to eject Friday by force, then he is illegitimately aggressing against the person and property of the second homesteader.

The analogy is a pretty airtight one. Crusoe, and extant Americans, were here first. Friday, and the would-be immigrant who Hoppe wants to bar from this country, are attempting to come here second. If Crusoe (present occupants) bars Friday (would-be immigrants are not allowed to settle in unused dessert and mountainous regions of the U.S.), then he is in Rothbard's analysis, claiming more than homesteading would justifiably entitle him to. Crusoe is the illegitimate aggressor against Friday. No less is true of the present occupants of the U.S.; by adopting the Hoppe analysis, they are preventing entirely innocent people from going about their lawful business of homesteading empty territory.¹²

Now, Hoppe could reply that the only reason these mountainous and dessert areas are not presently occupied is due to the fact that the U.S. government forbids its citizens to do so, and/or illegitimately occupies these lands itself through its agencies such as the Bureau of Land Management (B.L.M.).¹³ There are two responses to any such defense. One, Hoppe must then acknowledge that the courageous immigrants, and not the docile citizens, had the ability to ignore

¹² In a critical statement that seems almost explicitly to have the Hoppe thesis in mind, Rothbard (1998, 63) says:

Suppose, for example, that Mr. Green legally owns a certain acreage of land, of which the northwest portion has never been transformed from its natural state by Green or by anyone else. Libertarian theory will morally validate his claim for the rest of the land—provided, as the theory requires, that there is no identifiable victim (or that Green had not himself stolen the land.) But libertarian theory must invalidate his claim to ownership of the northwest portion. Now, so long as no “settler” appears who will initially transform the northwest portion, there is no real difficulty....He is not yet a criminal aggressor against anyone else. But should *another* man appear who does transform the land, and should Green oust him by force from the property (or employ others to do so), then Green becomes at that point a criminal aggressor against land justly owned by another. The same would be true if Green should use violence to prevent another settler from entering upon this never-used land and transforming it into use.” The point is again clear: Green represents the present populace of the U.S. who, under Hoppe's baleful influence, are guilty of being “criminal aggressors” in preventing “another settler from entering upon this never-used land.

¹³ This organization brags that it “administers 261 million surface acres of America's public lands, located primarily in 12 Western States. (<http://www.blm.gov/nhp/index.htm>). Surely, when the libertarian Nuremberg trials begin (Block, 2004), they will not ignore this horrendous claim.

these unjust governmental institutions. Two, land, happily, is a superfluous factor of production, compared to labor. Thus, at any given time, there will be sub-marginal land, precisely the territory that looks so attractive to the hypothetical immigrants we are now considering. But, with the advent of these people, the margin shifts. Terrain that was previously sub-marginal, before their arrival, becomes supra-marginal with their arrival. This means that before these new people came on the scene, there is a reason in addition to governmental proscriptions why the mountains of Wyoming and the tundra of Alaska was not homesteaded and settled; it was previously sub-marginal, even though it is no longer so under our assumptions.¹⁴

What about immigrants from the “country” of Storkovia? That is, how does the Hoppe theory handle newborns? My claim here is that anything this author can say about an immigrant I can say concerning a brand new baby, with a lag of some 18 years, perhaps. If the one will commit crimes, so will the other, in a decade or so. Ditto for welfare. And it is the same for being allowed onto the roads of the nation. If illegal immigrants should not be allowed onto the highways, why should it be licit for a citizen of, say, Texas, to enter a road in Louisiana? Hoppe might reply that parents are responsible for their children in a way that does not apply to employers of immigrants. But this only gets him so far. Remember that time lag! After 15–18 years or so, parents are no longer liable for the evil doings of their children. Given the analogy, there is no justification for treating employers any differently. Hoppe (2002, fn. 23) says that anyone, such as an employer who invites an immigrant to this country must obligate himself to financially support them. But this is erroneous, since it would be unjustified to impose any such obligation on parents, for their newborn children.

The implication of this is clear. Hoppe wants to claim that investments and traded goods are a two way street; none of them ever enter the domestic country unless there is a willing buyer or borrower. In contrast, he claims that immigrants, unlike investments and imports, are a one way street; the immigrant just shows up on our shores, without any sort of by-your-leave on the part of any citi-

¹⁴ At the risk of running an infinite regress, there is the possibility that had the present occupants of the U.S. known that the only way to preclude vast numbers of new arrivals was to homestead this otherwise uneconomic land, they might well have done so. In this case the economic benefit of the territory in question would not be crops or cattle, but rather the “services” of keeping undesirables away.

zen of the home country. Well, let us attempt a *reductio ad absurdum*: children, too, are a one way street. The parents may of course welcome them, but they are only the *exporters* of babies, from the country of “Storkovia” to the rest of us, who are forced to welcome them whether we wish to do so or not, exactly as in the case of immigrants, at least in Hoppe’s analysis.¹⁵

Let us now talk of bums and libraries, or, rather, immigrants who seize public property such as Yellowstone, Mt. Rushmore or Grand Canyon National Parks,¹⁶ or any of the land unjustifiably claimed by the B.L.M. States Hoppe: “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.”

