

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 4 FALL 2016 ISSUE 1

A RESPONSE TO THE LIBERTARIAN CRITICS OF OPEN-BORDERS LIBERTARIANISM

Walter E. Block, Ph.D.

*Harold E. Wirth Eminent Scholar Endowed Chair
and Professor of Economics*

Joseph A. Butt, S.J. College of Business

I. INTRODUCTION

Libertarians may be unique in many regards, but their views on immigration do not qualify. They are as divided as is the rest of the population on this issue. Some favor open borders, and others oppose such a legal milieu. The present paper may be placed in the former category. It will outline both sides of this debate in sections II and III. Section IV is devoted to some additional arrows in the quiver of the closed border libertarians, and to a refutation of them. We conclude in section V.

II. ANTI OPEN BORDERS

The libertarian opposition to free immigration is straightforward and even elegant.¹ It notes, first, a curious bifurcation in international economic relations. In the case of both trade and investment, there must necessarily be two² parties who agree to the commercial interaction. In the former case, there must be an importer and an exporter; both are necessary. Without the consent of both parties, the transaction cannot take place. A similar situation arises concerning foreign investment. The entrepreneur who wishes to set up shop abroad must obtain the willing acquiescence of the domestic partner for the purchase of land and raw materials. And the same occurs with financial transactions that take place across

¹ Peter Brimelow, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* (1995); Jesús Huerta De Soto, *A Libertarian Theory of Free Immigration*, 13 J. OF LIBERTARIAN STUD. 187, 187-97 (1998); Hans-Hermann Hoppe, *DEMOCRACY, THE GOD THAT FAILED: THE ECONOMICS AND POLITICS OF MONARCHY, DEMOCRACY AND NATURAL ORDER* (2001); John Hospers, *A Libertarian Argument Against Opening Borders*, 13:2 J. OF LIBERTARIAN STUD. 153 (1998); Stephan Kinsella, *A Simple Libertarian Argument Against Unrestricted Immigration and Open Borders*, LRC BLOG (Sept. 1, 2005), <http://archive.lewrockwell.com/kinsella/kinsella18.html>; Bionic Mosquito, *Open Borders: Case Study*, BIONIC MOSQUITO (Nov. 5, 2015), <http://bionicosquito.blogspot.ca/2015/11/open-borders-case-study.html>; Matthew Reece, *The Pragmatic Libertarian Case Against Open Borders*, THE ZEROth POSITION (Nov. 24, 2015), <https://reece.liberty.me/the-pragmatic-libertarian-case-against-open-borders>; Llewellyn Rockwell, *Open Borders Are an Assault on Private Property*, MISES DAILY ARTICLES (Nov. 16, 2015), <https://mises.org/library/open-borders-are-assault-private-property>; Murray Rothbard, *Nations by Consent: Decomposing the Nation-State*, 11 J. OF LIBERTARIAN STUD. 1 (1994); Eric Ruark, *The (Il)logic of Open Border Libertarians*, FEDERATION FOR AMERICAN IMMIGRATION, (May 21, 2014); Jared Taylor, *THE REAL AMERICAN DILEMMA: RACE, IMMIGRATION, AND THE FUTURE OF AMERICA* (American Renaissance 1998).

² Or more

national borders. Both lender and borrower must approve; otherwise, this interaction cannot possibly occur.

Matters are entirely different regarding labor mobility. Here, in the absence of any immigration restrictions, the migrant, without anyone's by-your-leave except his own, simply shows up on the territory of the receiving country. Nor is this only a mere failure to attain symmetry. Something far more important, at least for this version of libertarianism, is involved. Without mutual consent, it is charged, such movement constitutes trespass. Or, in some versions of this argument, it is in effect forced integration. Thus, from this quarter it is not at all clear that open immigration is the libertarian position. Indeed, the very opposite is true. Without limitations, restrictions, this is antithetical to libertarianism. In other words, private property rights are one of the two very bedrocks of this philosophy.³ Free and open immigration violates private property rights, and this is incompatible with freedom. Free immigration is an open sesame for trespass.⁴

³ Along with the non-aggression principle (NAP). See Hans-Hermann Hoppe, *THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY: STUDIES IN POLITICAL ECONOMY AND PHILOSOPHY*, 318-23 (1993); Jacob Huebert, *LIBERTARIANISM TODAY*, 27-39 (2010); Stephan N. Kinsella, *Legislation and the Discovery of Law in a Free Society*, 11 *J. OF LIBERTARIAN STUD.* 132 (1995); Stephan N. Kinsella, *New Rationalist Directions in Libertarian Rights Theory*, 12:2 *J. OF LIBERTARIAN STUD.* 313 (1996), http://www.mises.org/journals/jls/12_2/12_2_5.pdf; Murray N. Rothbard, *FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO*, 2-53 (1973).

⁴ Others have vigorously pursued their critiques of the open border libertarians. See Bionic Mosquito, *Open Borders: Case Study*, *BIONIC MOSQUITO* (Nov. 5, 2015), <http://bionicosquito.blogspot.ca/2015/11/open-borders-case-study.html>; Hans-Hermann Hoppe, *On Free Immigration and Forced Immigration*, *LRC BLOG* (Jan. 1970), <https://www.lewrockwell.com/1970/01/hans-hermann-hoppe/on-free-immigration-and-forced-integration/>.

