

A PURE LIBERTARIAN THEORY OF IMMIGRATION

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I

IMMIGRATION. THE VERY USE of the word is telling: since every immigrant is also an emigrant, why is the first term more frequently used? In the twentieth century, with the exception of countries under socialist regimes, it has typically been harder to move into a particular country than to leave it—but of course, since most of the earth is now under the control of states, leaving a country usually means having to be accepted into another.

The fact that states claim control over certain geographical areas doesn't mean they actually *own* these areas. States usually don't have many possessions legitimate from a pure libertarian point of view—ones that were not either directly confiscated or bought with tax money. Nor do states have any rightful claim to goods owned by individuals—if I own something, it is mine and cannot at the same time be the state's. Hence, libertarians are held to defend individual property rights and denounce states acting as if they had any right to decide what individual owners can and cannot do with their property.

Immigration, whether legal or illegal, whether motivated by work opportunities or subsidies, is widely debated in the U.S. and in Europe. Forced integration schemes by governments are a resented reality. Europe's growing number of immigrants (and children then born to those immigrants), some of them with very different cultures and no desire to integrate, has led to both economic and social problems as well as an alarming rise in crime rates—legitimate concerns not to be dismissed lightly.

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A libertarian immigration policy asking the state to filter entries would have to be compatible with property rights, answer the question “who should the state let in?” and provide a clear reason to why the state should treat foreign and local people differently. Proposals by libertarians to restrict immigration have so far all too often consisted of a blend of certain personal preferences with libertarian property rights theory.

I suggest a “pure” libertarian theory of immigration, based only on individual rights. I distinguish three different immigration policies, on which I will successively comment: (1) free immigration, that is, with no border checks, (2) invited immigration, that is, with border checks to filter out the uninvited, and (3) restricted immigration, that is, with border checks to filter out undesirables defined by some pre-established criteria. I conclude that the “free immigration” stance is the most respectful of individual property rights.

FREE IMMIGRATION

“When liberalism arose in the eighteenth and nineteenth centuries, it had to struggle for freedom of emigration. Today, the struggle is over freedom of immigration” (Mises 1985, p. 137). Freedom of immigration and “open borders” have been defended by many libertarians on various grounds.¹ I shall focus here on the most essential argument, one that I consider difficult to reject without rejecting the greater part of the libertarian creed.² All human beings, *qua* human beings, have identical rights. These rights are all ultimately included in the right to do whatever they want with what is theirs. What is theirs is defined as all that they possess that they haven’t stolen from anybody, that is, taken from a previous legitimate owner without the owner’s consent. These universal rights, obviously, change neither by crossing an arbitrary line called a border, nor by getting a piece of paper called a passport or a national identification card. This means that A has the right to trade with B, get married with B, sign contracts with B, send gifts to B, invite B, hire B, etc., since none of these actions imply an aggression against C. From a libertarian point of view, the respective “citizenships” of A, B, and C therefore can’t matter.

Thus, if an American has the right to hire whichever American he wants to work for him, he has the same right to hire any Mexican he

¹See for instance Friedman (1995, chap. 13); Salin (2000, chap. 11); Schoolland (2001); Block (1998, pp. 167-86); and Hudson (1986, pp. 51-62).

²For a defense of libertarian property rights theory, see for instance Rothbard (2002, pp. 21-70) and Hoppe (2006, chap. 13 and appendix).

chooses. “Illegal immigration,” therefore, means a type of immigration that the state has decided to deploy aggressive violence against,³ but which is in no other relevant aspect different from “legal immigration.” In fact, from a libertarian perspective, illegal immigration is often *better*, since in many cases the illegal immigrant can’t enjoy many of the pro-foreigner discriminations, such as “affirmative action” policies directed in favor of recent immigrants and welfare state money that a legal one can.⁴ A chapter on “The Illegal Immigrant” should definitely have been included in Walter Block’s *Defending the Undefendable*.⁵