Minor typographical error. I am sure that Hoppe really means, instead, that public property is *de jure* owned by the taxpayers. As a matter of *de facto*, I am sure he would agree with me that the real owners at present, unfortunately, are the government bureaucrats who now make the actual decisions about this land. And, of course, I agree with him that there is a difference, even a vast difference, between unowned goods and public property. We have already seen how Hoppe’s theory fails with regard to the former; let us see how this same conclusion can be reached with regard to the latter.

Suppose that the Mafia steals Hoppe’s bicycle. Ragnar Danneskjold comes along and takes¹⁷ it back from these hoodlums (Block, 2004). At this point Ragnar can do one of two things. Let us

¹⁵ In contrast my claim is that at least the domestic employer of the immigrant “welcomes” him. No matter how Hoppe may twist and turn, he cannot evade this analogy. True, there is a time lag, but apart from that, anything true of the immigrant (he may go on welfare, he may commit a crime) is also the case for the baby.

¹⁶ For a listing of all national parks, a real rogue’s gallery, see <http://data2.itc.nps.gov/parksearch/atoz.cfm>

¹⁷ Ragnar *logically cannot* “steal” the bike from the Mafia. One can only *rob* a rightful owner. When one takes something from a thief it is an utter impossibility for it to be theft. It can only be a (justified) taking, or liberation, or transfer, or some such.

¹⁸ Anyone who objects to this two part act cannot be a libertarian, and will be ignored in the present paper, which is a discussion amongst libertarians, not between them and others.

consider them in order. First, he could, as he did in Rand (1957) offer to give it back to Hoppe. If so, then, note, he engaged in a two-part act, which I presume was (eminently) justified.¹⁸ First, he took the bicycle from the Mafia; then, second, he gave it back to Hoppe. My contention is that if a complex two-part act is justified, then each and every of its constituent elements must also be licit. There cannot be a two-part act that is warranted where one of its subcategories is acceptable and the other not. Two wrongs cannot make a right, and neither can one wrong and one right which together comprise one complex act consisting of both parts, make a right. If there is one of the former, then the total two-part act is illicit. But we are already on record in assuming that the two-part act is justified. Therefore, the first of them must be so. That is, when Ragnar liberates the bike from the Mafia, that, in and of itself, divorced from anything else, is also a righteous act.

Suppose Hoppe objects, however, on the ground that he never gave permission for Ragnar to touch a hair on the head of this bike; that Ragnar is taking too much upon himself in grabbing up property that is not his. My analysis of this possibility is that Hoppe would then be complicit in his own robbery by the Mafia. Hoppe would no longer be the simple victim of a robbery. For some reason or other¹⁹ he refuses to support an act that is a necessary concomitant of the return of his stolen property to him. Hoppe can no longer claim the role of entirely innocent victim.

This, it must be admitted, is more than passing curious, at least at the outset. For, it might readily be asked, How can you be complicit in your own robbery? What does this even mean? That the victim consents, or that he is a robber himself?²⁰ One might be readily excused for thinking that if the supposed “victim” agreed to the procedure, whatever it was, it could hardly be called a robbery.

But these questions cannot be allowed to confuse matters. My point is a simple one: when and if Hoppe objects to Ragnar’s seizure of the bicycle from the Mafia, he would then be complicit in his own “robbery” by the Mafia; that is, it would be a theft no longer. Initially, when the Mafia took Hoppe’s bike, this was robbery, plain and simple. But, when Hoppe, the supposed victim, refuses to acquiesce in the return of this vehicle, he demonstrates (Rothbard, 1956) that we

¹⁹ I assume away the possibility that Hoppe has something personal against Ragnar, or any other such motivation irrelevant to the point at issue. I also rule out of court motivations of the sort that Hoppe fears the later retaliation on the part of the government against him for cooperating with Ragnar.

²⁰ These questions were articulated by a referee of this journal.

were mistaken in our initial assessment, or that Hoppe changed his mind as to how he interpreted the Mafia's action. It was not a robbery at all, in the event; rather, it was a gift of a bike from Hoppe to the Mafia. But this does not let Hoppe off the hook by one iota. For we all know, or, at least, all libertarians know, that he who voluntarily contributes to a robber gang is guilty of aiding and abetting them.

Let us return, for a moment to an illegal immigrant seizing a bit of Yellowstone Park, which Hoppe and I agree has been stolen from the taxpayers of America. This act, in splendid isolation from everything else, must necessarily be justified. It is a necessary precondition to returning it to its rightful owners. But Hoppe would object. What reason does he offer? That I confuse *de facto* and *de jure*? That since this land is in justice really owned by the long suffering taxpayers, it is illegitimate for anyone else, a third party, to even so much as touch it? This will not do.