III. THE CASE FOR OPEN BORDERS

Those libertarians in favor of free immigration⁵ are not without a defense of their position, even in the face of

⁵ Chris Berg, *Open the Borders*, 26 POL'Y 3, (2010); Walter Block, *A Libertarian Case for Free Immigration*, 13 J. OF LIBERTARIAN STUD. 167, (1998) [hereinafter Block, *Libertarian Case*]; Walter Block, *The State Was a Mistake*, MISES INSTITUTE (2004), <https://mises.org/library/state-was-mistake> (last visited Sept. 4, 2016); Walter Block, *Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part I*, 27 REASON PAPERS 117, (2004); Walter Block, Hoppe, Kinsella and Rothbard II, *Immigration: A Critique*, 22 J. OF LIBERTARIAN STUD. 593, (2011) [hereinafter Block, *Immigration: A Critique*]; Walter Block, *Rejoinder to Hoppe on Immigration*, 22 J. OF LIBERTARIAN STUD. 771, (2011) [hereinafter Block, *Rejoinder to Hoppe*]; Walter Block, *Rejoinder to Todea on the 'Open' Contract of Immigration*, 8 SCI. J. HUMANISTIC STUD. 52, (2013) [hereinafter Block, *Rejoinder to Todea*]; Walter Block, *Contra Hoppe and Brat on Immigration*, MGMT. EDUC. SCI. TECH. J., Jan. 2016, at 1; Walter Block & Gene Callahan, *Is There a Right to Immigration? A Libertarian Perspective*, 5 HUM. RTS. REV. 46 (2003); Donald Bourdreaux, *Absorbing Immigrants: Does America Have the Space and Resources to Allow Open Borders?*, FOUNDATION FOR ECONOMIC EDUCATION (2002), <https://fee.org/articles/absorbing-immigrants> (last visited Sept. 4, 2016); Donald Bourdreaux, *Immigration: The Practice of Principle*, CAFE HAYEK (2013), <http://cafehayek.com/2013/06/immigration-the-practice-of-the-principle.html> (last visited Sept. 4, 2016); Bryan Caplan, *Why Should We Restrict Immigration?*, 32 CATO J. 5, (2012); Bryan Caplan, *My Path to Open Borders*, OPEN BORDERS: THE CASE (2013), <http://openborders.info/blog/my-path-to-open-borders/> (last visited Sept. 4, 2016); Bryan Caplan, *America Should Open Its Borders: My Opening Statement for the Reason Immigration Debate*, LIBRARY OF ECONOMICS AND LIBERTY (2014), http://econlog.econlib.org/archives/2014/04/america_should.html (last visited Sept. 4, 2016); Richard Ebeling, *Freedom To Move: Personal Liberty or Government Control, Part I*, EPICTIMES (2015), <http://www.epictimes.com/07/23/2015/personal-liberty-or-government-control/> (last visited Sept. 4, 2016); Richard Ebeling, *Practicing Freedom: Markets, Marriage, and Migration*, EPICTIMES (2015),

<http://www.epictimes.com/richardebeling/2015/08/practicing-freedom-markets-marriage-and-migration/> (last visited Sept. 4, 2016); THE CASE FOR FREE TRADE AND OPEN IMMIGRATION, (Richard Ebeling & Jacob Hornberger eds., 1995); Albert Esplugas & Manuel Lora, *Immigrants: Intruders or Guests? A reply to Hoppe and Kinsella*, 22 J. OF LIBERTARIAN STUD. 185, (2010); Max Fisher, *How Ending Birthright Citizenship Would Change Immigration*, THE ATLANTIC (2010), <http://www.theatlantic.com/politics/archive/2010/08/how-ending-birthright-citizenship-would-change-immigration/344536/> (last visited Sept. 4, 2016); David Friedman, THE MACHINERY OF FREEDOM: A GUIDE TO RADICAL CAPITALISM, (2d ed. 1995); David Friedman, *Welfare and Immigration – The Other Half of the Argument*, DAVID D. FRIEDMAN'S HOME PAGE (2006), http://www.davidfriedman.com/Libertarian/Welfare_and_Immigration.html (last visited Sept. 4, 2016); David Friedman, *Immigrants and Welfare*, DAVID D. FRIEDMAN'S HOME PAGE (2012), <http://davidfriedman.blogspot.ca/2012/11/immigrants-and-welfare.html> (last visited Sept. 4, 2016); Anthony Gregory & Walter Block, *On Immigration: Reply to Hoppe*, 21 J. OF LIBERTARIAN STUD. 25, (2007); David Henderson, *Tear Down These Walls*, FOUNDATION FOR ECONOMIC EDUCATION (2012), <https://fee.org/articles/tear-down-these-walls/> (last visited Sept. 4, 2016); Jacob Hornberger, *End Immigration Socialism*, THE FUTURE OF FREEDOM FOUNDATION (2014), <http://fff.org/2014/09/22/end-immigration-socialism/> (last visited Sept. 4, 2016); Jacob Hornberger, *There Is Only One Libertarian Position on Immigration*, THE FUTURE OF FREEDOM FOUNDATION (2015), <http://fff.org/2015/08/25/one-libertarian-position-immigration/> (last visited Sept. 4, 2016); James Hudson, *The Philosophy of Immigration*, 8 J. OF LIBERTARIAN STUD. 51, (1986); Michael Huemer, *Is There a Right to Immigration?*, 36 SOC. THEORY & PRAC. 429, (2012); Jan Kregelka, *A Pure Libertarian Theory of Immigration*, 22 J. OF LIBERTARIAN STUD. 35, (2010); John Lee, *Confusing Public and Private: The Nonsensical Private Property Argument Against Open Borders*, OPEN BORDERS: THE CASE (2015), <http://openborders.info/blog/confusing-public-private-nonsensical-private-property-argument-open-borders/> (last visited Sept. 4, 2016); John Lee, *The claim that open borders inevitably leads to homogeneity is incredibly weak*, OPEN BORDERS: THE CASE (2015), <http://openborders.info/blog/claim-open-borders-inevitably-leads-homogeneity-incredibly-weak/> (last visited Sept. 4, 2016); William Niskanen, *Build a Wall around the Welfare State, Not around the Country*, CATO INSTITUTE (2006),