To prevent Americans from hiring Mexicans is therefore a clear violation not only of the rights of Mexicans, but also of the rights of the Americans who wanted to hire them, but risk a fine or even jail if they do so. The most common argument in favor of restrictions on hiring foreigners is not a libertarian one: foreigners are “taking jobs” from citizens.⁶ But a job is not a *property*, a job is a *contract*. There is no such thing as a positive right to a job guaranteed by a citizenship, or at least there can’t be from a libertarian perspective.⁷

The usual argument about libertarian “open borders” advocates favoring “absolute freedom to move” appears as a strawman argument. Hospers, for instance, asks, “Why should the property owner be free to

³Sometimes with the help of private groups such as those trying to guard the American-Mexican border.

⁴Although there are complaints about illegal immigrants from Mexico getting U.S. welfare money as well, in other cases (and in other countries) conditions might apply.

⁵Block (1991) defends as heroes the members of certain social groups widely hated although they do nothing wrong. For a defense of illegal immigrants in a similar manner see Bramoullé (n.d.) and Binswanger (2006).

⁶This argument is related to the “lump sum of jobs” fallacy, fortunately seldom used by libertarians and economists, although so widespread among laymen that it is worth briefly mentioning here for the sake of completeness. The fallacy assumes that there is a limited number of jobs, and that immigrants thus take “our” jobs from “us.” As Mises put it, “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 1985, p. 139). On the fallacies related to misconceptions about employment, see Hazlitt (1979, chaps. 7, 8). Anyhow, if it were legitimate and economically sound to limit competition in the labor market because it can put a downward pressure on nominal wages, then obviously working adult males should also stop females and young males from expanding the workforce.

⁷See Krepelka (2005).

reject the domestic trespasser but not the foreign one?” (Hospers 1998, p. 155) But has any libertarian *ever* claimed that? The libertarian argument in favor of open borders is that foreigners have the same (natural) rights as citizens, not *more* rights. Similarly, a “right to immigrate” is not a positive right, but merely a negative right not to be stopped from traveling from one country to another, in the same way as a citizen has a right not to be stopped from returning home after a vacation abroad.

Hospers also wonders,

When one questioner asks, “Isn’t there a danger that immigrants will enter the country to receive the benefits of the welfare state?” Jacob Hornberger responds, “Then get rid of the welfare state!” The response, of course, provides no answer to the question asked. What are we supposed to do in the meantime? We have at the moment a rather “advanced” welfare state, and what policy should we adopt while we still have the welfare state with us? (Ibid., p. 158)

Similarly, Cox writes “Do we have to choose the kind of workers who should be invited in? Yes, we do” (2006, p. 28). But who is the “we”? A political majority? Libertarians only? Or the individuals who actually choose which foreigners they hire? Apart from the dubious use of the “we,” the fallacy here is to suppose that, for some reason, no change ever to the welfare state can be achieved, whereas it is somehow enough for some libertarians to wish for restricted immigration to have it: “It would be one thing if Cox, or you dear reader, for some reason had the power to decide whether the nation would have federal border patrols or not—and at the same time *lacked* the authority to alter any other federal policies” (Murphy 2006).

Besides, the U.S. already has a restricted immigration policy, and illegal immigrants count in the millions nevertheless. Is it really a surprise for libertarians that state controls are simply not efficient? Therefore, an even more restrictive immigration policy would have to be politically reasonable *and* possible in practice, not to mention that a really efficient control of illegal immigration might require national identification cards and controls more fitting for a police state than for the Land of the Free. And even a totalitarian state would not be able to avoid corruption and possible entry of immigrants or even terrorists.