Let us now consider a second scenario. Ragnar now has Hoppe's bicycle in his possession. He refuses to give it back to Hoppe, and decides to keep it for himself.²¹ We now enter the field of second best.²² Given, then, that we cannot attain the ideal libertarian situation of Hoppe getting back his property, which is the second best alternative: that the Mafia keep the bike, or that Ragnar retain it? We are now in somewhat precarious territory for the libertarian theoretician. Matters are by no means so clear as before. But, there is one salient difference between Ragnar and the Mafia. The former is *not* a thief, while the latter most certainly is. Remember, the Mafia *stole* this vehicle from its rightful owner, Hoppe, while Ragnar most certainly did not do any such thing. Rather, Ragnar *liberated* the bicycle from this very same robber.

To return to the illegal immigrant who is now perched on a part of Yellowstone Park and refuses to give it back to a taxpayer, the rightful owner. In like manner we may say of him that he really should return this property to its proper owner. However, we may also say that of the two options, one the status quo where the evil

²¹ There is no need to consider the case where Ragnar gives Hoppe back his bike. If the immigrant gives back the piece of Yellowstone Park he has seized and homesteaded to a taxpayer, he can no longer claim legitimate residence in the country. We assume away the possibility that a thankful taxpayer will allow him to keep part of this terrain.

²² We shall have much more to say about this in the next section, dealing with Kinsella.

state retains this property, and the other where the robber is relieved of his illicit gains, the latter is certainly a better second best scenario.

Thus, illegal immigration, Hoppe to the contrary notwithstanding, is justified on libertarian grounds not only for unowned property, but also for that stolen from the taxpayers of the country.²³

My response is that I do not at all claim that property such as government roads or libraries is “unowned.” Rather, I claim these holdings were *stolen*. I agree that the state now *possesses* them; I argue, only, that this is unjustified. And, yes, I insist, the *same* libertarian analysis can be applied, in this context, to virgin and stolen land. Why? This is because for the libertarian, at least as I construe him, stolen land is *de jure* virgin land, ready for the next homesteader to seize it (on the assumption that the rightful original owner cannot be located, or he acquiesces in the state’s seizure, or that, arguendo, we can ignore this rightful owner.)

IV. KINSELLA: GETTING SOMETHING BACK

Kinsella (2005) also supports the Rothbard II—Hoppe thesis that it is compatible with libertarian anarcho capitalism for the state to regulate immigration. On the face of it, this seems a dubious proposition, but Kinsella brilliantly makes his case. He starts off as follows:

What I am getting at is that the state does own many resources, even if (as I and other anarcho-libertarians believe) the state has no

²³ A referee of this Journal objects to the foregoing as follows:

First, how does all this apply to land that is not unowned (like BLM land), but to land that is already homesteaded/possessed/used, like roads or public libraries? Can we just assume they are subject to the same analysis? The reasoning is not the same; the author’s reasoning concerning the wilds seems to be that it has never been homesteaded, since mere decree (by the state) is not sufficient. Fine. But a resource in use like a library or road is no longer in the commons. One would say it was already homesteaded (this is made clear if you think of a case where the state purchases private (already-homesteaded) goods, using tax funds—that property is clearly not unowned; the private owner transferred his title to the new owner, the state). If the author is going to insist these things are also unowned, he can’t rely on them having been appropriated by mere decree, since they are (and were) actually in use and possession. He needs some additional reason or argument that they are unowned. Otherwise, the conclusion would be something like this: the state is the legal owner; those to whom the state owes restitution are the “real” or natural owners.

natural or moral right to own these things. Nonetheless the state does own some resources—roads, ports, buildings and facilities, military bases, etc. We can allow that a road, for example, is actually, or legally, owned by the state, while also recognizing that the “real” owners are the taxpayers or previous expropriated owners of the land who are entitled to it.

Again, I must register a slight quibble, the same one, as it happens, I did with Hoppe. Kinsella surely does not mean that the “real owners” of the roads are the innocent victims of the state, as in *de facto*. He knows full well that the people who make decisions about highways are the minions of the state. I take it that Kinsella would agree that the hapless taxpayers, and those victimized by eminent domain to build them, are instead the *de jure* owners of the roads, at least from a libertarian perspective.

Secondly, I note that Kinsella’s case in favor of government intervention in this field is a more limited one. At best, then, his theory applies to public property, but not to *unowned* (by anyone) virgin territory.

Continues Kinsella:

The point here is the state does (legally) own resources which are “really” owned by others. As libertarians, we can view this situation as the state holding property on behalf of the real owners, as a sort of uninvited caretaker.

Again, I must object. This is too optimistic by half; how about characterizing the state as an invader; not working in “behalf” of the victims, but *against* them. After all, Kinsella and I both agree that the government is in the wrong. The word “uninvited” is very apt. But it is difficult to reconcile this word with “on behalf.”

States Kinsella (2005):

Now my contention is that *given* the existence of significant public property in a certain country, it is not necessarily unlibertarian for immigration to be restricted by means of usage-rules established on public property by the state-owner.

Consider this case. I live in a small independent city, which has about 10,000 residents. It is very small and dense, and smack-dab in the middle of Houston, which has 4 million people. 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.”

Let us stop here, for a moment. This sounds tinny to my anarcho-capitalist ears. It is uncomfortably akin to lower in-state university

tuition for the residents of the state, and higher tuition payments for out of staters. Is this not an uncomfortable position for a libertarian.