<http://www.cato.org/blog/build-wall-around-welfare-state-not-around-country> (last visited Sept. 4, 2016); Alex Nowrasteh, *Could Our Immigration Laws Prevent the Next Google?*, THE HUFFINGTON POST (March 28, 2012), http://www.huffingtonpost.com/alex-nowrasteh/post_2887_b_1232305.html (last visited Sept. 4, 2016); Alex Nowrasteh, *Could Our Immigration Laws Prevent the Next Google?*, THE FEDERALIST (2015), <http://thefederalist.com/2015/09/04/alex-nowrasteh-critiques-donald-trumps-immigration-plan/> (last visited Sept. 4, 2016); Sheldon Richman, *Border Control Bogey*, FOUNDATION FOR ECONOMIC EDUCATION (2010), <http://fee.org/freeman/border-control-bogey/#axzz2TOf3I1IZ> (last visited Sept. 4, 2016); Sheldon Richman, *What the Immigration Bill Overlooks*, THE FUTURE OF FREEDOM FOUNDATION (2013), <http://fff.org/explore-freedom/article/what-the-immigration-bill-overlooks/> (last visited Sept. 4, 2016); Sheldon Richman, *TGIF: In Praise of 'Thick' Libertarianism*, THE FUTURE OF FREEDOM FOUNDATION (2014), <http://www.fff.org/explore-freedom/article/tgif-in-praise-of-thick-libertarianism/> (last visited Sept. 4, 2016); Sheldon Richman, *Libertarianism is More than Just Rejecting Force: The 'thick' and 'thin' of libertarian philosophy*, REASON.COM (2014), <http://reason.com/archives/2014/04/06/a-libertarian-opposition-to-racism> (last visited Sept. 4, 2016); Sheldon Richman, *TGIF: Libertarianism Rightly Conceived*, THE FUTURE OF FREEDOM FOUNDATION (2014), <http://fff.org/explore-freedom/article/tgif-libertarianism-rightly-conceived/> (last visited Sept. 4, 2016); Sheldon Richman, *What Social Animals Owe Each Other*, THE FUTURE OF FREEDOM FOUNDATION (2014), <http://www.fff.org/explore-freedom/article/what-social-animals-owe-each-other/> (last visited Sept. 4, 2016); Sheldon Richman, *Let the Immigrants Stay*, THE FUTURE OF FREEDOM FOUNDATION (2014), <http://fff.org/explore-freedom/article/let-the-immigrants-stay/> (last visited Sept. 4, 2016); Sheldon Richman, *TGIF: Gun Control and Immigration Restrictions Are Enemies of Liberty*, FREE ASSOCIATION (2015), <http://sheldonfreeassociation.blogspot.ca/2015/10/tgif-gun-control-and-immigration.html> (last visited Sept. 4, 2016); Sheldon Richman, *TGIF: Let the Refugees In*, FREE ASSOCIATION (2015), <http://sheldonfreeassociation.blogspot.ca/2015/11/tgif-let-refugees-in.html> (last visited Sept. 4, 2016); Sheldon Richman, *Immigrants Are Less Criminal Than Natural-Born Americans*, REASON.COM (2016), <https://reason.com/blog/2016/01/14/immigrants-are-less-criminal-than-natura> (last visited Sept. 4, 2016); PASCAL SALIN,

LIBERALISME, 231-254 (Paris: Odile Jacob 2000); Ken Schoolland, *Immigration: An Abolitionist Case*, FOUNDATION FOR ECONOMIC EDUCATION (2002), <http://fee.org/files/doclib/schoolland0102.pdf> (last visited Sept. 4, 2016); Ken Schoolland, Associate Professor of Economics and Political Science at Hawaii Pacific University & Member of the Board of Directors for the International Society for Individual Liberty, Address at the World Conference of the International Society for Individual Liberty, *Why Open Immigration?* (July 29, 2002); Dalmia Shikha, *On immigration, Obama may be cynical, but he's not breaking the law*, THE WASHINGTON EXAMINER (2014), http://www.washingtonexaminer.com/on-immigration-obama-may-be-cynical-but-hes-not-breaking-the-law/article/2551807%22%20target=%22_blank (last visited Sept. 4, 2016); Julian Simon, THE ECONOMIC CONSEQUENCES OF IMMIGRATION, (Oxford: Basil Blackwell 1989); Julian Simon, *Are There Grounds for Limiting Immigration?*, 13 J. OF LIBERTARIAN STUD. 137, (1998); Ilya Somin, *Obama, immigration, and the rule of law*, THE WASHINGTON POST (2014), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/11/20/obama-immigration-and-the-rule-of-law/> (last visited Sept. 4, 2016); Diana Todea, *A libertarian account of freedom of movement and open borders*, 2 SCI. J. HUMANISTIC STUD. 99, (2010); Will Wilkinson, *Milton Friedman's Argument for Illegal Immigration*, THE FLY BOTTLE (2008), <http://www.willwilkinson.net/flybottle/2008/06/11/milton-friedmans-argument-for-illegal-immigration/> (last visited Sept. 4, 2016); Will Wilkinson, *Liberalism and Birthright Citizenship*, THE FLY BOTTLE (2010), <http://www.willwilkinson.net/flybottle/2010/08/09/liberalism-and-birthright-citizenship/> (last visited Sept. 4, 2016). In contrast, there are some libertarians who take a middle ground in this controversy assuming neither a clear position for or against open borders. See Brian Doherty, ET AL., HUMANE AND PRO-GROWTH: A REASON GUIDE TO IMMIGRATION REFORM, (Shikha Dalmia ed., 2013); J.C. Lester, *Book Reviews In Defense of the Realm: The Place of Nations in Classical Liberalism By David Conway*, 20 J. OF LIBERTARIAN STUD. 81, (2006); Patrcik Lynch, *Libertarians Can Believe in Borders*, LIBRARY OF LAW AND LIBERTY (2015), <http://www.libertylawsite.org/2015/10/27/why-libertarians-can-believe-in-borders/> (last visited Sept. 4, 2016); Tibor Machan, *Immigration Into a Free Society*, 13 J. OF LIBERTARIAN STUD. 199, (1998); Ron Paul, LIBERTY DEFINED: 50 ESSENTIAL ISSUES THAT AFFECT OUR FREEDOM, 150-159 (2011); Keith Preston, *The Immigration Question: A Libertarian Middle*

this seeming overwhelming case against it. The open borders libertarian asks, is immigration necessarily a violation of property rights? When put in this way, it is clear that it is not. For example, suppose an Asian, or an African, or a Mexican, or a Martian for that matter, were to catapult⁶ into a completely unowned parcel of land that has never before been homesteaded.⁷ For example,

Ground Between Rockwell and Carson, ATTACK THE SYSTEM (2015), <https://attackthesystem.com/2015/11/13/the-immigration-question-a-libertarian-middle-ground-between-rockwell-and-carson> (last visited Sept. 4, 2016); Michael Rozeff, *Original Appropriation and Its Critics*, LRC BLOG (2005), <https://www.lewrockwell.com/2005/09/michael-rozeff/original-appropriation-and-its-critics/> (last visited Sept. 4, 2016).