On the other hand, one doesn’t need to be a libertarian to notice the obvious contradiction in the state’s subsidizing the presence of people whom the same state supposedly wants out. Would it really be that impossible to obtain an end to subsidies for at least illegal immigration? As North comments:

When critics of open immigration tell me that these newcomers will bankrupt the state welfare systems, I am not sent into a state of despair. When they also tell me that the public schools could not

stand the pressure, I am also not sent into despair. At zero price, there is greater demand than supply. The larger the demand, the faster the bankruptcy. If voters begin to perceive that immigrants are not morally entitled to the welfare state's entitlement programs, I can only concur. It then becomes easier to make my point: no one else is entitled to them, either. (North 1998, p. 217)

The same premise (private property rights) that allows free immigration also allows any sort of *private* discrimination and forbids any form of *state* discrimination: a trade between A and B is voluntary as long as they both agree to it, that is, it's not voluntary if B doesn't want to have anything to do with A (and his reasons are his own business) but is forced by the state to hire him or trade with him in any other way. However, the voluntary trade can't happen either if A and B *both* want to trade, but the state forbids them to do so. All of this is implied by the very definition of private property rights and voluntary trade—a trade, or any other relationship for that matter, is voluntary *as long as both parties agree to it*. To be free to trade with whom I want and to be free not to trade with whom I don't want are obviously two sides of the same coin; a *right* to do something *always* has as corollary a right not to do it—otherwise it is not a right but an obligation.

Hoppe has done a good job of restating the importance of this politically incorrect, yet essential right, however I wish to insist even more on this point: the right to exclude is not only a consequence of property rights, but, more precisely, is synonymous with them (2001, pp. 139-42). The ownership of something is precisely the right to choose what to do with it, that is, discriminate among an infinite array of possible uses. The very definition of theft, for instance, implies discrimination: the same act, such as walking in an apartment and taking an item from it, is either an invitation with a gift or a burglary, depending solely on the owner's arbitrary choice.

Any attempt to ban private discrimination must therefore necessarily negate property rights and their corollary—that all human beings have the same rights. Anti-discrimination laws create two classes of citizens: In the case of jobs, a job seeker can choose freely where to apply for work (he won't be accused of discrimination for trying to get a job at Coca-Cola and not Pepsi, for instance, nor for looking for jobs only at white-led companies, for that matter), but an employer choosing who to hire now must often comply with certain “politically correct” rules in order not to be accused of discrimination. In the case of “affirmative action,” state racism and the creation of different castes of people is even more obvious: some people have “rights” that other do not have, based on some arbitrarily defined ethnic characteristics.

An exception to free immigration is often made for criminals and disease carrying people.⁸ However, the relevant question is: should ill foreigners and criminal foreigners be treated any differently than ill or criminal citizens? A case might be built for excluding disease-carrying foreigners, but some reason would have to be provided as well for not expelling from the country local citizens who caught the flu. As for foreign criminals, an interesting argument is that foreign criminals might find it attractive to live in a rich country's prisons. Should they therefore be treated differently than citizens who dislike living in prison? But the same argument applies to citizens of various income classes: certain crimes can be explained as rational in the sense that for the people who commit them, the potential benefits outweigh the potential costs (taking chances of success and risk of getting caught into account). The opportunity cost of going to prison might be quite different for a homeless citizen who doesn't have much to lose and for a rich financier who might lose substantial amounts of valuable time and money if sent to jail. So if there is a problem with the "attractiveness" (or cost for taxpayers, in a similar argument) of prisons being too important, then it is not an issue limited to immigration.

INVITED IMMIGRATION

Hoppe presents the case for *invited* immigration as follows:

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 agree. . . . Hence, in advocating free trade and restricted immigration, one follows the same principle: requiring an invitation for people as for goods and services. (1998, pp. 226-27)

If all land were privately owned, we could but agree with Hoppe: in such a case, an individual would have to secure the agreement of all the owners whose property he would pass on. But the situation gets more complicated with states:

Now, if the government excludes a person while even one domestic resident wants to admit this very person onto his property, the result

⁸ "[Carriers of communicable diseases] are in effect, if not by intention, an 'invading army' in that if they are allowed in the recipient country, they will spread their germs to innocent people" Block (1998, p. 176).

is forced exclusion (a phenomenon that does not exist under private property anarchism). Furthermore, if the government admits a person while there is not even one domestic resident who wants to have this person on his property, the result is forced integration (also non-existent under private property anarchism). (Hoppe 2001, p. 142)