Kinsella is saying, if I may paraphrase him, that government is our caretaker. As such, it must perforce set up reasonable rules. The state should act as if it were a (perhaps bumbling) private owner. In this way the people from whom the money to finance the swimming pool was stolen may at least get some services in return. But this is a fatally conservative outlook. The radical alternative is that the “rules” of the pool should be fashioned so as to eliminate these enterprises from governmental control. For example, everyone, anyone, should be “allowed” to walk off with the water in the pool, even the very bricks of which it is composed.²⁴

Kinsella continues his narrative:

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 worth-

²⁴ A referee poses this objection: “but suppose the ‘*de jure*’ owners would all, unanimously, prefer that the water and bricks be left alone? Why is this radical? Is it libertarian at all to disregard the wishes of the *de jure* owners?” Why? My answer is that this is justified because the *de jure* owners are in bed with the state, that is why. On the one hand we have a bunch of “*de jure*” owners who are quite satisfied with the *status quo*. They certainly do not act so as to “alter and abolish it” and accept a move in the direction of privatization. Worse, they oppose the Ragnar of our scenario who is acting in a manner compatible with breaking down the statist order. On the other hand we have person taking on the Ragnar role who, whatever may be his motives, is at least acting so as to disrupt the evil present system. Rand (1967) made a similar point as does Kinsella; that the Berkeley university students who were trashing their campus were in the wrong. For a rejoinder, on the private property rights grounds that this was a *public* university, see Block (2003).

less to me and most of my fellow residents of the City if there were no rules on entry, or no discrimination against outsiders. The rule set on the usage of this property by its caretaker-owner, the City, is a reasonable one—one that the owner of a private pool might adopt, and also one that generates more restitution for the victims of the City's aggression, than a less discriminatory rule would.

Time to summarize again.

Kinsella's plan is that locals get a bit more of their tax payments back in the form of services they may or may not enjoy. In contrast the radical alternative is that every time the government sets up a swimming pool (or a university, library, road, etc.), the next day it disappears, as the books, bricks, water, etc., are carted away by people. Soon, there will be no government "services" at all, and good riddance, too. Now, I realize that this is but an empirical extrapolation. It may or may not occur. This scenario will depend upon numerous other factors: the intensity with which the people hate the state, it's raw power over them, etc. But we are now in the world of second best, attempting to predict, a precarious undertaking at best. My point is that the radical scenario I am positing seems to me more compatible with the libertarian ethos than the more conservative one depicted by our author.

Kinsella (2005) again:

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.

But why does the state have to continue to own anything? If it must, *arguendo*, why can it not refuse to establish any rules whatsoever? How about the homestead rule that the first homesteader of stolen and illicitly own land becomes the new rightful owner? Kinsella's argument moves too quickly from the fact that the government does indeed legally own property to the conclusion that it must carry through on its ownership in a manner that continues this state of affairs.

Kinsella (2005) now directly addresses the point of contention:

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. It need not literally prohibit private property owners from having illegal immigrants on their property. It need only prevent them from using the roads or ports—which it owns.

Restrictions, yes, but not prohibitions; foreigners with a strong desire to locate in this country (Mexicans who want the southwest returned to them; for example, the reconquista²⁵ movement)²⁶ would probably be willing to locate en masse to some uninhabited areas of Arizona, Nevada or Colorado; there, they could build their own roads; at least there is nothing in Kinsella's thesis to stop them.

Here is another option. One of these immigrants, a rich one, buys up a big area, and then invites all of his buddies from wherever, and ships them in by plane or helicopter. If they can not get out onto U.S. roads,²⁷ well, then, no one from the U.S. can cross their territory, either.

I admit that Kinsella's model would make immigration much more difficult than it is at present. However, I doubt it would stop this process in its tracks. People willing to risk their very lives coming here on rubber tire rafts (e.g., from Cuba) are not likely to be deterred by the inconvenience of not being able to use the roads.

However, this is problematic. We need not concede, as a second best policy, that government may make up rules which focus on compensation to the victims. This is very short run.²⁸ A better second best policy would be to institute rules that bring to an end the unjustified theft in the first place. Instead of keeping the overall system intact as does Kinsella's recommendation, and merely trying to get the victims more of the pie, one more in keeping with radical libertarianism is at least try to undermine the injustice which creates the problem in the first place.

Kinsella (2005) on rules:

²⁵ <http://www.google.ca/search?hl=en&q=Mexican+takeover+of+U.S.+southwest&btnG=Google+Search&meta=>

²⁶ Let it not be surmised that I favor such activities. I am merely trying to probe the logic of Kinsella's position by attempting to tease out its implications.

²⁷ For a libertarian argument that the immigrants can legitimately tunnel under, or bridge over, extant government (or even private) roads, see Block and Block (1996).

²⁸ Of course, the higher the internal rate of discount, the more short run oriented we would be advised to be. But to focus on this issue would be to take us away from our real concern; justice not the maximization of some version of satisfaction, however calculated.