⁶ Perhaps arriving by helicopter, or space ship in the case of the Martian.

⁷ For the libertarian, homesteading is the sine qua non of private property rights. See Walter Block, *Earning Happiness Through Homesteading Unowned Land: a comment on 'Buying Misery with Federal Land' by Richard Stroup*, 15 J. OF SOC. POL. AND ECON. STUD. N.2, 237-254 (1990); Walter E. Block, *Homesteading City Streets; An Exercise in Managerial Theory, Planning and Markets*, Vol. 5, No. 1, 18-23, (2002), <http://www-pam.usc.edu/volume5/v5i1a2s1.html>; Walter E. Block, *On Reparations to Blacks for Slavery*, *Human Rights Review*, LRC BLOG (2002), <https://www.lewrockwell.com/lrc-blog/reparations-blacks-slavery/>; Walter E. Block and Guillermo Yeatts, *Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform'*, J. NAT. RESOURCES & ENVTL. L., Vol. 15, No. 1, 37-69 (1999-2000); Water E. Block and Michael R. Edelstein, *Popsicle sticks and homesteading land for nature preserves*, ROMANIAN ECONOMIC AND BUSINESS AND BUSINESS REVIEW, Vol. 7, No. 1, pp. 7-13 (2005), <http://www.rebe.rau.ro/REBE%207%201.pdf>; Per Bylund, *Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership*, (June 2005) (master thesis on file with Lund University), <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1330482>; Per Bylund, *Man and Matter: how the former gains ownership of the latter*, LIBERTARIAN PAPERS, Vol. 4, No. 1, (2012), <http://libertarianpapers.org/articles/2012/lp-4-1-5.pdf>; Hugo Grotius, *Law of War and Peace* (De Jure Belli ac Pacis, (1625);

consider some territory in the midst of Alaska, or in some isolated part of the Wyoming Rocky Mountains. Our immigrant starts to mix his labor with this land that has never been touched by human beings.⁸ What law that a libertarian must respect has this Asian, African, Mexican, or Martian violated? It is not clear that he has acted unlawfully⁹ at all. Rather, the very opposite is the case. If the statists try to remove him from these immigrant land claims, it is they, not he who is the trespasser, the NAP violator, the disrespecter of private property rights. This is a clear case, as clear as can be. Such an immigrant homesteader acts entirely within the limits of libertarian

Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, (1993); Hans-Hermann Hoppe, *Of Private, Common, and Public Property and the Rationale for Total Privatization*, LIBERTARIAN PAPERS, Vol. 3, No. 1, 1-13 (2011), <http://libertarianpapers.org/2011/1-hoppe-private-common-and-public-property/>; Stephan N. Kinsella, *A libertarian theory of contract: title transfer, binding promises, and inalienability*, 17 J. OF LIBERTARIAN STUD. 11 (2003), http://www.mises.org/journals/jls/17_2/17_2_2.pdf; Stephan N. Kinsella, *How we come to own ourselves*, MISES DAILY ARTICLES (Sept. 7, 2006), <http://www.mises.org/story/2291>; Stephan N. Kinsella, *Homesteading, Abandonment, and Unowned Land in the Civil Law*, MISES DAILY ARTICLES (May 22, 2009), <http://blog.mises.org/10004/homesteading-abandonment-and-unowned-land-in-the-civil-law/>; John Locke, *An Essay Concerning the True Origin, Extent and End of Civil Government*, 17-19 (1948); John Locke, *Second Treatise of Civil Government*, Chap. 5, (1955); Ellen Frankel Paul, *Property Rights and Eminent Domain*, (1987); Samuel Pufendorf, *Natural Law and The Law Of Nations*, (1673); Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, 32 (1973); Michael Rozeff, *Communities, Immigration, and Decentralization*, LRC BLOG (Dec. 14, 2005), <http://www.lewrockwell.com/rozeff/rozeff51.html>; Carl Watner, *The Proprietary Theory of Justice in the Libertarian Tradition*, JOURNAL OF LIBERTARIAN STUDIES, Vol. 6, No. 3-4, 289-316 (1982), http://mises.org/journals/jls/6_3/6_3_6.pdf.

⁸ The Bureau of Land Management of the U.S. Government of course claims these parcels, but as they have not homesteaded them either, the libertarian need not support such land titles.

⁹ At least not according to the libertarian NAP law.

law.¹⁰ A more debatable example concerns other property owned by the government that has not been totally empty of human habitation: parks, roads, forests. Suppose an immigrant were to set up shop in one of those places, in the face of a population that, through inaction, in effect acquiesces in continued state ownership. My own view is that anyone, citizen or outsider, who would do so would be in the right.¹¹ However, I readily acknowledge, this is a far more complicated claim than the one concerning

¹⁰ Bionic Mosquito appears to be ambivalent on this issue. On the one hand, he asserts: "I suppose, given my logic above, I could conclude that Block's immigrant squatter on the top of the Rocky Mountains now 'owns' the land under his feet - at least until the owner (taxpayer, government - it really doesn't matter at the moment) defends it and removes him. Which the state will, via the US military (or some similar agency)." Bionic Mosquito, *Dances With Elephants*, BIONIC MOSQUITO BLOG (Aug. 12, 2015), <http://bionicmosquito.blogspot.ca/2015/08/dances-with-elephants.html>. If I read this correctly, it means that in this author's view the homesteader is not the legitimate owner of the land with which he has mixed his labor. On the other hand, this scholar also maintains: "Yet 'own' means something- eventually they come into contact. This leads me to consider the possibility: 'own' means what one can defend. I don't say that this fits neatly in libertarian theory; I don't say it is just..." *Id.* In my view, in contrast, licit ownership, at least for the libertarian perspective, has nothing whatsoever to do with whether or not the owner can successfully defend his property. When the bully exploits the 90 pound weakling, or the mugger robs a victim, or the conquistadores steal the land of the peasants, or the slave master despoils the slave of his labor, the latter is still in the right, even though he is unable to "defend" his rights, and the former is in the wrong. Might does not make right, at least not for the libertarian.