However, as long as the earth is not a hundred percent privately owned, a person can travel without trespassing on anyone's private land, either by using only unowned land (unoccupied, not homesteaded, and with no legitimate owner), or by using only "public property."⁹

Another of Hoppe's arguments is a more pragmatic one. He argues that under open borders, so many unproductive and unwelcome immigrants would come that, for instance for the U.S. or Switzerland, it "would amount to a massive foreign invasion and ultimately lead to the destruction of American and Swiss civilization" (1998, p. 227). But as long as immigrants are only allowed on public property, don't work, and are generally unwelcome, what will they live off? Even if welfare for everyone wasn't abolished before the borders were opened, it seems difficult to conceive that it would not be the moment the residents start to notice that their streets are crowded with idle immigrants. Without state subsidies or private charity, even Switzerland isn't so rich as to have unlimited amounts of food lying in the streets. Immigrants could try to live off theft, or get in jail on purpose, but similar problems can exist even with restricted immigration: the state's control of the borders is never perfect, and the enforcement of property rights and protection of security is an issue even with restricted immigration. And if beggars or idle people crowding the streets were a problem and if there were reasons to ban them, there would still be no reason to limit the ban to those of them that are foreigners.

Could the lack of security get worse with open borders? Yes, this is an issue that can't be ignored. In Switzerland, for instance, a large part of violent and property crimes are committed by foreigners. However, the crime rate for resident foreigners is roughly the same as that for Swiss citizens: the main problem is non-resident foreigners. Although there might be exceptions, quite often non-resident foreign criminals are *uninvited*, whereas resident foreigners are *invited*. So the main conclusion that can be drawn from the data on crime is that *invited* immigration is not really a problem, while *uninvited* is. But the problem remains, and the security argument is still a valid one: It seems rather obvious that Switzerland would be a much safer place now if it had

⁹For instance, if a foreigner crosses the border on some snowy high mountain, without bothering anyone, without anyone even noticing his presence, this could hardly be seen as a case of "forced integration."

erected a very high wall extending over the whole Swiss border fifty years ago and had admitted zero new foreigners since. If a foreign population has a higher crime rate than the local one, to discriminate against them might be a good way to increase security. But then again, other groups, such as young males, also have higher crime rates than the general population, and it does not appear libertarian to consider the security of some people reason enough to infringe on the rights of other, mostly innocent people.

If immigration has to be “invited,” how is “invitation” to be defined? The invitation question could be rephrased as: will anyone let the immigrant onto his private property? If even a tourist needs a hotel room, a plane ticket and food, by accepting to trade with him, the locals have in fact “invited” him. Hoppe writes

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 everyone not in possession of such a ticket will have to be expelled at his own expense. (Ibid., p. 231)

There could of course be others ways to prove an “invitation”: a residency permit (issued only to people that were first invited as workers), real estate ownership, etc. But are these conditions to be required? What about tourists who merely want to travel on roads and do some sightseeing? Do they need an invitation too, and if so, by whom?

Another of Hoppe’s conditions appears quite “soft”:

In accordance with the objective of making all immigration (as trade) invited-contractual, the fundamental requirement for citizenship is the acquisition of property ownership, or more precisely the ownership of real estate and residential property. (Ibid., p. 232)

If one should be able to acquire not only resident status but even citizenship merely by acquiring real estate, then immigration in the U.S. or Switzerland under this proposal would in fact be easier for many than it is now.¹⁰ Citizenship implies the “right” to vote usually denied to resident aliens—and all other foreigners for that matter, whereas citizens often can vote even if they live abroad. The “right” to vote should more accurately be referred to as the legal privilege, authorization, or *power* (small but real) to take decisions about *other* people’s property. There is no reason to consider the extension of the voting franchise to a greater number of people as a good thing:

¹⁰On libertarian arguments against easy citizenship, see also Block and Callahan (2003, p. 66).