It seems to me establishing rules as to how public roads are to be used is not inherently unlibertarian. Even libertarians who say the state has no right to make any rules at all regarding property it possesses—even speed limits etc.—really advocate the following rule: allow anyone to use it, and/or return it to the people. This is a way of using a piece of property. But most libertarians don't seem to have a principled opposition to the very idea of rule-setting itself.

Can we not define “pure” libertarianism in terms of just that principled opposition? Of course, no libertarian can have a principled opposition to the very idea of rule-setting itself. But I fail to see why this cannot apply to *government* property. Further, it is hardly a *governmental* rule to return the property in question to its proper private owners. This author mistakenly defines rules so as to make it a logical impossibility to oppose rule setting on state property. But surely, one may without pain of contradiction advocate that government *make no rules at all* concerning the roads, or bubblegum manufacture, and leave all of this to markets. It is *not* a type of government rule to refrain from making rules, and to allow private persons to do so at their own discretion, and with their own property.

For similar reasons I disagree with Kinsella's (2005) statement:

Sure, the state should not own a sports stadium or road, but so long as it does, it is not inherently unlibertarian for the state-owner to promulgate and enforce some rules regarding usage of the resource. A road may have speed limits; a stadium or museum may charge an entrance fee; the sheriff's office and the courthouse might have locks on the doors preventing anyone but employees from entering.

It seems to me decidedly unlibertarian to advocate these sorts of “reasonable” rules. A more libertarian stance would be to welcome actual chaos on all property states steal from victims. The likelihood is that pure bedlam and pandemonium on all such terrain would deter the thieves from their evil deeds.

Next, consider Kinsella's (2005) opinion on immigration rules:

Advocates of open-borders/unrestricted immigration are simply those who prefer a certain rule of usage be issued by the feds: that anyone at all may use federal roads, ports, etc. Whereas other citizens have a different preference: they prefer that the feds not allow everyone, but only some people. By having the latter rule, obviously, a version of immigration restriction could be established *de facto*.

Now I am not so far arguing for the latter rule. I am simply noting that it is not necessarily unlibertarian, as the open-borders types want to maintain. They urge that the illegitimate owner-caretaker of public property use it in *this* way; others want it used another

way. We all agree the rule that really should be adopted is: return the property to private hands. Where we differ is on what second-best rule is more libertarian, or more preferred. Is one second-best rule more clearly libertarian than the other? It seems to me that one useful way to compare alternative rules is to examine the restitution that would be provided by various usage-rules. A rule that generates more restitution for more people is, other things being equal, probably preferable to other rules.

I would say, in contrast, that on ground of second-best libertarian preferability, a rule that *ends the injustice* is superior to one that merely “generates more restitution” for the victims, but continues to victimize them.

Kinsella (2005) replies

If the feds announced *tomorrow* (emphasis added) that *no rules at all* applied to the federal highways, the utility of the roads to most people would fall dramatically, meaning that restitution has decreased.

I fully agree with Kinsella on this point. One day’s notice would be simply far too little. But, suppose that the government made this announcement one year ago, and allowed a libertarian tribunal to figure out which private companies (owned by mulcted taxpayers) should take over which roads. Is there any doubt that the utility of the highways to most people would be greatly enhanced? (Block, 2009).

Here is a statement of Kinsella’s (2005) with which I am in full agreement:

. . . one reasonable rule of thumb used to judge the validity of a given usage rule for a publicly owned resource is to ask whether a private owner of a similar resource might adopt a similar rule.

However, it is difficult to reconcile this perspective with Kinsella’s view that the government should discriminate against those who reside out of town with regard to the swimming pool, or immigrants as to the roads. This is simply not how private enterprise works. Yes, there is discrimination on the market, but not on the basis of either of these criteria.²⁹ Instead, entrepreneurs price discriminate against those who are more costly to supply. If newcomers to the country are responsible for more traffic accidents than the native born, we can expect this to be reflected in the differential prices they are charged by road owners and insurance companies. In the

²⁹ Nor, certainly, on the basis of race or sex. See on this Epstein, 1992; Herrnstein and Murray, 1994; Levin, 1987; Sowell, 1975; Williams, 1982.

extreme, plausibly, immigrants with bad driving records, or of whom it is predicted will cause more accidents, might even be barred from road entry entirely. But there is no evidence whatsoever attesting to differential driving abilities, certainly so extreme as would likely lead private owners to forbid highway use.

But Kinsella (2005) does not base his recommended road rules on what private enterprise in this industry is likely to do. Instead, he would:

. . . compare the amount and types of restitution corresponding to alternative usage-rules. And since it is impossible for the state to adopt a rule that perfectly satisfies all citizens—this is one problem with having public property in the first place—then, other things being equal, a rule that is favored by the overwhelming majority may be viewed as providing “more” overall restitution than one that is favored only by a few people.