¹¹ See Joachim Hagopian, *Deep State's Draconian Measures To Criminalize Citizens*, LRC BLOG (Jan. 2016) <https://www.lewrockwell.com/2016/01/joachim-hagopian/deep-states-vicious-measures>; Ron Paul, *Oregon Standoff: Isolated Event or Sign of Things to Come?*, LRC BLOG (Jan. 2016), <https://www.lewrockwell.com/2016/01/ron-paul/beginning-civil-unrest>; Joel Skousen, *Oregon Standoff: Federal Land Grab vs. the Sagebrush Rebellion*, TEA PARTY ECONOMIST (Jan. 9 2016), <http://www.garynorth.com/public/14709.cfm>.

entirely virgin territory and one I shall not pursue in the present paper.

Another weakness in the closed border libertarian position concerns internal immigration. If movement from Argentina to the U.S. is to be stemmed by regulations presumably emanating from private property rights considerations, what of a change of address from New York to Louisiana? It would appear that the same arguments that apply to the one case also do so for the other (Richman, 2010). The criticism of the migrant to the U.S. from Argentina is that without some sort of controls, there is a violation of property rights. The immigrant arrives, as it were, without any permission from anyone else. However, that same situation holds true for interstate movements; for intrastate ones too. People continually travel, for instance between New Orleans and Baton Rouge, all on their own cognizance; with no permission from anyone else. The implication of the non-open borders position is that this, too, should be looked at askance. And, yet, this consideration would appear to be a *reductio ad absurdum* of that viewpoint.

IV. OTHER ARGUMENTS

A. ACTUAL IMMIGRANT PRACTICE

It might be claimed that the typical immigrant does not hive off to the desolate woods where no man has ever trod before. Rather, he enters a city, typically where members of the donor country congregate, so that he can be amongst his own kind. Says Mosquito (2016D): “These refugees are not settling on the 3000-meter-plus peaks of the Swiss Alps, far removed from any otherwise improved land; they are not going north of the Arctic Circle. They are coming to the developed – and even most developed – parts of Europe. Even if I accept your theory, you cannot avoid this practice – today.” This cannot be denied.

However, this is hardly even relevant to our discussion. We are now attempting to explore whether free immigration is *per se* a violation of the libertarian principles of private property rights. And, if a single,

solitary counter example can be furnished, this proves there is no fundamental rights violation in this practice.

B. CANNOT HIRE?

In view of Hoppe (2004):

It is incorrect to infer from the fact that an immigrant has found someone willing to employ him that his presence on a given territory must henceforth be considered 'invited.' Strictly speaking, this conclusion is true only if the employer also assumes the full costs associated with the importation of his immigrant-employee. This is the case under the much-maligned arrangement of a 'factory town' owned and operated by a proprietor. Here, the full cost of employment, the cost of housing, healthcare, and all other amenities associated with the immigrant's presence, is paid for by the proprietor. No one else's property is involved in the immigrant-worker settlement. Less perfectly (and increasingly less so), this full-cost-principle of immigration is realized in Swiss immigration policy. In Switzerland, immigration matters are decided on the local rather than federal government level, by the local owner-resident community in which the immigrant wants to reside. These owners are interested that the immigrant's presence in their community increase rather than decrease their property values. In places as attractive as Switzerland, this typically means that the immigrant (or his employer) is expected to buy his way into a community, which often requires multimillion-dollar donations.

Unfortunately, welfare states are not operated like factory towns or even Swiss communities. Under welfare-statist condition, the immigrant employer must pay only a small fraction of the full costs associated with the immigrant's presence. He is permitted to socialize (externalize) a substantial part of such costs onto other property owners. Equipped with a work permit, the immigrant is allowed to make free use of every public facility: roads, parks, hospitals, schools, and no landlord, businessman, or private association is permitted to discriminate against him as regards housing, employment, accommodation, and association. That is, the immigrant comes invited with a substantial fringe benefits package paid for not (or only partially) by the immigrant employer (who allegedly has extended the invitation), but by other domestic proprietors as taxpayers who had no say in the invitation whatsoever. This is not an 'invitation,' as commonly understood. This is an imposition. It is like inviting immigrant workers to renovate one's own house while feeding them from other people's refrigerators. Consequently, because the cost of importing immigrant workers is lowered, more employer-sponsored immigrants will arrive than otherwise. Moreover, the character of the immigrant changes, too. While Swiss communities choose well-heeled, highly value-productive immigrants, whose presence enhances communal property values all-around, employers under democratic welfare State conditions are permitted by state law to externalize their employment costs on others and tend to import increasingly cheap, low-skilled and low value-productive immigrants,

regardless of their effect on all-around communal property values.¹²

There are several difficulties in this position. First, consider the claim that the employee immigrant is to be considered invited¹³ “only if the employer also assumes the full costs associated with the importation of his immigrant-employee.” Consider the case of “immigrants” from an entirely different country, “Storkovia.” Contrary to the views of some biologists, all babies come from that nation.¹⁴ They are, not merely in effect, but, actually, immigrants. They come from a place completely outside of the recipient country, in some sense even further removed than adult or child migrants from elsewhere on the planet. Do the parents of these immigrants bear anything like the “full costs associated with the[ir] importation?” To ask this is to answer it: of course not. When these immigrants grow up and commit crimes, it is their responsibility, not that of their mothers and fathers. Why, then, impose “full costs” on employers, and not on parents? Wherein lies the justification for treating these importers of immigrants so differently?