It would be difficult on any democratic theory to regard every possible extension of the franchise as an improvement. We speak of universal adult suffrage, but the limits of suffrage are in fact largely determined by considerations of expediency. The usual age limit of twenty-one and the exclusion of criminals, resident foreigners, non-resident citizens, and the inhabitants of special regions or territories are generally accepted as reasonable. . . . It can scarcely be said that equality before the law necessarily requires that all adults should have the vote; the principle would operate if the same impersonal rule applied to all. (Hayek 1978, p. 105)

And to quote Hoppe himself:

The successive expansion of the franchise and finally the establishment of universal adult suffrage did *within* each country what a world democracy would do for the entire globe: it set in motion a seemingly permanent tendency toward wealth and income redistribution. (2001, p. 96)

The right to invite whom I want onto my property is a true right in the libertarian sense, the “right” to vote is not. The extension of the voting franchise to non-citizens (or an easy access to citizenship which is somewhat equivalent to it) is a different matter than the mere coming of an immigrant: If I invite an immigrant, he might trespass on my property and “public property,” but not on other people’s private property.¹¹ On the distinction to be made between mere immigration and citizenship, North, referring to Biblical Israel, points out that “The crucial boundary was citizenship, not the border. Who became a judge in Israel was of far greater concern than who became a resident” (1998, p. 215). And he concludes:

When the immigrant can soon gain access to citizenship, but without any confession of faith other than his promise to obey the law and the Constitution, he thereby gains the authority to participate in the changing of both the law and the Constitution. He can seek to make the law and the Constitution conform to his confession of faith. This is the heart of the matter; this is the heart of the problem. . . . In the United States today, the waiting period for citizenship is as short as five years. The waiting period is similar in other democratic nations. This, not the threat of economic competition, is the problem of immigration for the free society. Because the citizen authoritatively declares the law and seeks to impose it on others, he can become a threat to the free society. (Ibid., pp. 218-19)

¹¹For a fuller criticism of the “right” to vote, see Spooner (1877 and 1966).

The problem of voting in relation to immigration is, however, not the same for all countries: for the U.S., with easy citizenship through *jus soli*, the problem is obvious, and granting non-citizens voting rights as is proposed by some obviously wouldn't help; for Switzerland, with *jus sanguinis* and citizenship overall hard to get, even requiring in certain communes the approval of a majority of the citizens of the commune, the two issues are more clearly separated.¹²

Another condition that Hoppe suggests would be more drastic: “The invitor is held liable to the full extent of his property for any crimes the invitee commits against the person or property of any third party” (1998, p. 231). Since a crime is an invasion on someone else's property, the crime is the same whether committed by a local, an uninvited foreigner, or an invited one. An efficient security system should protect against all criminals, and perhaps try to deter all criminals from committing crimes. Why should the invitor of an immigrant bear responsibility for his actions? If someone is responsible for bringing a new person into “the community,” then it should be the same for children: A might be robbed by an immigrant that wouldn't be there were it not for B inviting him, but he might also be robbed by B's son or grandson for that matter (whatever their age), that wouldn't be there either were it not for B's choice to have children.

RESTRICTED IMMIGRATION

In my comments on invited immigration, I have considered that the state filters entries at the border and that to be invited is the necessary and sufficient condition to be admitted into the country. Hoppe, however, goes further by suggesting that in a situation with “public ownership” of certain areas, the state should “act as if” it were the private owner of these areas:

Nor is it permissible to argue, as some open border proponents have done, that while foreigners may not enter private property without the owner's permission they may do so with public property. In their eyes, public property is akin to unowned property and thus “open” to everyone, domestic citizen and foreigners alike. However, this analogy between public property and unowned resources is wrong.

¹²The latter practice, however, has recently been ruled unconstitutional by the Federal Supreme Court of Switzerland, following a controversy in which these democratic votes were accused of “discrimination.” A ballot initiative that would change the Federal Constitution so as to restore the communes' power to choose how to grant citizenship was voted on and rejected. The granting of voting “rights” to foreigners is also an issue. So far, some cantons (states) have granted it, mostly at the commune level, sometimes at the canton level as well.