Here, Kinsella comes perilously close to embracing, of all things, democracy. I suggest Hoppe (2001) as an antidote to this dangerous anti-libertarian tendency. There is no doubt that Kinsella is correct in maintaining that political voting might be a good indicator as to restitution. But that is not all this author is saying, if I understand him correctly. In addition, he is recommending that road usage be determined by majority vote. To support my interpretation, here is Kinsella (2005, emphasis added) again:

Given these considerations, it seems obvious to me that, just as my neighborhood pool discriminates against outsiders, and just as a private pool also does this, so the state owner-caretaker of federal property might also establish rules that discriminate against some immigrants. *It is obvious that the overwhelming majority of citizens do not want open borders*; which means almost every American taxpayer would prefer that public property not be open to everyone. It is also clear that given federal anti-discrimination laws, providing unlimited access to public roads is tantamount to forced integration. . . . This cost is yet another reason why most Americans would prefer not to have public property open to all with no discrimination or restrictions. Given that values are subjective, using property to cater to the subjective preferences of the vast majority would seem to be one way of achieving a more substantial degree of restitution.

All I can say is that majority vote is no litmus test of libertarianism. Most Americans also favor minimum wage laws, taxes, government, affirmative action, yet no one would assert that these policies are therefore libertarian. I certainly support Kinsella’s (2005) contention that “99% of my fellow taxpayers would . . . prefer some immigration restrictions.” This might well enhance restitution, as he con-

tends, but, as I have argued, restitution is a far less important libertarian concern than stopping the violence that lead to the need for the restitution in the first place.

V. A RECONCILIATION?

Is it possible to construct a reconciliation between me, Rothbard, Hoppe and Kinsella?³⁰ I would like nothing better, since there are no libertarian theorists who I regard more highly than them.

Suppose we took the position that:

1. all property (*every last bit of it*) should be privately owned
2. on that day when this occurs, the U.S. government (or, if it no longer exists as a result of point 1, then private defense agencies) can make a rule that no immigrant can come into the country without the express permission of an extant landowner.

Would that satisfy both sides? Sadly, it would not. For the hordes of immigrants, the “yellow peril,” call it what you will, could still come sweeping into the country, ruining our “language and culture,” such that it is. All this would take is *one* large landowner, willing to accept their presence on his land. If the private road owners did not

³⁰ I am unclear as to where de Soto, another important libertarian, fits into the picture. On the one hand he says (de Soto, 1998, 187–188): “However, the coercive action of the state manifests itself not only in hindering the free movement of people, but, at the same time, in forcing the integration of certain groups of people against the wishes of the natives of a given state or region. This coercive action on the part of the state occurs both intranationally and internationally. Thus, within each nation, measures for the integration of certain minorities and groups are often imposed by force, such as anti-discrimination laws, affirmative action legislation, or busing laws. At the international level, many states, either legally or de facto, open up their frontiers to foreigners indiscriminately and allow them to use the public goods (roads, parks, beaches, government health care, educational, and welfare services) as free riders. In this way, the state generates significant external costs for the natives, who are obliged to accept the forced integration of the foreigners against their wishes or under conditions that they do not desire.” I interpret this as in support of Hoppe, who likens open borders with forced integration. On the other hand, de Soto (1998, 190–191) also states: “We may, therefore, conclude that emigration and immigration *per se*, subject to the general principles of law in an environment where all resources are private, not only do not pose any problems of forced integration or external costs but, on the contrary, are important leading forces of economic and social development and of the wealth and variety of culture and civilization.” This, it would appear, supports my own position.

allow these newcomers onto their property, this would make such mass immigration more difficult, but not impossible. However, I do not see my way clear to agreeing that *all* highway and road firms are likely to forego the profits that would be available to them by allowing immigrants access.

I, too, share the concerns of the anti immigration libertarians.³¹ Émigrés from countries such as England, Korea, Germany, China, France, Canada, Australia, Japan and Sweden have fit in well with our culture. Much more important, they are not over represented amongst the criminal element; indeed, the very opposite is the case. The same, alas, cannot be said for immigrants from numerous other countries. I stand second to no one in being appalled at the prospect of millions of new settlers from these latter nations inundating our beloved United States; murdering, raping and pillaging.

However, I have a concern I regard as even more important; libertarian theory. Perhaps it is possible for utilitarian or consequentialist libertarians³² to reconcile their principles with regulated borders, but this is not possible, I contend, for deontological ones such as myself.

Is it impossible to reconcile libertarian theory with closed or regulated borders only at present? Could this occur one day under changed circumstances? According to one theory, to which I do not subscribe, a possible reconciliation might occur if and only if all property in the country is privately owned, every square inch of it. Then, the only thing holding back the masses would be private roads, whose owners might or might not allow the new immigrants onto them. Block (2006) makes the case that while we cannot be sure how a private enterprise road industry would operate, it would likely distinguish between people not on the basis of their skin color, nor immigrant status, but rather based on their driving and other behavior. If so, then there would be no serious barriers, compatible with libertarian theory, against unrestricted immigration.

Thus, we libertarians can have our cake and eat it too, with regard to immigration. We can champion two propositions, seemingly incompatible, but really not. They are, first, that we will be

³¹ I use this last word advisedly. There are some open borders libertarians who claim their opponents are not libertarians at all. Not I, not I. I regard Rothbard II, Hoppe and Kinsella as gifted libertarians, but mistaken on this issue.