Second, consider “the cost of housing, healthcare, and all other amenities associated with the immigrant’s presence” as well as the fact that the “immigrant is allowed to make free use of every public facility: roads, parks, hospitals, schools, and no landlord, businessman, or private association is permitted to discriminate against him as regards housing, employment, accommodation,

¹² Hans-Hermann Hoppe, *In the Free Market, May a Businessman Hire Any Immigrant He Chooses?*, LRC BLOG (Sept. 22, 2004), <https://www.lewrockwell.com/2004/09/hans-hermann-hoppe/in-the-free-market-may-a-businessman-hire-any-immigrant-he-chooses/>.

¹³ Block & Callahan, *Is There a Right to Immigration? A Libertarian Perspective*, *supra* note 5 (explaining that because of this, labor mobility, too, would garner agreement by two parties, as in the case of internationally traded goods or investments).

¹⁴ *Id.* (explaining that the stork carries boy babies in blue cloth, and girl babies in pink).

and association.”¹⁵ But whose fault is this? Is it the immigrants? Of course not. These policies were put in place long before he arrived on the shores of the recipient country. As well, the immigrants from Storkovia will also be able to access this “substantial fringe benefits package.” The logic of this argument implies, again, that babies should either be banned and/or their creation, in migration from Storkovia, should be strictly controlled; as strictly as migrants from any other “place.” No, of course, the libertarian answer, to which Hoppe would certainly agree is to get rid of the welfare state which offers these “fringe benefits” to all and sundry.¹⁶

Third, Hoppe’s concern with declining “communal property values” is more than passing curious, given that under libertarianism, property, and only property, not its value, may properly be owned. This point is eloquently demonstrated by none other than this author himself.¹⁷

C. COLOGNE, GERMANY; SWITZERLAND, SWEDEN, DENMARK

A very powerful argument against open borders is based on what is actually occurring in late 2015 and early 2016. Large numbers of immigrant men, mainly from Arab countries have been molesting women, raping them, in many of the European nations that have welcomed them.¹⁸

¹⁵ *Id.* (explaining how those consideration apply to voting, receiving welfare, etc., with a lag time of some 18-21 years).

¹⁶ David D. Friedman, *Welfare and Immigration – The Other Half of the Argument*, DAVID D. FRIEDMAN’S HOME PAGE (April 1, 2006), http://www.daviddfriedman.com/Libertarian/Welfare_and_Immigration.html (making a valid point that immigration may well help reduce or eliminate these burdensome and illicit welfare programs).

¹⁷ See Hans Hermann-Hoppe & Walter Block, On Property and Exploitation (2002).

¹⁸ Martin Armstrong, *Germany’s Refugee Crisis is Starting to Explode*, LRC BLOG (Jan 11, 2016), <https://www.lewrockwell.com/2016/01/martin-armstrong/germanys-rapefugee-crisis/>; Janosch Deckler, ‘Criminal’ migrants carried out Cologne assault Stolen mobile phones found at refugee centers, POLITICO (Jan. 11, 2016 1:35 PM),

This has been so serious a problem, and so widespread, that there is even a new language to describe these acts of biting the hand that feeds them: “rapefugees” and “Taharrush.”¹⁹ This behavior is particularly despicable in that repays benevolence with viciousness. In the view of many, this is the Achilles Heel of libertarian open borders position. It would be difficult to quarrel with this assessment, at least in the view of most exponents of this opinion. However, this is a small segment of scholars who have contributed to that literature whose perspectives are invulnerable to this critique.

Before we make this defense, let us take a small detour and discuss the distinction put forth by Kant (1785,

<http://www.politico.eu/article/criminal-migrants-carried-out-cologne-hauptbahnhof-sex-assault-refugees-asylum-migration>; Michael B. Dougherty, *The Morally Repugnant Response To The Cologne Sexual Assault Gang*, THE WEEK (Jan.11 2016), <http://theweek.com/articles/598070/morally-repugnant-response-cologne-sexual-assault-gang>; Tyler Durden, *Massive Coverup Exposed In Sweden As Media, Cops Hid Migrant Sex Attacks*, ZERO HEDGE (Jan. 11, 2016), <http://www.zerohedge.com/news/2016-01-11/massive-coverup-exposed-sweden-media-cops-hid-migrant-sex-attacks>; Nick Hallett, *'Taharrush': Authorities Fear Repeat of Cologne as Middle East Rape Culture Imported to Europe*, BREIBART BLOG (Jan. 10, 2016), <http://www.breitbart.com/london/2016/01/10/german-authorities-fear-repeat-of-cologne-as-taharrush-comes-to-europe/>; Rex Murphy, *Every major authority in Cologne – police, officialdom, press – failed*, NATIONAL POST (Jan. 9, 2016 4:49 PM), <http://news.nationalpost.com/full-comment/rex-murphy-every-major-authority-in-cologne-police-officialdom-press-failed>; Taki Theodoracopulos, *Who Scares America More?*, TAKI'S MAG. (2016), http://takimag.com/article/who_scares_america_more_taki/print#axzz3wwlTmKF.

¹⁹ “Gang-rape,” or “collective harassment” in Arabic. See Corey Charlton, *The Arabic gang-rape 'Taharrush' phenomenon which sees women surrounded by groups of men in crowds and sexually assaulted... and has now spread to Europe*, MAILONLINE (Jan. 12, 2016), <http://www.dailymail.co.uk/news/article-3395390/The-Arabic-gang-rape-Taharrush-phenomenon-sees-women-surrounded-groups-men-crowds-sexually-assaulted-spread-Europe.html>.