There is a categorical difference between unowned resources (open frontier) and public property. Public property is the result of state-government confiscations—of legislative expropriations and/or taxation—of originally privately owned property. While the state does not recognize anyone as its private owner, all of government controlled public property has in fact been brought about by the tax-paying members of the domestic public. Austrians, Swiss, and Italians, in accordance with the amount of taxes paid by each citizen, have funded the Austrian, Swiss, and Italian public property. Hence, they must be considered its legitimate owners. Foreigners have not been subject to domestic taxation and expropriation; hence, they cannot claim any rights regarding Austrian, Swiss or Italian public property. (2002, p. 90)

Hoppe thus argues that the state should discriminate according to the (supposed) preferences of the residents, who are to be considered as co-owners of the “publicly owned” resources financed with their taxes:

The best one may hope for, even if it goes against the “nature” of a democracy and thus is not very likely to happen, is that the democratic rulers act as if they were the personal owners of the country and as if they had to decide who to include and who to exclude from their own personal property (into their very own houses). This means following a policy of utmost discrimination: of strict discrimination in favor of the human qualities of skill, character, and cultural compatibility . . . all immigrants [should have to] demonstrate through tests not only (English) language proficiency, but all-around superior (above-average) intellectual performance and character structure as well as a compatible system of values. (2001, pp. 148-49)

However, all these criteria are mere *preferences*: we cannot know with certainty that all owners would actually actively discriminate on this basis,¹³ and it is debatable whether the criteria are the good ones, and whether the state would really be able to efficiently discriminate according to them.¹⁴

Further, to ask rulers to act like owners of the whole country (in a similar way as monarchs would) is quite a slippery slope:

Why stop there? Why should the rulers act like owners only when it comes to immigration policy? Logically, they should do so with respect to emigration policy also. . . . Apparently, democrat rulers, too, should be able to prevent, à la the old Soviet Union, productive people from

¹³Block and Callahan give good economic reasons why they wouldn't. See Block and Callahan (2003, pp. 48-50).

¹⁴See on this Hornberger (2000).

leaving the country and kick out the unproductive—all the better to enhance the capital value of the nation. (Richman 2000)

The restrictions seem even more radical as they are presented by Kinsella:

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. It seems to me establishing rules as to how public roads are to be used is not inherently unlibertarian. (2005)

It can be argued that it is better if the state lets roads be used as means of transportation rather than for military parades or strikes. It can also be argued that it is also all right if the state forbids camping in the middle of the highway. And even if it were legitimate for someone to go camping in the middle of a public highway, there doesn't seem to be much point in begging the state to let him. However, other cases might be less obvious, and the states' decisions regarding the use of scarce resources remain fundamentally arbitrary. The question of rules regarding the use of state-controlled resources is debatable, and there probably won't be agreement on "second best" solutions. Is there a particular reason why the state should discriminate between citizens who wish to use the road as a means of travel and foreigners who wish to use the road as a means of travel as well?

The argument for expelling immigrants has been analyzed with an analogy with the "bum in the public library" case: should the state expel the bum from the library? Block and Callahan consider the library as a good that anyone can "liberate," Hoppe considers it as the property of the taxpayers (thus his point that libertarians should wish for the state to act as if it were the owner of the library and expel the bum) (Block and Callahan 2003, pp. 50-53). I consider neither approach entirely satisfactory if we are to think of the public library or its contents as either confiscated goods or goods acquired with tax money.

Let's say, for instance, that there is in the library one book of subversive literature the state confiscated from me. The bum could take the book from the library, and give it back to me. But he could also take the book for himself, and then even destroy it. In the first case the book is returned to its legitimate owner, in the second it is not. Let's take

another example: suppose I am the owner of a whole private library. The state confiscates it, and makes it a public library. A “liberation” group then blows it up. What is the “second best” for me, the state keeping the library, or the library being blown up? On the other hand, as Block correctly notes, in some cases a blowing of public property is legitimate. Suppose the state confiscates a tank from me, and then uses it to attack me or some other innocent victims. Then indeed, the blowing up of the tank would be welcome and would be “second best” to the tank returning back to me.