³² For example, Friedman, 1989; Salerno 1973.

happy to accept as many immigrants as wish to come to our shores, but only if they are well behaved. Second, all land, every square inch of it, must be privatized.

But what of the possible stance that the first must wait until the second is already accomplished. That is, the immigrants shall have to wait for full privatization. This is untenable for reasons laid out so eloquently by Rothbard in his incisive critique of Allan Greenspan. This would mean that libertarianism would be held not as a living, breathing entity, something to be applied to the real world as it is, but as a bloodless philosophy, which is applicable only to some future never, never land. States Rothbard (1987, 3):

. . . Greenspan is only in favor of the gold standard if all conditions are right: if the budget is balanced, trade is free, inflation is licked, everyone has the right philosophy, etc. In the same way, he might say he only favors free trade if all conditions are right: if the budget is balanced, unions are weak, we have a gold standard, the right philosophy, etc. In short, never are one's "high philosophical principles" applied to one's actions. It becomes almost piquant for the Establishment to have this man in its camp.

Let us face facts. We pitifully few libertarians do not hold power. We do not even hold any realistic balance of power.³³ It is not as if the "open borders" libertarians are going to be in a position to decide these matters any time soon, and they will open up the population spigots, erasing all barriers. Thus, our job is not to "make" public policy; rather, it is to analyze it, but from a libertarian point of view.

On the other hand, it cannot be denied, that if we are to be taken seriously³⁴ on this or any other public debate, we must have a plan such that if, somehow, magically, the ability to implement were placed in our hands, we could *do* so to good effect. Well, we do have such a program. Privatize every square inch of land in the U.S., certainly including the roads and highways, and then place no legal barriers against people from other countries who wish to settle here,

³³ This is true despite the fact that Libertarian Party (<http://www.lp.org/>) candidates rarely, but sometimes do, garner more votes than the difference between the two major parties. The Ron Paul phenomenon may change this.

³⁴ Better, if we are to take ourselves seriously.

³⁵ "Suppose the all powerful Martians threaten to blow up the entire earth unless we kill innocent person Joe." If libertarians can stare down such challenges (Block, 2002), we can also face with some equanimity being "overrun" with immigrants.

provided only that these immigrants can find an owner of some territory in the U.S. who will welcome them.

Should the government open the immigration floodgates³⁵ right now, with the welfare system as it is in place, with public roads and highways, with an inept police force that cannot possibly deal with the gigantic number of criminals who would, *arguendo*, be swept into the country under such a policy? Yes. For this is the only policy compatible with libertarianism.

Here is a word in favor of this policy from a consequentialist or utilitarian libertarian point of view. Suppose this just for a moment to be a real threat. And, posit, that the average person got bitten by the libertarian bug as a result of fear of this onslaught. This might well usher in a truly libertarian society. Welfare of all kinds and varieties would immediately be dispensed with. Likewise, no more affirmative action, forced integration of any kind.³⁶ There would be an unprecedented economic flowering. With all property privately owned, land values would rise greatly. Further, they would be denominated in terms of gold. These last two factors, alone, would reduce incentives to relocate here. If the world became more libertarian as a result of this magnificent U.S. experiment, other countries would become safer havens for our capital. Since it is usually far cheaper to move goods or capital than massive numbers of people, U.S. investment abroad would drive up wages in the underdeveloped countries of the world. This would further reduce the economic incentives of their peoples to relocate on our shores.

VI. CONCLUSION

I am going to take the somewhat unusual step of devoting this entire conclusion to a careful consideration of a referee's comments to an earlier version of this paper, virtually in their entirety. I think so highly of these objections that I can in no other way do justice to them.

Accordingly, here are (the first part of) his remarks:

In the Libertarian Forum for June 15, 1969, Rothbard (Rothbard I, in fact) wrote: "Often, the most practical method of de-statizing is simply to grant the moral right of ownership on the person or group who seizes the property from the State. Of this group, the most morally deserving are the ones who are already using the property but who have no moral complicity in the State's act of

³⁶ Apart, of course, from the free immigration that Hoppe characterizes in this manner.

aggression. These people then become the “homesteaders” of the stolen property and hence the rightful owners. Take, for example, the State universities. This is property built on funds stolen from the taxpayers. Since the State has not found or put into effect a way of returning ownership of this property to the taxpaying public, the proper owners of this university are the “homesteaders”, those who have already been using and therefore “mixing their labor” with the facilities. The prime consideration is to deprive the thief, in this case the State, as quickly as possible of the ownership and control of its ill-gotten gains, to return the property to the innocent, private sector. This means student and/or faculty ownership of the universities.