1930) between his categorical and hypothetical imperatives. The former is articulated in the form of a command: Do this! Don't do that! Or, regarding our present concerns: Open the border! Do not open the border! The latter takes on an if-then format: If you want this, do that. If you want that, do this. If you want to see large numbers of unskilled workers unemployed, implement the minimum wage law. If you do not want to see large numbers of unskilled workers unemployed, eliminate the minimum wage law.²⁰

Most libertarian advocates of open borders take on the categorical imperative: Open the borders! True, advocates state that the following reasons for their position: it is the moral policy to pursue, it does not harm domestic workers, and that it promotes specialization, etc. Nevertheless at the end of the day, their bottom line is a categorical one: do not prohibit open and free immigration. However, there are some libertarian advocates of free unimpeded immigration who adopt the hypothetical stance. This small subset of the open borders libertarians²¹ do not say: open all borders, period. They assert, rather, open all borders or homestead all land, all standing room, all territory on which people might settle.²² To put this in other words: all borders should be open (a categorical); if, however, you are afraid of being inundated by people who will molest women and engage in other untoward acts, then privatize all land, every square inch of it. When you follow this policy, free immigration will be converted into trespass or forced integration, something that falls completely outside of the bounds of libertarian law. With full private property over every square inch of

²⁰ Note, a scenario in which the minimum wage increases employment and pay would be a logical contradiction; therefore, we do not ask about it.

²¹ Block, *Libertarian Case*, *supra* note 5; Block, *Immigration: A Critique*, *supra* note 5; Block, *Rejoinder to Hoppe*, *supra* note 5; Block, *Rejoinder to Todea*, *supra* note 5; Block and Callahan, *supra* note 5; Gregory and Block, *supra* note 5.

²² Walter Block & Peter Nelson, WATER CAPITALISM: THE CASE FOR PRIVATIZING OCEANS, RIVERS, LAKES, AND AQUIFERS, (Rowman & Littlefield eds., 2015) (including bodies of water internal to the country).

land, then and only then would open immigration constitute trespass or forced integration.

I do not say that the open border libertarians who adopt the categorical imperative are refuted by the Cologne, Germany argument. I only maintain they are vulnerable to it. For example, they may assert that the obvious harms to allowing “rapefugees” into their country is more than offset by the positives; the humanitarian policy of rescuing innocent people in danger of their lives, etc. Whether this will suffice or not is beyond the scope of the present paper. The only point I wish to make now is that the open borders libertarians who adopt the Kantian hypothetical are invulnerable to the Cologne counterexample. They can properly defend their position by claiming that it is not their fault that the “rapefugees” were allowed into Germany. The government of Angela Merkel had a choice: either open the borders or privatize fully. Had they adopted the latter policy, there would not have been any “rapefugees” allowed into their territory. But, they chose differently. The responsibility thus lies with them, not with the open borders libertarians.²³

D. THICK LIBERTARIANISM

In the view of some libertarian opponents of open borders, this policy will lead away from libertarianism, and/or make it more difficult to move in its direction in the first place. Mosquito (2016H) writes as follows on this matter:

So what does culture have to do with maintaining a libertarian order? This, to me, is quite simple: the less conflict, the less chance that some self-proclaimed and self-pitying disadvantaged group will look to a savior to deliver them from their perceived suffering. The less conflict, the less chance that people will look

²³ Not that the latter had any power to make any determination at all in these decisions.

for someone to do something about it. The 'someone' will ultimately be the monopoly provider of fixing all things for all people. And there goes the libertarian order - or even the possibility of moving closer to one. No matter the pleasant thoughts of open-borders libertarians, in this world we have an open borders example turning into a call for more state action....Ask yourself: who is the 'opposition' in this drama? Who is the 'enemy'? Look in the mirror. This is the fruit of 'open borders' in this world.²⁴

Note that this is a thick libertarian²⁵ perspective. As such it is incompatible with what I am trying to do in the

²⁴ Mosquito, *supra* note 10 (doubles down on this perspective with this statement: "I am not arguing libertarian theory; I am suggesting that *Block's* suggested path from here to there will move society away from, and not toward, a libertarian world.").

²⁵ For advocates of thick libertarianism, See Nick Gillespie, ET AL., *The Declaration of Independents: How Libertarian Politics Can Fix What's Wrong With America*. (Public Affairs 2011); Charles Johnson, *Libertarianism through Thick and Thin*, RAD GEEK PEOPLE'S DAILY (OCT. 3, 2008), http://radgeek.com/gt/2008/10/03/libertarianism_through/; Charles Johnson, *Libertarianism through Thick and Thin*, RAD GEEK PEOPLE'S DAILY (July 20, 2013), http://radgeek.com/gt/2008/10/03/libertarianism_through/; Roderick Long, *The Plot Thickens*, AUSTRO-ATHENIAN EMPIRE BLOG (Nov. 3, 2007), <http://aaeblog.com/2007/11/03/the-plot-thickens/>; Roderick Long, *Thickness Unto Death*, AUSTRO-ATHENIAN EMPIRE BLOG (July 10, 2008), <http://aaeblog.com/2008/07/10/thickness-unto-death/>; Roderick Long, *Monster Thickburger Libertarianism*, AUSTRO-ATHENIAN EMPIRE BLOG (July 24, 2008), <http://aaeblog.com/2008/07/24/monster-thickburger-libertarianism/>; Bionic Mosquito, *The Real Action is in the Reaction of the Opposition*, LRC BLOG (Jan. 11, 2016), <https://www.lewrockwell.com/2016/01/bionic-mosquito/open-borders-saul-alinsky/>; Cathy Reisenwitz, *Thick*