The case obviously gets quite complicated when the state taxes a lot of people and uses the proceeds to finance many different goods and services. If we were to follow the logic that it is good if anyone “liberates” goods and money from the state, then we should rejoice that more and more people are applying for welfare. It could be argued that they do help to make the collapse of the welfare state closer at hand, but still, is it moral to accept stolen money, or steal anything we can from a thief? To reclaim stolen goods is one thing, but to “liberate” whatever goods one can from the state is another.¹⁵ It is not obvious that the legitimate owner of a stolen good would prefer to see it in some anonymous bum’s private hands than in a public library.

However, we also have to point out that we do not consider valid the argument stating that the state will have to replace the stolen books from the library through more taxes, and that, therefore, taking goods from the state is always equivalent to taking them from taxpayers. If I reclaim a stolen good from a thief, I bear no responsibility for his “replacing” the good by robbing some other person. But let’s return to our bum: if bums in general pay no taxes, there is still no reason given by the advocates of restricted immigration why the *foreign* bum should be treated any differently than the *local* bum.

Any single taxpayer is only one among many people whose money has been used to finance the public road or some other public resource. Therefore, if the taxpayer has a right to see his preferences regarding the use of that resource followed, it is a right that is limited by the fact that all the other “supposed co-owners” have the same right. The taxpayer, however, is the full owner of his house and money. Is it legitimate, or

¹⁵An interesting question is that of attending schools and universities paid with tax money. A possible answer is either to consider that the schools are paid with the parents’ taxes, or to consider it as a “loan” from the state that the educated person will more than repay through proportional or progressive taxation. However, even if the person does not “repay” the state for that money, it still does not follow that the state would have a right to ask for reimbursement: the state was not the legitimate owner of the money in the first place.

even a “second best solution” in terms of property rights restitution, for the state to stop all people from doing what they want with property they fully own, on the grounds that the majority of the “involuntary co-owners” of “public property” might disagree? Let’s suppose I live in a house in Texas and own a large parcel of land around my house, with no roads around, and employ Mexicans to work for me. Let’s also suppose they don’t use any public property to come, walking through the desert, so it’s all right following Kinsella’s rule. Now comes the state. The state robs me of my property by confiscating the land around my house, and builds a road that forms a circle around my house, and pays for the road by taxing some distant neighbors, neighbors that happen not to like Mexicans. Should I then be forced to fire the Mexicans I was hiring, since they would have to trespass on the road to come to work in my house?

The argument of “publicly owned” areas would therefore have us fall right into the statist trap of interventionism.¹⁶ Because of one infringement of private property rights (the use of aggression to finance a certain good), we would be led to support another one (the use of aggression to stop some individuals from inviting whomever they want on their property). Furthermore, similar reasoning could be used (and sadly often is) to defend several other restrictions of liberty: for instance, while we have socialized medicine, it would seem reasonable for the government to stop people from smoking, using drugs, eating too much and practicing dangerous sports, while making safe physical activity, eating vegetables and wearing seat belts mandatory, since the costs are to be borne by everyone.¹⁷ Libertarians, however, should instead push for the direct solution: an end to socialized medicine. To stop the state’s intervention that causes the problem in the first place is better than to try to stop some subsequent issues it raises: “For every social problem A caused by government program X, problem A can be solved by abolishing program X” (Stepp 2001).

A second point is the legitimacy that the “publicly owned” areas argument lends to majority rule. Majority rule is legitimate if it has been unanimously accepted as a rule, not if it has been imposed upon unwilling taxpayers. But even if majority rule were legitimate, Kinsella doesn’t

¹⁶Thus, “This is precisely the essential trap of the statists: to justify ever more oppression as a palliative to the failure of past oppressive measures” Rideau (2003). The fact that state intervention necessarily leads to more state intervention in a vicious circle of interventionism has been identified already by Mises (1991).