Now our author is not obligated to agree with Rothbard I about this; but Rothbard I’s position seems plausible here (to me anyway), and if we extend it to public libraries, it would seem to imply that the current non-violent users of the library—namely the employees and the patrons—are the proper homesteaders. And I would say that they have homesteaded it JOINTLY, so that individuals can’t stroll off with a book or pee on the carpet; they have in effect formed a cooperative partnership in the library. (This isn’t necessarily to invoke the Holcombe/Long³⁷ view of common property. It’s compatible with that, but it doesn’t imply it. It just means that the nature of their use of the library better supports their having become joint-partner private owners of the whole library than it does their having become individual owners of separate chunks.) So robbing the library is NOT like “robbing” the Mafia. It’s like one joint-owner of a cooperative enterprise strolling off with part of the common assets without getting permission from the rest of the co-owners—which I take to be illegitimate.

If that’s the wrong conclusion to draw, our author needs to explain why so . . .

Here is my reply to this very thoughtful objection. *If*, a big if, we were in the post revolutionary stage of libertarianism, then what this referee says is eminently reasonable. Here, there would be a libertarian Nuremberg Trial, and *all* previously held government property, that is, stolen property, would be returned to its rightful owners: non members of the (former) ruling class, who were victimized by it. If we could assume a God’s eye point of view, that is, that we had full knowledge of all past theft, then the patrons and employees of the library would *not* be made the owners of it. Instead, the title to the library would be given to those from whom the money was initially stolen (through taxes) so as to build it and stock it with books.

³⁷ I criticize the views of Long and Holcombe on common property in Block (2010).

However, in the more realistic situation of less than perfect information on the part of the Nuremberg judges, then Rothbard's syndicalism scenario would be precisely the one followed. Then, under these conditions, the objection "robbing the library is NOT like 'robbing'" the Mafia" would hold true. Then, too, it would be indeed the case that anyone peeing on the floor, or walking off with a book without checking it out, would be stealing from the joint owners.

The mistake implicit in the objection is that we are not now in a post revolutionary libertarian society, where free enterprisers have seized power, and are in the process of returning stolen governmental goods to their rightful owners, and "imposing" freedom on everyone.³⁸ Instead, we are at present in a pre revolutionary libertarian society. Here, it is not libertarians who hold power. Rather, this task falls to the minions of the state. In this context, the only ones attempting to wrest power away from the illegitimate government³⁹ are the Ragnars of the world.

The difference between these two scenarios cannot possibly be exaggerated. There is all the world of difference between the two. In the present context, it is only Ragnar who is acting compatibly with libertarian principle. In liberating a book, or relieving himself on the library rug, he is not at all violating anyone's legitimate private property rights. It can no longer be said, in this context, that "robbing the library is NOT like 'robbing'" the Mafia." Now, the two are indistinguishable. The *only* relevant difference between the Mafia and the (illegitimate) government is that the latter is bigger and has better public relations.

Here is the second part of this referee's comments:

If Hoppe refuses to give consent to Ragnar to restore the bike from the Mafia to Hoppe, it seems there are 2 possibilities. One is that Hoppe is simply GIVING the bike to the Mafia. Surely he has a right to do this, if it's his bike, and so the Mafia now has a rightful claim to it. (They may be obligated to use it to pay off OTHER claims against them, but that's another story.)

The other possibility is that Hoppe still regards it as his rightful property but doesn't approve of Ragnar using force to get the bike back for Hoppe. (Many pacifists have a position like this.) I have a hard time seeing how this makes Hoppe "complicit" in violating his own rights. First, you can't violate your own rights; that doesn't make sense: "*volenti non fit injuria*." Second, nothing in lib-

³⁸ That is, ensuring that the libertarian non aggression axiom is upheld.

³⁹ We are of course here not talking about countries that I live in or shall ever visit. We are only discussing those other governments, the illegitimate ones.

ertarian theory says one has an OBLIGATION to help anyone's rights—one's own or another's—get protected; so his "refusal to support an act that is a necessary concomitant of the return of his stolen property" is a perfectly legitimate choice on his part. Third, if it really is his bike he has the right to lay down conditions for its use. He's entitled to say "Nobody touch it!" The fact that the Mafia has broken this rule doesn't seem to license Ragnar in breaking it too.

I cannot see my way clear to agreeing with the referee on this point either. In my view, if Hoppe *gives* his bike to the Mafia, or to the government, as a voluntary contribution, he is to that extent guilty of aggression, and is no longer acting fully compatibly with libertarian theory. It is one thing to pay off an aggressor who is bigger and stronger than you. Here, you are innocent. But, if you initiate a gift to the evil doers⁴⁰ then in effect you become part of their gang.

Second, I take the view that if Hoppe still regards the bike as his rightful property, but will use force against Ragnar when the latter is attempting to seize this vehicle from the Mafia or government, then he is acting incompatibly with his own supposed beliefs. In a word, Hoppe would then be guilty of committing a performative contradiction (Hoppe, 2006).⁴¹ If he is merely a pacifist, he does not act against Ragnar, and thus is irrelevant to our concerns.

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⁴⁰ I assume this gift is not merely an attempt to ward off later greater deprivations by only merely appearing to support the robber gang. Otherwise, it is not really a gift.

⁴¹ In making this statement, I am assuming away motivations on Hoppe's part to the effect that Ragnar is a bumbler, the state or the Mafia is about to give him his bike back, and that Ragnar will only interfere with this occurrence, etc.

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