and thin libertarianism and Tom Woods, *SEX & THE ST.* (Dec. 23, 2013), <http://cathyreisenwitz.com/blog/2013/12/23/thick-and-thin-libertarianism-and-tom-woods/>; Sheldon Richman, *TGIF: In Praise of 'Thick' Libertarianism*, *EXPLORE FREEDOM* (Apr. 4, 2014), <http://fff.org/explore-freedom/article/tgif-in-praise-of-thick-libertarianism/>; Sheldon Richman, *Libertarianism is more than just rejecting force: the 'thick' and 'thin' of libertarian philosophy*, *HIT & RUN* (Apr. 6, 2014), <http://reason.com/archives/2014/04/06/a-libertarian-opposition-to-racism>; Sheldon Richman, *TGIF: Libertarianism Rightly Conceived*, *EXPLORE FREEDOM* (May 2, 2014), <http://fff.org/explore-freedom/article/tgif-libertarianism-rightly-conceived/>; Sheldon Richman, *What Social Animals Owe Each Other*, *EXPLORE FREEDOM* (July 1, 2014), <http://fff.org/explore-freedom/article/what-social-animals-owe-each-other/>; Jeffery Tucker, *Against libertarian brutality: Will libertarianism be brutalist or humanitarian? Everyone needs to decide*, *THE FREEMAN* (March 12, 2014), http://www.fee.org/the_freeman/detail/against-libertarian-brutalism; Kevin Vallier, *Political Libertarianism: Between Thick and Thin*, *BLEEDING HEART LIBERTARIANS* (May 7, 2014) <http://bleedingheartlibertarians.com/2014/05/political-libertarianism-between-thick-and-thin>; Kevin Vallier, *Libertarian Social Morality: Progressive, Conservative or Liberal?*, *BLEEDING HEART LIBERTARIANS* (February 22, 2013), <http://bleedingheartlibertarians.com/2013/02/libertarian-social-morality-progressive-conservative-or-liberal/>; Matt Zwolinski, *Libertarianism: Thick and Thin*, *BLEEDING HEART LIBERTARIANS* (December 28, 2011), <http://bleedingheartlibertarians.com/2011/12/libertarianism-thick-and-thin/#more-1697>. In contract, advocates for thin libertarianism, See Logan Albright, *What Libertarianism Is Not*, *MISES INSTITUTE CANADA BLOG* (Apr. 26, 2014) <http://mises.ca/posts/blog/what-libertarianism-is-not/>; Walter E. Block, *Pure libertarianism*, *THE LIBERTY CRIER* (May 17, 2014), http://libertycrier.com/pure-libertarianism/?utm_source=The+Liberty+Crier&utm_campaign=n=8cd483dafc-The_Liberty_Crier_5_19_2014&utm_medium=email&utm_term=0_600843dec4-8cd483dafc-284768769; Walter Block, *Was Murray Rothbard a Thick Libertarian*, *ECON POL'Y J.* (May 23, 2014), http://www.economicpolicyjournal.com/2014/05/was-murray-rothbard-thick-libertarian.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+economicpolicyjournal%2FKpWH+%28EconomicPolicyJournal.com%29; Walter Block, *Was Murray*

Rothbard a Thick Libertarian? Part II, ECON POL'Y J. (May 23, 2014),

present paper: discern what is the proper libertarian position on immigration. In very sharp contrast, this is not an objection on that ground. That is, whether a policy will promote liberty, somewhat shockingly, is entirely irrelevant to the question of what is the proper libertarian analysis of the issue. Instead, it raises an entirely different question: what view of libertarianism, correct or incorrect, will best promote libertarianism, a very distinct concern. To clarify this, consider some other cases. For example, the minimum wage law prohibits consenting adults from negotiating a wage contract below the level stipulated by this legislation. As such, this is a per se violation of liberty, and thus incompatible with libertarianism. But, suppose, just suppose, that the best way to promote economic freedom would be to support the minimum wage law. This might be true if this enactment creates so much unemployment for unskilled workers that a general revulsion leads to a jettisoning of all sorts of economic interventionistic policies. Then, by stipulation, the minimum wage law would encourage the free enterprise system, paradoxical though this might sound. A similar procedure is taking place in the present debate over free and open immigration. Mosquito is claiming that such a policy will *lead* to greater statism. It might well do so, as far as I know. However, my concern here is not with which

<https://www.lewrockwell.com/2014/05/laurence-m-vance/i-am-a-libertarian/>; Robert Wenzel, *A Note on the Difference Between Libertarians and Libwaps*, ECON POL'Y J. (May 1, 2014), http://www.economicpolicyjournal.com/2014/05/a-note-on-difference-between.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+economicpolicyjournal%2FKpwH+%28EconomicPolicyJournal.com%29; Robert Wenzel, *It's Here: Libertarian-Socialism*, ECON POL'Y J. (June 14, 2014), http://www.economicpolicyjournal.com/2014/06/its-here-libertarian-socialism.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+economicpolicyjournal%2FKpwH+%28EconomicPolicyJournal.com%29; Tom Woods, *Thick and Thin Libertarianism, and Duck Dynasty*, THE TOM WOODS SHOW (December 19, 2013), <http://tomwoods.com/thick-and-thin-libertarianism-and-duck-dynasty/>.

is the most efficient efficacious way to *achieve* liberty, or maintain it. It is, rather, with what liberty *consists of*, an entirely different matter.

Here is another example. It is a paradigm implication of libertarianism that all drugs should be legalized. But, posit, that if so, then some famous person will die from an overdose, and the electorate will become so revulsed by economic freedom, that democratic government will institute all sorts of horrid regulations. Still, drug legalization is the libertarian position, even though, under our present scenario, it will, paradoxically, lead to less liberty.

We must stress that there is nothing at all wrong with enquiring which policies lead to and away from freedom. These are very valuable studies. One does not become enmeshed into the wilds of thick libertarianism until one conflates the two; equating policies the promote liberty with the libertarian position. For example, consider the totally made up scenario where murdering innocent people will somehow bring liberty closer. It is still incompatible with libertarianism, and punishable by libertarian law, to do so. (Block, 2004, 2006).

V. CONCLUSION

Libertarian open borders opponents emphasize the importance of a shared culture (Mosquito, 2015E) in terms of reducing intra-national hostilities. They are undoubtedly correct; there is little doubt that homogeneous societies tend to be more peaceful than heterogeneous ones.²⁶ This, of course, mitigates against the open border position. To be sure, some open border cases will fall victim to the Cologne, Germany objection based on rape. But not all, if the benefits of free

²⁶ Craig Calcaterra, *Majority of Baseball Brawls are between Players of Different Ethnicities*, NBC SPORTS (2015), <http://mlb.nbcsports.com/2015/09/30/majority-of-baseball-brawls-are-between-players-of-different-ethnicities/> (last visited Nov. 19, 2016) (offering an example of this that might well be unknown even to writers who maintain this stance in opposition to immigration).

immigration are ruled to outweigh this objection. And all of the free immigration perspectives based on the hypothetical imperative are immune to the charge that they promote rape.