¹⁷See on this Block and Callahan (2003, pp. 61-62).

prove that locals are necessarily in favor of more restricted immigration. In Switzerland, for instance, several ballot initiatives proposing to limit the number of foreigners were rejected. I am not saying that the majority would necessarily favor fully open borders, but there is obviously no unanimity or anything near it on the issue; some people want to invite foreigners, others don't. More relevant is the fact that people *do* invite immigrants: they hire them, house them and trade with them. The most libertarian position seems to be to let people do what they want with their legitimately owned resources, before asking about second best possibilities regarding the use of illegitimately owned resources on the use of which there is nothing near unanimous agreement.

A radical version of the “public areas” argument used by Hoppe and Kinsella would imply that any entry of a newcomer necessarily constitutes an invasion as long as there is not unanimity regarding his coming. But this argument would prove too much. Hoppe correctly notes that “any argument in favor of international protectionism is simultaneously an argument in favor of inter-regional and inter-local protectionism” (1998, p. 222). The same would be true for this case: it would imply that not only immigration from another country, but even the move from another region or city,¹⁸ the birth of a new baby, or even tourism, would all constitute invasions. Even in the weak form in which Kinsella presents it, that is, to follow what the majority considers “reasonable” in relation to public areas, the conclusion would be that a couple should not be allowed to have a baby if the majority of the residents of the same city were to disagree because they don't want more people congesting the roads they pay for.¹⁹

There is another major problem with the “roads” argument: depending on the country, roads might well not be paid with the resident's taxes. Roads might have been built a long time ago with taxes of people long since dead, and their current maintenance be paid with gas taxes. What then? Why would then an immigrant have less right than a citizen to use public roads? Further, what about people who don't pay the particular tax that is used to finance the roads, shouldn't they be expelled from the country as well? If the point is that some people should be excluded from “public” roads, parks, etc. because they don't pay taxes, then there is still no reason why the rule should apply particularly to immigration. Following the argument's logic, the rule

¹⁸A point also noted by Block. See Block (1998, p. 173).

¹⁹An objection also raised by Block. See Block (2004). For a further development on the fact that many arguments in favor of restricting immigration would apply as well to restricting new births, see Block and Callahan (2003, pp. 55-61).

should then be: allow all (net) taxpayers, or people willing to become (net) taxpayers, to stay or come into the country, and expel or refuse to let in all net tax-consumers.

CONCLUSION

The case against free immigration thus appears unconvincing: none of the arguments in favor of restricting immigration in fact provides a valid reason to treat foreign and local people differently. However, crime, voting, the welfare state and anti-discrimination laws do raise legitimate concerns. For crime, to enforce private property rights, including the right to defend one's property against trespassers, appears as the direct solution. The state's police, instead of enforcing victimless crime laws, should be employed at protecting residents against real criminals, be they foreign or domestic. The question of voting is a separate issue from that of the mere right to work and live in a country, and there is no libertarian rights argument for a positive right to a citizenship or voting. On the question of the welfare state, the only answer is to ask for a stop to any form of subsidies for immigrants, any form of subsidies for anyone for that matter.

Some might say libertarians will never have a say on that. But will they have a say on immigration, or on anything for that matter? If a libertarian were to become president of the U.S. and had the support of a libertarian House and Senate, he could simply take all the relevant decisions at the same time. On the other hand, if there are ballot initiatives on these issues, the choice is likely to be about the "least worst" and there is often no clear-cut libertarian answer on what that is.²⁰

When we talk about whom we want to let in, we are talking about personal preferences. To ask the state to act as if it were the owner raises the problem that diverse owners might have diverse opinions on whom it is best to admit. There is not much point in trying to convince the state to act as some (maybe most, maybe not) of us would if we were choosing as owners. The state won't listen anyway, and we won't agree on it, neither among libertarians nor among the general population. Instead, libertarians should focus on furthering pure libertarian ideas: the abolition of the welfare state, the right of owners to discriminate freely, and better protection of property rights.

²⁰For instance, even such a proposal as welcome as that of cutting subsidies for illegal immigrants might be packaged with other changes that there are libertarian reasons to oppose. See on this Unz (1994).

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